

**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

MOTION RECORD

October 5, 2021

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TAB 1

Court File No. 31-2764805

**ONTARIO
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THE PROVINCE OF ONTARIO**

NOTICE OF MOTION

(Re: Continuation under the *Companies' Creditors Arrangement Act*)

MEDIFOCUS INC., (“**Medifocus**” or the “**Applicant**”) will make a motion to a Judge presiding over the Commercial List on October 7, 2021 at 11:00 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”

Time: Oct 7, 2021 11:00 AM Eastern Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/94895328141?pwd=cUtFT0FyVTFYd2lPNXQ3Q2VmZGNWZz09>

Meeting ID: 948 9532 8141

Passcode: 380170

One tap mobile

+16473744685,,94895328141#,,, *380170# Canada

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Dial by your location

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+1 438 809 7799 Canada

+1 587 328 1099 Canada

Meeting ID: 948 9532 8141

Passcode: 380170

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

THE MOTION IS FOR:

1. An Order, substantially in the form appended at Tab 4 of the Motion Record (the “**Initial Order**”) that, among other things:
 - a) abridges the time for service of this Motion, validates the manner of service, and declares that this Motion is properly returnable before the Court;
 - b) declares that Medifocus is a company to which the *Companies Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) applies;
 - c) authorizes the continuation under the CCAA of Medifocus’ proposal proceedings commenced under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), on September 8, 2021, pursuant to the Notice of Intention to Make a Proposal filed by Medifocus (the “**NOI**”);
 - d) appoints msi Spergel Inc. (the “**Proposed Monitor**”) as an officer of this Honourable Court to monitor the business and financial affairs of the Applicant;
 - e) stays all proceedings and enforcement processes taken or that might be taken in respect of Medifocus, the Proposed Monitor, or their respective employees and representatives until January 7, 2022;
 - f) approves the Sale Process and Stalking Horse Bid, as described below, and detailed in the Affidavit of Raymond Tong, as filed;

- g) approves a debtor-in-possession credit facility term sheet (the “**DIP Term Sheet**”), pursuant to which Medifocus will obtain DIP financing up to a maximum of \$700,000; and
- h) grants the following charges over the property of Medifocus, listed in order of priority:

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

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

- 2. Such further and other relief as may be requested and this Honorable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

- 3. During COVID-19 pandemic, healthcare providers limited the accessibility of certain non-urgent medical treatments. Most of Medifocus’ business revolves around the research, development, and sale of medical device systems used in non-urgent medical treatment.
- 4. Medifocus’ primary technology is Prolieve, a treatment for Benign Prostatic Hyperplasia, also known as an enlarged prostate (“**BPH**”) through the thermotherapeutic use of precisely focused microwave-generated heat. Despite the seriousness of BPH, it is not usually an issue considered in need of urgent treatment.
- 5. The COVID-19 pandemic dramatically and negatively impacted Medifocus’ sales. Healthcare providers constrained the availability of non-urgent medical procedures and the general public limited their use of medical resources.

6. Medifocus therefore faced a liquidity crisis and mounting debt obligations which limited the development of their treatment pipeline. In response, on September 8, 2021, the Applicant commenced restructuring proceedings by filing the NOI under the BIA. msi Spergel was appointed as the proposal trustee under the NOI (the “**Proposal Trustee**”).
7. The Applicant now seeks an order transferring these proceedings to the CCAA, approving the Sale Process and Stalking Horse Bid and the creation of the Administration Charge and DIP Lender’s Charge (as described further below).

Continuation under the CCAA

8. The Applicant is insolvent and seeks to continue the NOI proceedings under the CCAA pursuant to section 11.6 of the CCAA. The Applicant requires the continued stay of proceedings and the other relief set out in the Initial Order to maximize the value of its business while it runs a going-concern sales process for the benefit of all stakeholders. Under the circumstances, a bankruptcy and liquidation would not be commercially reasonable and would result in a worse outcome for the stakeholders of Medifocus.
9. The Applicant is a “debtor company” as defined under the CCAA. The total claims against the Applicant exceeds \$5 million. Medifocus has not filed a proposal in the NOI proceedings. If the DIP Term Sheet is approved and the funds are advanced, Medifocus will have sufficient cash to continue operating during the proposed CCAA stay period.
10. The proposal trustee supports Medifocus’ motion to continue the NOI proceedings under the CCAA and will file a report prior to the hearing.

11. The proposed continuation would be consistent with the purposes of the CCAA. The continuation of the proceeding will, among other things:
 - a) provide the Applicant with administrative efficiencies to preserve stakeholder value;
 - b) allow the Applicant to benefit from the flexibility of the CCAA, including by implementing reverse vesting transaction structures to preserve the value of existing regulatory approvals;
 - c) provide time necessary to fully and formally canvass the market for purchasers of the business as a going-concern through a court-supervised stalking horse sale process, thereby maximizing stakeholder value; and
 - d) improve the recoveries for creditors as the mandatory superintendent's levy under section 147 of the BIA does not apply under the CCAA.
12. msi Spergel is a trustee within the meaning of section 2(1) of the BIA, and is otherwise qualified to act as the Monitor and has consented to so act.

Sale Process and Stalking Horse Bid

13. Should the Initial Order be granted, it is the Applicant's intention to implement, as quickly as possible, a sales process to be led by the Proposed Monitor for the listing of the business of Medifocus as a going-concern through a court-supervised stalking horse sale process (the "**Sale Process**").

14. An orderly Sale Process within the CCAA proceedings will provide for an efficient and fair process and is intended to provide more value for creditors than the liquidation or receivership of Medifocus.
15. The Sale Process provides an appropriate mechanism to further expose the Applicant's business to the market. The proposed Sale Process is open and transparent and will be conducted and supervised by the Proposed Monitor to maximize value for all of the Applicant's stakeholders.

DIP Financing

16. The Applicant has secured a commitment under the DIP Term Sheet in the maximum principal amount of \$700,000.
17. The quantum of the DIP Term Sheet is limited to what is reasonably necessary for the continued operation of the Applicant, taking into account the liquidity needed to maintain operations, including the maintenance of Medifocus' licenses and patents, and will permit the Company to operate until the end of the proposed stay period.
18. The DIP lender is willing to advance funding on the condition that it be granted the DIP Lender's Charge as security for amounts advanced under the DIP Term Sheet. The proposed DIP Lender's Charge will rank in priority to all other charges and encumbrances other than the Administration Charge.
19. It would be just and appropriate under the circumstances to approve the proposed DIP Term Sheet to maintain the Applicant as a going-concern while it conducts the Sale Process.

Priority Charges

20. The Applicant seeks the following Court-ordered charges as part of the relief granted by the Initial Order, in the following priority:

First – the “**Administration Charge**”, up to a maximum of \$200,000 to secure the fees and disbursements of the professional advisors of the Applicant, Proposed Monitor and Proposed Monitor’s counsel; and,

Second – the “**DIP Lender’s Charge**”, in the maximum amount of \$700,000 (together, the “**Priority Charges**”).

21. It is just and appropriate under the circumstances to grant the Priority Charges. The requested relief is limited only to that required to maintain the Applicant during the initial period of the CCAA until the expiry of the stay of proceedings.

Extension of the NOI Proceedings

22. Strictly in the alternative, if this Court does not see it fit to grant the proposed Initial Order at this time, the Applicant seeks an extension of the stay period under the NOI proceedings up to and including November 22, 2021.
23. Medifocus has acted, and continues to act, in good faith and with due diligence during the NOI proceedings with the oversight of the Proposal Trustee. No creditors of the Applicant will be materially prejudiced by the proposed stay extension.
24. The Proposal Trustee supports the proposed stay extension.

25. The information which section 10(2) of the CCAA requires, or reasonable surrogates therefor, accompanies this application.

Further Grounds

26. Section 11.6 of the CCAA, the provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
27. Rules 1.04, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, RSO 1990, Reg 194;
28. Section 106 of the *Courts of Justice Act*, RSO 1990, c C.43, as amended;
29. 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:

30. The Affidavit of Raymond Tong, sworn October 4, 2021;
31. The consent of msi Spergel Inc. to act as Monitor in the CCAA proceedings;
32. The First Report of the Proposed Monitor, dated October 5, 2021;
33. Such further and other evidence as counsel may advise and this Honourable Court may permit.

October 5, 2021

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Lawyers for Medifocus Inc.

TO: **THE SERVICE LIST**

**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.**

011
Court File No. 31-2764805

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NOTICE OF MOTION

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TAB 2

Court File No. 31-2764805

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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 Spengel Inc. (“**MSI**”) was appointed as proposal trustee (in such capacity, the

“**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

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

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

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

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

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

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

II. OVERVIEW OF THE APPLICANT

A. Business of Medifocus

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

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

21. Medifocus' common shares were historically traded on the Toronto Stock Exchange (TSX) under the trading symbol "MFS" and the OTC Markets under the trading symbol "MDFZF".

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

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

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

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

(i). *Acquisition of APA 1000 Rights*

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

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

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

(ii). *Purchase of Prolieve Technology*

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

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

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

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

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

(iii). *Development APA 1000 Technology*

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

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

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

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

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

(iv). *FDA and Equivalent Approvals*

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

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

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

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

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

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

B. Employees & Pension Plans

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

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

C. Cash Management

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

III. ASSETS AND LIABILITIES

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

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

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

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

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

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

A. Real Property Leases of the Applicant

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

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

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

B. Secured Obligations of the Applicant

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

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

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

C. Unsecured Obligations of the Applicant

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

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

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

| | |
|--|---------------------|
| Accounts payable: | \$322,709 |
| Accrued expenses: | \$1,188,056 |
| Accrued interest payable: | \$5,899,599 |
| Convertible notes payable (net of discount), current portion | \$5,540,000 |
| The Royalties: | \$2,190,867 |
| Promissory notes payable: | \$783,897 |
| 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.

(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.

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**”)

(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.

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.

-22-

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

VII. CONCLUSION

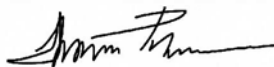
94. Medifocus is not able to meet its liabilities as they generally become due. Additionally, the aggregate of Medifocus' property is not, at a fair valuation, sufficient to enable payment of all of its obligations, due and accruing due.

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.

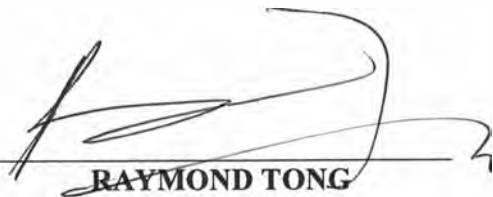
96. The relief requested in the proposed Initial Order is limited to relief that is reasonably necessary for the continued operations of Medifocus in the ordinary course of business during the stay period.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

AFFIDAVIT OF RAYMOND TONG

WEISZ FELL KOUR LLP

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

Caitlin Fell (LSO No. 60091H)

Email: cfell@wfklaw.ca
Tel: 416.613.8282

Pat Corney (LSO No. 65462N)

Email: pcorney@wfklaw.ca
Tel: 416.613.8287

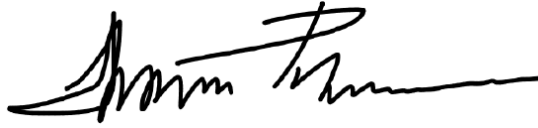
Shaun Parsons (LSO No. 81240A)

Email: sparsons@wfklaw.ca
Tel: 416.613.8284

Fax: 416.613.8290

Lawyers for Medifocus Inc.

THIS IS **EXHIBIT “A”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 4TH DAY OF OCTOBER 2021

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

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 4TH DAY OF OCTOBER 2021

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

A COMMISSIONER FOR TAKING AFFIDAVITS

Request ID: 026754046
 Transaction ID: 80700238
 Category ID: UN/E

Province of Ontario
 Ministry of Government Services

Date Report Produced: 2021/09/27
 Time Report Produced: 17:12:22
 Page: 1

CORPORATION PROFILE REPORT

| | | |
|--|----------------------------|----------------------------------|
| Ontario Corp Number | Corporation Name | Incorporation Date |
| 2070582 | MEDIFOCUS INC. | 2005/04/25 |
| | | Jurisdiction |
| | | ONTARIO |
| Corporation Type | Corporation Status | Former Jurisdiction |
| ONTARIO BUSINESS CORP. | ACTIVE | NOT APPLICABLE |
| Registered Office Address | | Date Amalgamated |
| MIRSAD JAKUBOVIC 1090 DON MILLSRD | | NOT APPLICABLE |
| Suite # 404 TORONTO ONTARIO CANADA M3C 3R6 | | New Amal. Number |
| | | NOT APPLICABLE |
| | | Notice Date |
| | | NOT APPLICABLE |
| Mailing Address | | Letter Date |
| MIRSAD JAKUBOVIC 1090 DON MILLSRD | | NOT APPLICABLE |
| Suite # 404 TORONTO ONTARIO CANADA M3C 3R6 | | Revival Date |
| | | NOT APPLICABLE |
| | | Continuation Date |
| | | NOT APPLICABLE |
| | | Transferred Out Date |
| | | NOT APPLICABLE |
| | | Cancel/Inactive Date |
| | | NOT APPLICABLE |
| | | EP Licence Eff.Date |
| | | NOT APPLICABLE |
| | | EP Licence Term.Date |
| | | NOT APPLICABLE |
| | Number of Directors | Date Commenced in Ontario |
| | Minimum | Maximum |
| | 00003 | 00010 |
| Activity Classification | | Date Ceased in Ontario |
| NOT AVAILABLE | | NOT APPLICABLE |

Request ID: 026754046
Transaction ID: 80700238
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2021/09/27
Time Report Produced: 17:12:22
Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number

2070582

Corporation Name

MEDIFOCUS INC.

Corporate Name History

MEDIFOCUS INC.

Effective Date

2005/04/25

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator:**Name (Individual / Corporation)**

(JOSEPH) SHUEN
CHUEN
CHAN

Address

130 KING STREET WEST
THE EXCHANGE TOWER, P.O. BOX 427
Suite # 1800
TORONTO
ONTARIO
CANADA M5X 1E3

Date Began

2010/01/29

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type**Resident Canadian**

Y

Request ID: 026754046
Transaction ID: 80700238
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2021/09/27
Time Report Produced: 17:12:22
Page: 3

CORPORATION PROFILE REPORT

Ontario Corp Number

2070582

Corporation Name

MEDIFOCUS INC.

Administrator:**Name (Individual / Corporation)**

DR. AUGUSTINE

CHEUNG

Address

130 KING STREET WEST
THE EXCHANGE TOWER, P.O. BOX 427
Suite # 1800
TORONTO
ONTARIO
CANADA M5X 1E3

Date Began

2008/11/25

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type**Resident Canadian**

N

Administrator:**Name (Individual / Corporation)**

DR. AUGUSTINE

CHEUNG

Address

130 KING STREET WEST
THE EXCHANGE TOWER, P.O. BOX 427
Suite # 1800
TORONTO
ONTARIO
CANADA M5X 1E3

Date Began

2008/11/25

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

N

Request ID: 026754046
Transaction ID: 80700238
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2021/09/27
Time Report Produced: 17:12:22
Page: 4

CORPORATION PROFILE REPORT

Ontario Corp Number

2070582

Corporation Name

MEDIFOCUS INC.

Administrator:**Name (Individual / Corporation)**

DR. AUGUSTINE

CHEUNG

Address

130 KING STREET WEST
THE EXCHANGE TOWER, P.O. BOX 427
Suite # 1800
TORONTO
ONTARIO
CANADA M5X 1E3

Date Began

2008/11/25

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

CHIEF EXECUTIVE OFFICER

Resident Canadian**Administrator:****Name (Individual / Corporation)**

DR. AUGUSTINE

P.Y.
CHOW

Address

130 KING STREET WEST
THE EXCHANGE TOWER, P.O. BOX 427
Suite # 1800
TORONTO
ONTARIO
CANADA M5X 1E3

Date Began

2010/08/30

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type**Resident Canadian**

N

Request ID: 026754046
Transaction ID: 80700238
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2021/09/27
Time Report Produced: 17:12:22
Page: 5

CORPORATION PROFILE REPORT

Ontario Corp Number

2070582

Corporation Name

MEDIFOCUS INC.

Administrator:**Name (Individual / Corporation)**

MIRSAD
JAKUBOVIC

Address

61 BRIAN DRIVE

TORONTO
ONTARIO
CANADA M2J 3Y1

Date Began

2008/11/25

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

CHIEF FINANCIAL OFFICER Y

Resident Canadian**Administrator:****Name (Individual / Corporation)**

MIRSAD
JAKUBOVIC

Address

61 BRIAN DRIVE

TORONTO
ONTARIO
CANADA M2J 3Y1

Date Began

2014/01/06

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type**Resident Canadian**

Y

Request ID: 026754046
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Province of Ontario
Ministry of Government Services

Date Report Produced: 2021/09/27
Time Report Produced: 17:12:22
Page: 6

CORPORATION PROFILE REPORT

Ontario Corp Number

2070582

Corporation Name

MEDIFOCUS INC.

Administrator:**Name (Individual / Corporation)**

JOHN

MON

Address

130 KING STREET WEST
THE EXCHANGE TOWER, P.O. BOX 427
Suite # 1800
TORONTO
ONTARIO
CANADA M5X 1E3

Date Began

2008/11/25

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

CHIEF OPERATING OFFICER

Resident Canadian**Administrator:****Name (Individual / Corporation)**

GRANT

WALSH

Address

130 KING STREET WEST
THE EXCHANGE TOWER, P.O. BOX 427
Suite # 1800
TORONTO
ONTARIO
CANADA M5X 1E3

Date Began

2009/03/25

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type**Resident Canadian**

Y

Request ID: 026754046
Transaction ID: 80700238
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2021/09/27
Time Report Produced: 17:12:22
Page: 7

CORPORATION PROFILE REPORT

Ontario Corp Number

2070582

Corporation Name

MEDIFOCUS INC.

Administrator:**Name (Individual / Corporation)**

GRANT

WALSH

Address

130 KING STREET WEST
THE EXCHANGE TOWER, P.O. BOX 427
Suite # 1800
TORONTO
ONTARIO
CANADA M5X 1E3

Date Began

2009/03/25

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

CHAIRMAN

Resident Canadian**Administrator:****Name (Individual / Corporation)**

TAK CHEUNG

YAM

Address

12 MAY ROAD
39B CLOVELLY COURT

HONG KONG

CHINA

Date Began

2012/11/28

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type**Resident Canadian**

N

Request ID: 026754046
Transaction ID: 80700238
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2021/09/27
Time Report Produced: 17:12:22
Page: 8

CORPORATION PROFILE REPORT

Ontario Corp Number

2070582

Corporation Name

MEDIFOCUS INC.

Last Document Recorded

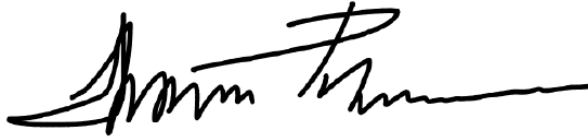
| Act/Code | Description | Form | Date |
|----------|--------------------|------|--------------------------------|
| CIA | ANNUAL RETURN 2009 | 1C | 2017/03/21 (ELECTRONIC FILING) |

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

THIS IS **EXHIBIT “C”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 4TH DAY OF OCTOBER 2021



A COMMISSIONER FOR TAKING AFFIDAVITS

Patent Register

Product name : Prolieve Thermolatilation System ("Prolieve")

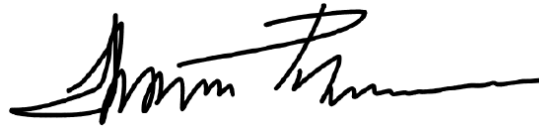
Date of FDA (USA) approval

19-Feb-2014

| No. | Name of authority | Descriptions | Patent no. | Granted Date | Filed Date | Expiry Date | Application no. |
|---------------------------------------|---|--|--------------------------------|--------------|-------------|--|--------------------------------|
| MEDI.0105 | United States Patent and Trademark Office | Induction Heating for Delivery of Thermal Therapy | 6,895,282 | 17-May-2005 | 4-Oct-2002 | 9-Jan-2023 | 10/264,969 |
| MEDI.0105C1 | United States Patent and Trademark Office | Medical Treatment Using Pulsed Energy | 8,140,169 | 20-Mar-2012 | 5-Apr-2005 | 9-Jan-2023 | 11/100,138 |
| MEDI.0100 | United States Patent and Trademark Office | Induction Heating for the Delivery of Thermal Therapy | 8,412,346 | 2-Apr-2013 | 14-Feb-2012 | 4/10/2022 | 13/396,131 |
| | | | | | | | |
| MEDI.0102 | United States Patent and Trademark Office | Adjustable Profit Probe | 8,123,705 | 28-Feb-2012 | 6-Oct-2005 | 29/7/2028 Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 976 days. (i.e. 6 Oct-25 + 976 days) | 11/246,936 |
| MEDI.0102C1 | United States Patent and Trademark Office | Thermal Monitoring | 8,414,501 | 9-Apr-2013 | 23-Dec-2008 | 13-Feb-2029 | 12/342,959 Pat.No.8,414,501 |
| MEDI.0102C2 | United States Patent and Trademark Office | Thermal Monitoring | 8,409,110 | 2-Apr-2013 | 26-Sep-2008 | 30-Aug-2029 | 12/238,589 Pat.No.8,409,110 |
| | | | | | | | |
| MEDI.0103 | United States Patent and Trademark Office | Device and Method for Treatment of Tissue Adjacent a Bodily Conduit by Thermocompression | 6,958,075 | 25-Oct-2005 | 18-Sep-2001 | 18-Sep-2021 | 09/054,194 |
| | European Patent Office | 07-00412EP1 / Europe | EP1435868B1 | 2-Nov-2006 | 13-Sep-2002 | | EP1435868B1 |
| | | 07-00412DE1 / Germany | | | | | |
| | | 07-00412FR1 / France | | | | | |
| | | 07-00412GB1 / UK | | | | | |
| | | 07-00412IT1 / Italy | | | | | |
| | Japan Patent Office | 07-00412JP1 / Japan | 4292259 | 8-Jul-2009 | | 4292259 | |
| Canadian Intellectual Property Office | 07-00412CA1 / Canada | 2460907 | 19-Nov-2013 | | | 2460907 | |
| MEDI.0103C1 | United States Patent and Trademark Office | Device and Method for Treatment of Tissue Adjacent a Bodily Conduit by Thermocompression | 7,811,313 | 12-Oct-2010 | 30-Jun-2004 | 19-Oct-2022 | 10/879,288 |
| MEDI.0103C2 | United States Patent and Trademark Office | Device and Method for Treatment of Tissue Adjacent a Bodily Conduit by Thermocompression | 8,221,413 | 17-Jul-2012 | 3-Aug-2010 | 18-Sep-2021 | 12/849,458 |
| | | | | | | | |
| MEDI.0106 | United States Patent and Trademark Office | System and Method Heating the Prostate Gland to Treat and Prevent the Growth And Spread of Prostate Tumors | 09/597,234 Pat.No.6,477,426 | 5-Nov-2002 | 20-Jun-2000 | 19-Sep-2020 | 09/597,234 Pat.No.6,477,426 |
| | Canadian Intellectual Property Office | 07-00411CA1/ Canada | 2408627 | 4-Sep-2012 | 20-Jun-2001 | | 2408627 |
| | European Patent Office | 07-00411EP1/ Europe | EP1292362 | 19-Mar-2003 | | | EP1292362 |
| | | 07-00411ES1/ Spain | | | | | |
| | | 07-00411DE1/ Germany | | | | | |
| | | 07-00411FR1/ France | | | | | |
| | | 07-00411GB1/ UK | | | | | |
| | | 07-00411IE1/ Ireland | | | | | |
| | | 07-00411IT1/ Italy | | | | | |
| | Japan Patent Office | 07-00411JP1/ Japan | 4503229 | 15-Jan-2004 | | 4503229 | |
| Mexico | 07-00411MX1/ Mexico | 227252 | 14-Apr-2005 | | 227252 | | |
| MEDI.0106C1 | United States Patent and Trademark Office | System and Method Heating the Prostate Gland to Treat and Prevent the Growth And Spread of Prostate Tumors | 10/247,747 Pat.No.6,788,977 | 7-Sep-2004 | 20-Sep-2002 | 12-Jul-2020 | 10/247,747 Pat.No.6,788,977 |
| | Canadian Intellectual Property Office | 07-00411CA2/ Canada | 2498166 | 2-Jun-2015 | 16-Sep-2003 | | 2498166 |
| | European Patent Office | 07-004411EP2/ Europe | EP1555955 | 27-Jul-2005 | | | EP1555955 |
| | Japan Patent Office | 07-004411JP2/ Japan | 4559860 | 27-Jul-2005 | | | 4559860 |
| MEDI.0107 | United States Patent and Trademark Office | Method and Apparatus for Treatment of Tissue Adjacent A body Conduit With A Gene Coated Compression Ballon | 10/436,500 Pat.No.7,837,720 | 23-Nov-2010 | 13-May-2003 | 19-Oct-2022 | 10/436,500 Pat.No.7,837,720 |
| | Canadian Intellectual Property Office | Method and Apparatus for Treatment of Tissue Adjacent A body Conduit With A Gene Coated Compression Ballon | 254901 | 27-Jan-2005 | 11-May-2004 | | 254901 |
| | European Patent Office | 07-00411EP3/ Europe | EP1622531B1 | 8-Feb-2006 | | | EP1622531B1 |
| | | 07-00411DE3/ Germany | 602004019907.9 | | | | 602004019907.9 |
| | | 07-00411FR3/ France | EP1622531B1 | | | | EP1622531B1 |
| | | 07-00411GBE3/ UK | | | | | |
| | | 07-00411IE3/ Ireland | | | | | |
| | | 07-00411IT3/ Italy | | | | | |
| | Japan Patent Office | 07-00411JP3/ Japan | 4568283 | 21-Dec-2006 | | | 4568283 |
| MEDI.0107C1 | United States Patent and Trademark Office | Catheter | 12/902,636 Pat.No.8,221,414 | 17-Jul-2012 | 12-Oct-2010 | 20-Jun-2020 | 12/902,636 Pat.No.8,221,414 |
| | European Patent Office | 07-00411EP1A/ Europe | EP1647305B1 | 29-Dec-2010 | 20-Jun-2001 | | EP1647305B1 |
| | | 07-00411DE1A/ Germany | | | | | |
| | | 07-00411FR1A/ France | | | | | |
| | | 07-00411GB1A/ UK | | | | | |
| | | 07-00411IE1A/ Ireland | | | | | |
| | | 07-00411IT1A/ Italy | | | | | |
| MEDI.0109 | United States Patent and Trademark Office | Method and Apparatus Treating Tissue Adjacent a Bodily Conduit with Thermocompression and Drugs | 10/504,302 Pat.No.7,833,220 | 16-Nov-2010 | 19-Feb-2003 | 19-Oct-2022 | 10/504,302 Pat.No.7,833,220 |

| IP Type | Type Code | Country | IP Number | Renewal Date | Case Status | CPA Account Number | Lapse | Current Annuity | Division Code | Division Name | Customer Reference | Case Code | File Number | Grant Date | Grant Number | Proprietor | Customer Agent Name | Expiry Date | First Priority Date | First Priority Number | PCT Filing Date | PCT Filing Number | Parent Application Date | Parent Application Number | Application Date | Application Number | Publication Date | Publication Number | Data Added |
|---------|-----------|--|-----------------|--------------|----------------------|--------------------|-------|-----------------|---------------|---------------|-------------------------------------|-----------|--------------|-------------|--------------|-------------------------------|---------------------|-------------|---------------------|-----------------------|-----------------|-------------------|-------------------------|---------------------------|------------------|--------------------|------------------|--------------------|-------------|
| PATENT | AP | EPO - European Patent Office | 06815516.7 | | Granted | 2511202 | | 0 | | | METHOD FOR THE PRE-CONDITIONING/FIX | 275444 | 07-00414EP03 | 05-Sep-2018 | 2079380 | BOSTON SCIENTIFIC CORPORATION | | 27-Sep-2026 | 22-Mar-2006 | | 27-Sep-2006 | PCT/US06/037569 | | | 27-Sep-2006 | 06815516.7 | 22-Jul-2009 | 2079380 | 30-Apr-2012 |
| PATENT | PT | China | 01811529.2 | | Fees not yet due | 2511202 | | 0 | | | SYSTEM & METHOD FOR HEATING THE | 271908 | 07-00411CN01 | | | BOSTON SCIENTIFIC CORPORATION | | 20-Jun-2021 | | | | | | 20-Jun-2001 | 01811529.2 | | | 20-Jun-2005 | |
| PATENT | UL | United States of America | 12/335073 | | Fees not yet due | 2511202 | | 0 | | | MEDICAL TREATMENT USING PULSED | 275442 | 07-00477US02 | | | BOSTON SCIENTIFIC SCIMED INC | | | | | | | | 15-Dec-2008 | 12/335073 | | | 07-Mar-2013 | |
| PATENT | AP | WIPO (PT) - World Intellectual Property Organization | PCT/US06/037569 | | No fees due | 2511202 | | 0 | | | METHOD FOR THE PRE-CONDITIONING | 272213 | 07-00414WO03 | | | BOSTON SCIENTIFIC CORPORATION | | 27-Sep-2026 | | | | | | 27-Sep-2006 | PCT/US06/037569 | | | 07-Mar-2013 | |
| PATENT | AP | WIPO (PT) - World Intellectual Property Organization | PCT/US06/010505 | | No fees due | 2511202 | | 0 | | | APPARATUS AND METHOD FOR THE | 271975 | 07-00414WO01 | | | BOSTON SCIENTIFIC CORPORATION | | 22-Mar-2026 | | | | | | 22-Mar-2006 | PCT/US06/010505 | | | 07-Mar-2013 | |
| PATENT | UE | United States of America | 8476242 | 02-Jan-2021 | Awaiting instruction | 2511202 | | 0 | | | METHOD FOR THE PRE-CONDITIONING | 271976 | 07-00414US03 | 02-Jul-2013 | 8476242 | BOSTON SCIENTIFIC CORPORATION | | 17-Nov-2025 | | | | | 17-Nov-2005 | 11/280199 | 27-Sep-2006 | 11/527688 | | | 07-Mar-2013 |
| PATENT | UE | United States of America | 8765116 | 01-Jan-2022 | None | 2511202 | | 2 | | | APPARATUS AND METHOD FOR | 271974 | 07-00414US02 | 01-Jul-2014 | 8765116 | BOSTON SCIENTIFIC CORPORATION | | 17-Nov-2025 | | | | | | 17-Nov-2005 | 11/280199 | | | 07-Mar-2013 | |
| PATENT | AP | WIPO (PT) - World Intellectual Property Organization | PCT/US03/04512 | | No fees due | 2511202 | | 0 | | | DEVICE AND METHOD FOR TREATMENT OF | 271963 | 07-00413WO01 | | | BOSTON SCIENTIFIC CORPORATION | | 19-Feb-2023 | | | | | | 19-Feb-2003 | PCT/US03/04512 | | | 07-Mar-2013 | |
| PATENT | WG | United States of America | 8374702 | 12-Aug-2020 | Abandoned | 2511202 | | 2 | | | DRUG DELIVERY | 306924 | 07-00413US04 | 12-Feb-2013 | 8374702 | BOSTON SCIENTIFIC CORPORATION | | 13-Sep-2022 | | | | | | 13-Sep-2002 | PCT/US02/029048 | | 13-May-2005 | 10/504302 | 07-Mar-2013 |
| PATENT | PT | Mexico | PA/A/04/007897 | | Fees not yet due | 2511202 | | 0 | | | DEVICE AND METHOD FOR TREATMENT OF | 271971 | 07-00413MX01 | | | BOSTON SCIENTIFIC CORPORATION | | | | | | | | 19-Feb-2003 | PA/A/04/007897 | | | 07-Mar-2013 | |
| PATENT | PT | India | 01164/KOLNP/04 | | Fees not yet due | 2511202 | | 0 | | | DEVICE AND METHOD FOR TREATMENT OF | 271969 | 07-00413IN01 | | | BOSTON SCIENTIFIC CORPORATION | | 19-Feb-2023 | | | | | | 19-Feb-2003 | 01164/KOLNP/04 | | | 07-Mar-2013 | |
| PATENT | PT | China | 03804947.3 | | Fees not yet due | 2511202 | | 0 | | | DEVICE AND METHOD FOR TREATMENT OF | 271967 | 07-00413CN01 | | | BOSTON SCIENTIFIC CORPORATION | | 19-Feb-2023 | | | | | | 19-Feb-2003 | 03804947.3 | | | 05-Mar-2013 | |
| PATENT | AP | WIPO (PT) - World Intellectual Property Organization | PCT/US02/29048 | | No fees due | 2511202 | | 0 | | | DEVICE AND METHOD FOR TREATMENT OF | 271933 | 07-00412WO01 | | | BOSTON SCIENTIFIC CORPORATION | | 13-Sep-2022 | | | | | | 13-Sep-2002 | PCT/US02/29048 | | | 05-Mar-2013 | |
| PATENT | UL | United States of America | 13/523096 | | Fees not yet due | 2511202 | | 0 | | | DEVICE AND METHOD FOR TREATMENT OF | 306922 | 07-00412US04 | | | BOSTON SCIENTIFIC CORPORATION | | | | | | | 18-Sep-2001 | 09/954194 | 14-Jun-2012 | 13/523096 | | | 05-Mar-2013 |
| PATENT | PT | Mexico | PA/A/04/002564 | | Fees not yet due | 2511202 | | 0 | | | DEVICE AND METHOD FOR TREATMENT OF | 271952 | 07-00412MX01 | | | BOSTON SCIENTIFIC CORPORATION | | | | | | | | 13-Sep-2002 | PA/A/04/002564 | | | 05-Mar-2013 | |
| PATENT | PT | India | 00378/KOLNP/04 | | Fees not yet due | 2511202 | | 0 | | | DEVICE AND METHOD FOR TREATMENT OF | 271951 | 07-00412IN01 | | | BOSTON SCIENTIFIC CORPORATION | | 13-Sep-2022 | | | | | | 13-Sep-2002 | 00378/KOLNP/04 | | | 05-Mar-2013 | |
| PATENT | AP | WIPO (PT) - World Intellectual Property Organization | PCT/US04/014768 | | No fees due | 2511202 | | 0 | | | METHOD AND APPARATUS FOR TREATMENT | 271954 | 07-00411WO03 | | | BOSTON SCIENTIFIC CORPORATION | | 11-May-2024 | | | | | | 11-May-2004 | PCT/US04/014768 | | | 05-Mar-2013 | |
| PATENT | AP | WIPO (PT) - World Intellectual Property Organization | PCT/US03/28898 | | No fees due | 2511202 | | 0 | | | METHOD FOR ADMINISTRATING | 271923 | 07-00411WO02 | | | BOSTON SCIENTIFIC CORPORATION | | 16-Sep-2023 | | | | | | 16-Sep-2003 | PCT/US03/28898 | | | 05-Mar-2013 | |
| PATENT | AP | WIPO (PT) - World Intellectual Property Organization | PCT/US01/19689 | | No fees due | 2511202 | | 0 | | | SYSTEM AND METHOD FOR HEATING THE | 271906 | 07-00411WO01 | | | BOSTON SCIENTIFIC CORPORATION | | 20-Jun-2021 | | | | | | 20-Jun-2001 | PCT/US01/19689 | | | 05-Mar-2013 | |
| PATENT | UL | United States of America | 13/523302 | | Fees not yet due | 2511202 | | 0 | | | CATHERETER | 306921 | 07-00411US05 | | | BOSTON SCIENTIFIC CORPORATION | | | | | | | 20-Jun-2000 | 09/597234 | 14-Jun-2012 | 13/523302 | | | 05-Mar-2013 |
| PATENT | PT | Mexico | PA/A/05/012161 | | Fees not yet due | 2511202 | | 0 | | | METHOD AND APPARATUS FOR TREATMENT | 271959 | 07-00411MX03 | | | BOSTON SCIENTIFIC CORPORATION | | | | | | | | 11-May-2004 | PA/A/05/012161 | | | 05-Mar-2013 | |
| PATENT | PT | Mexico | PA/A/05/003015 | | Fees not yet due | 2511202 | | 0 | | | METHOD FOR ADMINISTRATING | 271928 | 07-00411MX02 | | | BOSTON SCIENTIFIC CORPORATION | | | | | | | | 16-Sep-2003 | PA/A/05/003015 | | | 05-Mar-2013 | |
| PATENT | PT | India | 02482/KOLNP/05 | | Fees not yet due | 2511202 | | 0 | | | METHOD AND APPARATUS FOR TREATMENT | 271957 | 07-00411IN03 | | | BOSTON SCIENTIFIC CORPORATION | | 12-May-2025 | | | | | | 12-May-2005 | 02482/KOLNP/05 | | | 05-Mar-2013 | |
| PATENT | PT | China | 200480013080.9 | | Fees not yet due | 2511202 | | 0 | | | METHOD & APPARATUS FOR TREATMENT | 271960 | 07-00411CN03 | | | BOSTON SCIENTIFIC CORPORATION | | 11-May-2024 | | | | | | 11-May-2004 | 200480013080.9 | | | 04-Mar-2013 | |
| PATENT | PT | China | 03822401.1 | | Fees not yet due | 2511202 | | 0 | | | METHOD FOR ADMINISTRATING | 271926 | 07-00411CN02 | | | BOSTON SCIENTIFIC CORPORATION | | 16-Sep-2023 | | | | | | 16-Sep-2003 | 03822401.1 | | | 04-Mar-2013 | |
| PATENT | AP | WIPO (PT) - World Intellectual Property Organization | PCT/US08/077772 | | No fees due | 2511202 | | 0 | | | THERMAL MONITORING | 274705 | 06-01351WO01 | | | BOSTON SCIENTIFIC SCIMED INC | | 26-Sep-2028 | | | | | | 26-Sep-2008 | PCT/US08/077772 | | | 04-Mar-2013 | |
| PATENT | AP | WIPO (PT) - World Intellectual Property Organization | PCT/US06/030100 | | No fees due | 2511202 | | 0 | | | ADJUSTABLE PROFILE PROBE | 267978 | 05-00097WO01 | | | BOSTON SCIENTIFIC SCIMED INC | | 31-Jul-2026 | | | | | | 31-Jul-2006 | PCT/US06/030100 | | | 04-Mar-2013 | |
| PATENT | UE | United States of America | 8123705 | 28-Aug-2023 | None | 2511202 | | 3 | | | ADJUSTABLE PROFILE PROBE | 261334 | 05-00097US01 | 28-Feb-2012 | 8123705 | BOSTON SCIENTIFIC SCIMED INC | | 06-Oct-2025 | | | | | | 06-Oct-2005 | 11/246936 | | | 04-Mar-2013 | |

THIS IS **EXHIBIT “D”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 4TH DAY OF OCTOBER 2021



A COMMISSIONER FOR TAKING AFFIDAVITS

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this "Agreement"), dated as of June 25, 2012, is made by and among (i) **BOSTON SCIENTIFIC CORPORATION**, a Delaware corporation ("Parent"), (ii) those Affiliates of Parent that are identified on Schedule 1.01(a) attached hereto that hold Purchased Assets (together with Parent, the "Sellers"), on the one hand, and (iii) **MEDIFOCUS, INC.**, a Canadian corporation ("Buyer"), on the other hand.

WHEREAS, Parent, directly and through certain of its Affiliates, including the Sellers, is engaged in the business of manufacturing and selling the Prolieve Products (as defined herein) (the "Business"); and

WHEREAS, the Sellers wish to sell, or cause to be sold, to Buyer, and Buyer wishes to purchase from the Sellers, all right, title and interest in and to certain assets of Sellers that are used in connection with or related to the manufacture, marketing and sale of the Prolieve Products (as defined herein), and in connection therewith Buyer is willing to assume certain liabilities relating thereto described herein, all upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the promises and the mutual agreements and covenants hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

SECTION 1.01. Certain Defined Terms. For purposes of this Agreement:

"Action" means any claim, action, suit, arbitration, inquiry, proceeding, mediation, litigation or investigation by or before any Governmental Authority.

"Affiliate" means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

"Ancillary Agreements" means the Assumption Agreements, the Bills of Sale, the Transfer Agreements, the Transition Services Agreement, the Buyer License Agreement, the Seller License Agreement, and any other agreements that the parties may mutually agree upon prior to Closing.

"Assumption Agreements" means the Assumption Agreements to be executed by Buyer and Parent and/or the applicable Sellers at the Closing, substantially in the form of Exhibit A.

"Bills of Sale" means the Bills of Sale and Assignment to be executed by Parent and/or the applicable Sellers at the Closing, substantially in the form of Exhibit B.

"Books, Records and Files" means any studies, reports, records (including shipping and personnel records), books of account, invoices, contracts, instruments, surveys, regulatory filings and approvals (including all supporting data and information), data (including financial, sales, purchasing and operating

data), computer data, disks, diskettes, tapes, marketing plans and collateral materials, customer lists, supplier lists, distributor lists, correspondence and other documents.

"Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the City of Boston, Massachusetts.

"Business Intellectual Property" means, collectively, the Business Transferred Intellectual Property and the Business Licensed Intellectual Property.

"Business Licensed Intellectual Property" means proprietary, intangible know-how, such as information, inventions, formulas, materials, processes, developments, technology, research and trade secrets, owned by Sellers as of the Closing Date which is predominantly related to the design or manufacture of the Prolieve Products.

"Business Transferred Intellectual Property" means the Intellectual Property of the Parent and its Affiliates that is listed on Schedule 2.01(a)(ii).

"Buyer License Agreement" means the Non-Exclusive License Agreement, in the form of Exhibit C hereto, to be executed by Buyer and Parent at the Closing, pursuant to which Buyer licenses to Parent and its Affiliates the Business Transferred Intellectual Property.

"Closing Payment" means the amount of (a) \$2,500,000, plus, (b) \$62,728.23, representing the aggregate amount of severance payments with respect to certain employees of the Business who are not Transferred Employees, plus (c) \$19,960, representing the aggregate amount of purchases made by Parent and its Affiliates of components for the Prolieve Products on behalf of the Buyer.

"Code" means the Internal Revenue Code of 1986, as amended through the date hereof.

"Contract" means any written loan or credit agreement, bond, debenture, note, mortgage, indenture, lease, supply agreement, license agreement, development agreement or other contract, agreement, obligation, commitment or instrument that is intended to be legally binding, including all amendments thereto.

"control" (including the terms "controlled by" and "under common control with"), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise.

"Earnout Products" means the Prolieve Products and all improvements, enhancements, derivatives, and iterations thereto by Buyer or its Affiliates after the Closing Date.

"Encumbrance" means any mortgage, pledge, deed of trust, hypothecation, security interest, title defect, voting trust, shareholders' agreement, proxy, encumbrance, lien, burden, license, charge or other similar restriction, lease, sublease, title retention agreement, option, easement, covenant, encroachment or other adverse claim, other than, with respect to Intellectual Property included in the Purchased Assets, any licenses of Intellectual Property.

"FDA" means the United States Food and Drug Administration.

"Field" means microwave treatments for benign prostatic hyperplasia.

"Governmental Authority" means any United States federal, state or local or any non-United States government, governmental, regulatory or administrative authority, agency or commission, or non-governmental body that has been authorized by Law to act for a governmental body, or any court, tribunal, or judicial or arbitral body.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"Intellectual Property" means all intellectual property rights of any kind, including rights in, to and concerning (a) patents, patent applications and statutory invention registrations, including divisionals, continuations, continuations-in-part, foreign counterparts, re-issues and re-examinations thereof, (b) Trademarks, (c) published and unpublished works of authorship and copyrights therein, and copyright registrations and applications for registration thereof and all renewals, extensions, restorations and reversions thereof, (d) software, code, data, databases and compilations of information, and (e) confidential and proprietary information, inventions, formulas, processes, developments, technology, research, trade secrets and product specifications, drawings, and know-how.

"Knowledge" means, when used in connection with the Sellers and Parent with respect to any matter in question, the actual knowledge after reasonable inquiry of Parent's Vice President of Marketing, Urology and Women's Health, and the Director of Marketing, Director of Sales, Director of Clinical and Director of Quality responsible for the Business.

"Law" means, with respect to any Person, any United States federal, state, local or foreign statute, law, ordinance, treaty, regulation, rule, code, order, directive, settlement agreement, consent decree or other requirement or rule of law that is binding upon or applicable to such Person.

"Liabilities" means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including those arising under any Law, Action or Governmental Order and those arising under any contract, agreement, arrangement or undertaking.

"Permitted Encumbrances" means (a) statutory Encumbrances for current Taxes not yet due or delinquent (or which may be paid without interest or penalties) or the validity or amount of which is being contested in good faith by appropriate proceedings, (b) Encumbrances in favor of vendors, carriers, warehousemen, repairmen, mechanics, workers, materialmen, construction or other Encumbrances arising by operation of law or in the ordinary course of business in respect of obligations that are not yet due or that are being contested in good faith by appropriate proceedings, (c) statutory Encumbrances incurred or deposits made in the ordinary course of business in connection with workers' compensation, employment insurance and other social security legislation, and (d) those other defects in title, easements, restrictive covenants and similar encumbrances that, individually or in the aggregate, are not material in amount or significance to the Business.

"Person" means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization, joint venture or other entity.

"Product Sales" means the gross amount invoiced for sales, distributions, licenses, leases, transfers and other dispositions of Earnout Products by Buyer and its Affiliates (including any licensee or

distributor) to third parties, as calculated in accordance with generally accepted accounting principles consistent with past practices.

"Prolieve Products" means Parent's Prolieve Thermodilatation system for the treatment of benign prostatic hyperplasia.

"Registrations" means those authorizations and/or approvals issued by any Governmental Authority (including premarket approval applications, premarket notifications, investigational device exemptions, manufacturing approvals or authorizations, CE Marks, pricing and reimbursement approvals, labeling approvals or their foreign equivalent) that are exclusively held by Parent or its Affiliates as of the Closing, for the manufacture, distribution, marketing, storage, transportation, use and sale of the Prolieve Products as of the Closing Date.

"SEC" means the United States Securities and Exchange Commission.

"Seller Disclosure Schedule" means the Seller Disclosure Schedule attached hereto, dated as of the date of this Agreement and as may be updated by Parent on or prior to the Closing Date, delivered by Parent to Buyer in connection with this Agreement.

"Seller License Agreement" means the Non-Exclusive License Agreement, in the form of Exhibit D hereto, to be executed by Buyer and Parent at the Closing, pursuant to which Parent licenses to Buyer the Business Licensed Intellectual Property.

"Seller Material Adverse Effect" means any change, effect, event, occurrence, state of facts or development which individually or in the aggregate has resulted or would reasonably be expected to result in any change or effect, that is materially adverse to the business, operations, properties, financial condition or results of operations of the Business, taken as a whole.

"Tax" or "Taxes" (and with correlative meaning, "Taxable" and "Taxing") means any United States federal, state or local, or non-United States, income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, registration, value added, excise, natural resources, severance, stamp, withholding, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, capital stock, net worth, intangibles, social security, unemployment, disability, payroll, license, employee or other tax or similar levy, of any kind whatsoever, including any interest, penalties or additions to tax in respect of the foregoing.

"Tax Return" means any return, declaration, report, claim for refund, information return or other document (including any related or supporting estimates, elections, schedules, statements or information) filed or required to be filed in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

"Taxation Authority" means any Governmental Authority having any responsibility for (a) the determination, assessment or collection or payment of any Tax, or (b) the administration, implementation or enforcement of or compliance with any law relating to any Tax.

"Trademarks" means trademarks, service marks, trade dress, logos, trade names, corporate names, domain names and other source identifiers and all goodwill associated with any of the foregoing, registrations and applications for registration thereof, including all extensions, modifications and renewals of same.

"Transfer Agreements" means the Bills of Sale, the Assumption Agreements, and such assignments, instruments of assumption, affidavits and other instruments of sale, conveyance, transfer and assignment for the Sellers, in form and substance reasonably satisfactory to Buyer and Parent, as shall be necessary under Law in order to transfer all right, title and interest of the applicable Sellers in, to and under such Purchased Assets and Assumed Liabilities in accordance with the terms hereof.

"Transition Services Agreement" means a transition services agreement, to be entered into among Buyer, Parent and certain Affiliates of Parent, substantially in the form of Exhibit E attached hereto, at the Closing.

SECTION 1.02. Definitions. The following terms have the meanings set forth in the Sections set forth below:

| <u>Definition</u> | <u>Location</u> |
|---|-----------------|
| " <u>Agreed-Upon Allocation</u> " | 2.03(b) |
| " <u>Agreement</u> " | Preamble |
| " <u>Assumed Liabilities</u> " | 2.02 |
| " <u>Business</u> " | Preamble |
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| " <u>Buyer Indemnified Parties</u> " | 7.02 |
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ARTICLE II PURCHASE AND SALE

SECTION 2.01. Purchase and Sale of Assets.

(a) Purchased Assets. Upon the terms and subject to the conditions of this Agreement, at the Closing, Parent shall sell, convey, assign and transfer, and shall cause each Seller to sell, convey, assign and transfer, to Buyer the following assets, rights and properties of the Sellers (the "Purchased Assets"), and Buyer shall purchase the Purchased Assets:

(i) all machinery, equipment, mechanical and spare parts, supplies, owned and leased motor vehicles, production supplies, other miscellaneous supplies and other tangible property of any kind in each case to the extent exclusively used in the Business and listed on Schedule 2.01(a)(i);

(ii) the Business Transferred Intellectual Property;

(iii) copies of the Registrations, supported by and including: (A) the original documents, to the extent originals are available, in the possession of Parent or the Sellers evidencing such Registrations issued to Parent or the Sellers by a Governmental Authority exclusively related to the Prolieve Products, in each case to the extent assignable with or without requiring the consent of the issuing Governmental Authority; and (B) all related Registration applications, clinical research and trial agreements, data results and records of clinical trials and marketing research, all other clinical documents required to be kept by Law, all documents required be kept under the FDA Quality System Regulation or any other Law regulating the design or manufacture of Medical Devices, design history files, technical files, drawings, manufacturing, packaging and labeling specifications, validation documentation, packaging specifications, quality control standards and other documentation, research tools, laboratory notebooks, files and correspondence with regulatory agencies and quality reports and all relevant pricing information and correspondence with Governmental Authorities with respect to such pricing matters, in each case to the extent exclusively related to the Prolieve Products;

(iv) all advertising, marketing and promotional materials, including website content (but excluding the design of such websites), in each case to the extent exclusively used in the Business;

(v) the Contracts listed on Schedule 2.01(a)(v);

(vi) all inventories, including raw materials, works in process, semi-finished and finished products, stores, replacement and spare parts, packaging materials, operating supplies and inventory on consignment, in transit or deposited in a warehouse, in each case to the extent held for use exclusively in the Business;

(vii) all Books, Records and Files (other than income and similar Tax Returns and related books, records and files), either in electronic or hard copy format, to the extent exclusively used in, or exclusively related to, the Business, it being acknowledged and agreed by Seller and Buyer that all customer information and lists shall be transferred electronically;

(viii) all permits, licenses, certifications and approvals from all permitting, licensing, accrediting and certifying agencies, and the rights to all data and records held by such permitting, licensing and certifying agencies, in each case to the extent transferable and exclusively used in the Business or exclusively related to the Prolieve Products and listed on Schedule 2.01(a)(viii); and

(ix) all computer software data and information, and all related hardware, in each case to the extent exclusively used in the Business or exclusively related to the Prolieve Products.

(b) Books, Records and Files. Notwithstanding anything to the contrary contained in this Agreement, (i) Parent shall have no obligation to convey any Books, Records and Files or other data and information that Parent or its Affiliates are contractually or otherwise restricted by a third party from providing and (ii) Parent may retain copies of any Registrations and any Books, Records and Files conveyed pursuant to Section 2.01(a) (for its use with respect to its businesses other than the Business) and may redact any information not related to the Business from any Registrations, Books, Records and Files and similar materials conveyed pursuant to Section 2.01(a).

(c) Excluded Assets. The Buyer and Parent acknowledge and agree that the only assets of Parent and its Affiliates to be sold to the Buyer are the Purchased Assets specifically identified in Section 2.01(a) and that no other assets of Parent and its Affiliates are being sold under this Agreement, including without limitation, the following assets:

(i) all cash and cash equivalents, deposits, securities and negotiable instruments on hand, in lock boxes, in financial institutions or elsewhere, including any cash residing in any collateral cash account securing any obligation or contingent obligation; and

(ii) all accounts, notes and other receivables, whether current or noncurrent, including all file documentation related to such accounts, notes and other receivables, including invoices, shipping documents, communications and correspondence submitted to or received from customers related to such sales.

SECTION 2.02. Assumption of Liabilities. Upon the terms and subject to the conditions and exclusions set forth in this Agreement, at the Closing, Buyer shall assume and agrees to pay, perform and discharge when due, the following Liabilities relating to or arising out of the Business, the Prolieve Products or the Purchased Assets (collectively the "Assumed Liabilities"):

(i) all Liabilities of the Business set forth on any Seller Disclosure Schedule;

(ii) all Liabilities of the Business that were incurred in the ordinary course of business prior to the Closing, except for any product liability claims for personal or property damage, injury or death arising from the use of the Prolieve Products prior to the Closing Date, which shall remain the sole and exclusive responsibility and obligation of Sellers; and

(iii) all Liabilities of the Business arising out of or relating to the ownership, development or sale of the Purchased Assets or the operation of the Business after the Closing Date, including, without limitation, (A) all operating costs for the Rocky Mountain Mobile Services arising after the Closing, (B) all payments for post-market trials for the Prolieve Products, (C) all maintenance and filing fees and prosecution costs for all Business Transferred Intellectual Property arising after the Closing Date (except that Parent shall remain responsible for and pay all patent maintenance fees due and payable prior to December 31, 2012 for the Business Transferred Intellectual Property), (D) all obligations under any warranty obligations with respect to Prolieve Products sold by Parent or its Affiliates prior to the Closing Date (but excluding the product liability obligations retained by Seller pursuant to Section 2.02(ii) above; and (E) any product liability claims for personal or property damage, injury or death arising from the use of the Prolieve Products on or after the Closing Date.

SECTION 2.03. Purchase Price; Allocation of Purchase Price.

(a) Subject to the terms and conditions of this Agreement, the purchase price for the Purchased Assets is payable as follows:

(i) Buyer shall pay to Parent at the Closing, for the benefit of Parent and the Sellers, the Closing Payment in cash, of which \$250,000 was previously paid to Parent on March 21, 2012 as a deposit which Parent shall credit against the Closing Payment (the "Deposit");

(ii) Buyer shall pay to Parent up to a maximum of \$2,500,000 of sales payments pursuant to and in accordance with Section 2.04 (the "Sales Payments"); and

(iii) Buyer shall assume the Assumed Liabilities at the Closing.

The Closing Payment, the Sales Payments and the Assumed Liabilities are collectively referred to herein as the "Purchase Price."

(b) At or prior to Closing, Buyer and Seller shall mutually agree on a proposed allocation of the Purchase Price, by country, and among the Purchased Assets by asset category (the "Agreed Upon Allocation"). Each of Parent, Buyer and each of their respective Affiliates shall (i) be bound by the Agreed-Upon Allocation for purposes of determining any Taxes, and (ii) prepare and file, and cause its Affiliates to prepare and file, its Tax Returns on a basis consistent with the Agreed-Upon Allocation. None of Parent, Buyer or their respective Affiliates shall take any position inconsistent with the Agreed-Upon Allocation in any Tax Return, in any Tax refund claim, in any Tax litigation or administrative proceeding, or otherwise unless required by final determination by an applicable Taxation Authority. In the event that the Agreed-Upon Allocation is disputed by any Taxation Authority, the party receiving notice of the dispute shall promptly notify the other party hereto, and Buyer and Parent agree to use their best efforts to defend such Agreed-Upon Allocation in any audit or similar proceeding.

SECTION 2.04. Sales Payments.

(a) In addition to the Closing Payment and the assumption of the Assumed Liabilities, Buyer will make quarterly Sales Payments to Parent, as additional purchase price for the Purchased Assets, until such time as Parent shall have received a maximum aggregate amount in cash of Sales Payments under this Section 2.04 of \$2,500,000. The Sales Payments shall be in an amount equal to ten percent (10%) of the amount of Product Sales of Earnout Products and shall be paid pursuant to Section 2.04(b) below.

(b) Buyer shall make the payments required under Section 2.04(a) by check or wire transfer of immediately available funds delivered to Parent at the address set forth below. All payments shall be stated and paid in U.S. Dollars. Each Sales Payment shall be paid in cash quarterly no later than forty-five (45) days following the end of each calendar quarter, commencing with the first calendar quarter ending after the Closing Date.

(c) Buyer shall keep and maintain, for a period of at least three (3) years following each calendar year, records sufficient to determine the Product Sales and payments due under Section 2.04(a). Within forty-five (45) days following the end of each calendar quarter, Buyer shall provide Parent with a written report and certification including: (a) the quantities of Earnout Products that Buyer, its Affiliates, and/or sublicensees sold during the most recent calendar quarter period then

ended; (b) the total Product Sales (on a country by country basis); (c) the U.S. dollar equivalent of such sales; and (d) the total Sales Payment so computed and due Parent. Upon delivery of each report and certification due for a calendar quarter, Buyer shall also pay to Parent the Sales Payment due Parent for such calendar quarter.

(d) Parent shall have the right to have Buyer's relevant books and records for the then most recent three calendar years audited (including by an independent certified public accountant of Parent's choosing and reasonably acceptable to Buyer), to ascertain the accuracy of Buyer's reports delivered pursuant to Section 2.04(c). All such audits shall be scheduled within thirty (30) days following delivery of notice by Parent requesting such audit to Buyer, and conducted during Buyer's normal business hours, in a manner that does not unreasonably interfere with Buyer's normal business activities. If any audit discloses overpayment of Sales Payments, Parent will promptly refund Buyer the excess amount due. If any audit discloses underpayment of Sales Payments, Buyer shall promptly pay Parent the royalties due together with interest thereon at the lesser of (i) one and a half percent (1.5%) per month or (ii) the greatest amount permitted by law. Parent shall be responsible for all expenses it incurs in connection with any audit; provided, that if any audit determines that the reported total Sales Payments payable to Parent were less than ninety-five percent (95%) of actual Sales Payments due for the period in question, the actual out-of-pocket cost of such audit shall be reimbursed to Parent by Buyer within thirty (30) days after Parent's submission of an itemized bill.

(e) The Sales Payments shall not be subject to any right of set-off or other reduction by Buyer.

SECTION 2.05. Closing. Subject to the terms and conditions of this Agreement, the sale and purchase of the Purchased Assets and the assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the "Closing") to be held effective as of 12:01 a.m. EST on July 1, 2012, or such other date and time as Parent and Buyer may mutually agree in writing (the date of the Closing, the "Closing Date").

SECTION 2.06. Closing Deliveries by Parent. At the Closing, Parent shall deliver, or cause to be delivered, to Buyer:

(a) executed counterparts of each Ancillary Agreement to which Parent or a Seller is a party and such other instruments, in form and substance reasonably satisfactory to Buyer, as may be reasonably requested by Buyer or necessary under applicable Law to effect the transfer of the Purchased Assets to Buyer and to evidence such transfer in the public records, in each case duly executed by Parent or the applicable Seller; and

(b) a receipt for the Closing Payment.

SECTION 2.07. Closing Deliveries by Buyer. At the Closing, Buyer shall deliver, or cause to be delivered, to Parent:

(a) an amount equal to the Closing Payment minus the Deposit, by wire transfer in immediately available funds to an account or accounts designated in writing by Parent not fewer than three (3) Business Days prior to the Closing; and

(b) executed counterparts of each Ancillary Agreement to which Buyer is a party and such other instruments, in form and substance reasonably satisfactory to Parent, as may be reasonably requested by Parent or necessary under applicable Law to effect the assumption by Buyer of the Assumed Liabilities and to evidence such assumption in the public records.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF PARENT AND SELLERS

Each of the Sellers hereby represents and warrants to Buyer as follows:

SECTION 3.01. Organization, Authority, and Qualification. (a) Parent is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware and has all necessary corporate power and authority to enter into, execute and deliver this Agreement, the Ancillary Agreements to which it is a party and any document, instrument or certificate specifically contemplated by this Agreement or the Ancillary Agreements to which it is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party. The execution and delivery by Parent of this Agreement and the Ancillary Agreements to which it is a party, the performance by Parent of its obligations hereunder and thereunder and the consummation by Parent of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Parent. This Agreement has been, and upon their execution each of the Ancillary Agreements to which Parent is a party will be, duly and validly executed and delivered by Parent, and, assuming due authorization, execution and delivery by each of the other parties hereto and thereto (other than Affiliates of Parent), this Agreement is, and each of the Ancillary Agreements to which Parent is a party will be, a legal, valid and binding obligation of Parent, enforceable against it in accordance with its terms.

(b) Each Seller has been duly incorporated, is a validly existing legal entity and, where applicable, is in good standing (or its local equivalent) under the Laws of the jurisdiction of its incorporation, and has all necessary corporate power and authority to enter into, execute and deliver each Ancillary Agreement to which it is a party, to carry out its obligations thereunder and to consummate the transactions contemplated thereby. Each of the Sellers is a wholly owned, direct or indirect, subsidiary of Parent. The execution and delivery by each Seller of each Ancillary Agreement to which it is a party, the performance by such Seller of its obligations thereunder and the consummation by such Seller of the transactions contemplated hereby and thereby will be, when executed as provided in this Agreement, duly authorized by all requisite corporate action on the part of such Seller. Each Ancillary Agreement to which a Seller is a party will be, when executed as provided in this Agreement, duly and validly executed and delivered by such Seller and, assuming due authorization, execution and delivery by each of the other parties thereto (other than Parent or any Affiliates of Parent), will constitute, when executed as provided in this Agreement, a legal, valid and binding obligation of such Seller enforceable against it in accordance with its terms.

SECTION 3.02. No Conflict. Assuming that all consents, waivers, approvals, orders, authorizations and other actions described in Section 3.03 have been obtained, all filings and notifications listed in Section 3.02 of Seller Disclosure Schedule have been made and any applicable waiting period has expired or been terminated, the execution, delivery and performance by Parent of this Agreement, and the execution, delivery and performance by each of Parent and each Seller of the Ancillary Agreements to

which it is a party, do not and will not (a) violate, conflict with or result in the breach of the certificate of incorporation or by-laws (or similar organizational documents) of Parent or Sellers, (b) conflict with or violate, in each case in any material respect, any Law or Governmental Order applicable to Parent or Sellers, or (c) except as set forth in Section 3.02 of Seller Disclosure Schedule, conflict with, result in any violation or breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of, or result in, termination, cancellation or acceleration of any obligation or to the loss of a material benefit under, or to materially increase, additional, accelerated or guaranteed rights or entitlements of any Person, or result in the creation of any Encumbrance (other than Permitted Encumbrances) upon any of the Purchased Assets.

SECTION 3.03. Governmental Consents and Approvals. The execution, delivery and performance by Parent of this Agreement, and the execution, delivery and performance by Parent and each Seller of each Ancillary Agreement to which it is a party, do not and will not require any material consent, waiver, approval or other order or authorization of, action by or in respect of, or registration, declaration or filing with or notification to, any Governmental Authority, except (a) to the extent applicable, the requirements of the antitrust Laws of any relevant jurisdiction, (b) where failure to obtain such consent, waiver, approval, order or authorization or to make such filing or notification individually or in the aggregate has not had and would not reasonably be expected to have a Seller Material Adverse Effect, or (c) as may be necessary as a result of any facts or circumstances relating solely to Buyer or any of its Affiliates (other than simply the change of the owner or operator of the Business).

SECTION 3.04. Litigation. Except as set forth in Section 3.04 of Seller Disclosure Schedule, there is no material Action pending or, to the Knowledge of Parent, threatened against or affecting the Business or the Purchased Assets. As of the date of this Agreement, no Action by or against Parent or any of its Affiliates is pending, or to the Knowledge of Parent, threatened, that would reasonably be expected to affect the legality, validity or enforceability of this Agreement or the Ancillary Agreements or prevent the consummation of the transactions contemplated hereby or thereby.

SECTION 3.05. Purchased Assets; Title to Assets. Assuming the Sellers acquired valid title to the Purchased Assets upon their acquisition, the Sellers own and have good title to each of the Purchased Assets, free and clear of all Encumbrances other than Permitted Encumbrances. The Sellers do not make any representations or warranties (express or implied) as to the condition of the Purchased Assets. Sellers disclaim all express and implied warranties of merchantability and fitness for a particular purpose with respect to the Purchased Assets. Sellers disclaim all express or implied warranties that the Purchased Assets do not infringe patents or other proprietary rights of third parties.

SECTION 3.06. Taxes. There are no Tax Encumbrances on any assets of the Business, except with respect to Taxes being contested in good faith or Taxes for which payment is not yet due and for which adequate reserves have been established on the financial statement of Sellers and except for Permitted Encumbrances.

SECTION 3.07. Compliance with Laws. Sellers have conducted the Business in compliance, in all material respects, with all Laws and Governmental Orders applicable to the Purchased Assets or the Business.

SECTION 3.08. Product Approvals.

(a) All manufacturing operations conducted by the Sellers and their Affiliates (or, to the Knowledge of the Sellers, by third parties on behalf of the Sellers and their Affiliates) relating to the manufacturing of the Prolieve Products are being conducted in material compliance with current Good Manufacturing Practices and the quality system regulations of the United States Food and Drug Administration.

(b) Neither Seller nor any of its Affiliates has received any written notice that the FDA has commenced or is threatening to initiate any action to withdraw any Registrations to limit the ability of the Sellers to manufacture (or to have manufactured for it by a third party) or market any Prolieve Product or to request or recommend the recall or withdrawal of any Prolieve Product, or commenced, or to the Knowledge of the Sellers, threatened to initiate any action to enjoin production of the Prolieve Products at any facility of Sellers or its Affiliates or of any third party who manufactures Prolieve Products on behalf of Sellers.

SECTION 3.09. Intellectual Property. (a) Section 3.09(a) of the Seller Disclosure Schedule sets forth a true and complete list of all patents and patent applications, registered trademarks and trademark applications, registered copyrights and copyright applications, and domain names included in the Purchased Assets.

(b) Except as set forth in Section 3.09(b) of the Seller Disclosure Schedule, no Business Transferred Intellectual Property, or to the Knowledge of the Sellers, any Business Licensed Intellectual Property, is subject to any outstanding decree, order, injunction, judgment or ruling restricting the use of such Business Transferred Intellectual Property or Business Licensed Intellectual Property or that would impair the validity or enforceability of such Business Transferred Intellectual Property or Business Licensed Intellectual Property.

(c) Except as set forth in Section 3.09(c) of the Seller Disclosure Schedule, no Actions are pending or, to the Knowledge of the Sellers, threatened in writing against the Sellers based upon or challenging or seeking to deny or restrict the use by the Sellers of any of the Business Transferred Intellectual Property or Business Licensed Intellectual Property.

SECTION 3.10. Brokers. The Sellers have not incurred, nor will they incur, any liability for brokerage or finders' fees or agents' commissions or investment bankers' fees or any similar charges in connection with this Agreement or the consummation of the transactions contemplated hereby.

SECTION 3.11. Disclaimer. EXCEPT AS SET FORTH IN THIS ARTICLE III OR AS MAY BE SET FORTH IN ANY ANCILLARY AGREEMENT, NONE OF PARENT, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES MAKE OR HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF PARENT, ITS AFFILIATES OR THE BUSINESS. ANY SUCH OTHER REPRESENTATION OR WARRANTY IS HEREBY EXPRESSLY DISCLAIMED.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Parent as follows:

SECTION 4.01. Organization, Authority and Qualification. Buyer is a corporation duly incorporated, validly existing and in good standing under the Laws of Canada and has all necessary corporate power and authority to enter into, execute and deliver this Agreement, the Ancillary Agreements to which it is a party and any document, instrument or certificate contemplated by this Agreement or the Ancillary Agreements to which it is a party, to carry out its obligations hereunder and to consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which it is a party. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which it is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been, and upon their execution each of the Ancillary Agreements to which Buyer is a party will be, duly and validly executed and delivered by Buyer, and, assuming due authorization, execution and delivery by each of the other parties hereto and thereto, this Agreement is, and each of the Ancillary Agreements to which Buyer is a party will be, a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms.

SECTION 4.02. No Conflict. Assuming that all consents, waivers, approvals, orders, authorizations and other actions described in Section 4.03 have been obtained, all filings and notifications have been made and any applicable waiting period has expired or been terminated, the execution, delivery and performance by Buyer of this Agreement, and the execution, delivery and performance by Buyer of the Ancillary Agreements to which it is a party, do not and will not (a) violate, conflict with or result in the breach of the certificate of incorporation or by-laws (or similar organizational documents) of Buyer, (b) conflict with or violate any Law or Governmental Order applicable to Buyer, (c) conflict with, result in any violation or breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of, or result in, termination, cancellation or acceleration of any obligation or to the loss of a material benefit under, or result in the creation of any Encumbrance in or upon the properties or other assets of the Buyer's business under, any Contract to which Buyer is a party, or to which any of its properties or other assets is subject.

SECTION 4.03. Governmental Consents and Approvals. The execution, delivery and performance by Buyer of this Agreement, and the execution, delivery and performance by Buyer does not and will not require any consent, waiver, approval or other order or authorization of, action by or in respect of, or registration, declaration or filing with or notification to, any Governmental Authority, except (a) to the extent applicable, the requirements of the antitrust Laws of any relevant jurisdiction, or (b) any consent, approval or other order or authorization of, action by or in respect of, or registration, declaration or filing with or notification to, any Governmental Authority that are the responsibility of Parent or the Sellers.

SECTION 4.04. Brokers. The Buyer has not incurred, nor will it incur, any liability for brokerage or finders' fees or agents' commissions or investment bankers' fees or any similar charges in connection with this Agreement or the consummation of the transactions contemplated hereby.

SECTION 4.05. Solvency. After giving effect to the consummation of the transactions contemplated hereby and the incurrence of any indebtedness in connection therewith, the Buyer shall not be insolvent either because its financial condition is such that its debts are greater than the fair market

value of its assets or because the present fair saleable value of its assets will be less than the amount required to pay its probable liability on its debts.

ARTICLE V ADDITIONAL AGREEMENTS

SECTION 5.01. Confidentiality.

(a) The terms of the Confidentiality Agreement, dated as of February 9, 2012, between Parent and Buyer (the "Confidentiality Agreement") are hereby incorporated herein by reference and shall continue in full force and effect until the Closing, at which time such Confidentiality Agreement shall terminate.

(b) After the Closing Date and until the fourth (4th) anniversary of the Closing Date, Parent shall (and shall cause its Affiliates to) afford to Buyer and its advisors, upon reasonable notice, reasonable access, during normal business hours, to the Books, Records and Files (including accountants' work papers) relating to the Business for periods up to and including the Closing Date that are retained by Parent and its Affiliates pursuant to the terms of this Agreement (and shall permit such Persons to examine and copy such books and records to the extent reasonably requested by such party) and Parent shall cause its advisors to furnish, at Buyer's sole cost and expense, such information as may be reasonably requested by Buyer or its advisors in connection with financial reporting matters and other similar business purposes (either in electronic or hard copy format); provided, that nothing in this Section 5.01(b) shall require Parent or any of its Affiliates or advisors to furnish to Buyer or its advisors any materials prepared by Parent's financial or legal advisors that are subject to an attorney-client privilege or an attorney work-product privilege or which may not be disclosed pursuant to a protective Order; and provided further, that nothing in this Section 5.01(b) shall require Parent or any of its Affiliates or advisors to afford access to Books, Records and Files or provide information if Parent or its Affiliates are contractually or otherwise restricted by a third party from doing so. Parent shall, and shall cause its Affiliates to, maintain all such Books, Records and Files, and shall not destroy or dispose of any such Books, Records and Files, until the fourth (4th) anniversary of the Closing Date.

(c) After the Closing Date, Buyer shall (and shall cause its Affiliates to) afford to Parent and its advisors, upon reasonable notice, reasonable access, during normal business hours, to the Books, Records and Files (including accountants' work papers) relating to the Business for periods up to and including the Closing Date that are conveyed to, and held by, Buyer and its Affiliates on and after the Closing Date pursuant to the terms of this Agreement (and shall permit such Persons to examine and copy such books and records to the extent reasonably requested by such party); provided, that nothing in this Section 5.01(c) shall require Buyer or any of its Affiliates or advisors to furnish to Parent or its advisors any materials prepared by Buyer's financial or legal advisors that are subject to an attorney-client privilege or an attorney work-product privilege or which may not be disclosed pursuant to a protective Order; and provided further, that nothing in this Section 5.01(c) shall require Buyer or any of its Affiliates or advisors to afford access to Books, Records and Files or provide information if Buyer or its Affiliates are contractually or otherwise restricted by a third party from doing so. Buyer shall, and shall cause its Affiliates to, maintain all such Books, Records and Files, and shall not destroy or dispose of any such Books, Records and Files, until the fourth (4th) anniversary of the Closing Date.

SECTION 5.02. Regulatory and Other Authorizations; Notices and Consents. (a) Each of Parent and Buyer shall (and each shall cause its respective Affiliates to) use its reasonable efforts to obtain promptly all authorizations, consents, orders and approvals of all Governmental Authorities that may be or become necessary for the performance of its and the other party's obligations pursuant to, and the

consummation of the transactions contemplated by, this Agreement. Parent and Buyer will cooperate with one another in promptly seeking to obtain all such authorizations, consents, orders and approvals; provided, however, that Parent shall not be required to pay any fees or other payments to any such Governmental Authorities in order to obtain any such authorization, consent, order or approval (other than normal administrative and filing fees that are imposed on Parent). Neither Parent nor Buyer shall knowingly take any action that would have the effect of materially delaying, impairing or impeding the receipt of any authorizations, consents, orders and approvals of any Governmental Authority; provided, however, that in no way shall reasonable and timely negotiations in good faith by Buyer with any applicable Governmental Authority in order to obtain such authorization, consent, order or approval be deemed to constitute an act materially delaying, impairing, or impeding the receipt of authorizations, consents, orders and approvals of such Governmental Authority. Parent and Buyer each agree to make, or to cause to be made, (i) an appropriate filing of a notification and report form pursuant to the antitrust Laws of any relevant jurisdiction and (ii) any other filing or notification required by any other applicable Law, in each case, with respect to the transactions contemplated by this Agreement as promptly as reasonably practicable, and to supply promptly any additional information and documentary material that may be requested pursuant to the antitrust Laws of any relevant jurisdiction or any other applicable Law.

(b) Each party to this Agreement shall promptly notify the other party of any material communication it or any of its Affiliates receives from any Governmental Authority relating to the transactions that are the subject of this Agreement and permit the other party to review in advance any proposed communication by such party to any Governmental Authority. Neither party to this Agreement shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry related to the transactions contemplated by this Agreement unless it consults with the other party in advance and, to the extent permitted by such Governmental Authority, gives the other party the opportunity to attend and participate at such meeting. Subject to the Confidentiality Agreement, the parties to this Agreement will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other party may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods including under the antitrust Laws of any relevant jurisdiction. Subject to the Confidentiality Agreement, the parties to this Agreement will provide each other with copies of all material correspondence, filings or communications between them or any of their representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement and the transactions contemplated by this Agreement.

SECTION 5.03. Release of Obligations. After the Closing, each of Parent and Buyer, at the request of the other party, shall use, and shall cause their respective Affiliates to use, commercially reasonable efforts to obtain any consent, substitution or amendment required to novate or assign all Assumed Liabilities to Buyer, and obtain in writing the unconditional release of Parent and its Affiliates with respect to the Assumed Liabilities.

SECTION 5.04. Trademarks.

(a) Parent shall retain the ownership of any Trademarks that are used both in the Business and any other business of Parent, that are not used exclusively in, or related exclusively to, the Business and that do not include the name "Boston Scientific" (the "Parent Non-Business Licensed Marks"). Buyer and its Affiliates shall have no right to use in any way the Parent Non-Business Licensed Marks.

(b) Parent shall retain the ownership of the trade name "Boston Scientific" and any Trademarks that include the name "Boston Scientific" that are used in the Business as of the Closing (the

"Parent Business Licensed Marks" and, together with the Parent Non-Business Licensed Marks, the "Licensed Marks"). Except as expressly provided in this Section 5.04, Buyer and its Affiliates shall have no right to use in any way Parent Business Licensed Marks.

(i) Subject to the terms and conditions contained herein, effective as of the Closing Parent hereby grants to Buyer and its Affiliates, for a period of six (6) months after the Closing, a non-exclusive, non-assignable, worldwide and royalty-free license, right and privilege to use the Parent Business Licensed Marks on any packages and labels of the products of the Business ("Materials") used in the Business as of the Closing for the sole purpose of the operation of the Business by Buyer and its Affiliates after the Closing.

(ii) Effective upon the six (6) month anniversary of the Closing, Buyer and its Affiliates shall not use the Parent Business Licensed Marks in connection with the Business or otherwise.

(c) As soon as reasonably practicable after the Closing, but in no event later than ninety (90) days after the Closing, Buyer shall cease to use and shall remove or cover the name "Boston Scientific" from all signs, telephone listings, stationary, office forms or other similar materials of the Business, unless such use is required by a Governmental Authority.

(d) Buyer, on behalf of itself and its Affiliates, acknowledges and agrees that Parent is the owner of all right, title, and interest in and to the Licensed Marks, and all such right, title, and interest shall remain with Parent and its Affiliates. All rights to Licensed Marks not expressly granted to Buyer and/or its Affiliates under this Agreement shall remain the exclusive property of Parent and its Affiliates. Buyer shall not (and shall ensure its Affiliates do not) otherwise contest, dispute, or challenge the right, title, and interest of Parent and its Affiliates in and to the Licensed Marks. Buyer shall not (and shall ensure its Affiliates do not) file applications to register any Trademarks or apply for any domain names in any jurisdiction worldwide that are (i) confusingly similar to any of the Licensed Marks or (ii) consist of, in whole or part, any of the Licensed Marks. All goodwill and improved reputation generated by Buyer's or its Affiliates' use of the Licensed Marks shall inure to the benefit of Parent.

(e) Buyer shall not (and shall ensure its Affiliates do not) otherwise contest, dispute, or challenge the right, title, and interest of Parent and its Affiliates in and to all Trademarks of Parent and its Affiliates, other than Trademarks which constitute Business Transferred Intellectual Property.

SECTION 5.05. Further Action.

(a) Each of Parent, Sellers and Buyer shall (and each shall cause each of its respective Affiliates to) use commercially reasonable efforts to take, or cause to be taken, all appropriate action, to do or cause to be done all things necessary, proper or advisable under applicable Law and the agreements included in the Purchased Assets, and to execute and deliver such documents and other papers and any other agreements, as may be necessary to carry out the provisions of this Agreement and consummate and make effective the transactions contemplated by this Agreement or to effect the separation of the Business and the Purchased Assets from other assets of Parent and its Affiliates.

(b) To the extent that any of the transfers, distributions, deliveries and the assumptions required to be made in connection with the transactions contemplated by this Agreement shall not have been so consummated at Closing and subject to the terms of the Ancillary Agreements to the extent addressed thereby, the parties shall cooperate and use commercially reasonable efforts to effect such consummation as promptly thereafter as reasonably practicable, including executing and delivering

such further instruments of transfer and taking such other actions as the parties may reasonably request in order to effectuate the purposes of this Agreement or to more effectively transfer to Buyer or confirm Buyer's right, title to or interest in, all of Sellers' rights to the Purchased Assets, to put Buyer in actual possession and operating control thereof and to permit Buyer to exercise all of Sellers' rights with respect thereto (including rights under contracts and other arrangements as to which the consent of any third party to the transfer thereof shall not have previously been obtained). In the event and to the extent that Parent or Buyer is unable to obtain any required consents, Parent or the applicable Seller shall (i) continue to be bound thereby pending assignment to Buyer, (ii) at the direction and expense of Buyer, pay, perform and discharge fully all of its obligations thereunder from and after the Closing and prior to assignment to Buyer, (iii) exercise or exploit its rights and options under all such agreements, leases, licenses and other rights and commitments when and only as reasonably directed by Buyer, and (iv) without further consideration therefor, pay, assign and remit to Buyer promptly all monies, rights and other consideration received in respect of such agreements to the extent such amounts constitute Purchased Assets, and subject in each case to the terms of the Ancillary Agreements to the extent the same may apply; provided, however, that none of Parent nor any of its Affiliates shall be obligated to transfer or license to Buyer any Business Intellectual Property licensed from third parties that, despite the use by Parent and its Affiliates of such efforts, is incapable of being transferred or licensed; and provided, further, that none of Parent nor any of its Affiliates shall be obligated to pay any consideration or incur any expenses in connection with any of the foregoing. If and when any such consent shall be obtained or such agreement, lease, license or other right shall otherwise become assignable, Parent or the applicable Seller shall promptly assign all its rights and obligations thereunder to Buyer without payment of further consideration and Buyer shall, without the payment of any further consideration therefor, assume such rights and obligations.

(c) In the event that Buyer can demonstrate that certain assets, rights or properties which properly constitute Purchased Assets (other than any Contracts) were not transferred to Buyer at Closing, then Parent shall use commercially reasonable efforts to take all steps reasonably necessary to transfer and deliver any and all of such Purchased Assets to Buyer without the payment by Buyer of any further consideration therefor. In the event that Parent can demonstrate that certain assets which do not properly constitute Purchased Assets were transferred to Buyer at Closing, then Buyer shall promptly take all steps reasonably necessary to transfer and deliver any and all of such assets to Parent without the payment by Parent of any further consideration therefor.

(d) Buyer shall be responsible for all costs of physically transferring the Purchased Assets from Sellers to Buyer (including all shipping and handling costs and the costs of scanning any files requested to be transferred in electronic form).

SECTION 5.06. Covenant Not to Sue. Buyer, on behalf of itself and each of its Affiliates, successors and assigns and licensees, hereby covenants and agrees that it will not, individually or collectively, directly or indirectly, initiate, commence or prosecute any lawsuit or other action, or otherwise assert against Parent or any of its Affiliates, their successors and assigns or any of their licensees or distributors, any claims, alleging that the manufacture, having manufactured, marketing, offer of sale, sale, use, import or export of any products by Parent and its Affiliates outside the Field infringe any claims of any Business Intellectual Property. Buyer shall ensure that any assignment or transfer of any Business Intellectual Property (whether directly or by operation of law) to a Person not directly bound by this covenant not to sue shall be subject to this covenant not to sue (including by causing each such Person to agree in writing in a legally binding way to abide by such covenant not to sue, naming Parent as a third-party beneficiary of such agreement to abide). Nothing contained in this Agreement shall be construed or interpreted to limit or restrict in any way Buyer's right to develop, market and sell any products utilizing any of the Business Transferred Intellectual Property.

SECTION 5.07. Employment Matters. Schedule 5.07(a) attached hereto lists the employees of Parent or any of its Affiliates who have been performing services primarily for the Business (the "Transferred Employees"). Buyer shall offer employment to the Transferred Employees immediately following the Closing. Buyer shall offer employment to all Transferred Employees who are RMMS service technicians (no including RMMS management or office administration) immediately following the Closing at an annual compensation level no less than 90% of their current level with Parent or its Affiliates for a position within 35 miles of their current location of employment for a duration of no less than six (6) months following the Closing Date.

ARTICLE VI TAXES

SECTION 6.01. Tax Cooperation. Each of the parties and their Affiliates shall provide the other party with such information and records and make such of its officers, directors, employees and agents available as may reasonably be requested by such other party in connection with the preparation of any Tax Return or any audit or other proceeding that relates to the Purchased Assets.

SECTION 6.02. Conveyance Taxes. Notwithstanding any other provisions of this Agreement to the contrary, all transfer, documentary, recording, sales, use, registration, stamp and other similar Taxes (including all applicable real estate transfer Taxes, but excluding any Taxes based on or attributable to income or capital gains) together with any notarial and registry fees and recording costs imposed by any Taxing Authority or other Governmental Authority in connection with the transfer of the Purchased Assets hereunder ("Conveyance Taxes") will be paid by the Buyer, regardless of which Person is obligated to pay such Conveyance Taxes under applicable Law. The parties and their respective Affiliates will cooperate in timely preparing and filing all Tax Returns that may be required to comply with Law relating to Conveyance Taxes.

ARTICLE VII INDEMNIFICATION

SECTION 7.01. Survival of Representations and Warranties. The representations and warranties of the parties hereto contained in this Agreement or in any certificates delivered in connection with this Agreement shall survive for a period of six (6) months following the Closing Date; provided however, that the representations and warranties made pursuant to Sections 3.01, 3.05 and 3.10 shall survive until thirty (30) calendar days after the expiration of the applicable statute of limitation governing such claims.

SECTION 7.02. Indemnification by Parent. Subject to the limitations set forth in Section 7.04 below, from and after the Closing, Buyer and its Affiliates, officers, directors, agents, successors and assigns (the "Buyer Indemnified Parties") shall be indemnified and held harmless by Parent for and against all losses, damages, claims, costs and expenses, interest, awards, judgments and penalties (including reasonable attorneys' and consultants' fees and expenses) actually suffered or incurred by them (hereinafter, "Losses") to the extent arising directly out of or directly related to:

(i) any failure by Parent to fully perform, fulfill or comply with any covenant set forth herein or in any certificate, document or other instrument delivered pursuant to or in connection with this Agreement;

(ii) the inaccuracy of any representation or the breach of any warranty of Sellers set forth in this Agreement, the Ancillary Agreements, or any other document or certificate delivered at Closing; and

(iii) any product liability claims for personal or property damage, injury or death arising from the use of the Prolieve Products prior to the Closing Date.

SECTION 7.03. Indemnification by Buyer. From and after the Closing, Parent and its Affiliates, officers, directors, agents, successors and assigns shall be indemnified and held harmless by Buyer for and against any and all Losses to the extent arising out of or related to:

(i) any failure by Buyer to fully perform, fulfill or comply with any covenant set forth herein or in any certificate, document or other instrument delivered pursuant to or in connection with this Agreement;

(ii) events occurring on or after the Closing Date arising out of or related to the Business or the Purchased Assets; and

(iii) the Assumed Liabilities.

SECTION 7.04. Limits on Indemnification.

(a) General. Notwithstanding anything to the contrary contained in this Agreement, neither party hereto shall have any Liability under this Article VII for any punitive, incidental, consequential, special or indirect damages.

(b) Losses. For all purposes of this Article VII, "Losses" shall be net of (i) any insurance or other recoveries actually paid to an indemnified party or its Affiliates in connection with the facts giving rise to the right of indemnification, and (ii) any Tax benefit to which an indemnified party or any of its Affiliates is or will be entitled in connection with the facts giving rise to the right of indemnification.

(c) Threshold. Parent will not be required to indemnify any Buyer Indemnified Party hereunder until such time as the aggregate amount of Losses for which the Buyer Indemnified Parties are otherwise entitled to indemnification pursuant to this Agreement exceeds \$50,000.

(d) Maximum Liability. The maximum aggregate liability of Parent for indemnification under this Article VII will not exceed a maximum amount equal to Two Hundred Thousand Dollars (\$200,000), provided that this cap on Parent's aggregate liability shall not apply to (i) any Losses related to a breach by Sellers of Section 3.05 for which Parent's maximum aggregate liability shall be limited to the amount of the Purchase Price actually paid to Parent, or (ii) Parent's liability for product liability claims under Section 7.02(iii) which shall not be capped.

(e) Time Limit. Parent will not be liable for any Losses pursuant to Section 7.02(ii) unless a written claim for indemnification is given by the Buyer to Parent with respect thereto prior to the expiration of the applicable survival period set forth in Section 7.01 relating to the relevant representation and warranty.

(f) Sole Remedy. From and after the Closing the respective indemnification rights of the parties under this Article VII shall be the sole and exclusive rights and remedies available to such

parties with respect to the subject matter of this Agreement, and each of the parties hereby absolutely agrees and covenants not to seek any remedy at law or equity other than pursuant to this Article VII except in the case of actual fraud. Without limiting the generality of the foregoing, except as specifically authorized by this Article VII, the Buyer and Sellers hereby waive, release and disclaim any claims, rights or remedies arising in tort, by statute, or otherwise, with respect to Losses arising out of or relating to the transactions contemplated hereby, including without limitation, any claims, rights or remedies for negligent misrepresentation, fraud, or suppression of material fact.

SECTION 7.05. Notice of Loss; Third Party Claims. (a) An indemnified party shall give the indemnifying party notice of any matter that an indemnified party has determined has given or could give rise to a right of indemnification under this Agreement, within thirty (30) days of such determination, stating the amount of the Loss, if known, and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises.

(b) If an indemnified party shall receive notice of any Action from or involving any third party that the indemnified party believes is reasonably likely to give rise to a right of indemnification under this Article VII (each, a "Third Party Claim"), then, as promptly as practicable after the receipt of such notice, the indemnified party shall give the indemnifying party notice of such Third Party Claim, stating the amount of the Loss, if known, and method of computation thereof and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises; provided, however, that the failure to provide such notice shall not release the indemnifying party from any of its obligations under this Article VII except to the extent that such failure actually results in a detriment to the indemnifying party and shall not relieve the indemnifying party from any other Liability that it may have to any indemnified party other than under this Article VII. The indemnifying party shall be entitled to assume and control the defense of such Third Party Claim at its expense and through counsel reasonably satisfactory to the indemnified person if it gives notice of its intention to do so to the indemnified party within thirty (30) days of the receipt of such notice from the indemnified party. If the indemnifying party elects to undertake any such defense against a Third Party Claim, the indemnified party may participate in such defense at its own expense. The indemnified party shall reasonably cooperate with the indemnifying party in such defense and make available to the indemnifying party, at the indemnifying party's expense, all witnesses, pertinent records, materials and information in the indemnified party's possession or under the indemnified party's control relating thereto as is reasonably required by the indemnifying party. If the indemnifying party elects to direct the defense of any such claim or proceeding, it shall not consent to the entry of any judgment or enter into any settlement with respect to such Third Party Claim without the prior written consent of the indemnified party unless such judgment or settlement (i) contains a complete release of the indemnified party, (ii) does not require the indemnified party to pay any monetary obligation, and (iii) does not include any admission of wrongdoing, which consent shall not be unreasonably withheld or delayed. No indemnifying party shall be liable for any settlement of a Third Party Claim effected without such indemnifying party's prior written consent, which consent shall not be unreasonably withheld or delayed.

SECTION 7.06. Tax Treatment of Indemnity Payments. For all Tax purposes, the parties agree to treat all payments made under any indemnity provisions contained in this Agreement as adjustments to the Purchase Price, except to the extent applicable Law requires otherwise.

ARTICLE VIII CONDITIONS TO CLOSING

SECTION 8.01. Conditions to Obligation of Parent. The obligation of Parent to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or written waiver, at or prior to the Closing, of each of the following conditions:

(a) Covenants. Each of the covenants and agreements contained in this Agreement to be complied with by Buyer on or before the Closing shall have been complied with in all material respects; and

(b) Closing Deliveries. The Buyer shall have delivered the closing deliveries set forth in Section 2.07.

SECTION 8.02. Conditions to Obligation of Buyer. The obligation of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or written waiver, at or prior to the Closing, of each of the following conditions:

(a) Covenants. Each of the covenants and agreements contained in this Agreement to be complied with by Parent on or before the Closing shall have been complied with in all material respects;

(b) Closing Deliveries. Parent shall have delivered the closing deliveries set forth in Section 2.06; and

(c) Seller Material Adverse Effect. Since the date of this Agreement, there shall have occurred no events nor will there exist circumstances which singly or in the aggregate have resulted in a Seller Material Adverse Effect.

ARTICLE IX TERMINATION

SECTION 9.01. Termination. This Agreement may be terminated at any time prior to the Closing in the following circumstances:

(a) by the mutual written consent of Parent and Buyer; or

(b) by either Parent or Buyer, if the Closing shall not have occurred by July 31, 2012; provided, however, that the right to terminate this Agreement under this Section 9.01(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date.

SECTION 9.02. Effect of Termination. In the event of termination of this Agreement as provided in Section 9.01, this Agreement shall forthwith become void and there shall be no liability on the part of either party hereto except that nothing herein shall relieve either party from liability for any breach of this Agreement occurring prior to such termination.

ARTICLE X GENERAL PROVISIONS

SECTION 10.01. Expenses. Except as otherwise specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the other Ancillary Agreements and the transactions contemplated

hereby and thereby shall be borne by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

SECTION 10.02. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by an internationally recognized overnight courier service, by facsimile, by e-mail or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties hereto at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.02):

(a) if to Parent:

Boston Scientific Corporation
One Boston Scientific Place
Natick, MA 01760
Attention: Chief Financial Officer
Fax: (508) 650-8956

with a copy (which shall not constitute notice) to:

Boston Scientific Corporation
One Boston Scientific Place
Natick, MA 01760
Attention: Chief Corporate Counsel
Fax: (508) 650-8960

(b) if to Buyer:

Medifocus, Inc.
8320 Guilford Road
Suite A
Columbia, MD 21046
Attention: John Mon
Fax: (410) 290-7255

With copies to:
Venable LLP
750 East Pratt Street, Suite 900
Baltimore, MD 21202
Attention: Michael J. Baader, Esq.
Fax: (410) 244-7742

SECTION 10.03. Public Announcements. Each party to this Agreement shall consult with the other party before issuing, and shall provide the other party the opportunity to review and comment upon, any press release or other public announcement in respect of this Agreement or the transactions contemplated hereby and shall not issue any press release or other public statements or otherwise communicate with any news media regarding this Agreement and/or the transactions contemplated hereby without the consultation and prior written consent of the other party unless otherwise required by Law or applicable stock exchange regulation. The parties to this Agreement shall cooperate as to the timing and contents of any such press release, public announcement or communication. Without limiting the

foregoing, the parties acknowledge that they shall review and mutually agree on any proposed press release of the other party related to the execution of this Agreement prior to or simultaneously with the execution of this Agreement.

SECTION 10.04. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to either party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated by this Agreement are consummated as originally contemplated to the greatest extent possible.

SECTION 10.05. Entire Agreement. This Agreement, the Confidentiality Agreement and the Ancillary Agreements constitute the entire agreement of the parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and undertakings, both written and oral, between Parent and Buyer with respect to the subject matter hereof and thereof.

SECTION 10.06. Assignment. This Agreement may not be assigned without the express written consent of Parent and Buyer (which consent may be granted or withheld in the sole discretion of Parent or Buyer), as the case may be; provided, however, that either party may, without the consent of the other party, assign its rights and obligations, in whole or in part, under this Agreement to one or more of its controlled Affiliates, except that no such assignment shall relieve the assigning party from the performance of its obligations hereunder and any such assignment shall be made in compliance with Section 5.06.

SECTION 10.07. Amendment. This Agreement may not be amended or modified except (a) by an instrument in writing signed by, or on behalf of, Buyer and Parent or (b) by a waiver in accordance with Section 10.08.

SECTION 10.08. Waiver. Either party to this Agreement may (a) extend the time for the performance of any of the obligations or other acts of the other party, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered by the other party pursuant hereto or (c) to the extent permitted by applicable Law, waive compliance with any of the agreements of the other party or conditions to such party's obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of either party hereto to assert any of its rights hereunder shall not constitute a waiver of any of such rights.

SECTION 10.09. No Third Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns and nothing herein is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

SECTION 10.10. Other Remedies; Specific Performance. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not

exclusive of any other remedy conferred hereby, or by Law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy. The parties hereto agree that irreparable damage would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at Law or in equity.

SECTION 10.11. Interpretive Rules. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, and all Article and Section references are to this Agreement unless otherwise specified. The words "include," "includes" and "including" will be deemed to be followed by the phrase "without limitation." The word "days" means calendar days unless otherwise specified herein. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. No provision of this Agreement shall be construed to require either party or their respective officers, directors, subsidiaries or Affiliates to take any action which would violate or conflict with any applicable Law. The word "if" means "if and only if." The word "or" shall not be exclusive. The meanings given to terms defined herein will be equally applicable to both the singular and plural forms of such terms. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms. Except as otherwise expressly provided herein, all references to "dollars" or "\$" will be deemed references to the lawful money of the United States of America.

SECTION 10.12. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts. All Actions arising out of or relating to this Agreement shall be heard and determined exclusively in any Massachusetts federal court; provided, however, that if such federal court does not have jurisdiction over such Action, such Action shall be heard and determined primarily in any state court sitting in the Commonwealth of Massachusetts. Consistent with the preceding sentence, the parties hereto hereby (a) submit to the exclusive jurisdiction of any federal or state court sitting in the Commonwealth of Massachusetts for the purpose of any Action arising out of or relating to this Agreement brought by either party hereto and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Agreement or the transactions contemplated by this Agreement may not be enforced in or by any of the above-named courts. Each party further irrevocably consents to the service of process out of any of the aforementioned courts in any such Action by the mailing of copies thereof by mail to such party at its address set forth in this Agreement, such service of process to be effective upon acknowledgment of receipt by registered mail; provided, however, that nothing in this Section 10.12 shall affect the right of any party to serve legal process in any other manner permitted by law. The consent to jurisdiction set forth in this Section 10.12 shall not constitute a general consent to service of process in the Commonwealth of Massachusetts and shall have no effect for any purpose except as provided in this Section 10.12.

SECTION 10.13. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH OF THE PARTIES HERETO HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF


THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.13.

SECTION 10.14. Counterparts. This Agreement may be executed and delivered (including by facsimile or pdf transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.


[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, each of Parent, Sellers and Buyer has caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.


BOSTON SCIENTIFIC CORPORATION

By: 
 Name: Thomas G. Robinson
 Title: VP, Strategy & Business Development
 Urology & Women's Health

BOSTON SCIENTIFIC SCIMED, INC.

By: 
 Name: Vance R. Brown
 Title:

BOSTON SCIENTIFIC LIMITED

By: 
 Name: Vance R. Brown
 Title:

MEDIFOCUS, INC.


By: 
 Augustine Y. Cheung, PhD.
 Chief Executive Officer

EXHIBIT A

| Equipment No. | Description | Model No. | Serial No. Machine | Equipment Type | Location | Sub-location 1 | Customer Owned Number | Customer Asset Number | Asset No. |
|--------------------|---------------------------------------|----------------|--------------------|----------------|----------|-------------------|-----------------------|-----------------------|-----------|
| Crest-M-01 | Ultrasonic cleaner | QCS-1611-HE | 1096-T-1133 | Cleaning | Plant 2 | Boston Scientific | 7 | | |
| SFR00-01 | RIO System | MS-10000 | N/A | RIO | Plant 2 | Boston Scientific | 1 | | 1047 |
| Univar612/618-M-02 | Grinder | PFQ-612 | 2358U | Grinder | Plant 2 | Boston Scientific | 2 | | 1045 |
| Coiler-M-18 | Winder | Custom Made | Coiler-M-18 | Winder | Plant 2 | Boston Scientific | 3 | | 1025 |
| Coiler-M-19 | Winder | Custom Made | Coiler-M-19 | Winder | Plant 2 | Boston Scientific | 4 | | 1041 |
| Coiler-M-20 | Winder | Custom Made | Coiler-M-20 | Winder | Plant 2 | Boston Scientific | 5 | | 1046 |
| 1-251218LV1-M-01 | Tray sealer | M2004-030 | 1251218LV1-M-01 | Tray S. | Plant 2 | Celision | 17 | | 1031 |
| DSP501A-M | Locite dispenser | DSP501A | 116832 | Grinder | Plant 2 | Celision | 9 | | 1022 |
| 895-M | Dremel | 395 | N/A | Oven | Plant 2 | Celision | 10 | | 1044 |
| AB200-M | Molding machine | AB-200 | 02IM-570477-PM | Injector | Plant 2 | Celision | 11 | | 1060 |
| PE200-M | Plasma System | PE-200 | 21104 | Plasma | Plant 2 | Celision | 12 | | |
| Series P-M | Pouch sealer | 12P2 | 12P005 | Sealer | Plant 2 | Celision | 15 | | |
| 595CA-M-02 | Tube expander | 595CW/J-1JAW | 031204-1 | Expander | Plant 2 | Celision | 16 | | |
| EXFO4000C-M-02 | UV Curing system | A4000 | A4000-04392 | UV light | Plant 2 | Celision | 21 | | 1038 |
| 1500XLC-M-02 | Locite dispenser | 1500XL | 735048T | Dispense | Plant 2 | Celision | 22 | | 1029 |
| 60L PE-M | Pad Printer | 60LPE1CE-130 | 4007 | Printer | Plant 2 | Celision | 23 | | 1024 |
| C00064-M | Press | N/A | C00064-M | Cutter | Plant 2 | Celision | 24 | | 1061 |
| P1350L-M-02 | Power Supply | P1350 | P1350L-585 | Power S | Plant 2 | Celision | 25 | | 1060 |
| P1350L-M-03 | Power Supply | P1350 | P1350L-584 | Power S | Plant 2 | Celision | 26 | | 1062 |
| 595CA-M-05 | Tube expander | 595CW/J-1JAW | 040204-3 | Expander | Plant 2 | Celision | 27 | | 1036 |
| EXFO4000C-M-01 | UV Curing system | A4000 | A4000-04405 | UV light | Plant 2 | Celision | 28 | | 1029 |
| EXFO4000C-M-03 | UV Curing system | A4000 | A4000-04391 | UV light | Plant 2 | Celision | 29 | | 1031 |
| EXFO4000C-M-04 | UV Curing system | A4000 | A4000-04390 | UV light | Plant 2 | Celision | 30 | | 1031 |
| EXFO4000C-M-05 | UV Curing system | A4000 | A4000-04404 | UV light | Plant 2 | Celision | 31 | | 1031 |
| 1500XLC-M-01 | Locite dispenser | 1500XL | 734958T | Dispense | Plant 2 | Celision | 32 | | 1031 |
| 1500XLC-M-03 | Locite dispenser | 1500XL | 735083T | Dispense | Plant 2 | Celision | 33 | | 1031 |
| 1500XLC-M-04 | Locite dispenser | 1500XL | 732884T | Dispense | Plant 2 | Celision | 34 | | 1031 |
| 1500XLC-M-05 | Locite dispenser | 1500XL | 732884T | Dispense | Plant 2 | Celision | 35 | | 1031 |
| 2000WVC-M-01 | Ultrasonic welder | 2000W | WLB04038745 | Welder | Plant 2 | Celision | 36 | | 1031 |
| 2000WVC-M-02 | Ultrasonic welder | 2000W | WLB04038745 | Welder | Plant 2 | Celision | 37 | | 1031 |
| CELSIONFIXT-M | Fixtures | N/A | CELSIONFIXT-M | Fixture | Plant 2 | Celision | 38 | | 1031 |
| MDT-459 | Leak tester | MDT-050 | MDT-459 | Leak T | Plant 2 | Celision | 39 | | 1031 |
| MDT-460 | Leak tester | MDT-050 | MDT-460 | Leak T | Plant 2 | Celision | 40 | | 1031 |
| MDT-1413 | Leak tester | MDT-100 | MDT-1413 | Leak T | Plant 2 | Celision | 41 | | 1031 |
| MK25-M-01 | RF Welder Machine | AB7087-119MK25 | S.O.6525-2 | RF | Plant 2 | Celision | 42 | | 1031 |
| MK25-M-02 | RF Welder Machine | AB7087-119MK25 | S.O.6527-1 | RF | Plant 2 | Celision | 43 | | 1031 |
| MK25-M-03 | RF Welder Machine | AB7087-119MK25 | S.O.6725-5 | RF | Plant 2 | Celision | 44 | | 1031 |
| MK25-M-04 | RF Welder Machine | AB7087-119MK25 | S.O.6525-2 | RF | Plant 2 | Celision | 45 | | 1031 |
| P1350L-M-01 | Power Supply | P1350 | P1350L-586 | Power S | Plant 2 | Celision | 46 | | 1031 |
| P1350L-M-04 | Power Supply | P1350 | P1350L-583 | Power S | Plant 2 | Celision | 47 | | 1031 |
| DW822ABA | CPU for shelving | DW822ABA | MXD419021-W | CPU | Plant 2 | Celision | 48 | | 1031 |
| N836 | Monitor for Sherline | DT17157L | N836 | Monitor | Plant 2 | Celision | 49 | | 1031 |
| 1A123S-M-01 | Robot System for locite dispenser | 1A123S | 125069 | Dispense | Plant 2 | Celision | 50 | | 1031 |
| 144050 | Controller for Robot | 1A123S | 144050 | Control | Plant 2 | Celision | 51 | | 1031 |
| 595CA-M-01 | Tube expander | 595CW/J-1JAW | 040204-4 | Expander | Plant 2 | Celision | 52 | | 1031 |
| 595CA-M-03 | Tube expander | 595CW/J-1JAW | 040204-2 | Expander | Plant 2 | Celision | 53 | | 1031 |
| 595CA-M-04 | Tube expander | 595CW/J-1JAW | 040204-1 | Expander | Plant 2 | Celision | 54 | | 1031 |
| BT-999 | Leak tester | BT-1000 | BT-999 | Leak T | Plant 2 | Celision | 55 | | 1031 |
| CEL2600009 | Tester | CEL2600009 | N/A | Tester | Plant 2 | Celision | 56 | | 1031 |
| LS-1842 | Tester | LS-1842 | 539-2637 | Tester | Plant 2 | Celision | 57 | | 1031 |
| 9320595 | Hi voltage tester | HYT-07 III | 9320595 | Tester | Plant 2 | Celision | 58 | | 1031 |
| 5400-M-01 | Sherline Drill | AB-200 | SP-65188 | Drill | Plant 2 | Celision | 59 | | 1031 |
| SSZ | Microscope | SSZ | S2300B2200403175 | Micro | Plant 2 | Celision | 60 | | 1031 |
| 7156S | Monitor | 7156S | MSFL0027517 | Monitor | Plant 2 | Celision | 61 | | 1031 |
| 5400-M-02 | Sherline Drill | 5000 | SP-65628 | Drill | Plant 2 | Celision | 62 | | 1031 |
| G00615 | Tester | 12105-30 | G00615 | Tester | Plant 2 | Celision | 63 | | 1031 |
| EPH-ULT-M | Maquina Sherline para el producto EPI | 2510 | EPH-ULT-M | Cleaner | Plant 2 | EPI | 64 | | 1031 |
| EPH-LOVEN-M | Maquina Lindberg/Blue | 11-MT-1211812 | 899208 | Oven | Plant 2 | EPI | 65 | | 1031 |

Private Asset

L2 (A0)
L3 (A0)
L4 (A0)
L5 (A0)

| Plant | Material | MU Desc | Data | | | | | | Q1 Qty | In Transit Qty |
|-------------|--------------|---|-----------------------|------------------|------------------|-------------|-----------------|-----|--------|----------------|
| | | | Total Inventory Value | Sum of Total Qty | Unrestricted Qty | Blocked Qty | Consignment Qty | | | |
| D276 | M0060000190 | Reader Bar Code Spare | \$180 | 4 | 4 | | | | | |
| | M00600002R0 | Assy, Thermoelectric Module, REFURB | \$47,395 | 69 | 66 | | | 3 | | |
| | M00600005S0 | Assy, Joint w/Boot SPARE | \$1,864 | 10 | 9 | | | 1 | | |
| | M00600006S0 | LCD Monitor, NEC w/ mounting kit SPARE | \$3,338 | 7 | 7 | | | | | |
| | M00600007R0 | I/O Tower Kit REFURB | \$111 | 1 | 1 | | | | | |
| | M00600007S0 | I/O Tower Kit SPARE | \$2,564 | 23 | 22 | | | 1 | | |
| | M00600008S0 | Pump Head Spare | \$397 | 1 | 1 | | | | | |
| | M00600009S0 | VIDEO CARD 8MB PCI, SPARE | \$384 | 14 | 14 | | | | | |
| | M00600010S0 | Watchdog Timer CCA SPARE | \$258 | 1 | 1 | | | | | |
| | M00600011R0 | Assy, 4CH TC Thermometer REFURB | \$33,336 | 13 | 12 | | | 1 | | |
| | M00600011S0 | Assy, 4CH TC Thermometer SPARE | \$33,336 | 13 | 13 | | | | | |
| | M00600013S0 | ATX MB Assembly SPARE | \$925 | 2 | 2 | | | | | |
| | M00600014S0 | Hard Disk w/ 4.03 SW SPARE | \$1,795 | 14 | 14 | | | | | |
| | M00600016S0 | Velcro Strap Hook 3/4 SPARE | \$47 | 2 | 2 | | | | | |
| | M00600019S0 | Assy Printer BPH800 SPARE | \$879 | 1 | 1 | | | | | |
| | M00600020S0 | Key Operated Micro Switch AML SPARE | \$456 | 7 | 7 | | | | | |
| | M00600021S0 | RF Controller PCB SPARE | \$8,183 | 22 | 22 | | | | | |
| | M00600022S0 | RF Fan SPARE | \$84 | 1 | 1 | | | | | |
| | M00600023S0 | Motor DC Brushless SPARE | \$1,022 | 8 | 7 | | | 2 | | |
| | M00600024S0 | Controller PID Thermoelectric SPARE | \$8,808 | 26 | 26 | | | | | |
| | M00600025S0 | ASSY, MULTIFUNCTION MODULE, SPARE | \$1,751 | 10 | 9 | | | 1 | | |
| | M00600026S0 | ZIP DRIVE INTERNAL 250MB SPARE | \$997 | 11 | 11 | | | | | |
| | M00600027S0 | 1.44MB Floppy Drive SPARE | \$683 | 32 | 32 | | | | | |
| | M00600028S0 | RETAINER PC CARD SPARE | \$382 | 40 | 39 | | 1 | | | |
| | M00600030S0 | CASTER TWIN 3IN GREY W/BRAKE SPARE | \$109 | 5 | 5 | | | | | |
| | M00600032S0 | PWA, AC Inlet SPARE | \$771 | 11 | 11 | | | | | |
| | M00600033S0 | PC Card, Sound Card 24BIT PCI SPARE | \$127 | 3 | 3 | | | | | |
| | M00600036S0 | Key, Operating for AML Keyswitch SPARE | \$752 | 3 | 3 | | | | | |
| | M00600037S0 | CUSTOM KEYBOARD SPARE | \$126 | 4 | 3 | | | 1 | | |
| | M00600038S0 | Fuse 10A 32V SPARE | \$20 | 45 | 45 | | | | | |
| | M006000430 | Assy XP Upgrade Disk Kit BPH800 | \$152 | 10 | 8 | | | 2 | | |
| | M00600044S0 | Assembly Mouse Pad Spare | \$306 | 5 | 5 | | | | | |
| | M00600047S0 | Prolieve 4.03 Upgrade Kit - SPARE | \$145 | 1 | | | | 1 | | |
| | M006000520 | Kit, Prolieve, Cable Spool | \$313 | 3 | 3 | | | | | |
| | M006000530 | Prolieve, Left Handle | \$680 | 3 | 3 | | | | | |
| | M006000540 | Prolieve, Right Handle | \$453 | 2 | 2 | | | | | |
| | M006000550 | Prolieve, Monitor Arm Cover | \$354 | 3 | 3 | | | | | |
| | M006000570 | Prolieve, Front Pedestal Cover | \$1,050 | 7 | 7 | | | | | |
| | M006000580 | Prolieve, Base cover w Fender | \$912 | 4 | 4 | | | | | |
| | M006000590 | Prolieve, Front Left Panel | \$316 | 3 | 3 | | | | | |
| | M006000600 | Prolieve, Left Side Panel | \$1,007 | 4 | 4 | | | | | |
| | M006000610 | Prolieve, Right Side Panel | \$1,317 | 5 | 5 | | | | | |
| | M006000620 | Prolieve, Rear Top Panel | \$1,117 | 4 | 4 | | | | | |
| | M006000630 | Prolieve, Rear Bottom Panel | \$720 | 3 | 3 | | | | | |
| | M0060064 | Assy, Cable TC Probe | \$1,977 | 14 | 14 | | | | | |
| | M0060065 | Assy, Cable Amp Output | \$942 | 10 | 10 | | | | | |
| | M0068808000 | Prolieve Thermomodulation System | \$118,354 | 6 | | | | | | |
| | M006880800D0 | Prolieve Thermomodulation System-Demo | \$59,177 | 3 | | | | 2 | | |
| | M006880806R0 | Prolieve Console, Refurbished | \$2,978,587 | 161 | 79 | | | 30 | | |
| | M0068808100 | Prolieve Thermomodulation User Manual | \$491 | 10 | 10 | | | | | |
| | M0068808121 | Prolieve Console Printer - Bx 2 | \$713 | 23 | 23 | | | | | |
| | M0068808130 | Prolieve Microwave Cable | \$4,240 | 45 | 10 | | | 35 | | |
| | M0068808250 | Prolieve System RTM Console Adapter | \$63,907 | 572 | 537 | | | 35 | | |
| | M0068808260 | Prolieve System Kit with the coude tip | \$337,063 | 1,168 | 511 | | | 288 | 369 | |
| | M0068808400 | Prolieve User Manual, w/ Disposable RTM | \$6,578 | 275 | 275 | | | | | |
| D276 Total | | \$3,752,228 | 2,738 | 1,918 | | 1 | 403 | 369 | | |
| D628 | M0068808260 | Prolieve System Kit with the coude tip | \$866 | 3 | 3 | | | | | |
| D628 Total | | \$866 | 3 | 3 | | | | | | |
| M750 | M00600002R0 | Assy, Thermoelectric Module, REFURB | \$2,061 | 3 | 1 | | | | | |
| | M00600007S0 | I/O Tower Kit SPARE | \$111 | 1 | | | | | 1 | |
| | M00600011R0 | Assy, 4CH TC Thermometer REFURB | \$2,564 | 1 | 1 | | | | | |
| | M006880806R0 | Prolieve Console, Refurbished | \$138,080 | 7 | 7 | | | | | |
| M750 Total | | \$144,190 | 14 | 9 | | | | | | |
| Grand Total | | \$3,897,284 | 2,755 | 1,928 | | 1 | 403 | 370 | | |

BSCGS T&A Inv Report

| Category | Sub-category | Item | Quantity | Unit | Value |
|----------|--------------|------|----------|------|-------|
| ... | ... | ... | ... | ... | ... |

| Category | Sub-category | Item | Quantity | Unit | Value |
|----------|--------------|------|----------|------|-------|
| ... | ... | ... | ... | ... | ... |

| Category | Sub-category | Item | Quantity | Unit | Value |
|----------|--------------|------|----------|------|-------|
| ... | ... | ... | ... | ... | ... |

| Category | Sub-category | Item | Quantity | Unit | Value |
|----------|--------------|------|----------|------|-------|
| ... | ... | ... | ... | ... | ... |

| Calibration Tr | Supplier # | Instrument Description | Department | Model | Manufacturer | Status |
|----------------|------------|--------------------------|---------------|------------|-------------------------|----------------------|
| 10630 | CNR | Digital Power Meter | Field Service | 5000 EX | Bird Technologies Group | CNR |
| 10631 | CNR | Digital Power Meter | Field Service | 5000 EX | Bird Technologies Group | CNR |
| 10632 | CNR | Digital Power Meter | Field Service | 5000 EX | Bird Technologies Group | Inactive |
| 10633 | CNR | Digital Power Meter | Field Service | 5000 EX | Bird Technologies Group | CNR |
| 10634 | CNR | Digital Power Meter | Field Service | 5000 EX | Bird Technologies Group | CNR |
| 10635 | CNR | Digital Power Meter | Field Service | 5000 EX | Bird Technologies Group | Inactive |
| 10636 | CNR | Digital Power Meter | Field Service | 5000 EX | Bird Technologies Group | CNR |
| 10637 | CNR | Digital Power Meter | Field Service | 5000 EX | Bird Technologies Group | Inactive |
| 10638 | CNR | Digital Power Meter | Field Service | 5000 EX | Bird Technologies Group | CNR |
| 10639 | CNR | Digital Power Meter | Field Service | 5000 EX | Bird Technologies Group | CNR |
| 12816 | CNR | Digital Power Meter | Field Service | 5000 EX | Bird Technologies Group | CNR |
| 12817 | CNR | Digital Power Meter | Field Service | 5000 EX | Bird Technologies Group | CNR |
| 13008 | | Digital Power Meter | Field Service | 5000-EX | Bird Technologies Group | CNR |
| 13009 | | Digital Power Meter | Field Service | 5000-EX | Bird Technologies Group | CNR |
| 13010 | | Digital Power Meter | Field Service | 5000-EX | Bird Technologies Group | CNR |
| 13011 | | Digital Power Meter | Field Service | 5000-EX | Bird Technologies Group | CNR |
| 13012 | | Digital Power Meter | Field Service | 5000-EX | Bird Technologies Group | CNR |
| 13013 | | Digital Power Meter | Field Service | 5000-EX | Bird Technologies Group | CNR |
| 10640 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 10641 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 10642 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 10643 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Pending cal/Inactive |
| 10644 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 10645 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 10646 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 10647 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 10648 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 10649 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 12818 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 12819 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Pending cal/Inactive |
| 13002 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Active |
| 13003 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Pending cal/Inactive |
| 13004 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 13005 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Active |
| 13006 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Active |
| 13007 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 14445 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 14446 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 14447 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 14448 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Active |
| 14449 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Pending cal/Inactive |
| 14450 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Pending cal/Inactive |
| 14451 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Pending cal/Inactive |
| 14452 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Pending cal/Inactive |
| 14453 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 14454 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 14536 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 14537 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Pending cal/Inactive |
| 14538 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 14539 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 14540 | N/A | Digital Power Sensor | Field Service | 5010B | Bird Technologies Group | Inactive |
| 12432 | N/A | Heat Exchange Substitute | Field Service | CEL2600007 | Celsion | Active |
| 12433 | | Heat Exchange Substitute | Field Service | CEL2600007 | Celsion | Inactive |
| 12434 | N/A | Heat Exchange Substitute | Field Service | CEL2600007 | Celsion | Active |
| 12435 | N/A | Heat Exchange Substitute | Field Service | CEL2600007 | Celsion | Active |
| 12436 | N/A | Heat Exchange Substitute | Field Service | CEL2600007 | Celsion | Active |
| 12437 | N/A | Heat Exchange Substitute | Field Service | CEL2600007 | Celsion | Active |
| 12438 | C102478 | Heat Exchange Substitute | Field Service | CEL2600007 | Celsion | Active |
| 12439 | N/A | Heat Exchange Substitute | Field Service | CEL2600007 | Celsion | Pending cal/Inactive |

| | | | | | | |
|-------|----------|-----------------------------|---------------|-------------|-------------------|----------------------|
| 12441 | | Heat Exchange Substitute | Field Service | CEL2600007 | Celsion | Pending cal/Inactive |
| 13335 | N/A | Heat Exchange Substitute | Field Service | CEL2600007 | Celsion | Active |
| 13336 | C102477 | Heat Exchange Substitute | Field Service | CEL2600007 | Celsion | Active |
| 13337 | N/A | Heat Exchange Substitute | Field Service | CEL2600007 | Celsion | Pending cal/Inactive |
| 13889 | N/A | Heat Exchange Substitute | Field Service | 2600007 | Celsion | Active |
| 13891 | N/A | Heat Exchange Substitute | Field Service | 2600007 | Celsion | Pending cal/Inactive |
| 13892 | N/A | Heat Exchange Substitute | Field Service | 2600007 | Celsion | Active |
| 13893 | N/A | Heat Exchange Substitute | Field Service | 2600007 | Celsion | Active |
| 13903 | 1238 | Heat Exchange Substitute | Field Service | 2600007 | Celsion | Active |
| 13904 | 1235 | Heat Exchange Substitute | Field Service | 2600007 | Celsion | Active |
| 13905 | 1236 | Heat Exchange Substitute | Field Service | 2600007 | Celsion | Active |
| 13906 | 1239 | Heat Exchange Substitute | Field Service | 2600007 | Celsion | Active |
| 14133 | C102442 | Heat Exchange Substitute | Field Service | 2600007 | Celsion | Active |
| 15129 | | Prolieve RTM T/C Junction B | Field Service | M0068808030 | BSC | CNR |
| 15130 | PMC 7601 | RTM | Field Service | M0068808030 | BSC | Inactive |
| 15430 | PMC 7698 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15431 | PMC 7699 | RTM | Field Service | M0068808190 | Phillips Plastics | Active |
| 15432 | PMC 7700 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15433 | PMC 7701 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15434 | PMC 7702 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15435 | PMC 7703 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15436 | PMC 7704 | RTM | Field Service | M0068808190 | Phillips Plastics | Pending cal/Inactive |
| 15437 | PMC 7705 | RTM | Field Service | M0068808190 | Phillips Plastics | Active |
| 15438 | PMC 7706 | RTM | Field Service | M0068808190 | Phillips Plastics | Active |
| 15439 | PMC 7707 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15440 | PMC 7708 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15442 | PMC 7710 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15443 | PMC 7711 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15445 | PMC 7713 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15446 | PMC 7714 | RTM | Field Service | M0068808190 | Phillips Plastics | Active |
| 15447 | PMC 7715 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15448 | PMC 7716 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15449 | PMC 7717 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15450 | PMC 7718 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 15452 | PMC 7720 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 16457 | PMC 8205 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 16458 | PMC 8206 | RTM | Field Service | M0068808190 | Phillips Plastics | Active |
| 16459 | PMC 8207 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 16460 | PMC 8208 | RTM | Field Service | M0068808190 | Phillips Plastics | Active |
| 16461 | PMC 8209 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 16462 | PMC 8210 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 16463 | PMC 8211 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 16464 | PMC 8212 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 16465 | PMC 8214 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 16466 | PMC 8213 | RTM | Field Service | M0068808190 | Phillips Plastics | Active |
| 16467 | PMC 8215 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 16468 | PMC 8216 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 16469 | PMC 8217 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 16470 | PMC 8218 | RTM | Field Service | M0068808190 | Phillips Plastics | Inactive |
| 16473 | PMC 8325 | RTM | Field Service | M0068808190 | Phillips Plastics | Active |
| 16477 | PMC 8329 | RTM | Field Service | M0068808190 | Phillips Plastics | Active |
| 16478 | PMC 8330 | RTM | Field Service | M0068808190 | Phillips Plastics | Active |
| 16479 | PMC 8331 | RTM | Field Service | M0068808190 | Phillips Plastics | Active |
| 16480 | PMC 8332 | RTM | Field Service | M0068808190 | Phillips Plastics | Active |
| 15897 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15898 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15899 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15900 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15901 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15902 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |

| | | | | | | |
|-------|----------|---------------------|---------------|---------------|-------|----------|
| 15903 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15904 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15905 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15906 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15907 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15908 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15909 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15910 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15911 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15912 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15913 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15914 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15915 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15916 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15917 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15918 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15919 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 15920 | CNR | RTM Console Adapter | Field Service | M0068808250 | BSC | CNR |
| 14284 | PMC 7538 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Active |
| 14286 | PMC 7540 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14288 | PMC 7542 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14289 | PMC 7543 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14290 | PMC 7544 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14291 | PMC 7545 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14292 | PMC 7546 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Active |
| 14293 | PMC 7547 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14294 | PMC 7548 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14295 | PMC 7549 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14296 | PMC 7550 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14297 | PMC 7551 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14298 | PMC 7552 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Active |
| 14300 | PMC 7554 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Active |
| 14301 | PMC 7555 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14302 | PMC 7556 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14494 | PMC 7615 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14495 | PMC 7616 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Active |
| 14496 | PMC 7617 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14497 | PMC 7618 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Active |
| 14498 | PMC 7619 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14499 | PMC 7642 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14500 | PMC 7620 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14501 | PMC 7621 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Active |
| 14503 | PMC 7622 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Active |
| 14504 | PMC 7644 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |
| 14505 | PMC 7645 | Temperature Probe | Field Service | OL-703-Type 7 | Omega | Inactive |

BOSTON SCIENTIFIC CONSIGNED EQUIPMENT LIST

| SSCI CONSIGNED # | BOSTON SCIENTIFIC TEST EQUIPMENT TYPE |
|------------------|---|
| C101141 | AC LEAKAGE TEST BOX |
| C101180 | AC LEAKAGE TEST BOX |
| C101187 | AC LEAKAGE TEST BOX |
| C102769 | ASSOCIATED RESEARCH 8106 ASSOCIATED RESEARCH OMNIA 6 HI-POT |
| C102770 | ASSOCIATED RESEARCH 8106 ASSOCIATED RESEARCH OMNIA 6 HI-POT |
| C101159 | BIRD 100E WATT METER ELEMENT |
| C101188 | BIRD 100E WATT METER ELEMENT |
| C101189 | BIRD 100E WATT METER ELEMENT |
| C101958 | BIRD 100E WATT METER ELEMENT |
| C100892 | BIRD 300-T-FN RF LOAD |
| C100893 | BIRD 300-T-FN RF LOAD |
| C100894 | BIRD 300-T-FN RF LOAD |
| C100895 | BIRD 300-T-FN RF LOAD |
| C101182 | BIRD 300-T-FN RF LOAD |
| C101190 | BIRD 300-T-FN RF LOAD |
| C101192 | BIRD 300-T-FN RF LOAD |
| C101193 | BIRD 300-T-FN RF LOAD |
| C101194 | BIRD 300-T-FN RF LOAD |
| C101196 | BIRD 300-T-FN RF LOAD |
| C101158 | BIRD 43 WATT METER |
| C101219 | BIRD 43 WATT METER |
| C101429 | BIRD 43 WATT METER |
| C102906 | BIRD 5000 EX DIGITAL POWER METER |
| C102907 | BIRD 5000 EX DIGITAL POWER METER |
| C102906-1 | BIRD 5010 POWER SENSOR |
| C102907-1 | BIRD 5010 POWER SENSOR |
| C102906-3 | BIRD DPM-100E ELEMENT |
| C102907-3 | BIRD DPM-100E ELEMENT |
| C102906-2 | BIRD DPM-10E ELEMENT |
| C102907-2 | BIRD DPM-10E ELEMENT |
| C101904 | BLANK FLOPPY DISK |
| C101906 | BLANK FLOPPY DISK |
| C101142 | COLE-PARMER WATER BATH |
| C101201 | COLE-PARMER WATER BATH |
| C101208 | COLE-PARMER WATER BATH |
| C101209 | COLE-PARMER WATER BATH |
| C101901 | COLE-PARMER WATER BATH |
| C101178 | FLUKE 53 THERMOMETER |
| C101183 | HXC 2600007 HEAT EXCHANGER CARTRIDGE SUBSTITUTE |
| C101199 | HXC 2600007 HEAT EXCHANGER CARTRIDGE SUBSTITUTE |
| C101698 | HXC 2600007 HEAT EXCHANGER CARTRIDGE SUBSTITUTE |
| C101926 | HXC 2600007 HEAT EXCHANGER CARTRIDGE SUBSTITUTE |
| C102510 | HXC 2600007 HEAT EXCHANGER CARTRIDGE SUBSTITUTE |
| C100988 | ICT FIXTURE |
| C100989 | ICT FIXTURE |
| C101557 | LOGIC CUBE ECHO HARD DRIVE DUPLICATION SYSTEM |
| C101181 | OMEGA OL-703 THERMISTOR |
| C101078 | PHYSITEMP PROBE ASSEMBLY 2600012 |
| C101204 | PHYSITEMP PROBE ASSEMBLY 2600012 |
| C101210 | PHYSITEMP PROBE ASSEMBLY 2600012 |

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See File a List of Boston Scientific Test Equipment 9-14-11.xls

BOSTON SCIENTIFIC CONSIGNED EQUIPMENT LIST

| SSCI CONSIGNED # | BOSTON SCIENTIFIC TEST EQUIPMENT TYPE |
|------------------|---|
| C102384 | PHYSITEMP PROBE ASSEMBLY 2600012 |
| C102385 | PHYSITEMP PROBE ASSEMBLY 2600012 |
| C101191 | POWER SUPPLY TEST FIXTURE |
| C103068 | PROLIEVE BPH900 SYSTEM CEL2100048 |
| C101211 | PROLIEVE THERMODILATATION SYSTEM HARDWARE TEST WIZARD |
| C102591 | PROLIEVE THERMODILATATION SYSTEM HARDWARE TEST WIZARD |
| C102592 | PROLIEVE THERMODILATATION SYSTEM HARDWARE TEST WIZARD |
| C102593 | PROLIEVE THERMODILATATION SYSTEM HARDWARE TEST WIZARD |
| C102594 | PROLIEVE THERMODILATATION SYSTEM HARDWARE TEST WIZARD |
| C101139 | RF BALANCE TEST ADAPTER |
| C101203 | RF BALANCE TEST ADAPTER |
| C102764 | THERMOCOUPLE SENSOR ASSEMBLY 3500031 |
| C102765 | THERMOCOUPLE SENSOR ASSEMBLY 3500031 |
| C102766 | THERMOCOUPLE SENSOR ASSEMBLY 3500031 |
| C102771 | THERMOELECTRIC SPACING FIXTURE TDW-CEL3100147 |

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RMMS Asset List (March 27, 2012)

| Asset | Quantity | Lease Due |
|---------------------|-----------------|------------------|
| RMMS Vans | 17 | \$21,636.19 |
| Patient Monitors | 18 | \$0.00 |
| Portable Ultrasound | 20 | \$0.00 |
| Crash Carts* | 16 | \$0.00 |
| Office Equipment** | See note | \$0.00 |

Note:

----Office Equipment = 3 desks and 3 filing cabinets

----Other equipment (Computers, printers, etc. tagged as BSC equipment, expected to be returned)

---- list excludes Prolieve consoles which are reflected in inventory asset listing

RMMS Van Listing (March 27, 2012)

| Year | Make | Model | VIN | Odometer | Lease Payments | Total Owed |
|------|-------|-------|-------------------|----------|-------------------|---------------|
| 2009 | FORD | E250 | 1FTNE24W59DA34619 | 139,326 | 14 @ 518.35 | \$7,256.90 |
| 2009 | FORD | E250 | 1FTNE24W39DA36112 | 26,901 | 14 @ 524.22 | \$7,339.08 |
| 2008 | FORD | E250 | 1FTNE24W68DA89367 | 91,381 | 1 @ 441.94 | \$441.93 |
| 2007 | FORD | E250 | 1FTNE24W67DB33088 | 110,956 | 6 @ 265.62 | \$1,593.72 |
| 2007 | FORD | E250 | 1FTNE24W77DA36367 | 138,075 | 8 @ 307.10 | \$2,456.80 |
| 2007 | FORD | E250 | 1FTNE24W07DA40552 | 146,480 | 8 @ 318.47 | \$2,547.76 |
| 2006 | FORD | E250 | 1FTNE24L26HB04572 | 139,234 | | |
| 2006 | FORD | E250 | 1FTNE24L46HB16898 | 90,191 | | |
| 2006 | FORD | E250 | 1FTNE24L46HA43936 | 232,075 | | |
| 2006 | FORD | E250 | 1FTNE24L66HA63640 | 183,176 | | |
| 2004 | FORD | E150 | 1FTRE14L54HA24871 | 164,113 | | |
| 2003 | FORD | E150 | 1FTRE14L23HA24504 | 292,249 | | |
| 2003 | FORD | E150 | 1FTNE24L33HA28811 | 233,023 | | |
| 2001 | FORD | E150 | 1FTRE14W71HA89386 | 250,900 | | |
| 2000 | CHEVY | ASTRO | 1GBDM19W1YB183111 | 116,060 | | |
| 2000 | FORD | E150 | 1FTRE14W8YHA90055 | 275,419 | | |
| 2000 | FORD | E150 | 1FTRE14W0YHB00075 | 224,888 | | |

\$21,636.19

RMMS Patient Monitor Listing (March 27, 2012)

| Item | Model | Serial# | Status |
|--------------------|--------|----------|--|
| Welch Allyn ProPaq | 202 EL | DA014786 | In service |
| Welch Allyn ProPaq | 202 EL | DA010132 | In service |
| Welch Allyn ProPaq | 202 EL | DA021130 | In service |
| Welch Allyn ProPaq | 202 EL | DA014536 | In service |
| Welch Allyn ProPaq | 202 EL | DA004164 | In service |
| Welch Allyn ProPaq | 202 EL | DA001911 | In service |
| Welch Allyn ProPaq | 202 EL | DA006673 | In service |
| Welch Allyn ProPaq | 202 EL | DA019371 | In service |
| Welch Allyn ProPaq | 202 EL | DA005941 | In service |
| Welch Allyn ProPaq | 202 EL | DA020657 | In service |
| Welch Allyn ProPaq | 202 EL | DA016874 | In service |
| Welch Allyn ProPaq | 202 EL | DA019694 | In service |
| Welch Allyn ProPaq | 202 EL | DA018972 | In service |
| Welch Allyn ProPaq | 202 EL | DA007789 | In service |
| Welch Allyn ProPaq | 206 EL | DA016244 | In service |
| Welch Allyn ProPaq | 202 EL | DA008963 | In service |
| Welch Allyn ProPaq | 202 EL | DA003275 | Stored (in Greeley office) |
| Welch Allyn ProPaq | 202 EL | DA023160 | Stored (in Greeley office) |
| Welch Allyn ProPaq | 202 EL | DA019857 | Out of Service (Broken - High Repair Cost) |
| Welch Allyn ProPaq | 202 EL | DA008833 | Out of Service (Broken - High Repair Cost) |

Notes:

All monitors have been purchased prior to 2007 and are a minimum of 5 years old.

All monitors listed as "in service" or "stored" have been maintained annually by Welch Allyn

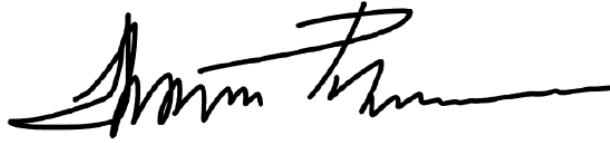
RMMS Ultrasound Listing (March 27, 2012)

| Item | Model | Serial # | Status |
|----------|-------|----------|----------------------------|
| Sonosite | 180 | 0203Y7 | In service |
| Sonosite | 180 | 01NBKR | In service |
| Sonosite | 180 | 01PX4V | In service |
| Sonosite | 180 | 0338F1 | In service |
| Sonosite | 180 | 01PX3T | In service |
| Sonosite | 180 | 01N9YB | In service |
| Sonosite | 180 | 01PX5P | In service |
| Sonosite | 180 | 01NBL7 | In service |
| Sonosite | 180 | 01J3T0 | In service |
| Sonosite | 180 | 01JCRB | In service |
| Sonosite | 180 | 01G2DP | In service |
| Sonosite | 180 | 01NB8Q | In service |
| Sonosite | 180 | 01G280 | In service |
| Sonosite | 180 | 02027W | In service |
| Sonosite | 180 | 030583 | In service |
| Sonosite | 180 | 01DVYT | In service |
| Sonosite | 180 | 01N9NY | Stored (in Greeley office) |
| Sonosite | 180 | 01LCHC | Stored (in Greeley office) |
| Sonosite | 180 | 01NB19 | Stored (in Greeley office) |
| Sonosite | 180 | 03050Z | Stored (in Greeley office) |

Notes:

All Ultrasounds have been purchased prior to 2007 and are a minimum of 5 years old.
 Per Sonosite, there is no annual maintenance needed, and none has been performed.
 The Sonosite 180 is no longer manufactured.

THIS IS **EXHIBIT “E”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 4TH DAY OF OCTOBER 2021

A handwritten signature in black ink, appearing to read 'Sharon Fung', is written over a horizontal dashed line.

A COMMISSIONER FOR TAKING AFFIDAVITS

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

and

CHEUNG LABORATORIES, INC.

PATENT LICENSE AGREEMENT

**M.I.T.'S OFFER TO CHEUNG LABORATORIES, INC. TO
ENTER INTO THIS LICENSE AGREEMENT SHALL EXTEND UNTIL
NO LATER THAN OCTOBER 31, 1997.**

(EXCLUSIVE)

11-7-94
Patent Exclusive

TLO:LP
<Date last modified 10/17/97>

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MASSACHUSETTS INSTITUTE OF TECHNOLOGY

and

CHEUNG LABORATORIES, INC.

PATENT LICENSE AGREEMENT

This Agreement is made and entered into this *24th* day of *OCTOBER*, 1997, (the "EFFECTIVE DATE") by and between MASSACHUSETTS INSTITUTE OF TECHNOLOGY, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and having its principal office at 77 Massachusetts Avenue, Cambridge, Massachusetts 02139, U.S.A. (hereinafter referred to as "M.I.T."), and CHEUNG LABORATORIES, INC., a corporation duly organized under the laws of Maryland and having its principal office at 10220-I Old Columbia Road, Columbia, MD 21046-1705 (hereinafter referred to as "LICENSEE"), and cancels, supersedes and replaces a previous Agreement by and between M.I.T. and LICENSEE for M.I.T. Case No.'s 5493L, 5672L, and 6512L dated June 12, 1996.

WITNESSETH

WHEREAS, M.I.T. is the owner of certain PATENT RIGHTS (as later defined herein) relating to M.I.T. Case No. 5493L, U.S. Patent No. 5,251,645, "Adaptive Hyperthermia System," by Alan J. Fenn; M.I.T. Case No. 5672L, "Non-Invasive Monopole Hyperthermia Array for Brain Tumor Heating," by Alan J. Fenn; M.I.T. Case No. 6512L, U.S. Patent No. 5,540,737, "Minimally Invasive Monopole Phased Array Hyperthermia Applicators for Treating Carcinoma," by Alan J. Fenn; and M.I.T. Case No. 7615L, "Adaptive Nulling And Focusing Hyperthermia Phased Arrays For Activating Thermosensitive Liposomes For Targeted Delivery Of Drugs To Deep Human Tissues," by Alan J. Fenn and has the right to grant licenses under said PATENT RIGHTS (as later defined herein), subject only to a royalty-free, nonexclusive license heretofore granted to the United States Government;

WHEREAS, M.I.T. desires to have the PATENT RIGHTS developed and commercialized to benefit the public and is willing to grant a license thereunder;

WHEREAS, M.I.T. is the owner of certain rights, title and interest in the PROGRAM (as later defined herein) relating to M.I.T. Case No. 7299LS, "NULLGSC," by Alan J. Fenn and M.I.T. Case No. 7298LS, "FOCUSGSC," by Alan J. Fenn subject only to the royalty-free, nonexclusive license rights of the United States Government pursuant to 48 CFR 52.227-14 (Civilian Agencies) and DFARS 252.227-7013 (Defense Agencies), and has the right to grant licenses thereunder;

WHEREAS, M.I.T. desires to have the PROGRAM developed and commercialized to

benefit the public and is willing to grant a license thereunder;

WHEREAS, M.I.T. and LICENSEE had entered into a License Agreement for M.I.T. Case No.'s 5493L, 5672L, 6512L, 7298LS and 7299LS dated June 12, 1996, and now wish to terminate that Agreement and replace it with this Agreement; and

WHEREAS, LICENSEE has represented to M.I.T., to induce M.I.T. to enter into this Agreement, that LICENSEE is experienced in the development, production, manufacture, marketing and sale of products similar to the LICENSED PRODUCT(s) (as later defined herein) and/or the use of the LICENSED PROCESS(es) (as later defined herein) and that it shall commit itself to a thorough, vigorous and diligent program of exploiting the PATENT RIGHTS, and to a thorough, vigorous and diligent program of exploiting the PROGRAM, so that public utilization shall result therefrom, all in the manner provided herein; and

WHEREAS, LICENSEE desires to obtain a license under the PATENT RIGHTS and also desires to obtain a license to the PROGRAM, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual terms, conditions and covenants contained herein, the parties hereto agree as follows:

1 - DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

1.1 "ADAPTATIONS" shall mean the PROGRAM as it may be adapted by LICENSEE for hardware other than the original M.I.T. Cray computer.

1.2 "COPYRIGHT" shall mean M.I.T.'s copyrights in the PROGRAM.

1.3 "DERIVATIVE WORKS" shall mean a program that uses the M.I.T. COPYRIGHTED PROGRAM and/or and ADAPTATION, but which has enhanced and new features or fewer features. LICENSEE shall be entitled to establish all proprietary rights for itself in the intellectual property represented by LICENSEE-created enhancements and new features, whether in the nature of trade secrets, copyrights or patent rights or other rights. M.I.T. shall be entitled to establish all proprietary rights for itself in the intellectual property represented by M.I.T.-created enhancements and new features, whether in the nature of copyrights or patent rights or other rights.

1.4 "END USER" shall mean a customer licensed or otherwise authorized by LICENSEE to use a single copy of the PROGRAM for internal purposes only and not for further distribution.

1.5 On the EFFECTIVE DATE, "EXCLUSIVE FIELDS OF USE" shall mean FIELD OF USE ONE, FIELD OF USE TWO, and FIELD OF USE THREE. This definition may be modified according to paragraphs 3.6, 3.7 and 3.8.

1.6 "FIELD OF USE ONE" shall mean Breast Hyperthermia.

1.7 "FIELD OF USE TWO" shall mean Prostate Hyperthermia.

1.8 "FIELD OF USE THREE" shall mean all other medical applications.

1.9 "INTELLECTUAL PROPERTY RIGHTS" shall mean all of the PATENT RIGHTS and COPYRIGHT.

1.10 "LICENSED PROCESS" shall mean any process which is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS, or by the COPYRIGHT.

1.11 "LICENSED PRODUCT" shall mean LICENSEE's hyperthermia machine or part thereof, and accessories, including, but not limited to disposable accessories such as temperature probes and needles, which:

- (a) is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS in the country in which any such LICENSED PRODUCT or part thereof is made, used or sold; or
- (b) is manufactured by using a process or is employed to practice a process which is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the PATENT RIGHTS in the country in which any LICENSED PROCESS is used or in which such product or part thereof is used or sold.
- (c) is covered in whole or in part by the COPYRIGHT.

1.12 "LICENSED SERVICE" shall mean any fee-bearing service performed by LICENSEE or any SUBLICENSEE or any MEDICAL SERVICE PROVIDER which uses a LICENSED PRODUCT or practices a LICENSED PROCESS.

1.13 "LICENSEE" shall mean Cheung Laboratories, Inc., and shall include a related company of Cheung Laboratories, Inc., the voting stock of which is directly or indirectly at least fifty percent (50%) owned or controlled by Cheung Laboratories, Inc.

1.14 "MEDICAL SERVICE PROVIDER" shall mean a customer or user of a LICENSED PRODUCT, at a clinical site, licensed or otherwise authorized to practice a LICENSED PROCESS and/or perform a LICENSED SERVICE by LICENSEE, which customer or user has explicitly not been granted rights by LICENSEE to make, sell, or lease LICENSED PRODUCTS.

1.15 "MILESTONE PAYMENT" shall mean a payment to LICENSEE from any third party due upon achievement of an agreed upon technical, regulatory, or business milestone related to LICENSED PRODUCTS, LICENSED PROCESSES, or LICENSED SERVICES. Illustrative examples of such milestones include, but are not limited to, achieving a technical result, obtaining FDA approval, and meeting sales targets.

MILESTONE PAYMENTS shall not include (i) any payments to LICENSEE which are subject to royalties under paragraphs 4.1 (h), (i) or (j), (ii) any advances to LICENSEE pursuant to bank loans or other bona fide credit arrangements, and (iii) any payments to LICENSEE to acquire LICENSEE's capital stock at a price not exceeding the fair market value thereof.

1.16 "NET SALES" shall mean the sum of the following:

a) LICENSEE's and its SUBLICENSEE'S billings for LICENSED PRODUCTS (including, explicitly, the PROGRAM), LICENSED PROCESSES, and LICENSED SERVICES, less the sum of the following items, providing that these items are payable by LICENSEE (or by its SUBLICENSEE) or deductible from LICENSEE's billings (or from SUBLICENSEE'S billings) within sixty (60) days of receiving payments from LICENSEE's (or SUBLICENSEE'S) customer(s):

- i. discounts allowed in amounts customary in the trade for quantity purchases, cash payments, prompt payments, wholesalers and distributors;
- ii. sales, tariff duties and/or use taxes directly imposed and with reference to particular sales;
- iii. outbound transportation prepaid or allowed;
- iv. amounts allowed or credited on returns or refunds; and
- v. allowance for bad debt, not to exceed Five Percent (5%) of NET SALES per calendar year.

No other deductions shall be made for commissions paid to individual whether they be with independent sales agencies or regularly employed by LICENSEE and on its payroll, or for the cost of collections. LICENSED PRODUCTS, LICENSED PROCESSES, or LICENSED SERVICES shall be considered "sold" ninety (90) days after billing or invoicing, or upon receipt of payment, whichever comes first, provided, however, that LICENSED PRODUCTS are actually shipped to customers; plus

b) LICENSEE's gross receipts from MEDICAL SERVICE PROVIDERS, other than receipts counted in paragraph 1.16 (a) above.

1.17 "OTHER REVENUE" shall mean LICENSEE's gross revenues from the sale of its own services for consulting, research and development, and training, in connection with:

- a. the sublicensing of the INTELLECTUAL PROPERTY RIGHTS; and/or
- b. the use or sale, lease or other transfer of LICENSED PRODUCTS, LICENSED PROCESSES and LICENSED SERVICES.

1.18 "PATENT RIGHTS" shall mean all of the following M.I.T. intellectual property:

- a. the United States patents listed in Appendix A;
- b. the United States patent applications listed in Appendix A, and divisionals, continuations and claims of continuation-in-part applications which shall be directed to subject matter specifically described in such patent applications, and the resulting patents;
- c. any patents resulting from reissues or reexaminations of the United States patents described in a. and b. above;

- d. the Foreign patents listed in Appendix A;
- e. the Foreign patent applications listed in Appendix A, and divisionals, continuations and claims of continuation-in-part applications which shall be directed to subject matter specifically described in such Foreign patent applications, and the resulting patents;
- f. Foreign patent applications filed after the EFFECTIVE DATE in the countries listed in Appendix B and divisionals, continuations and claims of continuation-in-part applications which shall be directed to subject matter specifically described in such patent applications, and the resulting patents; and
- g. any Foreign patents, resulting from equivalent Foreign procedures to United States reissues and reexaminations, of the Foreign patents described in d., e. and f. above.

1.19 "PROGRAM" shall mean the computer program(s), "NULLGSC" and "FOCUSGSC" and related documentation, if any described in Appendix C (hereinafter the "M.I.T. COPYRIGHTED PROGRAM"), and shall also include ADAPTATIONS, DERIVATIVE WORKS and TRANSLATIONS. PROGRAM may be protected by both PATENT RIGHTS and COPYRIGHTS.

1.20 "SUBLICENSEE" shall mean an entity which has the right to i) make or have made and sell LICENSED PRODUCTS or ii) make or have made and lease LICENSED PRODUCTS.

1.21 "TRANSLATION" shall mean a translation of the PROGRAM into another language.

2 - GRANT

2.1 M.I.T. hereby grants to LICENSEE the right and license for FIELD OF USE ONE, FIELD OF USE TWO, and FIELD OF USE THREE to practice under the PATENT RIGHTS and, to the extent not prohibited by other patents, to make, have made, use, lease, sell and import LICENSED PRODUCTS and to practice the LICENSED PROCESSES, and to perform LICENSED SERVICES until the expiration of the last to expire of the PATENT RIGHTS, unless this Agreement shall be sooner terminated according to the terms hereof.

2.2 M.I.T. hereby grants to LICENSEE the following rights and licenses for FIELD OF USE ONE, FIELD OF USE TWO, and FIELD OF USE THREE to the end of the term for which the COPYRIGHT shall be granted, unless this Agreement shall be sooner terminated:

- a. to use and reproduce the PROGRAM;
- b. to create DERIVATIVE WORKS; and
- c. to lease, transfer and sublicense the PROGRAM to END-USERS through the normal channels of distribution; and

2.3 In order to establish a period of exclusivity for LICENSEE, M.I.T. hereby agrees that it shall not grant any other license to the PATENT RIGHTS for the EXCLUSIVE FIELDS OF

USE, and also that it shall not grant any other license to the COPYRIGHT for the EXCLUSIVE FIELDS OF USE, subject only to Paragraphs 2.5 and 2.6 and to the royalty-free, nonexclusive license rights of the United States Government pursuant to 48 CFR 52.227-14 (Civilian Agencies) and DFARS 252.227-7013 (Defense Agencies) during the period of time commencing with the EFFECTIVE DATE and terminating with the first to occur of:

- (a) the expiration of ten (10) years after the first commercial sale of a LICENSED PRODUCT or first commercial use of a LICENSED PROCESS or the first commercial performance of a LICENSED SERVICE; or
- (b) the expiration of twelve (12) years after the EFFECTIVE DATE of this Agreement.

2.4 At the end of the exclusive period, the license granted hereunder shall become nonexclusive and shall extend to the end of the term or terms for which any PATENT RIGHTS or COPYRIGHT are granted, unless sooner terminated as hereinafter provided. The period of exclusivity may be extended with the written consent of M.I.T., on a field of use basis, which consent shall not unreasonably be withheld, provided that LICENSEE is a licensee in good standing, owing no fees, royalties or any other monies to M.I.T., and having met all the diligence milestones pertaining to the particular field of use in which an extension of the period of exclusivity is under consideration.

2.5 M.I.T. reserves the right to practice under the PATENT RIGHTS for its own noncommercial research purposes.

2.6 M.I.T. reserves the right to use the PROGRAM, to use and create DERIVATIVE WORKS of the PROGRAM and to distribute the PROGRAM and M.I.T.-created DERIVATIVE WORKS to third parties for noncommercial research purposes.

2.7 LICENSEE agrees that LICENSED PRODUCTS leased or sold in the United States shall be manufactured substantially in the United States.

2.8 In order to encourage and facilitate the development of LICENSED PRODUCTS, LICENSED PROCESSES, and LICENSED SERVICES M.I.T. agrees to perform the work described in the Technology Transfer Agreement attached to this license as ADDENDUM A. e

2.9 LICENSEE shall have the right to enter into sublicensing agreements for the rights, privileges and licenses granted hereunder only during the exclusive period of this Agreement, and with the following restrictions:

- a) Such sublicenses may extend past the expiration date of the exclusive period of this Agreement, or upon the termination of LICENSEE's exclusive rights in a particular field of use, pursuant to paragraphs 3.6, 3.7, and 3.8, but any exclusivity of such sublicenses shall expire upon the expiration of LICENSEE's exclusivity.
- b) Upon any termination of this Agreement, sublicensees' rights shall also terminate, subject to Paragraph 13.6 hereof.

- c) LICENSEE may not grant sublicenses which permit further sublicensing of the INTELLECTUAL PROPERTY RIGHTS without the express written permission of M.I.T.
- d) LICENSEE may not grant the rights to make, lease or sell LICENSED PRODUCTS to MEDICAL SERVICES PROVIDERS.

2.10 LICENSEE agrees that any sublicenses granted by it shall provide that the obligations to M.I.T. of Articles 2, 5, 7, 8, 9, 10, 12, 13, and 15 of this Agreement shall be binding upon the sublicensee as if it were a party to this Agreement. LICENSEE further agrees to attach copies of these Articles to sublicense agreements.

2.11 LICENSEE agrees to forward to M.I.T. a copy of any and all sublicense agreements promptly upon execution by the parties.

2.12 LICENSEE shall not receive from SUBLICENSEES anything of value in lieu of cash payments in consideration for any sublicense under this Agreement, without the express prior written permission of M.I.T.

2.13 The license granted hereunder shall not be construed to confer any rights upon LICENSEE by implication, estoppel or otherwise as to any technology not specifically set forth in Appendix A hereof.

3 - DUE DILIGENCE

3.1 LICENSEE shall use its best efforts to bring one or more LICENSED PRODUCTS, LICENSED PROCESSES, or LICENSED SERVICES to market through a thorough, vigorous and diligent program for exploitation of the INTELLECTUAL PROPERTY RIGHTS and to continue active, diligent marketing efforts for one or more LICENSED PRODUCTS, LICENSED PROCESSES or LICENSED SERVICES throughout the life of this Agreement.

3.2 LICENSEE shall raise a minimum of Five Million Dollars (\$5,000,000) toward the development of LICENSED PRODUCTS, LICENSED PROCESSES or LICENSED SERVICES according to the following schedule:

- (a) One Million Five Hundred Thousand Dollars (\$1,500,000) on or before January 1, 1998.
- (b) An additional One Million Five Hundred Thousand Dollars (\$1,500,000) on or before June 30, 1998.
- (c) An additional Two Million Dollars (\$2,000,000) on or before January 1, 2000.

3.3 (a) In addition, pertaining to FIELD OF USE ONE, LICENSEE shall adhere to the following milestone:

As soon as possible, but in all events on or before June 30, 1999 LICENSEE shall apply for FDA approval for commercial sale of a LICENSED PRODUCT in FIELD OF USE ONE, and/or for FDA approval for the commercial use of a

LICENSED PROCESS or commercial performance of a LICENSED SERVICE in FIELD OF USE ONE.

(b) In addition, pertaining to FIELD OF USE TWO, LICENSEE shall adhere to the following milestone:

As soon as possible, but in all events on or before June 30, 2001 LICENSEE shall apply for FDA approval for commercial sale of a LICENSED PRODUCT in FIELD OF USE TWO, and/or for FDA approval for the commercial use of a LICENSED PROCESS or commercial performance of a LICENSED SERVICE in FIELD OF USE TWO.

(c) In addition, pertaining to FIELD OF USE THREE, LICENSEE shall adhere to the following milestone:

As soon as possible, but in all events on or before June 30, 2002 LICENSEE shall apply for FDA approval for commercial sale of a LICENSED PRODUCT in FIELD OF USE THREE, and/or for FDA approval for the commercial use of a LICENSED PROCESS or commercial performance of a LICENSED SERVICE in FIELD OF USE THREE.

3.4 LICENSEE shall make sales of LICENSED PRODUCTS in FIELD OF USE ONE according to the following schedule:

| | |
|--------------------------------|-------------------|
| 1998 | at least 1 unit |
| 1999 | at least 5 units |
| 2000 | at least 10 units |
| 2001 and each year there after | at least 25 units |

3.5 Failure to comply with any of paragraphs 3.2 (a), (b) or (c) shall be grounds for M.I.T. to terminate this license pursuant to paragraph 13.3 hereof.

3.6 Failure to comply with paragraph 3.3 (a) or paragraph 3.4 shall be grounds to remove FIELD OF USE ONE from the definition of "EXCLUSIVE FIELDS OF USE", thereby terminating LICENSEE's exclusive rights to FIELD OF USE ONE. Under these circumstances, LICENSEE explicitly retains non-exclusive rights to FIELD OF USE ONE.

3.7 Failure to comply with paragraph 3.3 (b) shall be grounds to remove FIELD OF USE TWO from the definition of "EXCLUSIVE FIELDS OF USE", thereby terminating LICENSEE's exclusive rights to FIELD OF USE TWO. Under these circumstances, LICENSEE explicitly retains non-exclusive rights to FIELD OF USE TWO.

3.8 Failure to comply with paragraph 3.3 (c) shall be grounds to remove FIELD OF USE THREE from the definition of "EXCLUSIVE FIELDS OF USE", thereby terminating LICENSEE's exclusive rights to FIELD OF USE THREE. Under these circumstances, LICENSEE explicitly retains non-exclusive rights to FIELD OF USE THREE.

4 - ROYALTIES

4.1 For the rights, privileges and license granted hereunder, LICENSEE shall pay royalties to M.I.T. in the manner hereinafter provided to the end of the term of the PATENT RIGHTS or until this Agreement shall be terminated:

- (a) License Maintenance Fees of Ten Thousand Dollars (\$10,000) per year payable on January 1, 1998 and on January 1, 1999; provided, however, that Running Royalties subsequently due on NET SALES for each said year, if any, shall be creditable against the License Maintenance Fee for said year. License Maintenance Fees paid in excess of Running Royalties shall not be creditable to Running Royalties for future years.
- (b) License Maintenance Fees of Twenty Five Thousand Dollars (\$25,000) per year payable on January 1, 2000 and on January 1, 2001 provided, however, that Running Royalties subsequently due on NET SALES for each said year, if any, shall be creditable against the License Maintenance Fee for said year. License Maintenance Fees paid in excess of Running Royalties shall not be creditable to Running Royalties for future years.
- (c) License Maintenance Fees of Fifty Thousand Dollars (\$50,000) per year payable on January 1, 2002 and on January 1 of each year thereafter; provided, however, License Maintenance Fees may be credited to Running Royalties subsequently due on NET SALES for each said year, if any. License Maintenance Fees paid in excess of Running Royalties shall not be creditable to Running Royalties for future years.
- (d)
 - (i) Running Royalties in an amount equal to five percent (5%) of NET SALES of the LICENSED PRODUCTS, leased or sold by and/or for LICENSEE and/or its SUBLICENSEES for LICENSED PRODUCTS which are *either made or leased or sold* in a country in which there is a valid, issued claim of a patent described in either APPENDICES A or B.
 - (ii) Running Royalties in an amount equal to five percent (5%) of NET SALES of LICENSED SERVICES performed by and/or for LICENSEE and/or its SUBLICENSEES and/or authorized MEDICAL SERVICE PROVIDERS, utilizing LICENSED PRODUCTS which are *either made or leased or sold* in a country in which there is a valid, issued claim of a patent described in either APPENDICES A or B.
- (e)
 - (i) Running Royalties in an amount equal to three percent (3%) of NET SALES of the LICENSED PRODUCTS, leased or sold by and/or for LICENSEE and/or its SUBLICENSEES for LICENSED PRODUCTS which are *neither made nor leased nor sold* in a country in which there is a valid, issued claim of a patent described in either APPENDICES A or B, but which utilize the COPYRIGHT and/or practice or run the PROGRAM, as described in APPENDIX C.
 - (ii) Running Royalties in an amount equal to three percent (3%) of NET SALES of LICENSED SERVICES performed by and/or for LICENSEE and/or its SUBLICENSEES and/or authorized MEDICAL SERVICE PROVIDERS, utilizing LICENSED PRODUCTS which are *neither made nor leased nor sold* in a country in which there is a valid, issued claim of a patent described in either APPENDICES A or B, but which utilize the COPYRIGHT and/or

practice or run the PROGRAM, as described in APPENDIX C.

- (f) Running Royalties in an amount equal to ten percent (10%) of NET SALES of the PROGRAM delivered to END-USERS if the PROGRAM is sold separately from the LICENSED PRODUCTS.
- (g) Five Percent (5%) of MILESTONE PAYMENTS received by LICENSEE.
- (h) Fifty Percent (50%) of lump sum type payments received by LICENSEE from its SUBLICENSEES in consideration for a grant by LICENSEE to a SUBLICENSEE to practice under the INTELLECTUAL PROPERTY RIGHTS, including, explicitly, the right to make, sell, and lease LICENSED PRODUCTS, *without* a substantial and essentially simultaneous grant by LICENSEE to the SUBLICENSEE of LICENSEE-owned technology.
- (i) Twenty Five Percent (25%) of lump sum type payments received by LICENSEE from its SUBLICENSEES in consideration for a grant by LICENSEE to a SUBLICENSEE to practice under the INTELLECTUAL PROPERTY RIGHTS, including, explicitly, the right to make, sell, and lease LICENSED PRODUCTS, *with* a substantial and essentially simultaneous grant by LICENSEE to the SUBLICENSEE of LICENSEE-owned technology.
- (j) Ten Percent (10%) of lump sum type payments received by LICENSEE from its MEDICAL SERVICE PROVIDERS in consideration for a fully paid up license and/or authorization to practice LICENSED PROCESSES and perform LICENSED SERVICES, with no further reporting required from the MEDICAL SERVICE PROVIDER to LICENSEE concerning its practice of LICENSED PROCESSES or performance of LICENSED SERVICES.
- (k) If OTHER REVENUE is greater than NET SALES, then Running Royalties in an amount equal to fifteen percent (15%) of OTHER REVENUE.
- (l) If OTHER REVENUE is less than NET SALES, then Running Royalties in an amount equal to five percent (5%) of OTHER REVENUE.

4.2 All payments due hereunder shall be paid in full, without deduction of taxes or other fees which may be imposed by any government and which shall be paid by LICENSEE.

4.3 No multiple royalties shall be payable because any LICENSED PRODUCT, its manufacture, use, lease or sale are or shall be covered by more than one PATENT RIGHTS patent application or COPYRIGHT or PATENT RIGHTS patent licensed under this Agreement.

4.4 No multiple royalties shall be payable because any LICENSED PROCESS of LICENSED SERVICE, its use, practice, or performance is covered by more than one PATENT RIGHTS patent application or COPYRIGHT or PATENT RIGHTS patent licensed under this Agreement.

4.5 Royalty payments shall be paid in United States dollars in Cambridge, Massachusetts, or at such other place as M.I.T. may reasonably designate consistent with the laws and regulations controlling in any foreign country. If any currency conversion shall be required in connection with the payment of royalties hereunder, such conversion shall be made by using the exchange rate

prevailing at the Chase Manhattan Bank (N.A.) on the last business day of the calendar quarterly reporting period to which such royalty payments relate.

5 - REPORTS AND RECORDS

5.1 LICENSEE shall keep full, true and accurate books of account containing all particulars that may be necessary for the purpose of showing the amounts payable to M.I.T. hereunder. Said books of account shall be kept at LICENSEE's principal place of business or the principal place of business of the appropriate division of LICENSEE to which this Agreement relates. Said books and the supporting data shall be open at all reasonable times for five (5) years following the end of the calendar year to which they pertain, to the inspection of M.I.T. or its agents for the purpose of verifying LICENSEE's royalty statement or compliance in other respects with this Agreement. Should such inspection lead to the discovery of a greater than Ten Percent (10%) discrepancy in reporting to M.I.T.'s detriment, LICENSEE agrees to pay the reasonable cost of such inspection.

5.2 LICENSEE shall deliver to M.I.T. true and accurate reports, giving such particulars of the business conducted by LICENSEE and its sublicensees under this Agreement as shall be pertinent to diligence under Article 3 and royalty accounting hereunder:

- a. before the first commercial sale of a LICENSED PRODUCT or LICENSED SERVICE, annually, on January 31 of each year; and
- b. after the first commercial sale of a LICENSED PRODUCT or LICENSED SERVICE, quarterly, within sixty (60) days after March 31, June 30, September 30 and December 31, of each year.

These reports shall include at least the following:

- a. money raised pursuant to paragraph 3.2;
- b. number of LICENSED PRODUCTS manufactured, leased and sold by and/or for LICENSEE and all SUBLICENSEES;
- c. accounting for all LICENSED SERVICES sold by and/or for LICENSEE and all SUBLICENSEES and all MEDICAL SERVICE PROVIDERS;
- d. accounting for NET SALES, noting the deductions and credits applicable as provided in Paragraphs 1.16 and 6.3, accounting for OTHER REVENUE;
- e. Running Royalties due under Paragraph 4.1(d), (e), and (f);
- f. payments on MILESTONE PAYMENTS due under Paragraph 4.1 (g);
- g. Share of lump sum type payment received from SUBLICENSEES and from MEDICAL SERVICE PROVIDERS due under Paragraph 4.1(h), (i) and (j);
- h. payments on OTHER REVENUE due under paragraphs 4.1 (k) and (l);

- i. total royalties due; and
- j. names and addresses of all SUBLICENSEES of LICENSEE and of all authorized MEDICAL SERVICE PROVIDERS.

5.3 With each such report submitted, LICENSEE shall pay to M.I.T. the royalties due and payable under this Agreement. If no royalties shall be due, LICENSEE shall so report.

5.4 On or before the ninetieth (90th) day following the close of LICENSEE's fiscal year, LICENSEE shall provide M.I.T. with LICENSEE's certified financial statements for the preceding fiscal year including, at a minimum, a Balance Sheet and an Operating Statement.

5.5 The royalty payments set forth in this Agreement and amounts due under Article 6 shall, if overdue, bear interest until payment at a per annum rate two percent (2%) above the prime rate in effect at the Chase Manhattan Bank (N.A.) on the due date. The payment of such interest shall not foreclose M.I.T. from exercising any other rights it may have as a consequence of the lateness of any payment.

6 - PATENT PROSECUTION

6.1 M.I.T. shall have the administrative responsibility to apply for, seek prompt issuance of, and maintain during the term of this Agreement the PATENT RIGHTS in the United States and in the foreign countries listed in Appendices A and B hereto. Appendix B may be amended by verbal agreement of both parties, such agreement to be confirmed in writing within ten (10) days. The prosecution, filing and maintenance of all PATENT RIGHTS patents and applications shall be the primary responsibility of M.I.T.; provided, however, LICENSEE shall have reasonable opportunities to advise M.I.T. and shall cooperate with M.I.T. in such prosecution, filing and maintenance.

6.2 Payment of all fees and costs relating to the filing, prosecution, and maintenance of the PATENT RIGHTS incurred after the date of this Agreement shall be the responsibility of LICENSEE. M.I.T. is not financially obliged to maintain and prosecute patents.

6.3 M.I.T. agrees that LICENSEE may take a cumulative life of license credit for expenditures on the PATENT RIGHTS, such credit not to exceed Thirty Five Thousand Dollars (\$35,000) and to be taken according to the following schedule:

- a) LICENSEE may credit their above referenced patent prosecution and maintenance expenditures incurred in a given calendar year against up to one half of License Maintenance Fees due the following January 1 under paragraphs 4.1(a), (b), and (c).
- b) In the event that Running Royalties exceed the License Maintenance Fee for a given year, and LICENSEE owes M.I.T. Running Royalties in addition to the License Maintenance Fee already paid, then LICENSEE may use their patent prosecution and maintenance credit against up to one half of the Running Royalties due paragraphs 4.1 (d), (e) and (f).

7 - INFRINGEMENT

7.1 LICENSEE shall inform M.I.T. promptly in writing of any alleged infringement of the INTELLECTUAL PROPERTY RIGHTS by a third party of which it becomes aware and of any available evidence thereof. M.I.T. shall inform LICENSEE promptly in writing of any alleged infringement of the INTELLECTUAL PROPERTY RIGHTS by a third party of which it becomes aware and of any available evidence thereof. Within ten (10) business days of such notice the parties shall confer to determine how best to proceed.

7.2 During the term of this Agreement, M.I.T. shall have the right, but shall not be obligated, to prosecute at its own expense all infringements of the INTELLECTUAL PROPERTY RIGHTS and, in furtherance of such right, LICENSEE hereby agrees that M.I.T. may include LICENSEE as a party plaintiff in any such suit, without expense to LICENSEE. The total cost of any such infringement action commenced or defended solely by M.I.T. shall be borne by M.I.T. and M.I.T. shall keep any recovery or damages for past infringement derived therefrom.

7.3 If within six (6) months after having been notified of any alleged infringement, M.I.T. shall have been unsuccessful in persuading the alleged infringer to desist and shall not have brought and shall not be diligently prosecuting an infringement action, or if M.I.T. shall notify LICENSEE at any time prior thereto of its intention not to bring suit against any alleged infringer for the EXCLUSIVE FIELDS OF USE, then, and in those events only, LICENSEE shall have the right, but shall not be obligated, to prosecute at its own expense any infringement of the INTELLECTUAL PROPERTY RIGHTS for the EXCLUSIVE FIELDS OF USE, and LICENSEE may, for such purposes, use the name of M.I.T. as party plaintiff; provided, however, that such right to bring such an infringement action shall remain in effect only for so long as the license granted herein remains exclusive. No settlement, consent judgment or other voluntary final disposition of the suit may be entered into without the consent of M.I.T., which consent shall not unreasonably be withheld. LICENSEE shall indemnify M.I.T. against any order for costs that may be made against M.I.T. in such proceedings.

7.4 In the event that LICENSEE shall undertake the enforcement and/or defense of the INTELLECTUAL PROPERTY RIGHTS by litigation, LICENSEE may withhold up to fifty percent (50%) of the payments otherwise thereafter due M.I.T. under Article 4 hereunder and apply the same toward reimbursement of up to half of LICENSEE's expenses, including reasonable attorneys' fees, in connection therewith. Any recovery of damages by LICENSEE for each such suit shall be applied first in satisfaction of any unreimbursed expenses and legal fees of LICENSEE relating to such suit, and next toward reimbursement of M.I.T. for any payments under Article 4 past due or withheld and applied pursuant to this Article 7. The balance remaining from any such recovery shall be divided so that the percentage of the recovery due M.I.T. is calculated by creating a fraction, the numerator of which is the amount of royalties withheld, and

denominator of which is the cost of litigation paid by LICENSEE, but in no event shall such sum be less than Ten Percent (10%) of the net recovery.

7.5 In the event that a declaratory judgment action alleging invalidity or noninfringement of any of the INTELLECTUAL PROPERTY RIGHTS shall be brought against LICENSEE, M.I.T., at its option, shall have the right, within thirty (30) days after commencement of such action, to intervene and take over the sole defense of the action at its own expense.

7.6 In any infringement suit as either party may institute to enforce the PATENT RIGHTS pursuant to this Agreement, the other party hereto shall, at the request and expense of the party initiating such suit, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like.

7.7 LICENSEE, during the exclusive period of this Agreement, shall have the sole right in accordance with the terms and conditions herein to sublicense any alleged infringer for the EXCLUSIVE FIELDS OF USE for future use of the INTELLECTUAL PROPERTY RIGHTS. Any upfront fees as part of such a sublicense shall be shared equally between LICENSEE and M.I.T.; other royalties shall be treated per Article 4.

8 - PRODUCT LIABILITY

8.1 LICENSEE shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold M.I.T., its trustees, directors, officers, employees and affiliates, harmless against all claims, proceedings, demands and liabilities of any kind whatsoever, including legal expenses and reasonable attorneys' fees, arising out of the death of or injury to any person or persons or out of any damage to property, resulting from the production, manufacture, sale, use, lease, consumption or advertisement of the LICENSED PRODUCT(s) and/or LICENSED PROCESS(es) or arising from any obligation of LICENSEE hereunder.

8.2 LICENSEE shall obtain and carry in full force and effect commercial, general liability insurance which shall protect LICENSEE and M.I.T. with respect to events covered by Paragraph 8.1 above. Such insurance shall be written by a reputable insurance company authorized to do business in the Commonwealth of Massachusetts, shall list M.I.T. as an additional named insured thereunder, shall be endorsed to include product liability coverage and shall require thirty (30) days written notice to be given to M.I.T. prior to any cancellation or material change thereof. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000) per occurrence with an aggregate of Three Million Dollars (\$3,000,000) for personal injury or death, and One Million Dollars (\$1,000,000) per occurrence with an aggregate of Three Million Dollars (\$3,000,000) for property damage. LICENSEE shall provide M.I.T. with Certificates of Insurance evidencing the same.

8.3 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, M.I.T., ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, AND AFFILIATES MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, VALIDITY OF PATENT RIGHTS CLAIMS, ISSUED OR PENDING, AND TO THE COPYRIGHT AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION MADE OR WARRANTY GIVEN BY M.I.T. THAT THE PRACTICE BY LICENSEE OF THE LICENSE GRANTED HEREUNDER SHALL NOT INFRINGE THE PATENT RIGHTS OR THE COPYRIGHT OF ANY THIRD PARTY. IN NO EVENT SHALL M.I.T., ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES AND AFFILIATES BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOST PROFITS, REGARDLESS OF WHETHER M.I.T. SHALL BE ADVISED, SHALL HAVE OTHER REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY OF THE FOREGOING.

9 - EXPORT CONTROLS

LICENSEE acknowledges that it is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended and the United States Department of Commerce Export Administration Regulations). The transfer of such items may require a license from the cognizant agency of the United States Government and/or written assurances by LICENSEE that LICENSEE shall not export data or commodities to certain foreign countries without prior approval of such agency. M.I.T. neither represents that a license shall not be required nor that, if required, it shall be issued.

10 - NON-USE OF NAMES

LICENSEE shall not use the names or trademarks of the Massachusetts Institute of Technology or Lincoln Laboratory, nor any adaptation thereof, nor the names of any of their employees, in any advertising, promotional or sales literature without prior written consent obtained from M.I.T., or said employee, in each case, except that LICENSEE may state that it is licensed by M.I.T. under one or more of the patents and/or applications comprising the PATENT RIGHTS, and that it has a license to the COPYRIGHT.

11 - ASSIGNMENT

This Agreement is not assignable and any attempt to do so shall be void.

12 - DISPUTE RESOLUTION

12.1 Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any and all claims, disputes or controversies arising under, out of, or in connection with the Agreement, including any dispute relating to patent validity or infringement, which the parties shall be unable to resolve within sixty (60) days shall be mediated in good faith. The party raising such dispute shall promptly advise the other party of such claim, dispute or controversy in a writing which describes in reasonable detail the nature of such dispute. By not later than five (5) business days after the recipient has received such notice of dispute, each party shall have selected for itself a representative who shall have the authority to bind such party, and shall additionally have advised the other party in writing of the name and title of such representative. By not later than ten (10) business days after the date of such notice of dispute, the party against whom the dispute shall be raised shall select a mediation firm in the Boston area and such representatives shall schedule a date with such firm for a mediation hearing. The parties shall enter into good faith mediation and shall share the costs equally. If the representatives of the parties have not been able to resolve the dispute within fifteen (15) business days after such mediation hearing, then any and all claims, disputes or controversies arising under, out of, or in connection with this Agreement, including any dispute relating to patent validity or infringement, shall be resolved by final and binding arbitration in Boston, Massachusetts under the rules of the American Arbitration Association, or the Patent Arbitration Rules if applicable, then obtaining. The arbitrators shall have no power to add to, subtract from or modify any of the terms or conditions of this Agreement, nor to award punitive damages. Any award rendered in such arbitration may be enforced by either party in either the courts of the Commonwealth of Massachusetts or in the United States District Court for the District of Massachusetts, to whose jurisdiction for such purposes M.I.T. and LICENSEE each hereby irrevocably consents and submits.

12.2 Notwithstanding the foregoing, nothing in this Article shall be construed to waive any rights or timely performance of any obligations existing under this Agreement.

13 - TERMINATION

13.1 If LICENSEE shall cease to carry on its business, this Agreement shall terminate upon notice by M.I.T.

13.2 Should LICENSEE fail to make any payment whatsoever due and payable to M.I.T.

hereunder, M.I.T. shall have the right to terminate this Agreement effective on thirty (30) days' notice, unless LICENSEE shall make all such payments to M.I.T. within said thirty (30) day period. Upon the expiration of the thirty (30) day period, if LICENSEE shall not have made all such payments to M.I.T., the rights, privileges and license granted hereunder shall automatically terminate.

13.3 Upon any material breach or default of this Agreement by LICENSEE (including, but not limited to, breach or default under Paragraph 3.3), other than those occurrences set out in Paragraphs 13.1 and 13.2 hereinabove, which shall always take precedence in that order over any material breach or default referred to in this Paragraph 13.3, M.I.T. shall have the right to terminate this Agreement and the rights, privileges and license granted hereunder effective on ninety (90) days' notice to LICENSEE. Such termination shall become automatically effective unless LICENSEE shall have cured any such material breach or default prior to the expiration of the ninety (90) day period.

13.4 LICENSEE shall have the right to terminate this Agreement at any time on six (6) months' notice to M.I.T., and upon payment of all amounts due M.I.T. through the effective date of the termination.

13.5 Upon termination of this Agreement for any reason, nothing herein shall be construed to release either party from any obligation that matured prior to the effective date of such termination; and Articles 1, 8, 9, 10, 12, 13.5, 13.6, and 15 shall survive any such termination. LICENSEE and any SUBLICENSEE thereof may, however, after the effective date of such termination, sell all LICENSED PRODUCTS, and complete LICENSED PRODUCTS in the process of manufacture at the time of such termination and sell the same, provided that LICENSEE shall make the payments to M.I.T. as required by Article 4 of this Agreement and shall submit the reports required by Article 5 hereof.

13.6 Upon termination of this Agreement for any reason:

- a. LICENSEE shall provide M.I.T. with written assurance that the original and all copies of the PROGRAM and DERIVATIVE WORKS in its possession or control have been destroyed, except that, upon prior written authorization from M.I.T., LICENSEE may retain a copy for archival purposes; and
- b. the rights of END-USERS to use the PROGRAM shall continue, provided that any END-USER leasing or sublicensing the PROGRAM and not then in default shall obtain a lease or sublicense directly from M.I.T. under reasonable terms and conditions, which shall, at a minimum, include, indemnification of M.I.T. and proof of adequate insurance.

13.7 Upon termination of this Agreement for any reason, any SUBLICENSEE not then in default shall have the right to seek a license from M.I.T. M.I.T. agrees to negotiate such licenses in good faith under reasonable terms and conditions, which shall, at a minimum, include indemnification of M.I.T. and proof of adequate insurance.

13.8 Upon termination of this Agreement for any reason, any MEDICAL SERVICE PROVIDER shall have the right to seek a license from M.I.T. to continue practicing the LICENSED PROCESSES and or performing the LICENSED SERVICES. M.I.T. agrees to negotiate such licenses in good faith under reasonable terms and conditions, which shall, at a minimum, include indemnification of M.I.T. and proof of adequate insurance.

14 - PAYMENTS, NOTICES AND OTHER COMMUNICATIONS

Any payment, notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such party by certified first class mail, return receipt requested, postage prepaid, addressed to it at its address below or as it shall designate by written notice given to the other party:

In the case of M.I.T.:

Director
Technology Licensing Office
Massachusetts Institute of Technology
Room E32-300
Cambridge, Massachusetts 02139

In the case of LICENSEE:

John Mon
General Manager
Cheung Laboratories
10220-I Old Columbia Road
Columbia, MD 21046-1705

15 - MISCELLANEOUS PROVISIONS

15.1 All disputes arising out of or related to this Agreement, or the performance, enforcement, breach or termination hereof, and any remedies relating thereto, shall be construed, governed, interpreted and applied in accordance with the laws of the Commonwealth of Massachusetts, U.S.A., except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent shall have been granted.

15.2 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument signed by the parties.

15.3 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability


of the remaining provisions hereof.

15.4 LICENSEE agrees to mark the LICENSED PRODUCTS sold in the United States with all applicable United States patent numbers. All LICENSED PRODUCTS shipped to or sold in other countries shall be marked in such a manner as to conform with the patent laws and practice of the country of manufacture or sale.


15.5 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

IN WITNESS WHEREOF, the parties have duly executed this Agreement the day and year set forth below.

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY

By 
Name LITA L. NELSEN, DIRECTOR
Title TECHNOLOGY LICENSING OFFICE
Date Oct 17, 1997

CHEUNG LABORATORIES, INC.

By 
Name Augustine Y. Cheung
Title Chairman
Date Oct 24, 1997

APPENDIX A

PATENT RIGHTS ON THE EFFECTIVE DATE

UNITED STATES PATENT RIGHTS

M.I.T. Case No. 5493L
U.S. Patent No. 5,251,645, Issued October 12, 1993
"Adaptive Nulling Hyperthermia Array"
By Alan Fenn

M.I.T. Case No. 5672L
U.S. Patent Number 5,441,532, Issued August 15, 1995
"Adaptive Focusing and Nulling Hyperthermia Annular and Monopole Phased Array Applicators"
By Alan Fenn

M.I.T. Case No. 6512L
U.S.P.N. 5,540,737, Issued July 30, 1996
"Minimally Invasive Monopole Phased Array Hyperthermia Applicators For Treating Breast Carcinomas"
By Alan Fenn

M.I.T. Case No. 7615L
"Adaptive Nulling And Focusing Hyperthermia Phased Arrays For Activating Thermosensitive Liposomes For Targeted Delivery Of Drugs To Deep Human Tissues"
by Alan J. Fenn

FOREIGN PATENT RIGHTS

M.I.T. Case No. 6512L
Pending Applications in Great Britain, Germany and Canada
"Minimally Invasive Monopole Phased Array Hyperthermia Applicators For Treating Breast Carcinomas"
By Alan Fenn

APPENDIX B

1. Foreign patent applications and patents within the PATENT RIGHTS as of Effective Date:

M.I.T. Case No. 6512L

Pending Applications in Great Britain, Germany and Canada

"Minimally Invasive Monopole Phased Array Hyperthermia Applicators For Treating Breast Carcinomas"

By Alan Fenn

2. Foreign countries in which PATENT RIGHTS shall be filed, prosecuted and maintained in accordance with Article 6:

No additional instructions as of July 30, 1997.

APPENDIX CM.I.T. COPYRIGHTED SOFTWARE

M.I.T. Case No. 7299LS
“NULLGSC”
By Alan Fenn

M.I.T. Case No. 7298LS
“FOCUSGSC”
By Alan Fenn

ADDENDUM A
MASSACHUSETTS INSTITUTE OF TECHNOLOGY
TECHNOLOGY TRANSFER AGREEMENT

This Agreement is made and entered into this 24th day of October, 1997, (the "Effective Date") by and between CHEUNG LABORATORIES, INC., a corporation duly organized under the laws of Maryland and having its principal office at 10220-I Old Columbia Road, Columbia, MD 21046-1705 (hereinafter referred to as "LICENSEE") and the MASSACHUSETTS INSTITUTE OF TECHNOLOGY, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and having its principal office at 77 Massachusetts Avenue, Cambridge, Massachusetts 02139, U.S.A. (hereinafter referred to as "M.I.T."), and relates to the transfer of existing technology in conjunction with a license granted by M.I.T. to LICENSEE on the 24th day of October, 1997 for the Patent Rights to M.I.T. Case No. 5493L, "Adaptive Hyperthermia System," by Alan J. Fenn, and M.I.T. Case No. 5672L, "Non-Invasive Monopole Hyperthermia Array for Brain Tumor Heating," by Alan J. Fenn, and M.I.T. Case No. 6512L "Minimally Invasive Monopole Phased Array Hyperthermia Applicators for Treating Carcinoma," by Alan J. Fenn and M.I.T. Case No. 7615L, "Adaptive Nulling And Focusing Hyperthermia Phased Arrays For Activating Thermosensitive Liposomes For Targeted Delivery Of Drugs To Deep Human Tissues," by Alan J. Fenn (hereinafter the "Rights Granted").

WHEREAS, M.I.T. and LICENSEE recognize that the effective development of the licensed Rights Granted requires the INVENTOR (as later defined herein) to provide technical assistance to the LICENSEE to facilitate the transfer of existing licensed technology; and

WHEREAS, this Agreement defines the terms and conditions under which Alan J. Fenn (hereinafter referred to as the "INVENTOR"), a researcher employed by M.I.T. and the INVENTOR of M.I.T. Case Numbers 5493L, 5672L, 6512L, and M.I.T. Case No. 7615L, shall provide technical assistance to LICENSEE relating to said M.I.T. Cases (hereinafter referred to as the "TRANSFER PROGRAM").

NOW, THEREFORE, the parties hereto agree as follows:

1. FIELD AND SCOPE OF THE TRANSFER PROGRAM:

The field of the TRANSFER PROGRAM is defined by the Work Statement attached hereto as Attachment A. The TRANSFER PROGRAM may include site visits to LICENSEE's facilities, and consultation by telephone. M.I.T. agrees to use reasonable efforts to make available to the LICENSEE technical assistance by the INVENTOR.

2. DURATION:

The TRANSFER PROGRAM shall begin on the Effective Date and terminate one

(1) year later on unless sooner terminated at will by LICENSEE notifying M.I.T. in writing Thirty (30) days before it wishes to terminate the TRANSFER PROGRAM. M.I.T. may terminate the TRANSFER PROGRAM if circumstances beyond M.I.T.'s control shall preclude continuation. The TRANSFER PROGRAM may be extended by mutual written consent. The scheduling of days shall be by mutual agreement between LICENSEE and the INVENTOR with the schedule designed to minimize impact on other Lincoln Laboratory commitments. The total number of days shall be at LICENSEE's request, within the limits for each INVENTOR listed below.

| <u>INVENTOR</u> | <u>SCHEDULED TIME AVAILABLE</u> |
|-----------------|--|
| Alan Fenn | Not more than Ten (10) days within Twelve (12) months from the Effective Date. |

3. REIMBURSEMENT:

The LICENSEE agrees to reimburse M.I.T. for:

- (a) each work day or part thereof spent traveling to or from or working on the TRANSFER PROGRAM either at M.I.T. Lincoln Laboratory or at LICENSEE's facilities, in accordance with the following per diem schedule:

| <u>INVENTOR</u> | <u>PER DIEM</u> | <u>THEREAFTER</u> |
|-----------------|---|---|
| Alan Fenn | \$1,011.00 subject to change | Increased by amount of all pay raises and overhead increases. |
| (b) | the traveling expense of the INVENTOR in accordance with normal M.I.T. Lincoln Laboratory Travel rules; and | |
| (c) | an administrative fee of fifteen percent (15%) of the above reimbursable costs. | |

4. PAYMENT:

Payments shall be made to M.I.T. within thirty (30) days of LICENSEE's receipt of invoice.

5. NON-USE OF NAMES:

LICENSEE shall not use the names or trademarks of the Massachusetts Institute of Technology, nor any adaptation thereof, nor the names of any of its employees, in any advertising, promotional or sales literature without prior written consent obtained from M.I.T., and said employee, in each case, except that LICENSEE may state that it is licensed by M.I.T. under one or more of the patents and/or applications comprising the PATENT RIGHTS.

6. LIMITATION OF LIABILITY

LICENSEE AGREES THAT ALL TECHNICAL ASSISTANCE PROVIDED UNDER THE TRANSFER PROGRAM IS MADE WITHOUT WARRANTY OF ANY KIND EXPRESS OR IMPLIED. Neither M.I.T. nor any INVENTOR shall

have any liability whatsoever to LICENSEE or any third party in regard to the TRANSFER PROGRAM, including, but not limited to, technical assistance, and know-how, and LICENSEE shall indemnify M.I.T. for any and all liability of any kind which M.I.T. may incur in regard thereto.

7. NOTICES:

Any payment, notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such party by certified first class mail, postage prepaid, addressed to it at its address below or as it shall designate by written notice given to the other party:

In the case of M.I.T.:

Director
Technology Licensing Office
Massachusetts Institute of Technology
Room E32-300
Cambridge, Massachusetts 02139

In the case of LICENSEE:

please advise


John Mon
Cheung Laboratories, Inc.
10220-I Old Columbia Road
Columbia, MD 21046-1705



Agreed to for:

MASSACHUSETTS INSTITUTE
OF TECHNOLOGY

CHEUNG LABORATORIES, INC.

By: 

By: 

Name: LITA L. NELSEN, DIRECTOR
TECHNOLOGY LICENSING OFFICE

Name: Augustine Y. Cheung

Title: _____

Title: Chairman

Date: Oct 17, 1997

Date: Oct 24, 1997

ATTACHMENT A

WORK STATEMENT

Alan Fenn will assist Cheung Laboratories with technical questions and assist in any engineering aspects of clinical trials including visits to sites where clinical trials are being conducted.

Agreed to for:

MASSACHUSETTS INSTITUTE
OF TECHNOLOGY

CHEUNG LABORATORIES, INC.

By: 

By: 

Name: LITA L. NELSON, DIRECTOR

Name: Augustine Y. Cheung

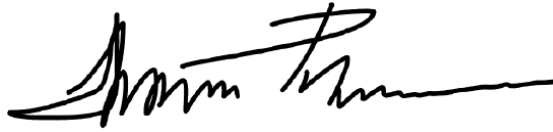
Title: TECHNOLOGY LICENSING OFFICE

Title: Chairman

Date: Oct 17, 1997

Date: Oct 24, 1997

THIS IS **EXHIBIT "F"** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 4TH DAY OF OCTOBER 2021



A COMMISSIONER FOR TAKING AFFIDAVITS

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS
MEDIFOCUS, INC.

Consolidated Financial Statements as of March 31, 2019, 2018 and 2017 and for each of the years in the three-year period then ended

| | |
|--|-----|
| <u>REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM</u> | F-2 |
| <u>CONSOLIDATED BALANCE SHEETS</u> | F-3 |
| <u>CONSOLIDATED STATEMENT OF OPERATIONS AND COMPREHENSIVE LOSS</u> | F-4 |
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| <u>NOTES TO AUDITED CONSOLIDATED FINANCIAL STATEMENTS AS OF MARCH 31, 2019</u> | F-7 |



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Email info@mcgovernhurley.com
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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of Medifocus, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated statements of financial position of Medifocus, Inc. (the Company) as of March 31, 2019 and 2018, and the related consolidated statements of operations and comprehensive loss, consolidated statements of cash flows, and consolidated statements of changes in stockholders' deficit for the years ended March 31, 2019, 2018, and 2017, and the related notes (collectively referred to as the financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of March 31, 2019 and 2018, and the results of its operations and its cash flows for the years ended March 31, 2019, 2018 and 2017, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

The accompanying consolidated financial statements have been prepared assuming that Medifocus, Inc. will continue as a going concern. As discussed in Note 1 to the financial statements, Medifocus, Inc.'s operating loss for the year ended March 31, 2019, negative working capital and accumulated deficit as at March 31, 2019, status of default with certain creditors, and the existence of claims against the Company, raise substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

We have served as the Company's auditor since 2017.

McGovern Hurley, LLP

Chartered Professional Accountants
Licensed Public Accountants

Toronto, Canada
July 29, 2019

MEDIFOCUS, INC.
CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
(in U.S. dollars)

| | <u>March 31, 2019</u> | <u>March 31, 2018</u> |
|--|-----------------------|-----------------------|
| ASSETS | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 183,104 | \$ 115,502 |
| Accounts receivable, net (Note 1) | 499,383 | 544,859 |
| Inventory, net (Note 1) | 109,706 | 204,073 |
| Other assets | 44,790 | 59,390 |
| Total Current Assets | <u>836,983</u> | <u>923,824</u> |
| Property and equipment, net (Note 3) | 97,919 | 213,521 |
| Deposits | 29,725 | 247,355 |
| Intangible assets, net (Note 4) | 801,127 | 1,047,339 |
| Total Assets | <u>\$ 1,765,754</u> | <u>\$ 2,432,039</u> |
| LIABILITIES AND STOCKHOLDERS' DEFICIT | | |
| Current liabilities: | | |
| Accounts payable | \$ 89,175 | \$ 304,419 |
| Accrued expenses (Note 9) | 631,382 | 870,892 |
| Accrued interest payable (Note 5) | 3,550,337 | 2,639,088 |
| Promissory notes payable (Note 5) | 767,156 | 776,873 |
| Payable to Boston Scientific Corporation (Note 2) | 2,179,061 | 1,902,387 |
| Contingent consideration, current portion (Note 2) | 11,139 | 251,935 |
| Convertible notes payable (net of discount), current portion (Note 5) | 5,410,000 | 5,410,000 |
| Total Current Liabilities | <u>12,638,250</u> | <u>12,155,594</u> |
| Contingent consideration (Note 2) | <u>—</u> | <u>—</u> |
| Total liabilities | <u>12,638,250</u> | <u>12,155,594</u> |
| Commitments and contingencies (Note 5 and Note 8) | | |
| Stockholders' deficit: | | |
| Common stock (no par value, unlimited shares authorized, 184,984,215 and 184,984,215 shares issued and outstanding as of March 31, 2019 and March 31, 2018, respectively. (Note 6) | 14,295,388 | 14,295,388 |
| Common stock issuable (Note 5 and Note 6) | 445,400 | 123,809 |
| Additional paid-in capital | 10,830,075 | 10,830,075 |
| Accumulated deficit | (36,443,359) | (34,972,827) |
| Total Stockholders' Deficit | <u>(10,872,496)</u> | <u>(9,723,555)</u> |
| Total Liabilities and Stockholders' Deficit | <u>\$ 1,765,754</u> | <u>\$ 2,432,039</u> |
| Going Concern (Note 1) | | |
| Contingencies (Note 5 and Note 8) | | |

See accompanying notes to consolidated financial statements.

MEDIFOCUS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in U.S. dollars)

| | Year ended March 31, | | |
|---|-----------------------|-----------------------|-----------------------|
| | 2019 | 2018 | 2017 |
| Sales | | | |
| Products | \$ 1,019,355 | \$ 1,218,385 | \$ 1,788,235 |
| Services | 1,747,385 | 1,448,415 | 1,995,465 |
| Total Sales | <u>2,766,740</u> | <u>2,666,800</u> | <u>3,783,700</u> |
| Costs of Sales | | | |
| Products | 652,884 | 708,975 | 908,602 |
| Services | 1,278,237 | 1,085,187 | 1,390,303 |
| Total Costs of Sales | <u>1,931,121</u> | <u>1,794,162</u> | <u>2,298,905</u> |
| Gross Profit | <u>835,619</u> | <u>872,638</u> | <u>1,484,795</u> |
| Operating Expenses | | | |
| Research and development | 105,469 | 181,397 | 320,386 |
| Sales and marketing | 30,626 | 27,806 | 108,127 |
| General and administrative | 1,222,113 | 1,384,586 | 1,567,675 |
| Total Operating Expenses | <u>1,358,208</u> | <u>1,593,789</u> | <u>1,996,188</u> |
| Loss from Operations - before other (expense) income | <u>(522,589)</u> | <u>(721,151)</u> | <u>(511,393)</u> |
| Other (Expense) Income | | | |
| Other income and (expenses) | 51,004 | 10,598 | (29,413) |
| (Loss) from change in fair value of contingent consideration (Note 2) | (36,083) | (54,185) | (83,189) |
| Gain from sale of consoles (Note 3) | — | — | 175,491 |
| (Loss) from impairment of other assets | (35,878) | — | — |
| Gain from recovery of harmonized sales tax receivable | — | 31,891 | 202,107 |
| Gain on debt settlement | — | 22,900 | — |
| Gain from settlement of debt for shares issuable (Note 5) | 10,145 | 30,705 | — |
| Interest expense (Note 5) | (937,131) | (862,004) | (1,323,320) |
| Total Other (Expense) Income | <u>(947,943)</u> | <u>(820,095)</u> | <u>(1,058,324)</u> |
| Net Loss | <u>(1,470,532)</u> | <u>(1,541,246)</u> | <u>(1,569,717)</u> |
| Other Comprehensive Income (Expense) | <u>—</u> | <u>—</u> | <u>—</u> |
| Net Comprehensive Loss | <u>\$ (1,470,532)</u> | <u>\$ (1,541,246)</u> | <u>\$ (1,569,717)</u> |
| Net Loss per share basic and diluted | <u>\$ (0.01)</u> | <u>\$ (0.01)</u> | <u>\$ (0.01)</u> |
| Weighted average common shares outstanding—basic and diluted | <u>184,984,215</u> | <u>184,984,215</u> | <u>184,984,215</u> |

See accompanying notes to consolidated financial statements.

MEDIFOCUS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in U.S. dollars)

| | Year ended March 31, | | |
|---|-----------------------|-----------------------|-----------------------|
| | 2019 | 2018 | 2017 |
| Net Loss | \$ (1,470,532) | \$ (1,541,246) | \$ (1,569,717) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | | |
| Accretion of deferred financing costs and debt discount (Note 5) | — | — | 600,862 |
| Depreciation and amortization | 376,780 | 372,885 | 362,716 |
| Gain on sale of consoles (Note 3) | — | — | (175,491) |
| Stock-based compensation (Note 6) | — | 85,298 | — |
| Loss on change in fair value of contingent consideration (Note 2) | 35,878 | 54,185 | 83,189 |
| (Gain) loss from (recovery) write-off of harmonized sales tax receivable | — | (31,891) | (202,107) |
| Loss on impairment of other assets | 36,083 | — | — |
| Provision (recovery) for bad debts and warranties | (9,839) | 4,549 | (53,006) |
| Gain on settlement of debt | — | (22,900) | — |
| Gain on settlement of debt for shares issuable (Note 6) | (10,145) | (30,705) | — |
| Gain on sale of Geno-Therapy | — | (50,000) | — |
| Loss on fixed asset disposal | — | — | 22,264 |
| Changes in operating assets and liabilities | | | |
| Decrease (Increase) in accounts receivable | 55,111 | 489,317 | (126,466) |
| Decrease (Increase) in inventory | 94,367 | (102,892) | (45,199) |
| (Increase) Decrease in other current assets | (21,483) | 43,382 | (52,475) |
| Decrease (Increase) in deposits | 217,630 | (26,025) | — |
| (Decrease) increase in accounts payable | (215,244) | (37,907) | (521,696) |
| Increase (Decrease) in accrued expenses | 107,025 | (46,463) | 239,323 |
| Increase in accrued interest | 937,410 | 861,957 | 715,369 |
| Net cash provided by (used in) operating activities | 133,041 | 21,544 | (722,434) |
| INVESTING ACTIVITIES: | | | |
| Sale of consoles | — | — | 209,000 |
| Purchase of equipment | (14,966) | (18,376) | (3,597) |
| Net cash (used in) provided by investing activities | (14,966) | (18,376) | 205,403 |
| FINANCING ACTIVITIES: | | | |
| Proceeds from notes payable | — | — | 500,000 |
| Net cash provided by financing activities | — | — | 500,000 |
| Effect of exchange rate changes on cash and cash equivalents | (50,473) | 42,040 | (26,621) |
| INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS | 67,602 | 45,208 | (43,652) |
| CASH AND CASH EQUIVALENTS, BEGINNING OF THE PERIOD | 115,502 | 70,294 | 113,946 |
| CASH AND CASH EQUIVALENTS, END OF THE PERIOD | \$ 183,104 | \$ 115,502 | \$ 70,294 |
| Cash paid for interest | \$ — | \$ — | \$ 7,092 |
| NON-CASH FINANCING ACTIVITIES | | | |
| Reclassification of assets | \$ — | \$ — | \$ 38,524 |
| Common shares issuable on settlement of debt | \$ 321,601 | \$ 123,809 | \$ — |
| ThermoGene consideration for sale offset by payables | \$ — | \$ 63,917 | \$ — |

See accompanying notes to consolidated financial statements.

MEDIFOCUS, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' DEFICIT
(in U.S. dollars)

| | Common Stock Shares | Common Stock Amount | Common Stock Issuable | Additional Paid-in Capital | Accumulated Deficit | Total Stockholders' Deficit |
|----------------------------------|------------------------------------|------------------------------------|--------------------------------------|---|--------------------------------|--|
| Balance at April 1, 2016 | 184,984,215 | \$14,295,388 | \$ — | \$10,744,777 | \$ (31,861,864) | \$ (6,821,699) |
| Net loss | — | — | — | — | (1,569,717) | (1,569,717) |
| Balance at March 31, 2017 | <u>184,984,215</u> | <u>14,295,388</u> | <u>—</u> | <u>10,744,777</u> | <u>(33,431,581)</u> | <u>(8,391,416)</u> |
| Settlement of debt | — | — | 123,809 | — | — | 123,809 |
| Stock-based compensation | — | — | — | 85,298 | — | 85,298 |
| Net loss | — | — | — | — | (1,541,246) | (1,541,246) |
| Balance at March 31, 2018 | <u>184,984,215</u> | <u>14,295,388</u> | <u>123,809</u> | <u>10,830,075</u> | <u>(34,972,827)</u> | <u>(9,723,555)</u> |
| Settlement of debt | — | — | 321,591 | — | — | 321,591 |
| Net loss | — | — | — | — | (1,470,532) | (1,470,532) |
| Balance at March 31, 2019 | <u>184,984,215</u> | <u>\$14,295,388</u> | <u>\$ 445,400</u> | <u>\$10,830,075</u> | <u>\$ (36,443,359)</u> | <u>\$ (10,872,496)</u> |

See accompanying notes to consolidated financial statements.

MEDIFOCUS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
AS OF MARCH 31, 2019

1. BUSINESS, GOING CONCERN, LIQUIDITY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Description of Business and Current Financial Condition

Medifocus Inc. (the “Company” or “Medifocus”) was incorporated under the Business Corporations Act (Ontario) on April 25, 2005. Medifocus develops and commercializes minimally invasive focused heat systems for the treatment of cancerous and benign tumors, and enlarged prostate, medically known as Benign Prostate Hyperplasia (“BPH”).

The Company owns two focused heat technology platforms with comprehensive US and international patent protection:

- The Endo-thermotherapy Platform-from which Prolieve Thermodilatation System (“Prolieve”) was developed, can potentially be used to treat cancers in prostate, rectal, cervical and esophageal, and
- The Adaptive Phased Array (“APA”) Microwave Focusing Platform-invented by MIT, licensed to Medifocus, directs precisely focused microwave energy at tumor center to induce shrinkage or eradication of tumors without undue harm to surrounding tissue. The Company’s APA 1000 Breast Cancer Treatment System, developed from the APA technology platform is currently in pivotal Phase-III clinical trials.

Going Concern Consideration

Effective April 1, 2016, the Company adopted ASU 2014-15, *Presentation of Financial Statements-Going Concern (Subtopic 205-40)*, which requires management to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company’s ability to continue as a going concern within one year after the date the financial statements are issued. Management’s evaluations are based on relevant conditions and events that are known and reasonably to be knowable as of July 29, 2019. Based on the following, management believes that it is probable that management will be unable to meet its obligations as they come due within one year that the financial statements are issued.

The Company’s operations are subject to certain risks and uncertainties including, among others, current and potential competitors with greater resources, lack of operating history and uncertainty of future profitability and possible fluctuations in financial results. Since inception, the Company has incurred substantial operating losses, principally from expenses associated with the Company’s Prolieve operation, research and development and financing activities. The Company believes these expenditures are essential for the commercialization of its technologies. The Company expects its operating losses to continue in the near future as it continues its Prolieve sales and marketing activities. Due to continued operating losses, there is substantial doubt regarding the Company’s ability to continue as a going concern. The Company’s ability to achieve profitability is dependent upon its ability to operate its Prolieve business profitably and to obtain governmental approvals, produce, and market and sell its new product candidates. There can be no assurance that the Company will be able to commercialize its technology successfully or that profitability will ever be achieved. The operating results of the Company have fluctuated significantly in the past. The Company expects that its operating results will fluctuate significantly in the future and will depend on a number of factors, many of which are outside the Company’s control.

The Company will need substantial additional funding in order to sustain its operation, to complete the development, testing and commercialization of its product candidates. The commitment to these projects will require additional external funding, at least until the Company is able to generate sufficient cash flow from the sale of one or more of its products to support its continued operations. If adequate funding is not available, the Company may be required to delay, scale back or eliminate certain aspects of its operations or attempt to obtain funds through unfavorable arrangements with partners or others that may force it to relinquish rights to certain of its technologies, products or potential markets or that could impose onerous financial or other terms. Furthermore, if the Company cannot fund its ongoing development and other operating requirements, particularly those associated with its obligations to conduct clinical trials under its licensing agreements, it will be in breach of these licensing agreements and could therefore lose its license rights, which could have material adverse effects on its business. The Company is not in compliance with the provisions of outstanding debt agreements, and it has not remitted quarterly royalty payments to Boston Scientific Corporation pursuant to the terms of its purchase agreement for Prolieve. The Company has not paid interest owing to certain debt holders of the convertible debentures, and is in default of the terms of the debentures. Subsequent to March 31, 2019, certain debt holders have launched action against the Company related to the outstanding debt. Additionally, any unfavorable judgements on the existing claims against the Company can potentially cause significant financial hardship and other damages to the Company. Additionally, the Company has uncertain ongoing litigation which could cause significant financial hardship to the company's resources, See note 8 for further analysis

Additionally, the Company has uncertain ongoing litigation which could cause significant financial hardship to the company's resources. See note 8 for further analysis

Management is continuing its efforts to obtain additional funds through equity financing and through the negotiation of debt agreements to ensure that the Company can meet its obligations and sustain operations. Additionally, the Company has reduced costs of operations, as the Company has eliminated certain positions that do not hold value to the Company. Management has also reduced debt by settling the debt with common shares. Although, the Company's positive cash flows from operating activities is a positive sign for the Company, it is not enough to eliminate the risk of uncertainty in the Company's future.

These factors raise substantial doubt about the ability of the Company to continue as a going concern. The consolidated financial statements do not include any adjustments relating to recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might be necessary should the Company be unable to continue in existence. Such adjustments could be material.

Basis of Presentation and Principles of Consolidation

The accompanying consolidated financial statements of Medifocus, Inc. have been prepared in accordance with generally accepted accounting principles in the United States ("U.S. GAAP") and include the accounts of the Company and its wholly-owned subsidiary Celsion (Canada) Inc. All intercompany transactions have been eliminated. There were no transactions for Celsion (Canada) Inc. for the years ended March 31, 2019, 2018 and 2017.

Unless otherwise noted, all references to "\$" or "dollar" refer to the United States dollar. The Company operates in a single business segment, focused heat systems for targeted thermotherapy of surface, subsurface and deep seated localized and regional cancers. Substantially all of the Company's revenue is generated, and assets are located, in the United States.

Foreign Currency

Effective April 1, 2013, the Company changed its reporting currency from the Canadian dollar (“CAD”) to the U.S. dollar in anticipation of filing its financial statements with the U.S. Securities and Exchange Commission. Effective April 1, 2014, the Company changed its functional currency and that of its wholly owned subsidiary to the U.S. dollar. As a result, all translation adjustments prior to April 1, 2014 were recognized into other income (expense) in the year ending March 31, 2015.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. The consolidated financial statements include significant estimates for the expected economic life and value of our licensed technology, allowance for doubtful accounts, value of contingent consideration, value of our debt issuances, accruals for estimated product returns, allowance for inventory obsolescence, allowance for our net operating loss carry forward, contingencies and related valuation allowance for tax purposes, stock-based compensation related to employees and directors, consultants and advisors. Because of the use of estimates inherent in the financial reporting process, actual results could differ significantly from those estimates.

Currency Risk

The Company held its cash balances within banks in Canada in Canadian dollars and with banks in United States in United States dollars. The Company’s operations are mainly conducted in United States of America however the Company has transactions in Canada which are affected by the fluctuation of the currency rates. The value of the United States dollar against the Canadian dollar may fluctuate with the changes in economic conditions.

During the year ended March 31, 2019, in comparison to the prior year, the Canadian dollar strengthened in relation to the US dollar and upon the translation of the Company’s debt and accrued expenses held in Canadian dollars, the Company recorded a currency gain of \$50,404 (2018- Loss of \$42,040 and 2017- Gain of \$26,621), in other income (expense) on the consolidated statements of operations and comprehensive loss.

Credit risk and economic dependence

Credit risk is the risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation. The financial instruments that potentially subject the Company to credit risk consist of cash and accounts receivable. The Company maintains cash with high credit quality financial institutions located in the United States and Canada.

The Company provides credit to its customers in the normal course of its operations. It carries out, on a continuing basis, credit checks on its customers. The Company’s operations rely significantly on one supplier and Company cannot easily source alternative suppliers.

Credit Concentration

One customer represented a concentration of approximately 15% of total trade receivables for the years ended March 31, 2019 and 2018. No individual customer represented more than 10% of revenues for the years ended March 31, 2019, 2018 and 2017. The Company’s sales are primarily in the United States.

Vendor Concentration and Vendor Deposits

The Company currently purchases 100% of its Prolieve catheter inventory from one supplier. Alternative suppliers and alternative catheters are not currently available. As of March 31, 2019 and 2018, the Company maintained a deposit of \$0 and \$221,330, respectively, with its vendor.

Fair Value Measurements

The Company's consolidated statements of financial position include various financial instruments (primarily cash and cash equivalents, accounts receivable, accounts payable, accrued expenses, payable to Boston Scientific Corporation, accrued interest payable, and notes payable) recorded at cost, which approximates their fair value. Fair value is the price that would be received from the sale of an asset or paid to transfer a liability assuming an orderly transaction in the most advantageous market at the measurement date. U.S. GAAP establishes a hierarchical disclosure framework which prioritizes and ranks the level of observability of inputs used in measuring fair value. These tiers include:

- Level 1—Quoted prices (unadjusted) in active markets that are accessible at the measurement date for identical assets or liabilities. The fair value hierarchy gives the highest priority to Level 1 inputs.
- Level 2—Observable market-based inputs other than quoted prices in active markets for identical assets or liabilities.
- Level 3—Unobservable inputs are used when little or no market data is available. The fair value hierarchy gives the lowest priority to Level 3 inputs.

In connection with the acquisition of Prolieve, the Company owes additional purchase consideration of up to \$2.5 million (contingent consideration) based on the sales of Prolieve products after their acquisition. The contingent consideration is measured at fair value on a recurring basis using Level 3 inputs, and the fair value is determined using unobservable inputs such as the discount rate. The change in the fair value of the contingent consideration of \$35,878, \$54,185 and \$83,189 for the years ended March 31, 2019, 2018 and 2017, respectively, is reflected as loss from change in fair value of contingent consideration in the accompanying consolidated statements of operations and comprehensive loss. *See note 2.*

The Company has no financial assets and liabilities measured at fair value on a non-recurring basis. The Company's long-lived assets are measured at fair value on a non-recurring basis only when an impairment is deemed to occur.

Fair Value of Financial Instruments

The carrying amounts of financial instruments classified as current assets or liabilities, including accounts receivable, accounts payable and accrued expenses approximate fair value because of the short maturity of these instruments.

Other Comprehensive (Loss) Income and Accumulated Other Comprehensive (Loss) Income

Other comprehensive (loss) income includes the total of the Company's net loss and all other changes in equity other than transactions with owners, including changes in equity for cumulative translation adjustments resulting from the consolidation of foreign subsidiary as the financial statements of the subsidiary was previously accounted for using the local currency as the functional currency. The Company did not recognize any foreign currency translation losses during the years ended March 31, 2019, 2018 and 2017.

Cash and Cash Equivalents

The Company considers all highly liquid instruments with original maturities of three months or less to be cash equivalents. All interest bearing and non-interest bearing accounts are guaranteed by the FDIC up to \$250,000. The Company may maintain cash balances in excess of FDIC coverage. Management considers this to be a normal business risk.

Accounts Receivable – Trade and Harmonized Sales Tax

Trade

The Company extends credit to customers on an unsecured basis and payment terms are typically 30 days from delivery or service. The Company's receivables are primarily related to Prolieve products and services. Management uses the aging account method to assess the company's allowance for doubtful accounts. The aging account method uses the number of days outstanding for the underlying invoices that have been past due. Receivables are written off when it is determined that the underlying invoices are uncollectible.

The Company maintained an allowance for doubtful accounts of \$36,523 and \$46,363 as of March 31, 2019 and 2018, respectively.

Harmonized Sales Tax

During the year ended March 31, 2016 the Company had a receivable from a Canadian tax agency for a harmonized sales tax, however, management was uncertain as to the collectability of the asset. During the year ended March 31, 2016, the Company decided to write-off the entire balance until the receivable is collected. During the year ended March 31, 2017, the collectability was ensured and the Company recovered a significant portion of the receivable. As the recovery (write-off) is considered by the Company as an infrequent occurrence and it is not part of the trade receivable balance, the transaction is included as a gain in other income (expense) in the statements of operations and comprehensive loss for the years ended March 31, 2017.

Accounts Receivable consisted of the following as of March 31, 2019 and 2018.

| | March 31, 2019 | March 31, 2018 |
|--|-----------------------|-----------------------|
| Accounts receivable trade | \$ 529,542 | \$ 585,835 |
| Accounts receivable - Harmonized sales tax | 6,364 | 5,387 |
| Allowance for doubtful accounts | (36,523) | (46,363) |
| | <u>\$ 499,383</u> | <u>\$ 544,859</u> |

Inventory

Inventory is valued at the lower of cost or market and consists primarily of console units and single-use treatment catheters. Current inventory of catheters and consoles consist of the direct costs of acquiring the inventory from vendors. Certain non-current inventory of console units, which were originally held for sale, were classified as property and equipment during the year ended March 31, 2016 as the Company began using the console units in operations. The carrying amount was adjusted prior to the transfer of the assets for any depreciation expense that would have been recognized since acquisition had the asset been classified as held for sale. The Company recognized a loss on impairment of long-lived assets in other income (expense) of the statement of operations and comprehensive loss in the amount of \$99,020, during the year ended March 31, 2016, related to this transaction.

Inventory is relieved using the first-in, first-out method and consists of the following at March 31, 2019 and March 31, 2018.

| | <u>March 31, 2019</u> | <u>March 31, 2018</u> |
|----------------------------|-----------------------|-----------------------|
| Finished Goods – Catheters | \$ 104,994 | \$ 199,361 |
| Finished Goods – Consoles | <u>4,712</u> | <u>4,712</u> |
| Total Inventory | <u>\$ 109,706</u> | <u>\$ 204,073</u> |

Property and Equipment

Property and equipment is stated at cost less accumulated depreciation. Depreciation is provided over the estimated useful lives of the related assets, ranging from three to seven years, using the straight-line method. Major renewals and improvements are capitalized and ordinary repairs and maintenance are expensed as incurred.

The Company reviews property and equipment for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. An asset is considered impaired if its carrying amount exceeds the future net undiscounted cash flows that the asset is expected to generate. If such asset is considered to be impaired, the impairment recognized is the amount by which the carrying amount of the asset, if any, exceeds its fair value determined using a discounted cash flow model.

Equity Method Investments

During the year ended March 31, 2018, the Company entered into a sale agreement of their rights to the Gene Therapy platform along with a \$50,000 deposit for consideration of \$100,000 to ThermeGene Corporation which was offset by approximately \$64,000 in payables leaving a remaining receivable balance of approximately \$36,000. The Company recorded a \$50,000 gain in connection with the sale of the platform. The Company received 10% of the purchaser's shares, ThermeGene, which are valued at \$0, which will remain anti-dilutive until ThermeGene Corporation raises \$2,000,000. During the year ended March 31, 2019, the receivable in the amount of approximately \$36,000 was deemed uncollectable. The write off is included in other income (expense) in the accompanying consolidated statements of operations and comprehensive loss.

Convertible Debt Instruments

When the Company has determined that the embedded conversion options should not be bifurcated from their host instruments the Company accounts for convertible debt instruments in accordance with ASC 470-20 *Debt with Conversion and Other Options*. The Company records, when necessary, discounts to convertible notes for the intrinsic value of conversion options embedded in debt instruments based upon the differences between the fair value of the underlying common stock at the commitment date of the note transaction and the effective conversion price embedded in the note. The Company amortizes any debt discount over the term of the notes, using the straight-line method, which approximates the effective interest method. The Company records, when necessary, any induced conversion expense, at the time of conversion for the difference between the reduced conversion price per share and the original conversion price per share.

Settlement of debt for shares issuable

Settlements of debt are recorded by the Company as a reduction of the liability and an increase in common stock on the date of the transaction. Any difference in the fair value of the Company's stock and debt being settled is treated as a gain or loss in the Company's consolidated statements of operations and comprehensive loss. At the reporting date, if the Company's stock has not yet been issued this stock is classified as common stock issuable. Common stock issuable is classified as equity in accordance with ASC 850-40 "Derivatives and Hedging – Contracts in Entity's Own Equity".

Contingent Consideration

In accordance with ASC 805, upon the purchase of Prolieve, the Company recognized a contingent consideration obligation as part of the consideration transferred in exchange for the acquired business. The initial measurement of the contingent consideration obligation was based on its estimated fair value. The contingent consideration obligation has been re-measured to fair value at each reporting date and will continue to be re-measured until the contingency is resolved, which is estimated to be during the year ended March 31, 2020. The contingent consideration is \$11,139 and \$251,935 as of March 31, 2019 and March 31, 2018, respectively.

Intangible Assets

Intangible assets consist of intellectual property and customer relationships for our Prolieve business acquired in July 2012. These intangible assets were originally recorded at fair value and are amortized on a straight line basis over their estimated useful lives of 10 years. The Company reviews its intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable, in a manner similar to that for property and equipment.

As of March 31, 2019, management determined, during the review of intangible assets, that the life of their intellectual property and customer relationships should be extended until the year March 31, 2029.

Revenue Recognition

The Company sells products and provides services which are used in the treatment of BPH. The Company recognizes revenue, net of sales taxes, from the sale of Prolieve consoles and catheters upon shipment to the customer. Revenue from the sale of products is measured at the fair value of the consideration received or receivable, net of any estimated returns. Revenue from the mobile service is recognized upon completion of the services, which is generally upon treatment of the patient.

The Company does not have a return policy that allows customers to return product, however the Company has allowed returns on a limited customer by customer basis. The Company's estimate for returns is based upon its historical experience with actual returns, however such returns have historically been limited. While such experience has allowed for reasonable estimation in the past, history may not always be an accurate indicator of future returns. The Company continually monitors its estimates for returns and makes adjustments when it believes that actual product returns may differ from the established accruals, if any. We record a provision for estimated returns in the same period as the related revenue is recorded.

Costs of Sales—Products

Costs of goods sold primarily include the cost of products sold to customers on a first-in first-out basis, along with amortization expense of our intellectual property, warranty costs, warehousing costs, freight and handling charges. Warehousing costs include payroll and benefit costs.

Costs of Sales—Services

Costs of services consist primarily of the costs to provide mobile services to our patients, including catheter cost, amortization expense of our intellectual property, depreciation of our mobile consoles and vehicle fleet, and payroll and benefit costs.

Product Warranty Liabilities

Prolieve products are covered by warranties against defects in material and workmanship for periods of up to 12 months. We record a liability for warranty claims at the time of sale based on the trend in the historical ratio of product failure rates, material usage and service delivery costs to sales, the historical length of time between the sale and resulting warranty claim and other factors. The accrued liability for warranty provisions was approximately \$4,800 and \$6,300 as of March 31, 2019 and March 31, 2018, respectively.

Research and Development Expenses

Research and development costs are expensed as incurred.

Income Taxes

Income taxes are accounted for under the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax asset and liabilities of a change in tax rates is recognized in results of operations in the period that the tax rate change occurs. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

A tax position is recognized as a benefit only if it is “more likely than not” that the tax position taken would be sustained in a tax examination, presuming that a tax examination will occur. The Company recognizes interest and/or penalties related to income tax matters in the income tax expense category.

Stock-Based Compensation

ASC 718 “Compensation - Stock Compensation,” prescribes accounting and reporting standards for all share-based payment transactions in which employee services are acquired. Transactions include incurring liabilities, or issuing or offering to issue shares, options and other equity instruments such as employee stock ownership plans and stock appreciation rights. Share-based payments to employees, including grants of employee stock options, are recognized as compensation expense in the financial statements based on their fair values. That expense is recognized over the period during which an employee is required to provide services in exchange for the award, known as the requisite service period (usually the vesting period), on a graded vesting basis.

The Company accounts for stock-based compensation issued to non-employees and consultants in accordance with the provisions of ASC 505-50 “Equity - Based Payments to Non-Employees.” Measurement of share-based payment transactions with non-employees is based on the fair value of whichever is more reliably measurable: (a) the goods or services received; or (b) the equity instruments issued. The fair value of the share-based payment transaction is determined at the earlier of performance commitment date or performance completion date.

The estimated fair value of the options and warrants that are ultimately expected to vest based on performance related conditions, as well as the options and warrants that are expected to vest based on future service, is recorded over the instrument’s requisite service period and charged to stock-based compensation. In determining the amount of options and warrants that are expected to vest, the Company takes into account, voluntary termination behavior as well as trends of actual option and warrant forfeitures.

Profit Sharing Plan

The Company sponsors a defined contribution retirement plan through a Section 401(k) profit sharing plan. Employees may contribute up to 15% of their pre-tax compensation. Participants are eligible for matching Company contributions up to 3% of eligible compensation dependent on the level of voluntary contributions. Company matching contributions totaled approximately \$15,000, \$15,000 and \$25,000 for the years ended March 31, 2019, 2018 and 2017, respectively.

Shipping and Handling

The Company incurs shipping and handling costs related to their Prolieve operations. The Company includes these expenses into the costs of sales on the Company's consolidated statement of operations. Shipping and handling costs totaled approximately \$37,000, \$35,000 and \$34,000 for the years ended March 31, 2019, 2018 and 2017, respectively.

Net Loss Per Share

Basic net loss per share is computed by dividing net loss available to common shareholders by the weighted-average number of shares of common shares outstanding during the period.

For periods of net loss, diluted loss per share is calculated similarly to basic loss per share because the impact of all dilutive potential common shares is anti-dilutive due to the net losses. Outstanding stock options of 10,700,000, 10,700,000 and 6,500,000 and outstanding stock purchase warrants of 0, 0 and 18,013,250 to purchase commons shares for the years ended March 31, 2019, 2018 and 2017, respectively, were considered anti-dilutive and therefore were not included in the calculation of diluted shares. Additionally, for the years ended March 31, 2019, 2018 and 2017, convertible promissory notes convertible into 21,640,000, 21,640,000 and 22,160,000, respectively, shares of common stock were also considered anti-dilutive and therefore were not included in the calculation of diluted shares.

Newly Adopted Accounting Pronouncements

ASU No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*, which provides guidance for revenue recognition for contracts. This guidance requires an entity to review contracts in five steps and will result in enhanced disclosures regarding the nature, amount, timing and uncertainty of revenue arising from contracts with customers. This standard is effective for fiscal years beginning after December 15, 2017 and early adoption is permitted only as of annual reporting periods for fiscal years beginning after December 15, 2016. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

ASU No. 2016-01, *Financial Instruments-Overall (Subtopic 825-10) - Recognition and Measurement of Financial Assets and Financial Liabilities*, which addresses certain aspects of recognition, measurement, presentation, and disclosure of financial instruments. Most notably, this new guidance requires equity investments (except those accounted for under the equity method of accounting or those that result in consolidation of the investee) to be measured at fair value with changes in fair value recognized in net income. This new guidance is effective for annual reporting periods beginning after December 15, 2017. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

ASU No. 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*. The ASU provides clarity to preparers on the treatment of eight specific items within an entity's statement of cash flows. The guidance becomes effective for all public entities in fiscal years beginning after December 15, 2017, including interim periods therein. Early adoption of the guidance, including within an interim period, is permitted. The adoption of this guidance did not have a material impact on the Company's consolidated financial statements.

ASU No. 2017-09, *Compensation-Stock Compensation (Topic 718): “Scope of Modification Accounting”*. The ASU amends the scope of modification accounting for share-based payment arrangements and provides guidance on the types of changes to the terms or conditions of share-based payment awards to which an entity would be required to apply modification accounting under ASC 718. The guidance becomes effective for annual reporting periods, including interim periods within those annual reporting periods, beginning after December 15, 2017. The adoption of this guidance did not have a material impact on the Company’s consolidated financial statements.

Recent Accounting Pronouncements

ASU No. 2018-13, *Fair Value Measurement (Topic 820)*. The ASU eliminates certain disclosures requirements for fair value measurements for all entities, requires public entities to disclose certain new information and modifies some disclosures requirements. The guidance becomes effective for annual reporting periods, including interim periods within those annual reporting periods, beginning after December 15, 2019. This guidance is not expected to have a material impact on the Company’s consolidated financial statements.

ASU No. 2018-11 and 2018-10, *Leases (Topic 842)*. The ASU discusses the effective date and transition requirements for the amendments related to separating components of a contract are the same as the effective date and transition requirements in ASU No. 2016-02. The guidance becomes effective for annual reporting periods, including interim periods within those annual reporting periods, beginning after December 15, 2018. This guidance is not expected to have a material impact on the Company’s consolidated financial statements.

ASU No. 2018-07, *Compensation-Stock Compensation (Topic 718)*: These amendments expand the scope of Topic 718, Compensation—Stock Compensation (which currently only includes share-based payments to employees) to include share-based payments issued to nonemployees for goods or services. Consequently, the accounting for share-based payments to nonemployees and employees will be substantially aligned. The ASU supersedes Subtopic 505-50, Equity—Equity-Based Payments to Non-Employees. The guidance becomes effective for annual reporting periods, including interim periods within those annual reporting periods, beginning after December 15, 2018. This guidance is not expected to have a material impact on the Company’s consolidated financial statements.

Emerging Growth Company Status

The Company is an “emerging growth company” as defined in section 3(a) of the Exchange Act, as amended by the United States Jumpstart Our Business Startups Act, enacted on April 5, 2012 (the “JOBS Act”), and will continue to qualify as an “emerging growth company” until the earliest to occur of: (a) the last day of the fiscal year during which the Company has total annual gross revenues of \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the SEC) or more; (b) the last day of the Company’s fiscal year following the fifth anniversary of the date of the first sale of the Company’s common equity securities pursuant to an effective registration statement under the Securities Act; (c) the date on which the Company has, during the previous 3-year period, issued more than \$1,000,000,000 in non-convertible debt; or (d) the date on which we are deemed to be a ‘large accelerated filer’, as defined in Exchange Act Rule 12b–2.

Generally, a company that registers any class of its securities under section 12 of the Exchange Act is required to include in the second and all subsequent annual reports filed by it under the Exchange Act, a management report on internal controls over financial reporting and, subject to an exemption available to companies that meet the definition of a “smaller reporting company” in Exchange Act Rule 12b-2, an auditor attestation report on management’s assessment of internal controls over financial reporting. However, for so long as the Company will continue to qualify as an emerging growth company, the Company will be exempt from the requirement to include an auditor attestation report in the Company’s annual reports filed under the Exchange Act, even if the Company does not qualify as a “smaller reporting company”. In addition, section 103(a)(3) of the Sarbanes-Oxley Act of 2002 has been amended by the JOBS Act to provide that, among other things, auditors of an emerging growth company are exempt from any rules of the Public Company Accounting Oversight Board requiring mandatory audit firm rotation or a supplement to the auditor’s report in which the auditor would be required to provide additional information about the audit and the financial statements of the Company.

Any U.S. domestic issuer that is an emerging growth company is able to avail itself to the reduced disclosure obligations regarding executive compensation in periodic reports and proxy statements, and to not present to its shareholders a nonbinding advisory vote on executive compensation, obtain approval of any golden parachute payments not previously approved, or present the relationship between executive compensation actually paid and the Company's financial performance. As a foreign private issuer, the Company is not subject to such requirements, and will not become subject to such requirements even if the Company was to cease to be an emerging growth company.

As a reporting issuer under the securities legislation of the Canadian provinces of Ontario, British Columbia, and Alberta, the Company is required to comply with all new or revised accounting standards that apply to Canadian public companies. Pursuant to Section 107(b) of the JOBS Act, an emerging growth company may elect to utilize an extended transition period for complying with new or revised accounting standards for public companies until such standards apply to private companies. The Company elected to utilize this extended transition period. However, while the Company elected to utilize this extended transition period, our consolidated financial statements as of March 31, 2019 reflect the adoption of all required accounting standards for public companies.

2. BUSINESS ACQUISITION AND CONTINGENT CONSIDERATION

On July 24, 2012 the Company purchased from Boston Scientific Corporation ("BSC"), in a taxable transaction, all of the assets, relating to the Prolieve, an FDA approved device for the treatment of BPH. The total purchase consideration consisted of the following:

| | |
|--|---------------------|
| Cash | \$ 2,535,610 |
| Fair value of contingent consideration | 1,126,505 |
| Total consideration | <u>\$ 3,662,115</u> |

The maximum amount of \$2,500,000 is payable as contingent consideration pursuant to the terms of the agreement. The fair value of the contingent consideration was determined by calculating its present value based on its payment terms using an interest rate of 24% (our estimated unsecured borrowing rate). The contingent consideration is payable quarterly at a rate of 10% of sales of Prolieve products. As of March 31, 2019, \$2,179,061 of royalties are due to BSC of which \$2,117,097 is past due.

The activity of the non contingent and contingent consideration obligation for the years ending March 31, 2019, 2018 and 2017 and the allocation is as follows:

| <i>Activity is as follows:</i> | Non Contingent | Contingent | Total |
|---|---------------------|------------------|---------------------|
| Balance at April 1, 2016 | \$ 1,257,995 | \$ 758,953 | \$ 2,016,948 |
| Less: payments | — | — | — |
| Change in non-contingent/contingent | 378,370 | (295,181) | 83,189 |
| Balance at March 31, 2017 | 1,636,365 | 463,772 | 2,100,137 |
| Less: payments | — | — | — |
| Change in non-contingent/contingent | 266,022 | (211,837) | 54,185 |
| Balance at March 31, 2018 | 1,902,387 | 251,935 | 2,154,322 |
| Less: payments | — | — | — |
| Change in non-contingent/contingent | 276,764 | (240,796) | 35,878 |
| Balance at March 31, 2019 | <u>\$ 2,179,061</u> | <u>\$ 11,139</u> | <u>\$ 2,190,200</u> |
| <i>Allocated as follows as of March 31, 2019:</i> | | | |
| Payable to Boston Scientific Corp. | <u>\$ 2,179,061</u> | <u>\$ —</u> | <u>\$ 2,179,061</u> |
| Contingent consideration – current | <u>\$ —</u> | <u>\$ 11,139</u> | <u>\$ 11,139</u> |
| Contingent consideration – non current | <u>\$ —</u> | <u>\$ —</u> | <u>\$ —</u> |

3. PROPERTY AND EQUIPMENT

Property and equipment consists of the following as of March 31, 2019 and 2018:

| | March 31, 2019 | March 31, 2018 |
|---|----------------|----------------|
| Machinery and equipment (5-7 year life) | \$ 35,937 | \$ 38,971 |
| Mobile consoles (7 year life) | 798,667 | 798,667 |
| Automobiles (3 year life) | 18,376 | 18,376 |
| Furniture and fixtures (3-5 year life) | 20,000 | 20,000 |
| | 875,980 | 876,014 |
| Accumulated depreciation | (775,061) | (662,493) |
| Total | \$ 97,919 | \$ 213,521 |

Depreciation expense was approximately \$131,000, \$127,000 and \$117,000 for the years ended March 31, 2019, 2018 and 2017, respectively. During the year ended March 31, 2017, the Company sold 10 consoles for gross proceeds of \$209,000 and recorded a gain on sale of consoles in the amount of \$175,491.

4. INTANGIBLE ASSETS

Intangible assets include intellectual properties and customer relationships relating to the Prolieve technology, acquired at a cost of \$2.5 million. The intellectual properties expire over several years commencing September 2021 and continuing until February 2029. These assets are being amortized on a straight-line basis until 2029; amortization expense was \$246,212 for each of the years ended March 31, 2019, 2018 and 2017, respectively.

Future amortization expense related to the net carrying amount of intangible assets is estimated to be as follows:

| | |
|------------|------------|
| 2020 | \$ 80,113 |
| 2021 | 80,113 |
| 2022 | 80,113 |
| 2023 | 80,113 |
| 2024 | 80,113 |
| Thereafter | 400,562 |
| Total | \$ 801,127 |

5. PROMISSORY NOTES PAYABLE, CONVERTIBLE NOTES PAYABLE AND ACCRUED INTEREST PAYABLE

In fiscal year 2013, the Company raised bridge financing of approximately \$435,000. The bridge financing lender received a promissory note, with interest payable at 2% per month after October 23, 2012. The original maturity date of the promissory note was October 23, 2013 and was subsequently extended until June 30, 2014 at which time the Company began paying additional interest of 2% per month on accrued interest with an additional interest charge of .09% per month on current interest expense. As of March 31, 2019, the note remains in default and is due in full. The Company has a total principal and accrued interest balance of approximately \$1,092,000 and \$907,000 as of March 31, 2019 and 2018, respectively. Interest expense of approximately \$220,000, \$182,000 and \$143,000 was recognized on the promissory note and accrued interest for the years ended March 31, 2019, 2018 and 2017, respectively.

In fiscal year 2014, the Company issued, in two separate tranches, 554 units of 8% redeemable promissory convertible notes (the “Notes”) together with Series C stock purchase warrants (the “Warrants”) to various accredited investors in an offering exempt from registration in the U.S pursuant to regulations D and S under the U.S. Federal Securities rules and regulations, receiving gross proceeds of \$5,540,000. The notes are convertible into 22,160,000 shares of common stock. Each warrant entitled the holder to acquire 20,000 common shares (for a total of 11,080,000 common shares) at an exercise price of \$0.30 per share and expired on December 18, 2016 and March 7, 2017. The warrants were classified as equity, were recorded as additional paid in capital at their estimated fair value of \$1,532,877, and were considered a non-cash financing activity. The Company recognized a beneficial conversion feature of \$195,938 and deferred financing fees (consisting of both cash payments and the fair value of stock purchase warrants classified as equity) of \$558,552 which were fully amortized using the effective interest method through the fiscal year ended March 31, 2017. The Company has accrued interest of \$2,425,694 owing to holders of the convertible debentures as of March 31, 2019, of which \$2,272,053 is past due.

During the year ending March 31, 2018, the Company settled \$130,000 of the convertible notes and \$24,514 of accrued interest at a settlement price of CAD \$0.05 (\$0.04) per share. The fair value of the stock was \$0.032 per share on the date of the settlement; therefore, per the guidance ASC 470-60, “Trouble Debt Restructuring by Debtors”, the Company recognized a gain of \$30,705 for the year ending March 31, 2018. Additionally, the Company recorded a common stock issuable in the amount of \$123,809 for 3,862,850 shares. During the year March 31, 2019, additional interest in the amount of \$25,551 was granted to the note holders as their shares were not issued during the year ended March 31, 2019. The additional interest was settled for 890,884 shares issuable which had a fair value of \$16,667, based on the fair value of stock of \$0.019. A gain of \$8,885 was recorded related to the transaction. The remaining shareholders have not settled their debt as of March 31, 2019.

In connection with the convertible notes, the Company recognized interest expense of \$596,724, \$560,926 and \$18,644 for the years ended March 31, 2019, 2018 and 2017, respectively. The Company recognized accretion expense of \$0, \$0 and \$91,698 for the years ended March 31, 2019, 2018 and 2017, respectively.

On May 13, 2016, the Company entered into a loan agreement in the amount of \$200,000. The financing lender will receive interest payable of 1.25% per month. The maturity date for the outstanding amount was November 30, 2016 and default interest of 2% per month began accruing effective that date as the loan is in default. The Company recognized \$48,000, \$48,000 and \$31,442 in interest expense for the years ended March 31, 2019, 2018 and 2017, respectively. Accrued interest related to the loan balance is \$127,442 and \$79,442 as of March 31, 2019 and 2018, respectively. The loan is secured by the Company’s assets.

On August 1, 2016, the Company entered into a loan agreement in the amount of \$200,000. The financing lender will receive interest payable of 1.25% per month. The maturity date for the outstanding amount was January 31, 2017 and default interest of 2% per month began accruing effective of that date as the loan is in default. The Company recognized \$48,000, \$48,000 and \$22,678 in interest expense for the years ended March 31, 2019, 2018 and 2017, respectively. Accrued interest related to the loan balance is \$118,678 and \$70,678 as of March 31, 2019 and 2018, respectively. The loan is secured by the Company’s assets.

On October 30, 2016, the Company entered into a loan agreement in the amount of \$100,000. The financing lender will receive interest payable of 1.25% per month. The maturity date for the outstanding amount is April 30, 2017 and default interest of 2% per month began accruing effective of that date as the loan is in default. The Company recognized \$24,000, \$23,258 and \$6,440 in interest expense for the years ended March 31, 2019, 2018 and 2017, respectively. Accrued interest related to the loan balance is \$53,698 and \$29,698 as of March 31, 2019 and 2018, respectively. The loan is secured by the Company’s assets.

6. EQUITY AND STOCK-BASED COMPENSATION

Common Stock

Authorized share capital consists of unlimited common shares with no par value.

On December 14, 2015, the Company completed a private placement of 15,500,000 units at a price of \$0.05 per unit raising gross proceeds of \$775,000 (net proceeds of \$713,000). Each unit consisted of one common share and 0.5 common share purchase warrant. Each whole warrant entitled the holder to acquire one common share at an exercise price of \$0.10 until December 14, 2017. As of March 31, 2018 these warrants are expired.

Management determined the warrants to have a grant date fair value of \$0.015 per warrant and accordingly, \$176,169 of the proceeds from the issuance was allocated to additional paid in capital, and the balance of the proceeds was allocated to common shares.

A relative fair value calculation was used to determine the carrying value of the warrants. The fair value of the warrants issued was estimated using a Black-Scholes pricing model with the following assumptions:

| | |
|-------------------------|-----------------|
| Risk free interest rate | 0.58% to 0.97% |
| Expected life in years | 2 - 3 years |
| Expected volatility | 98.96 to 146.6% |

The Company uses the contract life as its expected life. Volatility is calculated based on actual weekly trading history of the Company's common stock. The risk-free rate is based on the daily yield curve of U.S. treasury bills.

Common stock issuable

Prior to March 31, 2015, the Company received funds for common shares in the amount of \$1,561,000 (net of fees) as part of a future private placement occurring on May 12, 2015. All shares were issued during the year ended March 31, 2016. During the year ended March 31, 2016 the Company resolved to pay accrued expenses with common stock in the amount of \$140,452.

As of March 31, 2018, the Company has a total of shares issuable of 3,862,850 in the amount of \$123,809 at a settlement price of CAD \$0.05 (\$0.04), as a result of an agreement to settle convertible debt of \$130,000 plus accrued interest. As of March 31, 2019, additional 890,884 shares issuable, in the amount of \$16,667 at a settlement price of CAD \$0.05 (\$0.04) were granted to the debt holders.

As of March 31, 2019, the Company agreed to settle CA\$400,000 (\$304,923) of debt with the directors and the CFO for a total of shares issuable of 8,000,000, which is included as common stock issuance in the Company's consolidated statements of changes in stockholders deficit.

Stock Purchase Warrants

The Company did not have any stock purchase warrants outstanding as of March 31, 2019 and 2018:

Stock Options and Stock Option Plan

The purpose of the stock option plan ("the Plan") is to attract, retain and motivate persons as key service providers to the Company and to advance the interests of the Company by providing such persons with the opportunity, through share options, to acquire a proprietary interest in the Company and benefit from its growth. The options are non-assignable and may be granted for a term not exceeding five years.

The Company may grant stock options to directors, senior officers and service providers by resolution of the Board of Directors. The exercise price will reflect the market price of the Company's stock on the date of the grant. The maximum number of stock options outstanding under the Plan is limited 10% of issued shares.

During the year ending March 31, 2016, the Company issued 10,100,000 options to directors and officers of the Company which vested immediately upon issuance. The Company recorded \$183,410 in stock compensation expense related to these options.

During the year ended March 31, 2018, the Company issued 4,200,000 shares of stock options to the Company's CEO with an exercise price of CAD\$0.05 (\$0.04) per share. The options vested immediately and have an expected life of 5 years. The Company recorded \$85,294 in stock compensation expense related to these options.

No stock-based compensation cost was recorded for the years ending March 31, 2019 and 2017.

The Company measures the cost of stock option awards based on the grant-date fair value of the award. The cost is recognized over the period during which an employee is required to provide service in exchange for the award or the requisite service period. The Company recognizes stock-based compensation expense over the vesting periods of the awards, adjusted for estimated forfeitures. A summary of the stock option activity for the years ended March 31, 2019, 2018 and 2017 is presented below:

| | Option Shares # | Weighted average exercise price \$ | Weighted Average Remaining Contractual Life (years) | Aggregate Intrinsic Value \$ |
|-----------------------------|-----------------------|--|--|---------------------------------------|
| Outstanding April 1, 2016 | 10,100,000 | \$ 0.060 | 4.75 | \$ — |
| Granted | — | — | — | — |
| Exercised | — | — | — | — |
| Cancelled/Expired | (3,600,000) | 0.060 | — | — |
| Outstanding March 31, 2017 | 6,500,000 | 0.060 | 3.75 | \$ — |
| Granted | 4,200,000 | 0.040 | 4.41 | — |
| Exercised | — | — | — | — |
| Cancelled/Expired | — | — | — | — |
| Outstanding, March 31, 2018 | 10,700,000 | 0.051 | 3.43 | \$ — |
| Granted | — | — | — | — |
| Exercised | — | — | — | — |
| Cancelled/Expired | — | — | — | — |
| Outstanding, March 31, 2019 | 10,700,000 | \$ 0.051 | 2.43 | \$ — |
| Exercisable, March 31, 2019 | 10,700,000 | | | |

The weighted average fair value of the option grants issued in fiscal year 2016 was \$0.018 per share. The option grants were estimated on the date of the grant using the Black-Scholes option pricing model and using the following assumptions:

| | |
|------------------------------|-----------|
| Expected option life (years) | 2.5 years |
| Risk free interest rate | 1.12% |
| Expected volatility | 106% |

The weighted average fair value of the option grants issued in fiscal year 2018 was \$0.020 per share. The option grants were estimated on the date of the grant using the Black-Scholes option pricing model and using the following assumptions:

| | |
|------------------------------|---------|
| Expected option life (years) | 5 years |
| Risk free interest rate | 1.56% |
| Expected volatility | 122% |

7. INCOME TAXES

The Company is domiciled in Canada and files Canadian federal and certain provincial tax returns. The Company had no provision (benefit) for income taxes for the years ending March 31, 2019, 2018 and 2017 as a result of its net losses and full valuation allowance against its deferred assets.

The following is the statutory rates which apply to the Company

| | For the years ending March 31, | | |
|---------------------------------------|--------------------------------|--------|--------|
| | 2019 | 2018 | 2017 |
| Income Tax Statutory income Tax Rates | | | |
| United States | 21.00% | 21.00% | 35.00% |
| Canada | 26.50% | 26.50% | 26.50% |

The reconciliation of income taxes at statutory income tax rates (Canada - 26.5%) to the income tax expense is as follows:

| | For the years ending March 31, | | |
|--|--------------------------------|----------------|----------------|
| | 2019 | 2018 | 2017 |
| Loss before income taxes | \$ (1,471,000) | \$ (1,541,000) | \$ (1,570,000) |
| Expected income recovery based on statutory rate | (390,000) | (408,000) | (416,000) |
| Adjustment to expected income tax benefit | | | |
| Stock based compensation | - | 23,000 | - |
| Permanent differences | 2,000 | 2,000 | 3,000 |
| Change in benefit of tax assets not recognized | 388,000 | 383,000 | 413,000 |
| Deferred income tax provision (recovery) | - | - | - |

Deferred Income Tax

Deferred tax asset components as of March 31, 2019 and 2018 is as follows:

| | As of March 31, | |
|---------------------------------|----------------------|----------------------|
| | 2019 | 2018 |
| Non-capital loss carry-forwards | \$ 21,730,000 | \$ 22,586,000 |
| Property and Equipment | 1,888,000 | 1,769,000 |
| Net deferred tax asset | <u>\$ 24,879,000</u> | <u>\$ 24,355,000</u> |

As the Company has recognized substantial cumulative losses from operations and has not earned significant revenues, it has provided a 100% valuation allowance on the net deferred tax asset as of March 31, 2019 and 2018.

The Company has non-capital losses which may, under certain circumstances, be applied against future taxable income and which expire as follows:

| | |
|------|----------------------|
| 2026 | \$ 110,000 |
| 2027 | 11,000 |
| 2028 | 33,000 |
| 2029 | 5,000 |
| 2030 | 1,209,000 |
| 2031 | 1,537,000 |
| 2032 | 1,073,000 |
| 2033 | 3,047,000 |
| 2034 | 3,800,000 |
| 2035 | 4,556,000 |
| 2036 | 3,969,000 |
| 2037 | 685,000 |
| 2038 | 629,000 |
| 2039 | 1,086,000 |
| | <u>\$ 21,730,000</u> |

The Company is subject to income taxes in numerous jurisdictions. Significant judgment is required in evaluating the Company's tax positions and determining its provision for income taxes. The Company establishes liabilities for tax-related uncertainties based on estimates of whether, and the extent to which, additional taxes will be due. These liabilities are established when the Company believes that certain positions might be challenged despite its belief that its tax return positions are fully supportable. The Company adjusts these liabilities in light of changing facts and circumstances, such as the outcome of a tax audit. The provision for income taxes includes the impact of changes to the liability that is considered appropriate. The Company has identified no material uncertain tax positions as of March 31, 2019 and 2018.

The Company is subject to income tax audits in all jurisdictions for which it is required to file tax returns. Tax audits by their nature are often complex and can require several years to complete. Neither the Company nor any of its subsidiaries is currently under audit in any jurisdiction. All of the Company's income tax returns remain subject to examination by tax authorities.

During the year ended March 31, 2017, the Company recorded \$20,000 in tax penalties to the IRS for failure to timely file income tax returns for the prior years and is included in other income (expense) on the consolidated statements of operations and comprehensive loss. No penalties were recorded for either fiscal 2019 or 2018.

8. COMMITMENTS AND CONTINGENCIES

On January 16, 2006, the Company's wholly owned subsidiary, Celsion (Canada) Inc. purchased from Celsion Corporation (USA) ["Celsion"] all of the assets relating to breast cancer Microfocus APA 1000 System ("System"), consisting of the microwave machine technology, the APA technology licensed from MIT, and all related intellectual and regulatory property (collectively, the "Business"). The Company has a commitment to pay a 5% royalty to Celsion on the net sales of products sold by and patent royalties received by the Company and its successors and assignees. Total royalties paid are not to exceed \$18,500,000. Royalties will not be payable until the System can be placed in the market following successful completion of the pivotal clinical trial and receipt of approval to market the System in the US and Canada from the FDA and Health Canada. The Company has an additional commitment to pay a 5% royalty to MIT on the net sales of products, upon commercialization. If the Company does not apply for or does not receive FDA approval to enter at least one phase III clinical trials of a licensed product prior to the earlier of the termination of the agreement or June 25, 2018, the Company shall pay \$10,000 to MIT. As of March 31, 2019, the \$10,000 payment has been accrued for in accounts payable and accrued liabilities. If the Company receives approval for sale of at least one licensed product or discovery product then the Company shall pay MIT \$100,000. As of March 31, 2019, this requirement has not been met and no payment is due.

On October 1, 2017, the Company entered into an amended 5 year operating lease agreement. All vehicle leases expired during year ending March 31, 2018. Future minimum payments under the operating lease for office space as of March 31, 2019 are as follows:

| | | |
|------|----|--------|
| 2020 | \$ | 86,152 |
| 2021 | \$ | 88,752 |
| 2022 | \$ | 91,414 |
| 2023 | \$ | 86,080 |

The Company recognized total rent expense of \$119,053, \$154,704 and \$244,598 for the years ended March 31, 2019, 2018 and 2017, respectively.

The Company has a purchase commitment with its primary vendor in which to purchase 2,160 Prolieve Kits at \$286 for a total amount of \$617,760 through December 31, 2019.

During the year ended March 31, 2019, the Company entered into a research and development project agreement with Urobois Limited. The Company paid \$2,500 at the signing of the agreement and will make milestone payments to Urobois Limited in the amount of \$20,000 through the completion of the agreement. The project is current on hold.

In June 2018, W.L. Pate, JR and Charles C. Shelton filed a lawsuit in the District Court of Harris County, Texas to seek monetary relief of over \$200,000 but not more than \$1,000,000 from Medifocus Inc. for a transaction that did not materialize. Although the Company does not believe the suit has any merits and has not accrued for any amount in its financial statements as of March 31, 2019, any judgement unfavorable to the Company can potentially cause significant financial hardship and other damages to the Company. In addition, certain note holders of the Company had threatened to take legal actions against the Company due to the default on the notes. Such legal actions will also cause significant financial hardship and other damages to the Company.

9. RELATED PARTY TRANSACTIONS

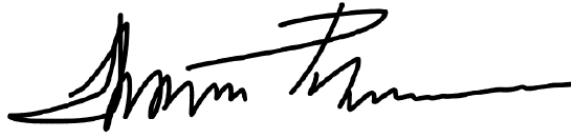
The Company has entered into several transactions with a director and an officer. Descriptions of the related party transactions are as follows:

- The Company made direct revenue sales to Dr. William Jow, the Company's CEO effective October 1, 2016, in the amount of approximately \$24,000, \$18,000 and \$36,000 during the years ended March 31, 2019, 2018 and 2017, respectively. There was a trade receivable balance of approximately \$0 and \$0 as of March 31, 2019 and 2018, respectively, related to these transactions. As of March 31, 2019 and 2018, respectively, the Company has an outstanding liability to Dr. William Jow in the amount of \$16,500 and \$14,500 for compensation and expense reimbursements. See also Note 6 for stock options issued to the CEO during the year ending March 31, 2018.
- The Company made a direct sale to Medifocus Asia, Ltd., in the amount of approximately \$17,200, \$0 and \$232,000 during the years ended March 31, 2019, 2018 and 2017, respectively. There was a trade receivable balance of approximately \$0 and \$0 as of March 31, 2019 and 2018, respectively. Mr. Augustine Chow and Mr. Raymond Tong, both directors of Medifocus, Inc, are also directors of Medifocus Asia, Ltd. Additionally, Mr. Augustine Chow and Mr. Raymond Tong have significant investments in Medifocus Asia, Ltd.
- The Company has accrued compensation expenses owed to the CFO and the board of directors as of March 31, 2019 and 2018 as follows: The amounts are unsecured, due on demand and bear no interest.

| | CFO | Directors |
|------|------------|------------------|
| 2019 | \$ 126,000 | \$ 475,000 |
| 2018 | \$ 109,000 | \$ 415,000 |

- During the year ended March 31, 2018, the Company settled a \$50,000 convertible debt and \$16,304 in related accrued interest charges due to Douglas Liu, Vice President of Finance, for 1,657,595 shares issuable. During the year ended March 31, 2019 an additional 325,157 shares issuable were granted for additional interest costs. See Note 5.
- Augustine Chow, a director of Medifocus Inc, is also a director of Gwyneth Gold Limited which has a substantial investment in the Company. Additionally, Gwyneth Gold Limited is the holder of a \$790,000 convertible note with the company and is owed \$410,687 in accrued interest as of March 31, 2019. See Note 5.
- During the year ended March 31, 2019, directors and CFO settled CA\$400,000 (\$304,923) of debt for 8,000,000 shares issuable. See Note 6.

THIS IS **EXHIBIT “G”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 4TH DAY OF OCTOBER 2021

A handwritten signature in black ink, appearing to read 'Sharon P.', is written above a horizontal dashed line.

A COMMISSIONER FOR TAKING AFFIDAVITS

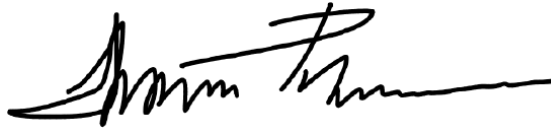
MEDIFOCUS, INC.
 UNAUDITED CONDENSED INTERIM CONSOLIDATED STATEMENTS OF OPERATIONS
(in U.S. dollars)

| | 3/31/2021 | 3/31/2020 |
|---|----------------|----------------|
| Sales | | |
| Products | \$ 293,114 | \$ 650,563 |
| Services | 807,875 | 1,372,165 |
| Total Sales | 1,100,989 | 2,022,728 |
| Costs of Sales | | |
| Products | 221,126 | 355,134 |
| Services | 609,464 | 749,047 |
| Total Costs of Sales | 830,590 | 1,104,181 |
| Gross Profit | 270,399 | 918,547 |
| Operating Expenses | | |
| Research and development | 20,097 | 23,719 |
| Sales and marketing | 2,573 | 35,002 |
| General and administrative | 728,920 | 1,715,805 |
| Total Operating Expenses | 751,590 | 1,774,526 |
| Loss from Operations | (481,191) | (855,979) |
| Other Income (Expense) | | |
| Interest expense | (1,173,271) | (962,263) |
| Loss from change in fair value of contingent consideration | | (667) |
| Other income (expense) | (264,874) | 27,547 |
| Total Other Income (Expense) | (1,438,145) | (935,383) |
| Net Loss | \$ (1,919,336) | \$ (1,791,362) |

MEDIFOCUS, INC.
UNAUDITED CONDENSED INTERIM CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
(in U.S. dollars)

| | <u>March 31, 2021</u> | <u>March 31, 2020</u> |
|--|-----------------------|-----------------------|
| ASSETS | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 6,385 | \$ 60,266 |
| Accounts receivable, net | 197,956 | 310,384 |
| Inventory, net | 66,656 | 42,531 |
| Other assets | 4,367 | 29,763 |
| Total Current Assets | 275,364 | 442,944 |
| Property and equipment, net + | 26,195 | 27,492 |
| Deposits | - | 29,725 |
| Intangible assets, net | 644,576 | 721,014 |
| Total Assets | <u>\$ 946,135</u> | <u>\$ 1,221,175</u> |
| LIABILITIES AND STOCKHOLDERS' DEFICIT | | |
| Current liabilities: | | |
| Accounts payable | \$ 322,709 | \$ 349,367 |
| Accrued expenses | 1,188,056 | 654,899 |
| Accrued interest payable | 5,899,599 | 4,512,600 |
| Promissory notes payable | 783,897 | 767,156 |
| Payable to Boston Scientific Corporation | 2,190,867 | 2,190,867 |
| Contingent consideration, current portion | — | — |
| Convertible notes payable (net of discount), current portion | 5,540,000 | 5,410,000 |
| Total Current Liabilities | 15,925,128 | 13,884,889 |
| Contingent consideration | — | — |
| Total liabilities | <u>15,925,128</u> | <u>13,884,889</u> |
| Stockholders' deficit: | | |
| Common stock (no par value, unlimited shares authorized, 184,984,215 and 184,984,215 shares issued and outstanding as of December 31, 2019 and March 31, 2019, respectively. | 14,295,388 | 14,295,388 |
| Common stock issuable | — | 445,400 |
| Additional paid-in capital | 10,830,075 | 10,830,075 |
| Accumulated deficit | (40,104,456) | (38,234,577) |
| Total Stockholders' Deficit | (14,978,993) | (12,663,714) |
| Total Liabilities and Stockholders' Deficit | <u>\$ 946,135</u> | <u>\$ 1,221,175</u> |

THIS IS **EXHIBIT “H”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 4TH DAY OF OCTOBER 2021

A handwritten signature in black ink, appearing to read 'Sharon P.', is written above a dashed horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Enquiry Result

File Currency: 22SEP 2021

All Pages ▾



Show All Pages

Note: All pages have been returned.

| | | | | | | | | | |
|---|---------------------------------|------------------|-------------|------------------------|-------------------------|----------------------------|---------------------|---------------------|------------------------|
| Type of Search | Business Debtor | | | | | | | | |
| Search Conducted On | MEDIFOCUS INC. | | | | | | | | |
| File Currency | 22SEP 2021 | | | | | | | | |
| | File Number | Family | of Families | Page | of Pages | Expiry Date | Status | | |
| | 771766443 | 1 | 1 | 1 | 2 | 21APR 2024 | | | |
| FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN | | | | | | | | | |
| File Number | Caution Filing | Page of | Total Pages | Motor Vehicle Schedule | Registration Number | Registered Under | Registration Period | | |
| 771766443 | | 001 | 2 | | 20210421 1532 1590 9604 | P PPSA | 3 | | |
| Individual Debtor | Date of Birth | First Given Name | | | Initial | Surname | | | |
| Business Debtor | Business Debtor Name | | | | | Ontario Corporation Number | | | |
| | MEDIFOCUS INC. | | | | | | | | |
| | Address | | | | City | Province | Postal Code | | |
| | SUITE #404, 1090 DON MILLS ROAD | | | | TORONTO | ON | M3C 3R6 | | |
| Individual Debtor | Date of Birth | First Given Name | | | Initial | Surname | | | |
| Business Debtor | Business Debtor Name | | | | | Ontario Corporation Number | | | |
| | | | | | | | | | |
| | Address | | | | City | Province | Postal Code | | |
| | | | | | | | | | |
| Secured Party | Secured Party / Lien Claimant | | | | | | | | |
| | ASSET PROFITS LIMITED | | | | | | | | |
| | Address | | | | City | Province | Postal Code | | |
| | SHOP 204 G/F THE ARCADE, | | | | HONG KONG | | | | |
| Collateral Classification | Consumer Goods | Inventory | Equipment | Accounts | Other | Motor Vehicle Included | Amount | Date of Maturity or | No Fixed Maturity Date |
| | | X | X | X | X | X | | | |
| Motor Vehicle Description | Year | Make | | | Model | V.I.N. | | | |
| | | | | | | | | | |
| General Collateral Description | General Collateral Description | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| Registering Agent | Registering Agent | | | | | | | | |
| | LLF LAWYERS LLP/DW | | | | | | | | |

| | Address | City | Province | Postal Code |
|--|---------------------------------------|--------------|----------|-------------|
| | 332 AYLMER STREET NORTH P.O. BOX 1146 | PETERBOROUGH | ON | K9J 7H4 |

CONTINUED

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|---|--------------------------------|------------------|-------------|------------------------|-------------------------|----------------------------|---------------------|---------------------|------------------------|
| Type of Search | Business Debtor | | | | | | | | |
| Search Conducted On | MEDIFOCUS INC. | | | | | | | | |
| File Currency | 22SEP 2021 | | | | | | | | |
| | File Number | Family | of Families | Page | of Pages | Expiry Date | Status | | |
| | 771766443 | 1 | 1 | 2 | 2 | 21APR 2024 | | | |
| FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN | | | | | | | | | |
| File Number | Caution Filing | Page of | Total Pages | Motor Vehicle Schedule | Registration Number | Registered Under | Registration Period | | |
| 771766443 | | 002 | 2 | | 20210421 1532 1590 9604 | | | | |
| Individual Debtor | Date of Birth | First Given Name | | | Initial | Surname | | | |
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| Business Debtor | Business Debtor Name | | | | | Ontario Corporation Number | | | |
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| | Address | | | | City | Province | Postal Code | | |
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| Individual Debtor | Date of Birth | First Given Name | | | Initial | Surname | | | |
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| Business Debtor | Business Debtor Name | | | | | Ontario Corporation Number | | | |
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| | Address | | | | City | Province | Postal Code | | |
| | | | | | | | | | |
| Secured Party | Secured Party / Lien Claimant | | | | | | | | |
| | | | | | | | | | |
| | Address | | | | City | Province | Postal Code | | |
| | 100 CYBERPORT ROAD | | | | | | | | |
| Collateral Classification | Consumer Goods | Inventory | Equipment | Accounts | Other | Motor Vehicle Included | Amount | Date of Maturity or | No Fixed Maturity Date |
| | | | | | | | | | |
| Motor Vehicle Description | Year | Make | | | Model | V.I.N. | | | |
| | | | | | | | | | |
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| General Collateral Description | General Collateral Description | | | | | | | | |
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| Registering Agent | Registering Agent | | | | | | | | |
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LAST PAGE

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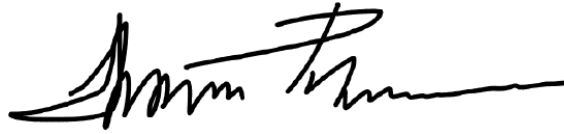


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THIS IS **EXHIBIT "I"** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 4TH DAY OF OCTOBER 2021



A COMMISSIONER FOR TAKING AFFIDAVITS

TO: **ASSET PROFITS LIMITED**

GENERAL SECURITY AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtor, the Debtor hereby agrees as follows:

Definitions and Interpretation

1. In this agreement, the following words shall, unless otherwise provided, have the meanings set out below:

"Business Day" means a day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

"Collateral" means all present and future property, assets and undertaking of the Debtor pledged, assigned, mortgaged, charged, hypothecated or made subject to a security interest pursuant to this agreement;

"Contractual Right" means any agreement, right, franchise, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary;

"Debtor" means Medifocus Inc., and its successors and assigns;

"Intellectual Property" means all patents, trade-marks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest, including without limitation, any trademarks, patents, industrial or intellectual property specifically listed or otherwise described in Schedule "A" hereto;

"Investment Collateral" means all present and future Investment Property (as such term is defined in the PPSA) and Financial Assets (as such term is defined in the STA) of the Debtor, including all present and future options and warrants of the Debtor and all other rights and entitlements arising therefrom or related thereto, and the Debtor's present and future interests in partnerships, limited partnerships, limited liability partnerships and limited liability companies, and including all substitutions for any of the foregoing and dividends and income derived therefrom or payable in connection therewith;

"Notes" means the promissory notes dated as of May 13, 2016, August 1, 2016 and October 30, 2016 issued by the Debtor, as borrower, to the Secured Party, as lender, as each note is amended, supplemented, otherwise modified, restated or replaced from time to time;

"Obligations" means all present and future indebtedness, liabilities and obligations, direct or indirect, absolute or contingent, matured or unmatured, joint or several, of the Debtor to the Secured Party, including without limitation, all such indebtedness, liabilities and obligations pursuant to or in respect of the Notes;

"Permitted Encumbrances" means any and all liens, charges, mortgages, security interests, hypothecs and other encumbrances which affect all or any portion of the Collateral and which have been permitted or consented to in writing by the Secured;

2.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, limited partnership or other entity;

"PPSA" means the *Personal Property Security Act* (Ontario), as amended from time to time and any legislation substituted therefor and any amendments thereto;

"Receiver" means a receiver, receiver-manager and receiver and manager;

"Secured Party" means Asset Profits Limited, and its successors and assigns;

"Security Interest" means the pledges, assignments, mortgages, charges and hypothecations of and the security interests in the Collateral created in favour of the Secured Party hereunder; and

"STA" means the *Securities Transfer Act, 2006* (Ontario), as amended from time to time and any legislation substituted therefor and any amendments thereto.

2. References such as "this agreement", "hereof", "herein", "hereto" and like references refer to this agreement and any schedules, exhibits or appendices attached hereto (all of which schedules, exhibits and appendices form a part of this agreement) and not to any particular section, subsection, paragraph or other subdivision of this agreement.
3. The division of this agreement into sections, subsections and paragraphs and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.
4. Terms used herein which are defined in the PPSA shall have the same meanings herein as are ascribed to such terms in the PPSA, unless such terms are otherwise defined.
5. The word "Debtor", the personal pronoun "it" or "its" and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used. The term "successors" shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders (including the neuter).
6. Nothing herein (including the definition and use of the term Permitted Encumbrances) is intended or shall be deemed to subordinate the Security Interest to any Permitted Encumbrance or any other lien, charge, mortgage, security interest, hypothec or encumbrance affecting all or any portion of the Collateral.
7. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
8. Unless otherwise expressly provided in this agreement, if any matter in this agreement is subject to the determination, consent or approval of the Secured Party or is to be acceptable to the Secured Party, such determination, consent, approval or determination of acceptability will be in the sole discretion of the Secured Party, which means the Secured Party shall have sole and unfettered discretion, without any obligation to act reasonably. If any provision in this agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such

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action. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term "including" shall mean "including, without limitation" and the use of the term "includes" shall mean "includes, without limitation".

9. This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Debtor hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of the courts of the Province of Ontario, provided that nothing herein shall prevent the Secured Party from proceeding at its election against the Debtor in the courts of any other province, country or jurisdiction.

Grant of Security Interest

10. As continuing security for the payment and performance of all Obligations, the Debtor hereby pledges, assigns, mortgages, charges and hypothecates to the Secured Party and grants to the Secured Party a security interest in the following:
 - (a) all present and future equipment of the Debtor, including all of its present and future machinery, fixtures, plant, tools, furniture, books, records, documents, vehicles of any nature, kind or description and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
 - (b) all present and future inventory of the Debtor, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;
 - (c) all present and future intangibles of the Debtor, including all of its present and future accounts and other amounts receivable, book debts, goodwill, Intellectual Property and choses in action of every nature and kind;
 - (d) all present and future documents of title, chattel paper, instruments and money of the Debtor;
 - (e) all present and future Investment Collateral;
 - (f) all present and future real property, personal property, assets, and undertaking of the Debtor of any nature or kind, including all real property, personal property, assets and undertaking at any time owned, leased or licenced by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled (other than the property, assets and undertaking of the Debtor validly pledged or assigned or subjected to a valid mortgage, charge, hypothec or security interest by subsection 10(a), 10(b), 10(c), 10(d) or 10(e) hereof and subject to the exceptions hereinafter contained); and
 - (g) all proceeds arising from the property, assets and undertaking of the Debtor referred to in this section 10, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto.

4.

Limited Exceptions to Grant of Security Interest

11. Despite any other provision of this agreement, the last day of any term reserved by any lease of real property, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, and whether falling within the general or particular description of the Collateral, is hereby and shall be excepted out of the Security Interest, but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of any such term, for the time being demised, as aforesaid, upon trust to assign and dispose of the same as any purchaser of such term shall direct.
12. Despite any other provision of this agreement, the Security Interest shall not attach to any Contractual Right to the extent that the granting of the Security Interest therein would constitute a breach of, or permit any Person to terminate such Contractual Right, but the Debtor shall hold its interest in each such Contractual Right in trust for the Secured Party and shall, after the Security Interest shall have become enforceable, specifically assign each such Contractual Right to the Secured Party, or as the Secured Party may otherwise direct. The Debtor agrees that it shall, upon the request of the Secured Party, whether before or after the Security Interest has become enforceable, use all commercially reasonable efforts to obtain any consent required to permit any such Contractual Right to be subjected to the Security Interest, and the Security Interest shall attach to such Contractual Right following the receipt of such consent.

Attachment

13. The Debtor confirms and agrees that:
 - (a) value has been given by the Secured Party to the Debtor;
 - (b) the Debtor has rights in all existing Collateral and power to transfer rights in the Collateral to the Secured Party; and
 - (c) the Debtor and the Secured Party have not postponed the time for attachment of the Security Interest, and the Security Interest shall attach to existing Collateral upon the execution of this agreement and shall attach to Collateral in which the Debtor hereafter acquires rights at the time that the Debtor acquires rights in such Collateral.

Provisions with respect to Investment Collateral

14. Whenever any Investment Collateral is a certificated security, an uncertificated security or a security entitlement, the Debtor shall, or shall cause the issuer of such Investment Collateral to, or shall cause the securities intermediary that holds such Investment Collateral to, take all steps as are necessary to give exclusive control over such Investment Collateral to the Secured Party in a manner satisfactory to the Secured Party.
15. All certificates representing Investment Collateral may remain registered in the name of the Debtor, but the Debtor shall, promptly at the request of the Secured Party, duly endorse such certificates in blank for transfer or execute stock powers of attorney in respect thereof and deliver such certificates or powers of attorney to the Secured Party; in either case with signatures guaranteed and with all documentation being in form and substance satisfactory to the Secured Party. Upon the request of the Secured Party:
 - (a) the Debtor shall promptly cause the Investment Collateral to be registered in the name of the Secured Party or its nominee, and the Secured Party is hereby appointed the irrevocable attorney (coupled with an interest) of the Debtor with full power of substitution to cause any or all of the Investment Collateral to be registered in the name of the Secured Party or its nominee;

5.

- (b) the Debtor shall promptly cause each securities intermediary that holds any Investment Collateral that is a security entitlement to record the Secured Party as the entitlement holder of such Investment Collateral; and
- (c) the Debtor shall promptly:
 - (i) cause a security certificate to be issued for any Investment Collateral that is in the form of an uncertificated security or a security entitlement;
 - (ii) endorse such security certificate in blank;
 - (iii) deliver such security certificate to the Secured Party; and
 - (iv) take all other steps necessary to give exclusive control over such certificated security to the Secured Party,

in a manner satisfactory to the Secured Party.

16. Until further notice is given by the Secured Creditor to the Debtor terminating such rights of the Debtor, the Debtor shall be entitled to exercise all voting rights attached to the Investment Collateral and give consents, waivers and ratifications in respect thereof; provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be prejudicial to the interests of the Secured Party or which would have the effect of reducing the value of the Investment Collateral as security for the Obligations, or imposing any restriction on the transferability of any of the Investment Collateral. All such rights of the Debtor to vote and give consents, waivers and ratifications shall cease immediately upon receipt by the Debtor of such notice by the Secured Party.
17. All dividends, distributions, interest and other income in respect of Investment Collateral and all proceeds received by the Debtor in respect of Investment Collateral may be received by the Debtor in the ordinary course and distributed in the ordinary course to the Debtor's shareholder or shareholders until further notice by the Secured Party. Upon receipt by the Debtor of such notice, the Debtor shall not be entitled to retain or distribute to its shareholder or shareholders any such dividends, distributions, interest or other income or proceeds and, if any such amounts are received by the Debtor after the Debtor receives such notice by the Secured Party, the Debtor shall hold such amounts in trust, as trustee for the Secured Party, and the Debtor shall forthwith pay such amounts to the Secured Party, to be applied to reduce the Obligations or, at the option of the Secured Party, to be held as additional security for the Obligations.
18. The responsibility of the Secured Party in respect of any Investment Collateral held by the Secured Party shall be limited to exercising the same degree of care which it gives valuable property of the Secured Party at the Secured Party's office where such Investment Collateral is held. The Secured Party shall not be bound under any circumstances to realize on any Investment Collateral or allow any Investment Collateral to be sold, or exercise any option or right attaching thereto, or be responsible for any loss occasioned by any sale of Investment Collateral or by the retention or other refusal to sell the same; nor shall the Secured Party be obliged to collect or see to the payment of interest or dividends thereon but, subject to section 17 hereof, all such interest and dividends, if and when received by the Debtor, shall be held by the Debtor in trust for the Secured Party and shall be forthwith paid to the Secured Party.

Representations and Warranties of the Debtor

19. The Debtor hereby represents and warrants to the Secured Party that:

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- (a) the Debtor has the capacity and authority to incur the Obligations, to create the Security Interest and to execute and deliver and perform its obligations under this agreement;
- (b) the execution and delivery of this agreement and the performance by the Debtor of its obligations hereunder have been duly authorized by all necessary proceedings;
- (c) this agreement constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting creditors' rights and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies;
- (d) except for the Security Interest, the Collateral is owned by the Debtor free from any mortgage, charge, lien, pledge, security interest or other encumbrance or claim whatsoever;
- (e) the chief executive office of the Debtor is located at 130 Adelaide Street West, Suite 906, Toronto, Ontario M5H 3P5;
- (f) the Debtor does not keep tangible Collateral at any location(s) except at SUITE #404, 1090 Don Mills Road, Toronto, Ontario M3C 3R6 and 10240 Old Columbia Rd. Suite G, Columbia, Maryland, 21046 other than tangible Collateral in transit to or from such locations;
- (g) the Debtor has made all necessary filings, registrations and recordations to protect all of its right, title and interest in the Intellectual Property including all relevant renewals; and all such filings, registrations and recordations have been duly and properly made and are in full force and effect and are not subject to dispute by any governmental authority or agency;
- (h) all Contractual Rights relating to or affecting the Intellectual Property are in good standing;
- (i) the Debtor owns directly or is entitled to use by Contractual Right or otherwise all of the Intellectual Property;
- (j) no litigation is pending or threatened which contains allegations respecting the validity, enforceability, infringement or ownership of any of the Intellectual Property, including any of right, title or interest of the Debtor in the Intellectual Property;
- (k) Schedule "A" hereto contains a complete and accurate list of all of the presently registered Intellectual Property of the Debtor, including all registered patents, trademarks and copyrights of the Debtor.

Covenants of the Debtor

20. The Debtor agrees with the Secured Party that, until the Obligations have been satisfied and paid in full:
- (a) it will:
 - (i) pay and satisfy the Obligations when due;

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- (ii) maintain the tangible Collateral in good condition and repair and allow the Secured Party or its agent access to all premises of the Debtor to inspect any and all Collateral;
- (iii) make and maintain all filings, registrations and recordations necessary or desirable to protect its right, title and interest in the Collateral, including all filings, registrations and recordations necessary or desirable in respect of patents, trade-marks, copyrights and industrial designs included in the Intellectual Property;
- (iv) defend the Collateral against any actions, claims and demands of any Person (other than the Secured Party) claiming the Collateral (or any of it) or an interest therein;
- (v) pay all taxes, rates, levies, assessments and other impositions and charges, of every nature and kind, which may now or hereafter be lawfully levied, assessed or imposed on or in respect of the Debtor or the Collateral (or any of it), including those which could result in the creation of a statutory lien or deemed trust affecting the Debtor or the Collateral, as and when the same become due and payable;
- (vi) maintain its corporate existence and file or cause to be filed any returns, documents or other information necessary to preserve such corporate existence;
- (vii) notify the Secured Party of any loss or damage to the Collateral, any change in any information provided in this agreement (including the schedules hereto) or any actual or potential claim affecting the Debtor, the Collateral or the Security Interest;
- (viii) hold the proceeds received from any direct or indirect dealing with the Collateral in trust for the Secured Party after either the Security Interest becomes enforceable or any of the Collateral is sold other than in the ordinary course of business of the Debtor and for the purpose of carrying on such business;
- (ix) obtain from financially responsible insurance companies and maintain:
 - A. public liability insurance,
 - B. all risks property insurance in respect of the Collateral on a replacement cost basis,
 - C. business interruption insurance, and
 - D. insurance in respect of such other risks as the Secured Party may reasonably require from time to time,

and such policies of insurance shall be in such amounts as may be reasonably required by the Secured Party and shall include a standard mortgage clause approved by the Insurance Bureau of Canada; and the Debtor agrees to cause the Secured Party to be noted as first loss payee and first mortgagee on such policies of insurance (except the public liability insurance policy, in respect of which it will cause the Secured Party to be noted as additional insured) and to furnish the Secured Party with certificates of insurance and certified copies of such policies; all

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such policies of insurance shall neither permit nor provide for any amount of co-insurance by the Debtor;

- (x) strictly comply with every covenant and undertaking heretofore or hereafter given by it to the Secured Party, whether contained herein or not;
- (xi) permit the Secured Party at any time and from time to time, both before and after the Security Interest shall have become enforceable, to require any account debtor of the Debtor to make payment to the Secured Party of any or all amounts owing by the account debtor to the Debtor and the Secured Party may take control of any proceeds referred to in subsection 10(g) hereof and may hold all amounts received from any account debtor and any proceeds as cash collateral as part of the Collateral and as security for the Obligations;
- (xii) prevent any Collateral from becoming an accession to any personal property not subject to the Security Interest, or becoming affixed to any real property;
- (xiii) deliver to the Secured Party, at the Secured Party's request, duly endorsed and/or accompanied by such assignments, transfers, powers of attorney or other documents as the Secured Party may request, all items of the Collateral comprising chattel paper, instruments, Investment Collateral and documents of title;
- (xiv) deliver to the Secured Party, at the Secured Party's request, a written agreement from each landlord of the Debtor in favour of the Secured Party and in form and substance satisfactory to the Secured Party, whereby such landlord:
 - A. agrees to give notice to the Secured Party of any default by the Debtor under the Debtor's lease and a reasonable opportunity to cure such default prior to the exercise of any remedies by the landlord; and
 - B. consents to the Security Interest and agrees that the Secured Party shall be entitled to enforce the Security Interest in priority to any right, interest or claim of the landlord in the Collateral;
- (xv) pay, on demand by the Secured Party, all costs and expenses (including all legal fees) incurred by the Secured Party in the preparation, perfection, administration and enforcement of this agreement (including expenses incurred in considering, protecting or improving the Secured Party's position, or attempting to do so, whether before or after default) and all such costs and expenses shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest;
- (xvi) at all times, both before and after the occurrence of a default, do or cause to be done such further and additional acts and things and execute and deliver or cause to be executed and delivered all such further and additional documents and agreements as the Secured Party may reasonably require to better pledge, assign, mortgage, charge and hypothecate the Collateral in favour of the Secured Party, to perfect the Security Interest and, without limiting the generality of the foregoing, to accomplish the intentions of this agreement; and

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- (xvii) preserve the Debtor's rights, powers, licences, privileges, franchises and goodwill, comply with all applicable laws, regulations and orders (including environmental laws, regulations and orders) affecting the Debtor or the Collateral and conduct its business in a proper and efficient manner so as to protect the Collateral, the Security Interest and the business and undertaking of the Debtor; and
 - (xviii) without limiting the generality of any of the forgoing, perform all covenants required of the Debtor under any Contractual Right relating to or affecting the Intellectual Property (or any of it), including promptly paying all required fees, royalties and taxes, to maintain each and every item of Intellectual Property in full force and effect, and vigorously protect, preserve and maintain all of the value of, and all of the right, title and interest of the Debtor in, all Intellectual Property, by way of the prosecution of or defence against suits concerning the validity, infringement, enforceability or ownership of the Intellectual Property (or any of it) or otherwise; and
- (b) it will not, without the prior written consent of the Secured Party:
- (i) incur or create any further or additional indebtedness except to the Secured Party and except such normal indebtedness as may be incidental to the ordinary course of its business;
 - (ii) create any lien upon, assign or transfer as security, or pledge, hypothecate, charge, mortgage or grant a security interest in any Collateral except to the Secured Party and except for Permitted Encumbrances;
 - (iii) other than in the ordinary course of business and for the purpose of carrying on such business, sell, transfer, assign, or otherwise dispose of any Collateral or any group of property and assets forming part of the Collateral if the aggregate consideration for such sale, transfer, assignment or other disposition exceeds \$10,000.00;
 - (iv) guarantee, endorse or otherwise become surety for or upon the obligations of others except to the Secured Party or by endorsement of negotiable instruments for deposit or collection in the ordinary course of the Debtor's business;
 - (v) declare or pay any dividends on or make any other payment or distribution in respect of any shares of its capital stock or make any change in its issued or authorized capital stock either by way of redemption of stock or otherwise;
 - (vi) pay any amount to officers or directors of the Debtor in their capacities as officers or directors by way of salary, bonus, commission, directors' fees or otherwise in excess of the scale of such payments to such officers or directors now being made by the Debtor;
 - (vii) make capital expenditures or incur any debt or liability therefor in excess of \$10,000.00 in the aggregate in any one fiscal year of the Debtor; for the purposes hereof "**capital expenditures**" means any expenditures which in accordance with sound accounting practice are chargeable to capital or fixed asset accounts and includes both such expenditures incurred in connection with the acquisition by purchase, erection or construction of lands, fixed assets, plant, machinery or equipment,

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whether fixed or moveable and the aggregate annual amounts payable under capital or finance leases;

- (viii) lend money to or invest money in any Person, by way of loan, acquisition of shares, acquisition of debt obligations or in any other way whatsoever;
- (ix) enter into or commit itself to enter into a lease or leases of goods under which for all such leases entered into in any fiscal year of the Debtor the aggregate rental payments over the whole of the term of such lease or leases will exceed \$10,000.00;
- (x) change its name;
- (xi) merge or amalgamate with any other corporation;
- (xii) change the location of its chief executive office without providing the Secured Party with thirty (30) Business Days' prior written notice thereof;
- (xiii) keep tangible Collateral at any location other than 10240 Old Columbia Rd. Suite G, Columbia, MD, 21046 without providing the Secured Party with thirty (30) Business Days' prior written notice thereof; or
- (xiv) make payments to any shareholders of the Debtor, or any Persons related to the Debtor or any of its shareholders within the meaning of the *Income Tax Act* (Canada), whether by way of loans, advances, repayment of indebtedness owing by the Debtor, interest on such indebtedness, salaries, dividends, guarantees, compensation or benefits of any kind whatsoever.

Default

21. Without prejudice to any right which the Secured Party may now or hereafter have to demand payment of any of the Obligations, the Obligations shall, at the option of the Secured Party, become payable and the Security Interest shall become enforceable in each and every of the following events:

- (a) if the Debtor defaults in the payment of any of the Obligations when due;
- (b) if the Debtor defaults in the observance or performance of any written agreement or undertaking heretofore or hereafter given by the Debtor to the Secured Party, whether contained herein or not;
- (c) if an order is made or a resolution passed for the winding-up, liquidation or dissolution of the Debtor, or if a petition is presented or filed for the winding-up of the Debtor, whether pursuant to the *Winding-up and Restructuring Act* (Canada) or otherwise;
- (d) if the Debtor ceases or threatens to cease to carry on business or makes a bulk sale of its assets, or if a Receiver or trustee for the Debtor or any of its property or assets is appointed (whether privately or by court order);
- (e) if the Debtor becomes insolvent or commits or threatens to commit any act of bankruptcy or if the Debtor makes an assignment or proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy or if a bankruptcy petition is filed or presented against the Debtor or if the Debtor otherwise becomes subject to proceedings under the *Bankruptcy and Insolvency Act*

11.

(Canada) or any other bankruptcy, insolvency or analogous law in any jurisdiction;

- (f) if any proceedings with respect to the Debtor are commenced under the *Companies' Creditors Arrangement Act* (Canada) or if the Debtor seeks relief or consents to the filing of a petition against it under any law which involves any compromise of any creditor's rights against the Debtor;
- (g) if an execution or any other process of any court becomes enforceable against the Debtor or if a distress or analogous process is initiated or levied against or upon the property of the Debtor or any part thereof;
- (h) if the Debtor permits any sum which has been admitted as due by the Debtor or is not disputed to be due by it and which forms or is capable of being made a charge on any Collateral in priority to the Security Interest to remain unpaid after proceedings have been taken to enforce such charge;
- (i) if any representation or warranty made by the Debtor or any of its officers, employees or agents to the Secured Party shall be false or inaccurate in any material respect;
- (j) if the Debtor defaults in the observance or performance of any provision relating to the indebtedness or liability of the Debtor to any person other than the Secured Party; or
- (k) if any licence, permit or approval required by any law, regulation or governmental policy or any governmental agency or commission for the operation by the Debtor of its business shall be withdrawn or cancelled.

Remedies of the Secured Party

22. Whenever the Security Interest shall have become enforceable, and so long as it shall remain enforceable, the Secured Party may proceed to realize the Security Interest and the Collateral and to enforce its rights by doing any one or more of the following:

- (a) entering upon the Collateral and any lands and premises where any Collateral is or may be located;
- (b) taking possession of Collateral by any method permitted by law;
- (c) occupying any lands and premises owned or occupied by the Debtor and using all or any part of such lands and premises and the equipment and other Collateral located thereon;
- (d) leasing, selling, licensing or otherwise disposing of the whole or any part or parts of the Collateral;
- (e) collecting, selling or otherwise dealing with any accounts or other amounts receivable of the Debtor, including notifying any person obligated to the Debtor in respect of an account, chattel paper or instrument to make payment to the Secured Party of all present and future amounts due thereon;
- (f) taking steps and expending such monies as it considers necessary or desirable in its sole discretion to maintain, preserve and protect the Collateral, including making payments on account of other security interests affecting the Collateral; provided that the Secured Party shall have no obligation to take any such actions

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or make any such expenditures; but any such amounts paid by the Secured Party shall be added to the Obligations and shall be secured by the Security Interest;

- (g) collecting any rents, income, and profits received in connection with the business of the Debtor or the Collateral, without carrying on such business;
- (h) exercising all voting rights attached to any Collateral constituting Investment Collateral (whether or not registered in the name of the Secured Party or its nominee) and giving or withholding all consents, waivers and ratifications in respect thereof and otherwise acting with respect thereto as though it were the absolute owner thereof;
- (i) exercising any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any Collateral constituting Investment Collateral as if it were the absolute owner thereof including the right to exchange at its sole discretion any and all of such Investment Collateral upon the merger, consolidation, reorganization, recapitalization or other readjustment of any issuer thereof, or upon the exercise by any issuer of any right, privilege or option pertaining to any such Investment Collateral, and in connection therewith, to deposit and deliver any such Investment Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine in its sole discretion, all without liability except to account for property actually received by it;
- (j) complying with any limitation or restriction in connection with any proposed sale or other disposition of Collateral constituting Investment Collateral as may be necessary in order to comply with applicable law or regulation or any policy imposed by any stock exchange, securities commission or other governmental or regulatory authority or official, and the Debtor agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, and the Secured Party shall not be liable or accountable to the Debtor for any discount in the sale price of any such Investment Collateral which may be given by reason of the fact that such Investment Collateral are sold in compliance with any such limitation or restriction;
- (k) carrying on the business of the Debtor or any portion thereof;
- (l) exercising any and all of the rights and remedies granted pursuant to the PPSA and any other applicable legislation, or otherwise available at law or in equity;
- (m) demanding, commencing, continuing or defending any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and giving valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the accounts or other amounts receivable of the Debtor or any other obligation of any third party to the Debtor;
- (n) borrowing money for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Debtor, and charge and grant further security interests in the Collateral in priority to the Security Interest or otherwise, as security for the money so borrowed;
- (o) accepting the Collateral in satisfaction of the Obligations;

13.

- (p) appointing by instrument in writing a Receiver or Receivers of the Collateral or any part thereof;
 - (q) bringing proceedings in any court of competent jurisdiction for the appointment of a Receiver or Receivers or for the sale of the Collateral or any part thereof; and
 - (r) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to the Debtor or the Collateral.
23. Any Receiver appointed by the Secured Party may be any person or persons (including one or more officers or employees of the Secured Party), and the Secured Party may remove any Receiver so appointed and appoint another or others instead. Any such Receiver may exercise any and all of the rights, remedies and powers of the Secured Party provided in this agreement. The Secured Party shall not be responsible for the actions, errors or omissions of any Receiver it appoints and any such Receiver shall be deemed to act as agent for the Debtor for all purposes, including the occupation of any lands and premises of the Debtor and in carrying on the Debtor's business, unless the Secured Party expressly specifies in writing that the Receiver shall be agent for the Secured Party for one or more purposes. Without limiting the generality of the forgoing, for the purposes of realizing upon the Security Interest, any Receiver may sell, lease, or otherwise dispose of Collateral as agent for the Debtor or as agent for the Secured Party as the Secured Party may specify in writing in its sole discretion. The Debtor agrees to ratify and confirm all actions of any Receiver appointed by the Secured Party acting as agent for the Debtor, and to release and indemnify the Receiver in respect of all such actions.
24. Without limiting the ability of the Secured Party or any Receiver to dispose of Collateral in any other manner, the Debtor agrees that any sale, lease or other disposition of the Collateral hereunder may be completed by public auction, public tender or private contract, with or without notice, with or without advertising and with or without any other formality (except as required by law), all of which are hereby waived by the Debtor. Any such disposition of Collateral may involve all or part of the Collateral and may be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as the Secured Party or any Receiver appointed by the Secured Party may, in its sole discretion, deem advantageous and may take place whether or not the Secured Party or any such Receiver has taken possession of such Collateral. Any purchaser or lessee of Collateral may be a customer of the Secured Party.
25. The Secured Party shall not be liable for any delay or failure to enforce any rights, powers or remedies available to it or to institute any proceedings for such purposes.
26. No right, power or remedy of the Secured Party (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such rights, powers and remedies may from time to time be exercised independently or in combination.
27. The Debtor agrees to pay to the Secured Party, forthwith on demand by the Secured Party, all costs and expenses incurred by the Secured Party in connection with the exercise by the Secured Party of its rights, powers and remedies hereunder, including:
- (a) any costs and expenses incurred by the Secured Party in taking, holding, moving, storing, recovering, possessing, repairing, processing, preparing for disposition or disposing of Collateral;
 - (b) any legal fees and expenses incurred by the Secured Party in enforcing its rights, powers and remedies, including those incurred in connection with any

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proceedings taken for the purpose of enforcing its rights, powers and remedies hereunder or otherwise relating to the non-payment or non-performance of any Obligations;

- (c) the cost of borrowing amounts as hereinbefore provided (for the purpose of carrying on the Debtor's business or otherwise), including, the principal amount or any such amount borrowed, all interest thereon and fees relating thereto; and
- (d) all costs and expenses of or incurred by any Receiver, agent or consultant appointed by the Secured Party (including any legal fees and expenses incurred by any such Receiver, agent or consultant).

All such sums shall bear interest at the highest rate applicable to the Obligations, shall form part of the Obligations and shall be secured by the Security Interest.

- 28. Any and all payments made in respect of the Obligations from time to time and moneys realized from any Collateral (including moneys realized on any enforcement of this agreement) may be applied to such part or parts of the Obligations as the Secured Party may see fit, and the Secured Party shall at all times and from time to time have the right to change any appropriation as the Secured Party may see fit.
- 29. The Debtor shall remain liable for all Obligations that are outstanding following realization of all or any part of the Collateral.

Rights of the Secured Party

- 30. The Secured Party may pay the whole or any part of any liens, taxes, rates, charges or encumbrances now or hereafter existing in respect of any Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Obligations, shall bear interest at the highest rate applicable to the Obligations, and shall be secured by the Security Interest. Whenever the Secured Party pays any such lien, tax, rate, charge or encumbrance, it shall be entitled to all the equities and securities of the Person or Persons so paid and is hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.
- 31. If the Debtor fails to perform or comply with any covenant or other obligation of the Debtor under this agreement, the Secured Party may, but need not, perform or otherwise cause the performance or compliance of such covenant or other obligation, provided that any performance or compliance undertaken by the Secured Party will not constitute a waiver, remedy or satisfaction of such failure. The costs and expenses of the Secured Party incurred in connection with any such performance or compliance shall be payable by the Debtor to the Secured Party on demand, form part of the Obligations, bear interest at the highest rate applicable to the Obligations and be secured by the Security Interest.
- 32. The Debtor grants to the Secured Party the right to set off against the Obligations (or any portion thereof) any amount owed by the Secured Party to the Debtor, including the amount of any and all accounts, credits or balances maintained by the Debtor with the Secured Party.
- 33. The Secured Party, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Debtor and all other Persons and securities as the Secured Party may see fit.

15.

34. Nothing herein shall obligate the Secured Party to extend or amend any credit to the Debtor or to any other Person.
35. The Secured Party may assign, transfer and deliver to any transferee any of the Obligations or any security or any documents or instruments held by the Secured Party in respect thereof. The Debtor shall not assign any of its rights or obligations hereunder without the prior written consent of the Secured Party.

Amalgamation of Debtor

36. If the Debtor amalgamates with any other corporation or corporations, this agreement shall continue in full force and effect and shall be binding on the amalgamated corporation and, for greater certainty:

- (a) the Security Interest shall:

- (i) continue to secure payment of all obligations of the Debtor to the Secured Party;
- (ii) secure payment of all obligations of each other amalgamating corporation to the Secured Party; and
- (iii) secure payment of all obligations of the amalgamated corporation to the Secured Party arising on or after the amalgamation;

and the term "Obligations" shall include all such obligations of the Debtor, the other amalgamating corporations and the amalgamated corporation;

- (b) the Security Interest shall:

- (i) continue to charge all property and assets of the Debtor;
- (ii) charge all property and assets of each other amalgamating corporation; and
- (iii) charge all property and assets of the amalgamated corporation in existence at the time of the amalgamation and all property and assets acquired by the amalgamated corporation after the amalgamation;

and the term "Collateral" shall include all such property and assets of the Debtor, the other amalgamating corporations and the amalgamated corporation;

- (c) all defined terms and other provisions of this agreement shall be deemed to have been amended to reflect such amalgamation, to the extent required by the context; and
- (d) the parties agree to execute and deliver all such further documents and assurances as may be necessary or desirable in connection with the foregoing.

Notices

37. Any notice, demand or other communication permitted or required to be given hereunder shall be in writing and may be effectively given by delivering it to the address(es) hereinafter set forth or by sending the same by fax to such address(es). Any notice, demand or other communication so given prior to 5:00 p.m. (Toronto time) on a Business Day by personal delivery or by fax shall be deemed to have been given, received and

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made on such Business Day and if so given after 5:00 p.m. (Toronto time) on a Business Day or a day which is not a Business Day, such notice, demand or other communication shall be deemed to have been given, received and made on the next following Business Day. The addresses of the parties for the purposes hereof shall be:

- (a) in the case of the Secured Party, addressed as follows:

Asset Profits Limited

Vistra Corporate Service Centre, Wickhams Cay II,
Road Town Tortola, VG1110, British Virgin Islands

| | |
|---------------|--------------------------------|
| Attention | Michael Cheng |
| Phone Number: | + 852 29602325 |
| Email: | mcheng.pacificlifesc@gmail.com |

- (b) in the case of the Debtor, addressed as follows:

Medifocus Inc.

130 Adelaide Street West, Suite 906, Toronto, Ontario M5H 3P5;

| | |
|---------------|--------------------|
| Attention | Raymond Tong |
| Phone Number: | +852 9104 8191 |
| Email: | rtong@asia-hmi.com |

Either party may from time to time notify the other, in accordance with the provisions hereof, of any change of address which thereafter, until changed by like notice, shall be the address of such party for all purposes of this agreement.

Miscellaneous

38. In the event that any day, on or before which any action is required to be taken hereunder, is not a Business Day, then such action shall be required to be taken on or before the first Business Day thereafter.
39. Time shall be of the essence of this agreement.
40. Upon payment and fulfillment by the Debtor, its successors or permitted assigns, of all Obligations and provided that the Secured Party is then under no obligation (conditional or otherwise) to make any further loan or extend any other type of credit to the Debtor or to any other Person, the payment of which is secured, directly or indirectly, by this agreement, the Secured Party shall, upon request in writing by the Debtor, delivered to the Secured Party at the Secured Party's address as set out above and at the Debtor's expense, discharge this agreement.
41. This agreement is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and shall be general and continuing security notwithstanding that the Obligations shall be at any time or from time to time fully satisfied or paid.
42. The Secured Party may in writing (and not otherwise) waive any default by the Debtor in the observance or performance of any provision of this agreement; provided that no waiver by the Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent default, whether of the same or a different nature, or the rights resulting therefrom.

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43. This agreement shall enure to the benefit of the Secured Party, its successors and assigns, and shall be binding on the Debtor, its successors and permitted assigns.
44. The Debtor agrees that the Secured Party may from time to time provide information concerning this agreement (including a copy hereof), the Collateral and the Obligations to any Person the Secured Party in good faith believes is entitled thereto pursuant to applicable legislation.
45. The Debtor acknowledges receipt of an executed copy of this agreement.

IN WITNESS WHEREOF this agreement has been executed by the Debtor as of the 21st day of April, 2021.

MEDIFOCUS INC.

By: _____


Name: Raymond Tong
Title: Director

I have authority to bind the corporation.

SCHEDULE "A"**COPYRIGHTS**

| Title | Reg. No. | Reg. Date |
|-------|----------|-----------|
| NONE | | |
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PATENTS

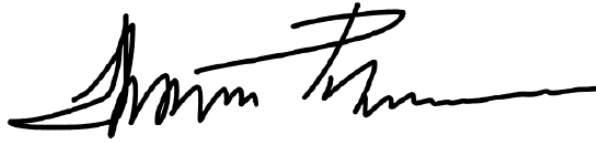
| Patent Title | Patent No. | Reg. Date | Filing Date |
|--|------------|------------|-------------|
| INDUCTION HEATING FOR THE DELIVERY OF THERMAL THERAPY | 6895282 | 5/17/2005 | 10/4/2002 |
| ADJUSTABLE PROFILE PROBE | 8123705 | 4/26/2007 | 10/6/2005 |
| APPARATUS FOR TREATMENT OF TISSUE ADJACENT A BODILY CONDUIT WITH A GENE OR DRUG-COATED COMPRESSION BALLOON | 7837720 | 11/23/2010 | 5/13/2003 |
| DEVICE AND METHOD FOR TREATMENT OF TISSUE ADJACENT A BODILY CONDUIT BY THERMOCOMPRESSSION | 6958075 | 3/20/2003 | 9/18/2001 |
| DEVICE FOR TREATMENT OF TISSUE ADJACENT A BODILY CONDUIT BY THERMOCOMPRESSSION | 7811313 | 10/12/2010 | 6/30/2004 |
| DEVICE AND METHOD FOR TREATMENT OF TISSUE ADJACENT A BODILY CONDUIT BY THERMOCOMPRESSSION | 8221413 | 7/17/2012 | 6/30/2004 |
| DRUG DELIVERY | 8224455 | 7/17/2012 | 10/12/2010 |
| METHOD AND APPARATUS TREATING TISSUE ADJACENT A BODILY CONDUIT WITH THERMOCOMPRESSSION AND DRUGS | 7833220 | 11/16/2010 | 5/13/2005 |

| Patent Title | Patent No. | Reg. Date | Filing Date |
|---|------------|-----------|-------------|
| INDUCTION HEATING FOR THE DELIVERY OF THERMAL THERAPY | 8412346 | 4/2/2013 | 2/14/2012 |
| INDUCTION HEATING FOR THE DELIVERY OF THERMAL THERAPY | 8140169 | 3/20/2012 | 4/5/2005 |
| THERMAL MONITORING | 8414501 | 4/9/2013 | 12/23/2008 |
| THERMAL MONITORING | 8409110 | 4/2/2013 | 9/26/2008 |
| PRE-CONDITIONING/FIXATION FOR DISEASE TREATMENT HEAT ACTIVATION/RELEASE WITH THERMO-ACTIVATED DRUGS AND GENE PRODUCTS | 8476242 | 7/2/2013 | 9/27/2006 |
| APPARATUS AND METHOD FOR PRE-CONDITIONING/FIXATION AND TREATMENT OF DISEASE WITH HEAT ACTIVATION/RELEASE WITH THERMOACTIVATED DRUGS AND GENE PRODUCTS | 8765116 | 7/1/2014 | 11/17/2005 |
| Drug Delivery | 8374702 | 2/12/2013 | 6/14/2012 |

TRADEMARKS

| Mark | Reg. No. | Reg. Date | Serial No. | Filing Date |
|----------|----------|-----------|------------|-------------|
| TUTD | 5966214 | 1/21/2020 | 88505852 | 7/9/2019 |
| PROLIEVE | 3055964 | 1/31/2006 | 76563240 | 12/4/2003 |
| | | | | |
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THIS IS **EXHIBIT “J”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 4TH DAY OF OCTOBER 2021

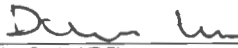
A handwritten signature in black ink, appearing to be 'Sharon Fung', written over a horizontal dashed line.

A COMMISSIONER FOR TAKING AFFIDAVITS

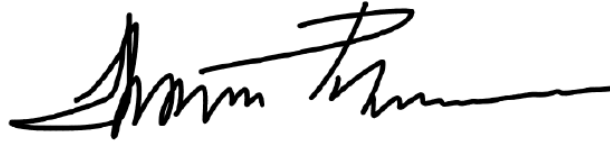
In the Matter of the Proposal of Medifocus Inc.
Cash Flow Statement (in US dollars)
For the 13-week period ending November 26, 2021

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

Dated the 16th day of September, 2021.


Douglas G. Liu, VP Finance
Medifocus Inc.

THIS IS **EXHIBIT “K”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 4TH DAY OF OCTOBER 2021



A COMMISSIONER FOR TAKING AFFIDAVITS

INTERIM CREDIT FACILITY TERM SHEET

WHEREAS on September 8, 2021, the Borrower (as defined below) commenced proposal proceedings pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**") and msi Spergel Inc. was appointed as the Trustee acting *in re* the proposal of the Borrower (in such capacity, the "**Proposal Trustee**") (the "**BIA Proceedings**");

AND WHEREAS the Borrower has advised the Lender that, prior to the expiry of the initial 30 day statutory stay of proceedings under the BIA, it intends to seek an order, among other things, converting and continuing the Insolvency Proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") to restructure its debts and affairs (the "**CCAA Proceedings**" and together with the BIA Proceedings, the "**Insolvency Proceedings**") pursuant to an initial order (as amended and restated, the "**Initial Order**") of the Ontario Superior Court of Justice, Commercial List (the "**Court**");

AND WHEREAS it is intended that the Proposal Trustee will be appointed Monitor of the Borrower (in such capacity, the "**Monitor**") in the CCAA Proceedings;

AND WHEREAS the Borrower has requested that the DIP Lender (as defined below) provide financing to fund certain cash requirements of the Borrower during the pendency of the Insolvency Proceedings;

AND WHEREAS the DIP Lender is willing to provide the DIP Loan herein to the Borrower in accordance with the terms and conditions set out in this Term Sheet.

NOW THEREFORE in consideration of the mutual covenants, terms and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

| | |
|--------------------------|--|
| Borrower: | Medifocus Inc. (the " Borrower ") |
| Lender: | Asset Profits Limited (the " DIP Lender ") |
| Type of DIP Loan: | A super-priority, debtor-in-possession interim, non-revolving credit facility up to a maximum amount of CDN \$700,000 (the " DIP Loan "), to be available to the Borrower, subject to and in accordance with the terms herein. |
| Currency: | Except as otherwise expressly provided herein, all dollar amounts herein are in Canadian Dollars. All payments made hereunder shall be made in the currency in respect of which the obligation requiring such payment arose. |
| Availability: | Subject to the fulfillment of the applicable conditions precedent to the availability of the DIP Loan set out herein and provided that no Event of Default (as defined below) has occurred and is then continuing, then the DIP Loan shall be advanced by the DIP Lender. |
| Advances: | Advances under the DIP Loan (collectively " Advances " and individually an " Advance ") shall be deposited into the Deposit Account and utilized by the Borrower in accordance with the Agreed Budget and the terms hereof. " Deposit Account " means |

the account(s) maintained by the Borrower to which payments and transfers under the Term Sheet are to be deposited, which are specified in writing by the Borrower to the DIP Lender or such other account or accounts as the Borrower may from time to time designate by written notice to the DIP Lender.

Purpose, Use of Proceeds:

The proceeds of the DIP Loan will be used to fund cash flow requirements of the Borrower on a going concern basis.

Court Officer:

The Proposal Trustee, or the Court-appointed monitor in the CCAA Proceedings, shall be msi Spergel Inc. (in such capacity, the "**Monitor**"). The Proposal Trustee or the Monitor, as the case may be, shall be authorized to have direct discussions with the DIP Lender, and the DIP Lender shall be entitled to receive information from the Proposal Trustee or the Monitor, as the case may be, as may be requested by the DIP Lender from time to time. The Borrower represents and warrants that counsel for the Proposal Trustee or the Monitor is Aird & Berlis LLP.

Termination Date:

The maturity of the DIP Loan (the "**Termination Date**") shall be the earliest of:

- (a) Six (6) months following the initial Advance hereunder or such other date agreed to by the DIP Lender in its sole discretion, subject to the ability of the Borrower, with the reasonable consent of the DIP Lender to extend the Termination Date for an additional three (3) months period by notice in writing to the DIP Lender delivered prior to the expiry of the initial six months term;
- (b) the effective date of any merger, amalgamation, consolidation, arrangement, reorganization, recapitalization, sale or any other transaction affecting all or a material part of its assets or operations or resulting in the change of ownership or control of the Borrower confirmed by the Court and satisfactory to the DIP Lender (any of the foregoing being a "**Transaction**");
- (c) the date on which the stay of proceedings provided for in the BIA Proceedings or the CCAA Proceedings, as the case may be, is dismissed or terminated or the date on which either of the Borrower becomes bankrupt or the stay is lifted to allow a filing of bankruptcy petition under the BIA, receivership or similar insolvency proceeding is not otherwise stayed; and
- (d) the date of the acceleration of the DIP Loan and the termination of the commitment with respect to the DIP

Loan as a result of an Event of Default hereunder (as defined herein).

All outstanding amounts under the DIP Loan, together with all interest accrued in respect thereof and all other amounts owing under this DIP Term sheet shall be payable in full on the Termination Date.

Interest Rate:

All amounts outstanding under the DIP Loan will bear interest at a rate of 9.0% *per annum*, on the daily balance outstanding under the DIP Loan.

Interest accrues and shall be due and payable on the Termination Date without further notice, protest, demand or other act on the part of the DIP Lender.

Repayment:

Unless otherwise repaid as contemplated herein, the DIP Loan shall be due, owing, payable and repaid on the Termination Date without further notice, protest, demand or other act on the part of the DIP Lender.

Mandatory Prepayments:

Unless otherwise consented to by the DIP Lender, the DIP Loan shall be repaid in full of the net proceeds of any Transaction involving the Borrower.

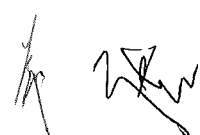
Representations and Warranties: The Borrower represents and warrants to the DIP Lender as of the date hereof, and as of the date of each advance under the DIP Loan that:

- (a) the Borrower is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power to carry on business as now and formerly conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to constitute a material adverse effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required; and
- (b) the execution, delivery and performance, as applicable, of the DIP Term Sheet has been duly authorized by all actions, if any, required on the part and by the Borrower's directors, and constitutes a legal, valid and binding obligation of the Borrower enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, moratorium and other similar laws of general application that limit the enforcement of creditors' rights generally and to general equitable principles.

Covenants:

The Borrower covenants and agree that:

- (a) the Borrower shall pay all amounts and satisfy all obligations in respect of the DIP Loan;
- (b) the Borrower shall not undertake any actions with respect to their respective assets, business operations and/or capital structure which would, in the sole determination of the DIP Lender, have a material adverse effect on the Borrower or the Collateral (as defined below);
- (c) the Borrower shall not incur any indebtedness, including the giving of guarantees, other than indebtedness specifically contemplated hereby or permitted in writing by the DIP Lender;
- (d) the Borrower shall not incur, create, assume or suffer to exist any lien, charge, security interest or other encumbrance on any Collateral now owned or hereafter acquired other than: (i) those encumbrances existing as at the date of the initial order granted in the CCAA Proceedings or permitted by the DIP Lender in its sole discretion, and (ii) the DIP Lender's Charge (defined below);
- (e) the Borrower shall not enter into any other credit facility or loan arrangements that would be secured in priority to or *pari passu* with the DIP Loan;
- (f) the Borrower shall not enter into any Transaction without the prior written consent of the DIP Lender;
- (g) without the prior written consent of the DIP Lender, the Borrower shall not: (i) declare or pay any dividends on, or make any other payments or distributions (whether by reduction of capital or otherwise) with respect to any of its respective issued and outstanding share or other equity interests, or (ii) make any loans;
- (h) the Borrower shall not sell any of their assets outside of the ordinary course of business without the prior written consent of the DIP Lender; and
- (i) the Borrower shall promptly pay all DIP Expenses (as defined below), including all legal and advisory fees and expenses, of the DIP Lender as such DIP Expenses are incurred and invoiced to the Borrower.

Handwritten signatures in black ink, appearing to be initials or names, located at the bottom right of the page.

Security:

As continuing security for the prompt payment of all amounts payable by the Borrower to the DIP Lender under the DIP Term Sheet and as continuing security for the due and punctual performance by the Borrower of its existing and future obligations (the “**DIP Obligations**”) pursuant to the DIP Term Sheet, the Borrower hereby grants, conveys, assigns, transfers, mortgages and charges as and by way of a fixed and specific security interest, to and in favour of the DIP Lender all of its property, assets, rights and undertaking, real and personal, moveable or immovable, tangible and intangible, legal or equitable, of whatsoever nature and kind, whatsoever locate, both present and future, now or hereinafter owned or acquired (collectively, the “**Collateral**”), including, without limitation, all real and immovable property (including leasehold lands) now or hereafter owned or acquired by such Borrower.

The DIP Obligations shall be subject to a fully perfected Court-ordered super-priority charge (the “**DIP Lender’s Charge**”) over the Collateral, in priority to any security interests, claims, trusts or deemed trusts (statutory or otherwise) without any requirements to effect *Personal Property Security Act* Ontario registrations.

Events of Default:

An “**Event of Default**” shall include, without limitation, the following:

- (a) the Borrower defaults in the payments of any amount due and payable to the DIP Lender (whether of principal, interest or otherwise) pursuant to DIP Term Sheet;
- (b) any representations and warranties made by the Borrower in the DIP Term Sheet proves to be incorrect as of the date given;
- (c) the Borrower fails or neglects to observe or perform any term, covenant, condition or obligation contained or referred to in the DIP Term Sheet or any other document between the Borrower and the DIP Lender;
- (d) the stay of proceedings provided for by virtue of the CCAA Proceedings expires without being extended, the CCAA Proceedings are dismissed or terminated or the Borrower becomes subject to a proceeding under the BIA or a receivership or similar insolvency proceeding;
- (e) the entry of an order staying, amending, reversing, vacating or otherwise modifying, in each case without the prior written consent of the DIP Lender, the DIP Loan,

the DIP Order or any other order granted by the Court in the CCAA proceedings; or

- (f) the Borrower undertakes any actions with respect to its assets, business operations and/or capital structure which would, in the sole determination of the DIP Lender, have a material adverse effect on the Borrower or the Collateral.

Upon the occurrence of an Event of Default, and in accordance with the notice terms of the Initial Order, all indebtedness of the Borrower to the DIP Lender shall become immediately due and payable and the DIP Lender may take all steps necessary to enforce its security.

The DIP Lender shall also have the right to exercise all other customary remedies, including, without limitation, the right to enforce and realize on all Collateral.

Conditions Precedent, to Advance of DIP Loan

The conditions precedent for making the DIP Loan available to the Borrower, include, without limitation:

- (a) the representations and warranties made by the Borrower in this DIP Loan Term Sheet being true and correct as of the date given; and
- (b) issuance of an order by the Court (the “**DIP Order**”), satisfactory in form and substance to the DIP Lender in its sole discretion, approving the DIP Loan, granting the DIP Lender’s Charge with the priority contemplated herein and authorizing the payment by the Borrower of all of the fees and expenses in respect of the DIP Loan, unless otherwise agreed to by the DIP Lender in its sole discretion.

Illegality:

In the event that it becomes illegal for the DIP Lender to lend or continue to lend, the DIP Lender will be repaid and/or the DIP Lender’s commitment will be cancelled.

Taxation:

All payments of principal, interest and fees will be made free and clear of all present and future taxes, levies, duties or other deductions of any nature whatsoever, levied either now or at any future time.

Fees and Expenses:

The Borrower shall pay all of the DIP Lender's out-of-pocket expenses (including the fees and expenses of its counsel and advisors), whether or not any of the transactions contemplated hereby are consummated and whether incurred prior to or after the date of the DIP Order, as well as all expenses of the DIP Lender in connection with the ongoing monitoring, interpretation, administration, protection and enforcement of the DIP Loan and continuation of the CCAA proceedings and the enforcement of any and all of its remedies at law (collectively, the "DIP Expenses").

Governing Law, Jurisdiction:

Laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario. The Borrower agree to submit to the non-exclusive jurisdiction of the courts of the CCAA Court.

Amendments, Waivers, Etc.:

No amendment or waiver of any provisions of this Term Sheet or consent to any departure by the Borrower from any provision thereof is effective unless it is in writing and signed by the DIP Lender (and in the case of amendments, the Borrower). Such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

Notices:

Any notice, request, consent, waiver or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or direct electronic transmission, including email, pdf email or "DocuSign" to such Person at its address set out on its signature page hereof. Any such notice, request or other communication hereunder shall be concurrently sent to the Monitor and its counsel. Any such notice shall be deemed to be given and received when received, unless received after 5:00 Eastern Time or on a day other than a business day, in which case such notice, request, consent, waiver or other communication shall be deemed to be received on the next following business day.

Entire Agreement:

This Term Sheet constitutes the entire agreement between the parties hereto pertaining to the matters therein set forth and supersede and replace any prior understandings or arrangements pertaining to the DIP Loan. There are no warranties, representations or agreements between the parties in connection with such matters except as specifically set forth herein or in this Term Sheet.

**Counterparts and
Facsimile Signatures:**

This Term Sheet may be executed in any number of counterparts, each of which when taken together shall constitute one and the same instrument. Any counterpart of this Term Sheet

can be executed and delivered by any manner of direct electronic transmission including without limitation "pdf email" or "DocuSign", each of which shall be deemed to be an original hereof.

[Remainder intentioned left blank; Signature page follows]

A handwritten signature in black ink, consisting of a stylized 'A' followed by a series of loops and a final flourish.

IN WITNESS HEREOF, the parties hereby execute this Term Sheet as of the date first written above.

Address:

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

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

MEDIFOCUS INC.

By: 

Name: RAYMOND TONG

Title: DIRECTOR

With a copy to:

msi Spergel Inc.

505 Consumers Road, Suite 200
Toronto, Ontario
M2J 4V8

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

Address:

Vistra Corporate Service Centre, Wickhams
Cay II, Road Town Tortola, VG1110, British
Virgin Islands

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

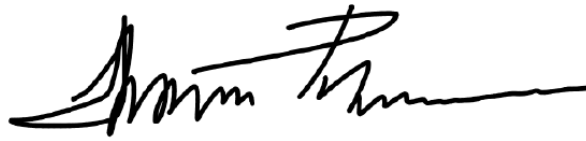
ASSET PROFITS LIMITED

By: 

Name: Michael Cheng

Title: Authorized Representative

THIS IS **EXHIBIT “L”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 4TH DAY OF OCTOBER 2021

A handwritten signature in black ink, appearing to read 'Sharon P.', is written above a dashed line.

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 “M”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 4TH DAY OF OCTOBER 2021



A COMMISSIONER FOR TAKING AFFIDAVITS

Asset Profits Limited and/or its permitted assignee

the Purchaser

and

Medifocus Inc.

the Vendor

STALKING HORSE ASSET PURCHASE AGREEMENT

October 5, 2021

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STALKING HORSE ASSET PURCHASE AGREEMENT

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

RECITALS:

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

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

ARTICLE 1 INTERPRETATION

Section 1.1 **Defined Terms.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Employee Plan” means all:

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

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

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

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

“Excluded Assets” has the meaning specified in Section 2.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Notice” has the meaning specified in Section 11.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1.2 References and Usage.

Unless expressly stated otherwise, in this Agreement:

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

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

Section 1.3 Headings, etc.

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

Section 1.4 Schedules.

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

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

ARTICLE 2 PURCHASE AND SALE

Section 2.1 Purchased Assets.

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

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

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

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

Section 2.2 Excluded Assets.

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

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

Section 2.3 Assumed Liabilities.

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

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

Section 2.4 Assignment and Assumption of Consent Required Contracts.

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

ARTICLE 3 PURCHASE PRICE

Section 3.1 Purchase Price.

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

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

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

Section 3.2 Payment of the Purchase Price.

The Purchaser shall pay and satisfy the Purchase Price:

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

Section 3.3 Purchase Price Allocation.

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

Section 3.4 No Effect on Other Rights.

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

ARTICLE 4 TAX MATTERS

Section 4.1 Transfer Taxes.

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

Section 4.2 Tax Elections.

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

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

Section 5.1 Representations and Warranties of the Vendor.

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

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

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

Section 5.2 Representations and Warranties of the Purchaser.

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

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

Section 5.3 No Other Representations or Warranties.

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

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

Section 5.4 AS IS, WHERE IS.

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

ARTICLE 6 PRE-CLOSING COVENANTS OF THE PARTIES

Section 6.1 Access by Purchaser.

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

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

Section 6.2 Access by Monitor.

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

Section 6.3 Title and Risk.

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

Section 6.4 Employees.

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

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

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

Section 6.5 Notices and Requests for Consents.

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

Section 6.6 Transfer of the Purchased Assets.

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

Section 6.7 Actions to Satisfy Closing Conditions.

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

ARTICLE 7 SALES PROCESS

Section 7.1 Compliance with Sale Process.

The Parties each agree to comply with the Sale Process.

Section 7.2 Expense Reimbursement.

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

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

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

ARTICLE 8 CONDITIONS OF CLOSING

Section 8.1 **Conditions for the Benefit of the Purchaser.**

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

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

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

Section 8.2 Conditions for the Benefit of the Vendor.

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

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

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

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

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

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

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

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

ARTICLE 9 CLOSING

Section 9.1 Date, Time and Place of Closing.

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

Section 9.2 Closing Procedures.

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

Section 9.3 Monitor's Certificate.

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

ARTICLE 10 TERMINATION

Section 10.1 Termination Rights.

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

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

Section 10.2 Effect of Termination.

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

ARTICLE 11 MISCELLANEOUS

Section 11.1 Notices.

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

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

VG1110,
British Virgin Islands

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

with a copy by email to:

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

Attn: Le Nguyen
Email: lnguyen@llf.ca

(b) to the Vendor at:

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

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

with a copy by email to:

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

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

(c) to the Monitor at:

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

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

with a copy by email to:

Aird & Berlis LLP

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

Attn: Kyle Plunkett
Email: kplunkett@airdberlis.com

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

Section 11.2 Time of the Essence.

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

Section 11.3 Third Party Beneficiaries.

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

Section 11.4 Expenses.

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

Section 11.5 Amendments.

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

Section 11.6 Waiver.

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

Section 11.7 Entire Agreement.

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

Section 11.8 Successors and Assigns.

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

Section 11.9 Severability.

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

Section 11.10 Governing Law and Jurisdiction.

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

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

Section 11.11 Counterparts.

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

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

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

ASSET PROFIT LIMITED

By:

Authorized Signing Officer

MEDIFOCUS INC.

By:

Authorized Signing Officer

SCHEDULES

Schedule 1.1(a) – Excluded Contracts

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

Schedule 1.1(b) – Excluded Liabilities

Any Liabilities in relation to the Excluded Assets.

Schedule 1.1(c) – Sale Process

See Attached.

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 2.2(d) – Excluded Assets

The Excluded Assets shall include:

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

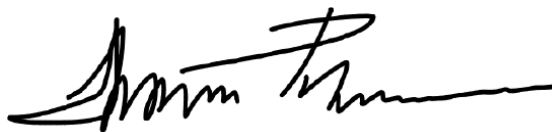
Schedule 3.3 – Purchase Price Allocation

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

Schedule 5.1(e) – Priority Amounts

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

THIS IS **EXHIBIT “N”** REFERRED TO IN THE
AFFIDAVIT OF RAYMOND TONG SWORN BEFORE ME,
THIS 4TH DAY OF OCTOBER 2021

A handwritten signature in black ink, appearing to read 'Sharon P. ...', is written above a dashed horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

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

CONSENT

msi Spergel inc., of the City of Toronto, Ontario, hereby consents to act as the court-appointed monitor of Medifocus Inc. pursuant to the terms of an order substantially in the form filed in the above proceeding.

DATED at Toronto, this 28th day of September, 2021.

msi Spergel inc., solely in its capacity as
Monitor and not in its personal capacity

Per:



Name: Mukul Manchanda

Title: Managing Partner

I have the authority to bind the corporation

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

Court File No. 31-2764805

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

CONSENT

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
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Toronto, Ontario M5J 2T9

Kyle B. Plunkett (LSO # 61044N)

Tel: (416) 865-3406

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Email: kplunkett@airdberlis.com

Miranda Spence (LSO # 60621M)

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: mspence@airdberlis.com

Lawyers for msi Spergel inc.

TAB 3

Court File No. _____

**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 APPLICATION

TO THE RESPONDENT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on October 7, 2021 at 11 a.m. by the Court by video conference.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant’s lawyer, or where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your other lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant’s lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: September 28, 2021

Issued by: _____

Address of court office:

Ontario Superior Court of Justice
(Commercial List)
330 University Avenue,
Toronto, ON M5G 1R8

TO: THIS HONOURABLE COURT

AND TO: THE ATTACHED SERVICE LIST AT SCHEDULE “A”

APPLICATION

THE APPLICANT MAKES AN APPLICATION FOR:

1. An Order, substantially in the form attached as Tab 4 of the Motion Record of Medifocus Inc. returnable October 7, 2021; and
2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS APPLICATION ARE:

3. Medifocus Inc. (“**Medifocus**”) is insolvent and has committed an act of bankruptcy;
4. The Applicant is a company to which the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) applies;
5. The Applicant has liabilities in excess of \$5 million;

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

6. The Affidavit of Raymond Tong, to be sworn;
7. The consent of msi Spergel Inc. to act as Monitor in the CCAA proceedings;
8. The First Report of the Proposed Monitor, to be filed;
9. Such further and other evidence as counsel may advise and this Honourable Court may permit.

September 28, 2021

WEISZ FELL KOUR LLP

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

Caitlin Fell (LSO No. 60091H)

Email: cfell@wfklaw.ca
Tel: 416.613.8282

Pat Corney (LSO No. 65462N)

Email: pcorney@wfklaw.ca
Tel: 416.613.8287

Shaun Parsons (LSO No. 81240A)

Email: sparsons@wfklaw.ca
Tel: 416.613.8284

Fax: 416.613.8290

Lawyers for Medifocus Inc.

SCHEDULE “A”
Service List

Court File No. 31-2764805

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

SERVICE LIST
(September 28, 2021)

| | |
|---|---|
| <p>MEDIFOCUS INC. 10240 Old Columbia Rd., Suite G Columbia, MD USA 21046</p> <p>Attention: Dr. Raymond Tong, Director Email: rtong@asia-hmi.com</p> | <p>WEISZ FELL KOUR LLP 200 Bay Street, Suite 2305 Toronto, ON M5J 2J3</p> <p>Caitlin Fell LSO No. 60091H Email: cfell@wfklaw.ca Tel: 416.613.8282</p> <p>Shaun Parsons LSO No. 81240A Email: sparsons@wfklaw.ca Tel: 416.613.8284</p> <p>Fax: 416.613.8290</p> <p>Lawyers for Medifocus Inc.</p> |
|---|---|

| | |
|---|--|
| <p>MSI SPERGEL INC. 200 – 505 Consumers Rd. Toronto, ON M2J 4V8</p> <p>Mukul Manchanda Tel: 416.498.4314 Email: mmanchanda@spergel.ca</p> <p>Fax: 416.494.7199</p> <p>Proposed Monitor</p> | <p>AIRD BERLIS LLP Brookfield Place 181 Bay St #1800 Toronto, ON M5J 2T9</p> <p>Kyle Plunkett Email: kplunkett@airdberlis.com Tel: 416.865.3406</p> <p>Miranda Spence Email: mspence@airdberlis.com Tel: 416.865.3414</p> <p>Fax: 416.863.1515</p> <p>Lawyers for the Proposed Monitor</p> |
| <p>LLF LAWYERS LLP 332 Aylmer St. N. Peterborough, ON K9H 3V6</p> <p>Le Nguyen Email: lnguyen@llf.ca Tel: 705.742.1674 x 231</p> <p>Fax: 705.742.4677</p> <p>Lawyers for Asset Profits Ltd</p> | <p>JUSTICE CANADA 120 Adelaide Street West, Suite #400 Toronto, ON M5H 1T1</p> <p>Diane Winters Email: diane.winters@justice.gc.ca Tel: 647.256.7459</p> <p>Fax: 416.973.0810</p> |
| <p>INSOLVENCY UNIT ONTARIO MINISTRY OF FINANCE 6th Floor - 33 King Street West Oshawa, ON L1H 8H5</p> <p>Email: insolvency.unit@ontario.ca</p> | |

ELECTRONIC SERVICE LIST

rtong@asia-hmi.com; cfell@wfkllaw.ca; sparsons@wfkllaw.ca; mmanchanda@spergel.ca;
kplunkett@airdberlis.com; mspence@airdberlis.com; Inguyen@llf.ca;
diane.winters@justice.gc.ca; insolvency.unit@ontario.ca;

DOCUMENT CENTRE WEBSITE

<https://www.spergelcorporate.ca/engagements/medifocus-inc/>

TAB 4

Court File No.

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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Lawyers for Medifocus Inc.

TAB 5

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'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) ~~(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.

Court File No.

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

INITIAL ORDER

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Lawyers for Medifocus Inc.

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

Court File No. 31-2764805

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

MOTION RECORD

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