

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

**THIRD REPORT OF MSI SPERGEL INC. IN ITS CAPACITY AS
MONITOR OF MEDIFOCUS INC.**

February 3, 2022

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I. INTRODUCTION

1. On September 8, 2021 (the “**Filing Date**”), Medifocus Inc. (“**Medifocus**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.-3, as amended (the “**BIA**”), and msi Spergel inc. (“**MSI**”) was appointed as proposal trustee (in such capacity, the “**Proposal Trustee**”) under the NOI (the “**NOI Proceedings**”).
2. On October 7, 2021, the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Order (the “**Initial Order**”), among other things,
 - (a) converting the NOI Proceedings into proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in order to allow for the completion of its restructuring process under the CCAA and providing the Company with a stay of proceedings through to and including January 7, 2022 (the “**Stay Period**”);
 - (b) terminating MSI’s appointment as Proposal Trustee and appointing MSI as Monitor of the Company under the CCAA proceedings (in such capacity, the “**Monitor**”);
 - (c) approving the Sale Process and the Stalking Horse Agreement (each as defined in the Initial Order);
 - (d) approving the Administration Charge (as defined in the Initial Order) to secure payment of the fees and expenses of the Monitor, the Monitor’s Counsel and counsel to the Company; and

- (e) approving interim financing and the DIP Lender's Charge (as defined in the Initial Order).
3. A copy of the Initial Order is attached hereto as **Appendix "A"**.
 4. The Monitor engaged Aird & Berlis LLP as its independent legal counsel (the "**Monitor's Counsel**").
 5. Further details regarding the Company and background leading up to the Filing Date as well as updates on the steps taken by the Company and the Monitor since the Filing Date can be found in the First Report of the Proposal Trustee (and the Proposed Monitor) dated October 5, 2021 (the "**First Report**") and the Second Report of the Monitor dated January 4, 2022 (the "**Second Report**"), respectively.
 6. The Initial Order approved the Sale Process which included a transaction contemplated by the Stalking Horse Agreement between the Company, as vendor, and Asset Profits Limited and/or its permitted assignee, as purchaser ("**APL**" or the "**Stalking Horse Bidder**"). The Monitor administered all aspects of the Sale Process with assistance of the Company.
 7. The Second Report provided details of the Sale Process conducted by the Monitor. As noted in the Second Report:
 - (a) In accordance with the Initial Order, within five (5) calendar days of the Sale Process being approved by the Court, the Monitor published a notice advertising the opportunity in the Globe and Mail. In addition, the Monitor published a notice advertising the opportunity in the Washington Post and the Baltimore Sun;

- (b) In addition to the above, the Monitor published a notice advertising the opportunity in the Insolvency Insider and on the Monitor's Case Website;
 - (c) Three Interested Parties advised the Monitor that they wished to commence due diligence. Only 2 of the 3 Interested Parties executed a non-disclosure agreement ("**NDA**");
 - (d) Upon execution of the NDA, the Monitor provided access to the virtual data room established and maintained by the Monitor. The data room was populated by the Monitor with the assistance of the Company;
 - (e) Binding APAs were due in writing to the Monitor by no later than 5:00pm (EST) on November 22, 2021 (the "**Bid Deadline**"). No such Binding APAs (with the exception of the Stalking Horse Agreement) were received by the Bid Deadline.
 - (f) Pursuant to the Sale Process, the Stalking Horse Agreement was deemed to be a Binding APA; and
 - (g) As there were no other bids received by the Bid Deadline, the Stalking Horse Agreement was declared to be the Successful Bid (as defined in the Sale Process).
8. On January 7, 2022, the Honourable Justice McEwen granted an Order (the "**Stay Extension Order**") further extending the Stay Period up to and including February 8, 2022 to permit the Company and the Stalking Horse Bidder to complete a transaction to the Stalking Horse Bidder. A copy of the Stay Extension Order is attached hereto as **Appendix "B"**.

9. All Court materials filed in these proceedings can be found on MSI's Case Website at: <https://www.spergelcorporate.ca/engagements/medifocus-inc/>
10. For the Court's ease of reference on the within Motion, copies of the First Report and the Second Report of the Monitor (without Appendices) are attached hereto as **Appendices "C"** and **"D"**, respectively.

II. PURPOSE OF THIS REPORT AND DISCLAIMER

11. The purpose of this third report (the **"Third Report"**) is to provide the Court with information pertaining to:
 - (a) the Monitor's activities and general updates since the Second Report;
 - (b) the Monitor's comments and report on the Company's updated cash flow projection for the period to and including March 18, 2022 (the **"Updated Cash Flow Projection"**);
 - (c) information concerning the structure of the Reorganization Transaction (as defined herein) proposed by the Company;
 - (d) the Monitor's recommendation that this Court make the following order, as requested by the Company (the **"RVO and Discharge Order"**):
 - i. declaring that 1000101532 Ontario Inc., a newly incorporated corporation as part of the proposed Reorganization Transaction (**"ResidualCo"** together with Medifocus, and subject to the requested Order being

granted, the “**Applicants**”) is a company to which the CCAA applies;

- ii. adding ResidualCo as an Applicant in these CCAA proceedings;
- iii. an order approving the Reorganization Transaction (as contemplated in Section IV of this Third Report) and authorizing the Applicants and their successors (including Residual Co) to implement and complete the Reorganization Transaction;
- iv. granting a reverse vesting order in which:
 - a. all liabilities (other than the Assumed Liabilities), debts, obligations, indebtedness, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distraint, levies, and charges of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not due yet in law or equity and whether based on statute or otherwise (collectively, the “**Liabilities**”) of Medifocus shall be transferred to, assumed by and vest absolutely and exclusively in ResidualCo and shall no longer be obligations of Medifocus, and
 - b. all of Medifocus’ assets, licenses, undertakings, permits, approvals, and properties of every nature

and kind whatsoever and wherever situate shall be and are hereby forever released and discharged from all such liabilities vesting in ResidualCo;

- v. upon consummation of the Reorganization Transaction, PurchaseCo (as defined herein) shall be the sole shareholder of Medifocus and Medifocus shall be free and clear of and from any and all Liabilities other than Assumed Liabilities;
- vi. extending the Stay Period (as defined in the Initial Order) to and including March 15, 2022;
- vii. approving the fees and activities of the Monitor and its legal counsel, as described herein, including the Fee Accruals;
- viii. authorizing MSI to file an assignment in bankruptcy on behalf of ResidualCo; and
- ix. discharging the Monitor and terminating these CCAA proceedings upon filing of a certificate by the Monitor certifying that all outstanding matters involving the Monitor to be attended to in connection with the CCAA proceedings have been completed (including, without limitation, the completion of the Reorganization Transaction), in substantially the form attached as Schedule “B” to the RVO and Discharge Order (the “**Monitor’s Certificate**”).

Restrictions and Disclaimer

12. In preparing this Third Report, the Monitor has relied upon certain financial information, books and records and discussions with the Company's management ("**Management**") and its legal counsel (the "**Information**").
13. Although the Monitor has reviewed this Information for reasonableness, the Monitor has not performed an audit or verification of such Information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Monitor expresses no opinion or other form of assurance with respect to such Information.
14. The Monitor also bases its report on the cash flow projections provided by the Company and its Management. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been performed. These cash flow projections contain reference to future events and are based on Management's assumptions and conditions that may not be ascertainable, actual results will vary from the projections, and such variations could be material and, accordingly, these assumptions may not remain valid throughout the period of the projections. Consequently, the reader is cautioned that they cannot be relied upon to the same extent as information derived from the reviewed accounts for completed accounting periods.
15. This Third Report does not take into account the future impact of COVID-19 on any projection or other assumptions presented by the Company to the Monitor. The potential for unknown ramifications on consumers, supply chains, commercial counterparties (both direct and indirect to the

Company's operations) and future decisions that may need to be made as a result of the evolving COVID-19 situation means that the projections and other assumptions may be significantly impacted by COVID-19. The full impact of COVID-19, both on the Company's business and in general, is not capable of being qualitatively or quantitatively assessed at this time, and the Monitor has not endeavored to do so in this Third Report.

16. Parties using this Third Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
17. This Third Report should be read in conjunction with the Affidavit of Raymond Tong sworn February 2, 2022 as such affidavit contains additional background information concerning the Company, and its structure, business activities, and stakeholders.
18. Unless otherwise specified, all currency references in this Third Report are in Canadian dollars.

III. BACKGROUND AND APPOINTMENT

19. Medifocus is a Canadian-owned, public biotechnology corporation, which holds a portfolio of medical products encompassing thermotherapy systems used in treating cancerous and benign tumors and enlarged prostates.
20. Medifocus was incorporated on April 25, 2005 under the *Ontario Business Corporations Act*, RSO 1990, c B.16., and conducts business and holds patents across several jurisdictions, including many Asian countries.

21. Prior to the Filing Date, Medifocus' common shares were historically traded on the Toronto Stock Exchange (TSX) under the trading symbol "MFS" and the OTC Markets under the trading symbol "MDFZF". However, on September 4, 2020, the Ontario Securities Commission issued a Cease Trade Order for the shares of the Company due to the failure to file certain periodic disclosures.
22. Medifocus has two central technology products, Prolieve and the APA 1000. Prolieve is used to treat enlarged prostates and has received approval by the FDA. The APA 1000 will be used to treat breast cancer but has not yet been approved by the FDA. Medifocus was in the process of its Phase III clinical trials for the APA 1000 when it had to pause these trials due to cash flow issues.
23. Medifocus has also received approval for both its technologies, Prolieve and APA 1000, in Hong Kong, Thailand, Singapore, South Korea, and Malaysia (the "**Asia Approvals**"). The Company advises that this approval process took over one year. The Company also notes that the Asia Approvals are contingent upon FDA approvals of both technologies. Should Medifocus lose, transfer, or otherwise have a third-party apply to the FDA to receive the approvals, the regulatory process to receive the Asia Approvals would need to be redone.
24. Due to the COVID-19 pandemic, many of the routine treatments which require Prolieve have been delayed, which has decreased sales of Prolieve compared to the pre-COVID comparable period. As a result of decreased demand for Prolieve, as well as COVID-related supply chain disruptions, Medifocus has halted the sales of Prolieve since May 2021.
25. Medifocus therefore faced a liquidity crisis and mounting debt obligations

which limited the development of the treatment pipeline. In response, as set out above, on the Filing Date, the Company commenced restructuring proceedings by filing the NOI under the BIA, which NOI Proceedings were subsequently converted under the CCAA.

26. The Company is now seeking a further extension to the Stay Period and the relief noted in paragraph 11(d) of this Third Report in order to complete the Reorganization Transaction prior to concluding these CCAA proceedings.

IV. STALKING HORSE AGREEMENT AND THE REORGANIZATION TRANSACTION

27. As mentioned, the Sale Process provides that unless a Binding APA was received through the Sale Process that was superior to the transaction contemplated by the Stalking Horse Agreement, then the Stalking Horse Bid would be declared the Successful Bid and the parties would work to complete it. A copy of the Stalking Horse Agreement is attached hereto as **Appendix “E”**.
28. The salient terms of the Stalking Horse Agreement are as follows (defined terms used in this section and not otherwise defined herein have the meaning ascribed to them in the Stalking Horse Agreement):
 - (a) The Purchase Price is the aggregate of the following amounts:
 - i. the assignment and assumption by the Purchaser of the amount of any advances under the DIP Loan to the Company pursuant to the DIP Loan Agreement during these proceedings;

- ii. the payment, in cash, or the assumption of, any payables of the Company, which by operation of law, are in priority to the Security of APL, as lender, in respect to the Purchaser Debt, including the payment of any amounts in respect of the Administration Charge (collectively, the “**Priority Payables**”); and
- iii. the amount of \$1,079,818.85 as a credit bid on account of the Purchaser Debt (the “**Credit Bid Amount**”).

(The assumptions of the amounts in (i) to (iii) above, are collectively, the “**Assumed Liabilities**”)

29. The Stalking Horse Bidder has considered an alternative transaction structure to effect the sale contemplated by the Stalking Horse Agreement and has requested that the Company and the Monitor consider a transaction structure that minimizes costs and the tax impacts associated with asset sales including taking necessary steps to preserve crucial regulatory approvals from the U.S. Food and Drug Association and the Asia Approvals. The transaction structure proposed by the Stalking Horse Bidder below is in the form of a reverse vesting transaction that allows the Company to retain its assets and vest out its liabilities and, most importantly, preserve the existing regulatory approvals currently in place.
30. The Reorganization Transaction is outlined as follows:
- (a) all of the liabilities of Medifocus other than the Assumed Liabilities shall be transferred to and vested in ResidualCo;

- (b) Medifocus shall apply to the Ontario Securities Commission (“**OSC**”) for a partial lifting of the Cease Trade Order in accordance with the *Securities Act* (Ontario), R.S.O. 1990, c. S5;
- (c) the constating documents of Medifocus shall be altered to, among other things, (i) permit the consolidation of the issued and outstanding common shares of Medifocus (including, for the avoidance of doubt, any common shares that are issued pursuant to paragraph 30 (d) herein); and (ii) provide for such additional changes to the rights and conditions attached to the common shares as may be agreed to by Medifocus and PurchaseCo;
- (d) the assets and regulatory approvals will remain with Medifocus, unaffected by the transaction;
- (e) APL (the “**Purchaser**”) or its permitted assignee (the “**Assignee**” and together with the Purchaser, “**PurchaseCo**”), as the case may be, shall subscribe for new shares of Medifocus to be paid by way of a credit bid of the secured indebtedness of the Purchaser (APL), existing as at the Filing Date, via private placement to be coordinated with the Toronto Stock Exchange;
- (f) all equity interests, compensation plans and other securities in Medifocus, other than PurchaseCo’s equity interest, shall be cancelled for no consideration such that PurchaseCo becomes the sole shareholder of Medifocus; and
- (g) Medifocus shall apply to the OSC to cease to be a reporting issuer, including full revocation of the Cease Trade Order,

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

31. The Company and the Stalking Horse Bidder have advised the Monitor that they require additional time beyond the timelines provided for in the Sale Process to settle the transaction documentation, seek Court approval of the transaction and, lastly, close the transaction contemplated by the Stalking Horse Agreement, as supplemented and modified by the Reorganization Transaction.
32. As the Sale Process was approved by the Court and there is no mechanism of extension by the Monitor, the Company is seeking this Court's approval of a revised timetable for closing to permit the sale transaction to close by March 15, 2022.
33. The Monitor is of the view that such extension is reasonable in the circumstances and should provide the Company with enough time to finalize the transaction structure, complete the required transaction documentation related to the Reorganization Transaction, and close the transaction. Accordingly, the Monitor supports the Company's request for an extension to the Stay Period.
34. The Monitor believes that the parties have conducted and continue to conduct themselves in good faith and with due diligence in pursuit of a transaction for the benefit of the Company's stakeholders, and that the proposed extension is favourable to that end.
35. The Monitor recommends the Court approve the proposed transaction between the Company and the PurchaseCo, including the Reorganization Transaction pursuant to the proposed RVO and Discharge Order for the following reasons:
 - (a) the Sale Process was carried out in accordance with the terms of

the Initial Order;

- (b) in the Monitor's view, the duration of the Sale Process was sufficient to allow interested parties to perform diligence and submit offers. Additionally, the duration of the Sale Process was approved by the Court as part of the Initial Order;
- (c) considering the loans owing to APL on a secured basis, the assets of Medifocus would need to generate over \$2.0 million for there to be any funds available for creditors ranking behind APL;
- (d) the Monitor does not believe that further time spent marketing the Company's business and assets will result in a superior transaction, nor is there funding available to do so as the DIP Loan is projected to be fully drawn in the near term;
- (e) the Company's business requires the stability of a completed transaction and a timely exit from this proceeding in order to preserve crucial regulatory approvals from the U.S. Food and Drug Association and the Asia Approvals, and to continue to operate as a going-concern;
- (f) APL is not willing to effect the Transaction absent the vesting out of the Liabilities (other than the Assumed Liabilities), given the risk of losing the regulatory approvals from the U.S. Food and Drug Association and the Asia Approvals, which would significantly impact the value of the assets;
- (g) the Monitor is confident that the value of the proposed transaction with the PurchaseCo substantially exceeds the liquidation value of

the Company's assets; and

- (h) The Reorganization Transaction is necessary to effect the sale transaction efficiently and expeditiously.

V. CASH FLOW FORECAST

- 36. The Company has prepared the Updated Cash Flow Projection for the period to and including March 18, 2022. The Updated Cash Flow Projection and the Company's statutory report on the Updated Cash Flow Forecast pursuant to Section 10(2)(b) of the CCAA are provided in **Appendices "F" and "G"**, respectively.
- 37. The Monitor has reviewed the Updated Cash Flow Projection, which indicates no sales until the completion of the sale transaction to the Stalking Horse Bidder. The cash flow requirement of the Company is anticipated to be covered by the DIP financing previously approved by the Court.
- 38. Based on the Monitor's review of the Updated Cash Flow Projection, there are no material assumptions which seem unreasonable. The Monitor's statutory report on the cash flow is attached hereto at **Appendix "H"**.

VI. ACTIVITIES OF THE COMPANY AND THE MONITOR

Overview of Activities since the Second Report

- 39. Since the Second Report, the Company, and its counsel, has, among other things:
 - (a) communicated with the Monitor and its legal counsel on various

matters in connection with the CCAA proceedings;

- (b) engaged with the Stalking Horse Bidder with respect to the Sale Process including on-going negotiations with respect to the structure of the Reorganization Transaction; and
 - (c) worked with the Monitor to prepare the Updated Cash Flow Projection.
40. In addition to assisting the Company and its legal counsel in connection with the above, the Monitor has been engaged in, among other things:
- (a) maintaining the Case Website where material documents pertaining to these proceedings are available in electronic form;
 - (b) on-going monitoring of the Company's cash flows and for ongoing reporting of variances;
 - (c) assisting the Company with preparing the Updated Cash Flow Projection;
 - (d) meeting and corresponding with the Company and its legal counsel regarding the Updated Cash Flow Projection, cash management, supplier issues and various other matters in connection with the Company's operations and its CCAA proceedings;
 - (e) responding to calls and enquiries from creditors and other stakeholders in connection with the CCAA proceedings; and
 - (f) reviewing materials filed with the Court in respect of the CCAA proceedings, and this Motion with respect to the requested relief.

VII. FEES AND DISBURSEMENTS OF THE MONITOR

41. The Monitor and its independent legal counsel, Aird & Berlis LLP, have maintained detailed records of the professional time and costs incurred since the Initial Order was granted on October 7, 2021. Pursuant to the Initial Order, the Court granted the Administration Charge in the amount of \$200,000 to secure the fees and disbursements of the Monitor, its counsel, and the Company's counsel.
42. The total fees of the Monitor during the period to and including January 31, 2022 are set out in the affidavit of Mukul Manchanda (the "**Monitor's Fee Affidavit**"), sworn February 3, 2022 in support hereof, a copy of which is attached hereto as **Appendix "I"**. As set out in the Monitor's Fee Affidavit, the Monitor's fees incurred up to and including January 31, 2022 are \$62,520.38 (inclusive of taxes and disbursements).
43. The total legal fees incurred by the Monitor for services provided by the Monitor's independent legal counsel during the period from August 17, 2021 through January 25, 2022 are set out in the affidavit of Kyle Plunkett (the "**A&B Fee Affidavit**"), sworn February 2, 2022, in support hereof, a copy of which is attached hereto as **Appendix "J"**. As set out in the A&B Fee Affidavit, the legal fees incurred up to January 25, 2022 are \$39,037.79 (inclusive of taxes and disbursements).
44. The Monitor is of the view that these accounts are reasonable in the circumstances and respectfully requests that the Court approve its fees and disbursements and those of its legal counsel.
45. Provided that there is no opposition to the relief sought in the Company's motion and that such relief is granted on February 8, 2022, the Monitor

estimates that the additional fees and disbursements necessary to complete these proceedings including disbursements and HST (collectively, the “**Fee Accrual**”) will be:

- (a) Monitor - \$16,950;
- (b) Monitor’s Counsel - \$16,950; and
- (c) MSI with respect to the bankruptcy of the Residual Co - \$11,300.

VIII. DISCHARGE OF MONITOR

46. Provided that the Company’s motion is granted, the Monitor proposes to attend to the following activities subsequent to the date of this Third Report and prior to the filing of the Monitor’s Certificate:

- (a) Ensuring that all outstanding matters involving the Monitor to be attended to have been completed (including, without limitation, obtaining confirmation of completion of the Reorganization Transaction); and
- (b) Completing all other residual and/or administrative matters in connection with MSI’s appointment as the Monitor including, without limitation, filing statutory reporting with the Office of the Superintendent of Bankruptcy.

IX. CONCLUSION AND RECOMMENDATIONS

47. Based on the foregoing, the Monitor respectfully recommends that this Court issue an order, inter alia:

- (a) Declaring ResidualCo is a company to which the CCAA applies;
- (b) adding ResidualCo as an Applicant in these CCAA proceedings;
- (c) approving the Reorganization Transaction and the steps contemplated at paragraph 30 above;
- (d) further extending the Stay Period to March 15, 2022;
- (e) approving the fees and activities of the Monitor; and
- (f) terminating these CCAA proceedings following the filing of the Monitor's Certificate.

Dated at Toronto this 3rd day of February, 2022

msi Spergel inc.

in its capacity as Monitor of Medifocus Inc.
and not in its personal or corporate capacities

Per:



Mukul Manchanda, CPA, CIRP, LIT

APPENDIX “A”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR) THURSDAY, THE 7TH
)
JUSTICE CAVANAGH) DAY OF OCTOBER, 2021

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

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

INITIAL ORDER

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

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

SERVICE

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

CONTINUANCE UNDER THE CCAA

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

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

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

RESTRUCTURING

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

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

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

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

APPOINTMENT OF MONITOR

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

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

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

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

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

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

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

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

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

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

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

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

DIP FINANCING

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

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

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES

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

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

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

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

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

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

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

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

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

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

SALE PROCESS

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

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

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

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

SERVICE AND NOTICE

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

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

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

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

GENERAL

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

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

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

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

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

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

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



Digitally signed by
Mr. Justice Cavanagh

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

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

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

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

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

Proceedings commenced at Toronto

INITIAL ORDER

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APPENDIX “B”

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

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

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

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

STAY EXTENSION ORDER

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

ON READING the motion record of the Applicant, including the affidavit of Raymond Tong, sworn December 30, 2021, and the exhibits thereto (the "**Tong Affidavit**"), and the second report of msi Spergel Inc. in its capacity as monitor of the Applicant (the "**Monitor**"), dated January 4, 2022, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, and all persons present as stated on the counsel slip, no one appearing for any other



person although properly served as appears from the affidavit of Christel Paul sworn December 31, 2021:

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

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

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

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



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

Applicant

7 Jan 22

Order to go as per the draft filed and signed.
There is no opposition and the Monitor supports the relief sought.
The extension is fair and reasonable and there is sufficient liquidity.



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

STAY EXTENSION ORDER

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Lawyers for Medifocus Inc.

APPENDIX “C”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

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

**FIRST REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF MEDIFOCUS INC.**

- AND -

**FIRST REPORT OF MSI SPERGEL INC. AS PROPOSED CCAA
MONITOR OF MEDIFOCUS INC.**

October 5, 2021

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APPENDICES

- A. Certificate of Filing the Notice of Intention to Make a Proposal
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I. INTRODUCTION

1. On September 8, 2021 (the “**Filing Date**”), Medifocus Inc. (“Medifocus” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.-3, as amended (the “**BIA**”), and msi Spergel inc. (“**Spergel**”) was appointed as proposal trustee (in such capacity, the “**Proposal Trustee**”) under the NOI. A copy of the Certificate of Filing issued by the Superintendent of Bankruptcy in respect of the Company’s NOI is attached hereto as **Appendix “A”**.
2. Spergel was previously retained by the Company to act as financial advisor to assist the Company’s management and its board of directors in reviewing restructuring alternatives available to the Company as part of its strategic review and planning.
3. The primary objectives of the Company’s NOI proceedings are to: (i) stabilize Company’s business, (ii) to restructure its business and affairs, including, but not limited to, reducing overhead costs, and (iii) to carry out the SISP (as defined herein).
4. The Company is now seeking an Order to, among other things, convert the NOI proceedings and continue its restructuring proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and to appoint Spergel as Monitor of Medifocus under the proposed CCAA proceedings (in such capacity, the “**Proposed Monitor**”).

II. PURPOSE OF THIS REPORT AND DISCLAIMER

5. The purpose of this first report (the “**First Report**”) is to provide the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) with information pertaining to the following:
- (a) a background information about the Company;
 - (b) the restructuring steps to be undertaken by the Company during these proceedings since the Filing Date;
 - (c) the activities of the Proposal Trustee since the Filing Date;
 - (d) the purpose and objective of the proposed conversion of the NOI proceeding to CCAA proceedings;
 - (e) Spergel’s qualification to act as monitor under the CCAA (the “**Monitor**”);
 - (f) the Company’s proposed interim financing facility (“**DIP Facility**”) extended by Asset Profits Limited (“**Asset Profits**”), as lender, to the Company pursuant to the terms of the DIP Term Sheet (as defined below) to fund the Company’s working capital requirements during these proceedings;
 - (g) the proposed Priority Charges over the Company’s property, assets and undertaking on account of (i) the Administration Charge (as defined below); and (iii) the DIP Lender’s Charge (as defined below);
 - (h) the Company’s request for an extension of the stay of proceedings

afforded under the CCAA (the “**Stay Period**”) to and including January 7, 2022;

- (i) the Company’s request for approval of a sales process to be conducted by the Company, with the supervision of the Monitor, and to enter into the stalking horse asset purchase agreement (the “**Stalking Horse Agreement**”) between the Company, as vendor, and a company owned and incorporated by the owners/directors of Asset Profits, the Company’s sole secured creditor (the “**Stalking Horse Bidder**”); and
- (j) the Proposal Trustee’s recommendation that this Court make orders, as requested by the Company, *inter alia*:
 - i. approving the Administration Charge;
 - ii. approving the DIP Facility and the DIP Charge (as defined below); and
 - iii. approving the conversion of the NOI proceedings to proceedings under the CCAA.

Restrictions and Disclaimer

- 6. In preparing this First Report, the Proposal Trustee has relied upon certain information provided to it by the Company’s management. The Proposal Trustee has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Proposal Trustee expresses no opinion or other form of

assurance with respect to such information.

7. The cash flow forecast and projections in this First Report relate to future events and are based on management's assumptions, which may not remain valid throughout the period of the projections. Consequently, they cannot be relied upon to the same extent as information derived from the reviewed accounts for completed accounting periods. For these reasons, the Proposal Trustee expresses no opinion as how closely the actual cash flows achieved will correspond to the projection.
8. This First Report does not take into account the future impact of COVID-19 on any projection or other assumptions presented by the Company to the Proposal Trustee. The potential for unknown ramifications on consumers, supply chains, commercial counterparties (both direct and indirect to the Company's operations) and future decisions that may need to be made as a result of the evolving COVID-19 situation means that the projections and other assumptions may be significantly impacted by COVID-19. The full impact of COVID-19, both on the Company's business and in general, is not capable of being qualitatively or quantitatively assessed at this time, and the Proposal Trustee has not endeavored to do so in this First Report.
9. Parties using this First Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
10. This First Report should be read in conjunction with the Affidavit of Raymond Tong sworn October 4, 2021 (the "**Tong Affidavit**") as such affidavit contains additional background information concerning the Company, and its structure, business activities, and stakeholders.

11. Court materials in these proceedings can be found on Spergel's Case Website at <https://www.spergelcorporate.ca/engagements/medifocus-inc/>
12. All references to dollars in this First Report are in Canadian currency unless otherwise noted.

III. BACKGROUND AND APPOINTMENT

13. On September 8, 2021, the Company commenced these proceedings by filing an NOI with the Superintendent of Bankruptcy, and Spergel was appointed as the Proposal Trustee.
14. Medifocus is a Canadian-owned, publicly listed biotechnology corporation, which holds a portfolio of medical products encompassing thermotherapy systems used in treating cancerous and benign tumors and enlarged prostates.
15. Medifocus was incorporated on April 25, 2005 under the *Ontario Business Corporations Act*, RSO 1990, c B.16., but primarily operates in the United States out of a facility located at 10240 Old Columbia Road, Suite G, Maryland, 21046. The Company also conducts business and holds patents across several jurisdictions, including many Asian countries.
16. Medifocus' common shares were historically traded on the Toronto Stock Exchange (TSX) under the trading symbol "MFS" and the OTC Markets under the trading symbol "MDFZF". However, on September 4, 2020, the Ontario Securities Commission issued a Cease Trade Order for the shares of the Company due to the failure to file certain periodic disclosures.

17. Medifocus has two central technology products, Prolieve and the APA 1000. Prolieve is used to treat enlarged prostates and has received approval by the FDA. The APA 1000 will be used to treat breast cancer but has not yet been approved by the FDA. Medifocus was in the process of its Phase III clinical trials for the APA 1000 when it had to pause these trials due to cash flow issues.
18. Medifocus has also received approval for both its technologies, Prolieve and APA 1000, in Hong Kong, Thailand, Singapore, South Korea, and Malaysia (the “**Asia Approvals**”). The Company advises that this approval process took over one year. The Company also notes that the Asia Approvals are contingent upon FDA approvals of both technologies. Should Medifocus lose, transfer, or otherwise have a third-party apply to the FDA to receive the approvals, the regulatory process to receive the Asia Approvals would need to be redone.
19. Medifocus has traditionally funded its operations through debt and equity offerings, as the sales of Prolieve were not sufficient to sustain on-going operations. As traditional lenders have been hesitant to fund products in the non-essential medical procedure space, capital funding has primarily come from private/non-traditional investors.
20. Due to the COVID-19 pandemic, many of the routine treatments which require Prolieve have been delayed, which has decreased sales of Prolieve compared to the pre-COVID comparable period. As a result of decreased demand for Prolieve, as well as COVID-related supply chain disruptions, Medifocus has halted the sales of Prolieve since May 2021.
21. Medifocus therefore faced a liquidity crisis and mounting debt obligations which limited the development of the treatment pipeline. In response, as

set out above, on the Filing Date, the Company commenced restructuring proceedings by filing the NOI under the BIA, and Spergel was appointed as the Proposal Trustee.

IV. CASH FLOW FORECAST

22. The Company has prepared a Statement of Projected Cash Flow for the 13 weeks beginning September 3, 2021 and ending on November 26, 2021 (the “**Cash Flow Forecast**”). The Cash Flow Forecast and the Company’s statutory report on the cash flow pursuant to paragraph 50.4(2)(c) of the BIA which is same as the statutory report required pursuant to Section 10(2)(b) of the CCAA is attached as **Appendix “B”**.
23. The Proposal Trustee has reviewed the Cash Flow Forecast, which indicates no further sales and confirms the quantum of the DIP financing, as outlined later in this First Report, needed to maintain the liquidity to sustain operations until the Sales Process is completed.
24. Based on Spergel’s review of the Cash Flow Forecast, the cash flow assumptions appear reasonable. Spergel’s statutory report on the Cash Flow Forecast pursuant to paragraph 50.4(2)(b) of the BIA which is same as the statutory report required pursuant to paragraph 23(1)(b) of the CCAA is attached as **Appendix “C”**.

V. PURPOSE AND OBJECTIVE OF THE PROPOSED CONVERSION TO CCAA PROCEEDINGS

25. The Company seeks to continue the NOI proceedings under the CCAA, pursuant to section 11.6, to maximize the value of its business while it runs the Sale Process (as defined below), on a going concern basis, for

- the benefit of all stakeholders.
26. The Company would also benefit from the flexibility afforded under the CCAA, including the option to implement reverse vesting structures to preserve the value of the existing regulatory approvals attached to certain valuable contracts.
 27. The Company proposes to commence a ‘stalking horse’ sale process (as described below), which will, among other things, permit the Company to:
 - (a) maximize the going-concern value for the Company’s property, assets and undertakings (the “**Assets**”) or the Company’s shares (the “**Shares**”) for the benefit of its stakeholders; and
 - (b) set a floor price for the value of the consideration to be obtained in such a sale process.
 28. The time period for the Company to file a proposal under the NOI will expire on October 8, 2021. The Company will not be in a position to make a proposal by such date.
 29. Accordingly, and in order to provide the time for the Sale Process described herein to be conducted and completed, the Company is seeking to convert the NOI proceedings to CCAA proceedings and to transition Spergel’s role from Proposal Trustee to Court-appointed Monitor.
 30. The Company requires the continued stay of all proceedings and enforcement processes taken or that might be taken in respect of Medifocus, the Proposed Monitor, or their respective employees and representatives, and accordingly, the Company is seeking an initial Stay

Period under to and including January 7, 2022. This will provide the time necessary to fully and formally canvass the market for purchasers of the business as a going-concern through a court-supervised Sale Process.

31. Under the circumstances, a bankruptcy and liquidation would result in a worse outcome for the stakeholders of Medifocus than the sale transaction contemplated by the Stalking Horse Agreement.

VI. QUALIFICATIONS TO ACT AS MONITOR

32. Spergel is a licensed insolvency trustee within the meaning of section 2(1) of the BIA. In addition, Spergel is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA.
33. Spergel has consented to act as Monitor in the proposed CCAA proceedings should the Court grant the Initial Order. A copy of Spergel's consent to act as Monitor is attached as Exhibit N to the Tong Affidavit.
34. Spergel has retained Aird & Berlis LLP ("**Aird**") to act as its independent legal counsel (the "**Monitor's Counsel**"). Aird has also been acting as counsel to Spergel in its capacity as Proposal Trustee in the NOI proceedings.
35. Prior to the Filing Date, Spergel was engaged to assist the Company to consider restructuring options and conduct certain financial analyses of its business. As a result of its engagement, Spergel acquired significant knowledge of Medifocus' business and operations, including the key issues and challenges presently facing the Company.
36. Neither Spergel nor any of its representatives or affiliates has been at any

time in the past two years: (a) a director, officer or employee of any member of the Company; (b) related to any member of the Company, or to any director or officer of any member of the Company; or (c) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of any member of the Company.

VII. PROPOSED DIP FINANCING

37. The Proposed Monitor understands that the Company has secured a commitment of up to a maximum of \$700,000 in interim financing, which is to be used towards on-going operations, funding professional costs of these proceedings and the maintenance of Medifocus' licenses and patents, until the end of the proposed Stay Period.
38. The DIP financing is proposed to be provided by Asset Profits, as lender, the Company's sole existing secured lender. The Proposed Monitor understands that Asset Profits is not related to the Company as that term is defined under the BIA.
39. The material terms and features of the DIP facility, as outlined in the DIP Term Sheet, include
 - (a) a non-revolving credit facility in the principal amount of \$700,000;
 - (b) interest rate of 9% per annum;
 - (c) no commitment fees;
 - (d) a small fee to cover out of pocket expenses in preparing and entering into the DIP arrangement; and

- (e) security ranking ahead of all other creditors of the Company.
40. It is contemplated that Asset Profits would be granted a Court-ordered charge over substantially all of the Assets to secure amounts owing by the Company pursuant to the DIP Facility (the “**DIP Lender’s Charge**”). The DIP Lender’s Charge will rank in priority to all other charges and encumbrances other than the Administration Charge (as defined below).
41. The Proposed Monitor makes the following observations in respect of certain of the terms of the proposed DIP Facility:
- (a) the DIP Facility shall be available in advances consistent with the Cash Flow Forecast; and
 - (b) based on its experience and the information available to it, the Proposed Monitor is of the view that the interest rate provided in the DIP Term Sheet is not outside the range for similarly situated DIP facilities. Asset Profits has also agreed to forego a market standard commitment fee and other related standby availability fees.
42. Given the cash flow issues and difficult market space in which the Company operates, the Proposed Monitor is of the view that it would be difficult and impractical for the Company to obtain alternative interim financing on better commercial terms than are being offered by Asset Profits. Asset Profits is also the incumbent secured creditor, understands the business and it is unclear whether they would support their interest being primed.
43. As a result, the Proposed Monitor is of the view that the DIP Facility and the DIP Lender’s Charge are appropriate in the circumstances.

VIII. ADMINISTRATION CHARGE

44. The Company is seeking a charge in an amount not to exceed \$200,000 (the “**Administration Charge**”) to secure the fees and expenses of the Monitor, its counsel and the Company’ counsel for services rendered both leading up to and after the Filing Date.
45. The Administration Charge is a customary provision in an Initial Order in a CCAA proceeding. It is required by the professionals engaged to assist a debtor company in the CCAA proceedings and to protect them if the debtor is unable to pay professional fees and costs during the CCAA process. The Administration Charge is to rank first on the Assets.
46. The quantum of the Administration Charge sought by the Company was determined in consultation with the Proposal Trustee and having regard for the Cash Flow Forecast.

IX. PRIORITY CHARGES

47. The Administration Charge and DIP Lender’s Charge shall together be defined as the “Priority Charges”.
48. The Company proposes the Court-ordered charges have the following priority:
 - (a) First, the Administration Charge; and
 - (b) Second, the DIP Lender’s Charge.

X. PROPOSED SALE PROCESS

49. In order to provide third parties with an opportunity to consider an acquisition of the Company's Assets or Shares, the Company is proposing that the Proposed Monitor market the Company's Assets or Shares for sale for a period of approximately seven (7) weeks (the "**Sale Process**"). The Company has developed the Sale Process in consultation with the Proposed Monitor, a copy of which is appended as **Appendix "D"** to this First Report.
50. The Sale Process is designed to ensure that the marketing process is fair and reasonable, and prospective interested parties have the ability to make an offer to purchase the Assets or Shares of the Company.
51. The Sale Process contemplates approval of a Stalking Horse Agreement between the Company, as vendor, and the Stalking Horse Bidder. Given the Stalking Horse Bidder is the sole secured creditor of the Company, it is contemplated that the Company, with the consent of the Proposed Monitor, will administer all aspects of the Sale Process.
52. The principal elements of the Sale Process are as follows (defined terms used in this section and not otherwise defined herein have the meaning ascribed to them in the Sale Process):
- (a) within five (5) calendar days of the Sale Process being approved by the Court, the Proposed Monitor shall publish notice of the Sale Process in any publications considered appropriate by the Company and the Proposed Monitor;
 - (b) as soon as is reasonably possible, the Monitor will prepare a

Teaser Letter notifying prospective purchasers of the existence of the Sale Process and inviting prospective purchasers to express their interest in making an offer in respect of the Assets or Shares pursuant to the terms of the Sale Process;

- (c) Potential Bidders that wish to commence due diligence will be required to execute a non-disclosure agreement (“**NDA**”);
- (d) Upon execution of the NDA, the Proposed Monitor, with the assistance of the Company, will determine if the Potential Bidder has a bona fide interest in pursuing a Transaction and thus deem them a “**Qualified Bidder**”;
- (e) The Company will prepare, with the assistance of the Monitor, a confidential information memorandum (“**CIM**”), which will provide, among other things, information considered relevant to the Sale Process. The CIM will be sent to each Qualified Bidder;
- (f) The Proposed Monitor, with the assistance of the Company, and subject to competitive and other business considerations, may give each Qualified Bidder access to due diligence materials and information relating to the Company that the Company deems appropriate, at its sole discretion;
- (g) Due diligence access may include access to an electronic data room (“**Data Room**”), on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Company may agree. Neither the Company nor the Proposed Monitor will be obligated to furnish any information relating to the Company or any person, at their discretion;

- (h) A Binding APA must be submitted in writing to the Proposed Monitor by no later than 5:00 p.m. (EST) on November 26, 2021 (“**Bid Deadline**”);
- (i) The Company, in consultation with the Proposed Monitor, may extend the Bid Deadline, once or successively, but is not obligated to do so. If the Bid Deadline is extended, the Company will promptly notify all Qualified Bidders;
- (j) A Binding APA must comply with all of the following:
 - i. The bid is an offer to purchase some or all of the Assets or Shares on terms and conditions acceptable to the Company and the Proposed Monitor and delivered to the Company and Proposed Monitor prior to the Bid Deadline;
 - ii. It is duly authorized and executed and includes a purchase price for the Assets/Shares expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits, schedules, and all applicable ancillary agreements thereto;
 - iii. Includes a letter of acknowledgement stating that the Qualified Bidder’s offer is irrevocable and open for acceptance until a successful APA is selected by the Company;
 - iv. Is accompanied by written evidence of a firm, irrevocable commitment for financing or other evidence satisfactory to the Proposed Monitor, at its sole discretion, of the ability of the Qualified Bidder to consummate the proposed

Transaction and pay the Purchase Price;

- v. It fully discloses the identity of each entity that will be bidding for the Assets or otherwise sponsoring, financing, participating, or benefiting from such bid;
- vi. It includes an acknowledgement and representation from the Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Assets/Shares and the Company prior to make its bid, (ii) it has relied solely upon its own independent review, investigation, and/or inspection of any documents in making its bid, and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, regarding the Assets, the Company, or the completeness of any information provided in connection therewith;
- vii. It includes evidence, in form and substance reasonably satisfactory to the Company, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Binding APA submitted by the Qualified Bidder;
- viii. Provides a deposit in the amount of not less than 15% of the Purchase Price offered by the Qualified Bidder (the "**Deposit**");
- ix. It is received by the Proposed Monitor by the Bid Deadline; and

- x. The bid contemplates closing the transaction set out therein within 10 Business Days of the Approval and Vesting Order (“**AVO**”) or the Reverse Vesting Order (“**RVO**”) (the “**Closing Date**”).
- (k) A Binding APA will be considered if, among other criteria set out in the Sale Process, it meets the following minimum criteria:
- i. It must be a Superior Offer, defined as: (i) a credible, reasonably certain and financially viable offer made by a Qualified Bidder to be a counterparty to a transaction, the terms of which offer are more favourable and no more burdensome or conditional than the terms contained in the Stalking Horse Agreement; and
 - ii. An offer that provides for cash consideration of the Purchase Price and provides for a reimbursement of the Stalking Horse Purchaser’s reasonable fees and expenses up to the maximum amount of \$25,000, and an incremental amount over and above the Purchase Price in the Stalking Horse Agreement in the amount of \$10,000.
- (l) The Company and the Proposed Monitor will review and evaluate each Binding APA and: (i) the Company with the consent of the Monitor may identify the highest or otherwise best offer for the Assets/Shares (the “**Successful Bid**”), or (ii) if no Binding APAs, other than the Stalking Horse Agreement, have been received by the Bid Deadline, then the Company shall declare the Stalking Horse Agreement as the Successful Bid; and

- (m) After determination of the Successful Bid, the Company will make a motion to the Court for an AVO or RVO in respect of the Successful Bid and underlying purchase agreement.
53. The Proposed Monitor notes that the proposed timeframe set out above is condensed, but with the full cooperation of the Company and with the Stalking Horse Agreement in hand, the Proposed Monitor believes that the deadlines proposed in the Sale Process are reasonable in the circumstances.
54. The Proposed Monitor is of the view that, in the circumstances, the proposed Sale Process represents the best opportunity to identify a potential going concern sale for the Company's Assets or Shares and the best potential to maximize value for the benefit of its stakeholders.

XI. STALKING HORSE AGREEMENT

55. The Company has negotiated the Stalking Horse Agreement with the Stalking Horse Bidder which provides that, unless an offer is received through the Sale Process that, among other things, provides for consideration that is at least \$10,000 in excess of the purchase price contemplated by the Stalking Horse Agreement, then the transaction contemplated by the Stalking Horse Agreement would be completed. A copy of the Stalking Horse Agreement is attached hereto as **Appendix "E"**.
56. The Stalking Horse Agreement contemplates the purchase of substantially all of the assets of Medifocus (the "**Purchased Assets**") and the assumption of substantially all of its liabilities relating to the Purchased Assets and which are due and payable or relate to the period from and

after the closing date.

57. The salient terms of the Stalking Horse Agreement are as follows (defined terms used in this section and not otherwise defined herein have the meaning ascribed to them in the Stalking Horse Agreement):

(a) The Purchase Price is the aggregate of the following amounts:

- i. The assignment and assumption of the amount of the DIP Loan advanced by the Purchaser to the Vendor pursuant to the DIP Loan Agreement;
- ii. The payment, in cash, or the assumption of, any payables of the Vendor, which by operation of law, are in priority to the security interest of the Purchaser in respect to the Purchaser Debt (the “**Priority Payables**”); and
- iii. The amount of \$1,079,818.85 as a credit bid on account of the Purchaser Debt (the “**Credit Bid Amount**”).

58. The Stalking Horse Bidder will be entitled to an expense reimbursement fee up to \$25,000 should a purchaser other than the Stalking Horse Bidder close a transaction through the Sales Process.

XII. CREDITOR NOTIFICATION

59. The proposed Initial Order requires the Monitor to:

- (a) publish without delay a notice in the national edition of *The Globe and Mail* newspaper containing the information prescribed under the CCAA; and

(b) within five days of the granting of the Initial Order to:

- i. make the Initial Order publicly available in the manner prescribed under the CCAA;
- ii. send, in the prescribed manner, a notice to every known creditor who has a claim against the Company of more than \$1,000 advising that the order is publicly available; and
- iii. prepare a list, showing the names and addresses of those creditors, and the estimated amounts of those claims, and make it publicly available in the prescribed manner.

60. If appointed Monitor, Spergel will also post the Initial Order and all motion materials on its Case Website in accordance with the E-Service Protocol.

XIII. ACTIVITIES OF THE PROPOSAL TRUSTEE SINCE FILING DATE

61. The Proposal Trustee's activities since the Filing Date have included, inter alia, the following:

(a) sending a notice, within five days of the Filing Date, of the NOI proceedings to all known creditors of Medifocus with claims of \$250 or more, in accordance with the BIA. Notice was also sent to certain other persons, including creditors with claims less than \$250, applicable tax authorities and any other party that requested a copy;

(b) establishing and maintaining the Case Website where material documents pertaining to these proceedings are available in

electronic form;

- (c) implementing procedures for the monitoring of the Company's sales and cash flows and for ongoing reporting of variances to the Cash Flow Forecast;
- (d) assisting the Company with preparing the Cash Flow Forecast and filing same with the Office of the Superintendent of Bankruptcy pursuant to the BIA;
- (e) meeting and corresponding with the Company and its legal counsel regarding the Cash Flow Forecast, cash management, supplier issues, landlord matters and various other matters in connection with the Company's operations and its NOI proceedings;
- (f) responding to calls and enquiries from creditors and other stakeholders in connection with the NOI proceedings;
- (g) reviewing materials filed with the Court in respect of the NOI proceedings, and this Motion with respect to the requested conversion to CCAA proceedings; and
- (h) drafting this First Report.

XIV. CONCLUSION AND RECOMMENDATIONS

62. Based on the foregoing, Spiegel, in its capacity as Proposal Trustee, and in its capacity as Proposed Monitor, respectfully recommends that this Court issue an order, *inter alia*:

- (a) converting the Company's NOI proceedings to CCAA proceedings;

- (b) appointing Spergel as the Monitor under the CCAA proceedings;
- (c) extending the Stay Period to January 7, 2022;
- (d) authorizing the Proposed Monitor to conduct the Sale Process;
- (e) authorizing the Company to enter into the Stalking Horse Agreement and approving the Stalking Horse Agreement and the Sale Process;
- (f) approving the DIP Term Sheet, pursuant to which Medifocus will obtain DIP financing up to a maximum of \$700,000;
- (g) granting the Priority Charges; and
- (h) Such further and other relief as may be requested and this Court deems just.

Dated at Toronto this 5th day of October, 2021

msi Spergel inc.,
solely in its capacity as Trustee *in re* the Proposal of Medifocus Inc.
and not in its personal or corporate capacity

- and -

msi Spergel inc.
as the Proposed Monitor in Medifocus Inc.
and not in its personal or corporate capacity

Per:



Mukul Manchanda, CPA, CIRP, LIT
Principal

APPENDIX “D”

**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.**

**SECOND REPORT OF MSI SPERGEL INC. IN ITS CAPACITY AS
MONITOR OF MEDIFOCUS INC.**

January 4, 2022

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- A. Initial Order dated October 7, 2021
- B. First Report of the Proposed Monitor (without appendices)
- C. The Sale Process
- D. Copies of notices published in The Globe and Mail, The Washington Sun and The Baltimore Post
- E. The Stalking Horse Agreement
- F. Updated Cash Flow Projection
- G. Company's Report on Cash Flow
- H. Monitor's Report on Cash Flow

I. INTRODUCTION

1. On September 8, 2021 (the “**Filing Date**”), Medifocus Inc. (“**Medifocus**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.-3, as amended (the “**BIA**”), and msi Spergel inc. (“**Spergel**”) was appointed as proposal trustee (in such capacity, the “**Proposal Trustee**”) under the NOI (the “**NOI Proceedings**”).
2. On October 7, 2021, the Company brought an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) seeking an Order or Orders, among other things,
 - (a) converting the NOI Proceedings into proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in order to allow for the completion of its restructuring process under the CCAA and providing the Company with a stay of proceedings through to and including January 7, 2022 (the “**Stay Period**”);
 - (b) terminating Spergel’s appoint as Proposal Trustee and appointing Spergel as Monitor of the Company under the CCAA proceedings (in such capacity, the “**Monitor**”);
 - (c) approving the Sale Process and the Stalking Horse Agreement (each as defined in the Initial Order);
 - (d) approving the Administration Charge (as defined in the Initial Order) to secure payment of the fees and expenses of the Monitor, the Monitor’s Counsel and counsel to the Company; and

- (e) approving interim financing and the DIP Lender's Charge (as defined in the Initial Order);
- 3. By order of the Honourable Mr. Justice Cavanagh dated October 7, 2021 (the "**Initial Order**"), the Court approved the relief sought by the Company. A copy of the Initial Order is attached hereto as **Appendix "A"**.
- 4. The Monitor engaged Aird & Berlis LLP as its independent legal counsel (the "**Monitor's Counsel**").
- 5. Further details regarding the Company and background leading up to the NOI Proceedings and the subsequent conversion to CCAA can be found in the First Report of the Proposal Trustee (and the Proposed Monitor) dated October 5, 2021 (the "**First Report**"). A copy of the First Report, without appendices, is attached hereto as **Appendix "B"**.

II. PURPOSE OF THIS REPORT AND DISCLAIMER

- 6. The purpose of this second report (the "**Second Report**") is to provide the Court with information pertaining to:
 - (a) its activities and general updates since the First Report;
 - (b) the Sale Process carried out by the Monitor;
 - (c) the Monitor's comments and report on the Company's updated cash flow projection for the period through for the period to and including March 4, 2022 (the "**Updated Cash Flow Projection**");
 - (d) the Company's request for an extension of the Stay Period from January 7, 2022 to and including February 8, 2022; and

- (e) the Proposal Trustee's recommendation that this Court make an Order, as requested by the Company, extending the Stay Period.

Restrictions and Disclaimer

7. In preparing this Second Report, the Monitor has relied upon certain information provided to it by the Company's management. The Monitor has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Monitor expresses no opinion or other form of assurance with respect to such information.
8. The cash flow forecast and projections in this Second Report relate to future events and are based on management's assumptions, which may not remain valid throughout the period of the projections. Consequently, they cannot be relied upon to the same extent as information derived from the reviewed accounts for completed accounting periods. For these reasons, the Monitor expresses no opinion as how closely the actual cash flows achieved will correspond to the projection.
9. This Second Report does not take into account the future impact of COVID-19 on any projection or other assumptions presented by the Company to the Monitor. The potential for unknown ramifications on consumers, supply chains, commercial counterparties (both direct and indirect to the Company's operations) and future decisions that may need to be made as a result of the evolving COVID-19 situation means that the projections and other assumptions may be significantly impacted by COVID-19. The full impact of COVID-19, both on the Company's business and in general, is not capable of being qualitatively or quantitatively

assessed at this time, and the Proposal Trustee has not endeavored to do so in this Second Report.

10. Parties using this Second Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes, and consequently should not be used for any other purpose.
11. This Second Report should be read in conjunction with the Affidavit of Raymond Tong sworn December 30, 2021 as such affidavit contains additional background information concerning the Company, and its structure, business activities, and stakeholders.
12. Court materials in these proceedings can be found on Spergel's Case Website at <https://www.spergelcorporate.ca/engagements/medifocus-inc/>
13. All references to dollars in this Second Report are in Canadian currency unless otherwise noted.

III. BACKGROUND AND APPOINTMENT

14. Medifocus is a Canadian-owned, public biotechnology corporation, which holds a portfolio of medical products encompassing thermotherapy systems used in treating cancerous and benign tumors and enlarged prostates.
15. Medifocus was incorporated on April 25, 2005 under the *Ontario Business Corporations Act*, RSO 1990, c B.16., but primarily operates in the United States out of a facility located at 10240 Old Columbia Road, Suite G, Maryland, 21046. The Company also conducts business and holds patents across several jurisdictions, including many Asian countries.

16. Prior to the Filing Date, Medifocus' common shares were historically traded on the Toronto Stock Exchange (TSX) under the trading symbol "MFS" and the OTC Markets under the trading symbol "MDFZF". However, on September 4, 2020, the Ontario Securities Commission issued a Cease Trade Order for the shares of the Company due to the failure to file certain periodic disclosures.
17. Medifocus has two central technology products, Prolieve and the APA 1000. Prolieve is used to treat enlarged prostates and has received approval by the FDA. The APA 1000 will be used to treat breast cancer but has not yet been approved by the FDA. Medifocus was in the process of its Phase III clinical trials for the APA 1000 when it had to pause these trials due to cash flow issues.
18. Medifocus has also received approval for both its technologies, Prolieve and APA 1000, in Hong Kong, Thailand, Singapore, South Korea, and Malaysia (the "**Asia Approvals**"). The Company advises that this approval process took over one year. The Company also notes that the Asia Approvals are contingent upon FDA approvals of both technologies. Should Medifocus lose, transfer, or otherwise have a third-party apply to the FDA to receive the approvals, the regulatory process to receive the Asia Approvals would need to be redone.
19. Due to the COVID-19 pandemic, many of the routine treatments which require Prolieve have been delayed, which has decreased sales of Prolieve compared to the pre-COVID comparable period. As a result of decreased demand for Prolieve, as well as COVID-related supply chain disruptions, Medifocus has halted the sales of Prolieve since May 2021.
20. Medifocus therefore faced a liquidity crisis and mounting debt obligations

which limited the development of the treatment pipeline. In response, as set out above, on the Filing Date, the Company commenced restructuring proceedings by filing the NOI under the BIA, which NOI Proceedings were subsequently converted under the CCAA.

21. The Company is now seeking an extension to the Stay Period in order to complete the sale transaction contemplated by the Stalking Horse Agreement (as defined below).

IV. THE SALE PROCESS

22. The purpose of the Sale Process approved by the Court pursuant to the Initial Order was to provide third parties with an opportunity to submit bids for the acquisition of the Company's Assets or Shares. A copy of the Court approved Sale Process is attached to this Second Report as **Appendix "C"**.
23. The Initial Order also approved a Stalking Horse Agreement between the Company, as vendor, and Asset Profits Limited and/or its permitted assignee, as purchaser ("**APL**" or the "**Stalking Horse Bidder**"). Given the Stalking Horse Bidder is the sole secured creditor of the Company, the Monitor administered all aspects of the Sale Process on behalf of the Company.
24. The key aspects of the Sale Process are as follows (defined terms used in this section and not otherwise defined herein have the meaning ascribed to them in the Sale Process):
 - (a) In accordance with the Initial Order, within five (5) calendar days of the Sale Process being approved by the Court, the Monitor

published a notice advertising the opportunity in the Globe and Mail. In addition, the Monitor published a notice advertising the opportunity in the Washington Post and the Baltimore Sun. Copies of the published notices are attached to this Second Report as **Appendix “D”**;

- (b) In addition to the above, the Monitor published a notice advertising the opportunity in the Insolvency Insider and on the Monitor’s Case Website.
 - (c) Three Interested Parties advised the Monitor that they wished to commence due diligence. Only 2 of the 3 Interested Parties executed a non-disclosure agreement (“**NDA**”);
 - (d) Upon execution of the NDA, the Monitor provided access to the virtual data room established and maintained by the Monitor. The data room was populated by the Monitor with the assistance of the Company; and
 - (e) Binding APAs were due in writing to the Monitor by no later than 5:00pm (EST) on November 22, 2021 (the “**Bid Deadline**”). No such Binding APAs (with the exception of the Stalking Horse Agreement) were received by the Bid Deadline. Pursuant to the Sale Process, the Stalking Horse Agreement is deemed to be a Binding APA.
25. As no other bids besides the Stalking Horse Agreement were received by the Bid Deadline, the Stalking Horse Agreement was declared to be the Successful Bid (as defined in the Sale Process).

26. As previously noted, the Stalking Horse Bidder made certain loan advances to the Company, which advances were secured by, among other security, a general security agreement granted dated April 21, 2021 by the Company in favour of APL (the “**Security**”). APL has registered the Security in Ontario.
27. As part of the consideration under the terms of the Stalking Horse Agreement, the Stalking Horse Bidder is, in part, credit bidding its secured debt formed part of the purchase price. Accordingly, the Monitor engaged the Monitor’s Counsel to undertake an independent review of the Security.
28. The Monitor has received a written opinion from the Monitor’s Counsel confirming that, subject to typical qualifications and assumptions, the Security is valid and enforceable in accordance with its terms in the province of Ontario.

V. STALKING HORSE AGREEMENT

29. As mentioned, the Sale Process provides that unless a Binding APA was received through the Sale Process that, among other things, provides for consideration that is at least \$10,000 in excess of the purchase price contemplated by the Stalking Horse Agreement, then the transaction contemplated by the Stalking Horse Agreement would be declared the Successful Bid and be completed. A copy of the Stalking Horse Agreement is attached hereto as **Appendix “E”**.
30. The salient terms of the Stalking Horse Agreement are as follows (defined terms used in this section and not otherwise defined herein have the meaning ascribed to them in the Stalking Horse Agreement):

- (a) The Purchase Price is the aggregate of the following amounts:
- i. the assignment and assumption of the amount of the DIP Loan advanced by the Purchaser to the Company pursuant to the DIP Loan Agreement;
 - ii. the payment, in cash, or the assumption of, any payables of the Company, which by operation of law, are in priority to the Security of APL in respect to the Purchaser Debt (collectively, the “**Priority Payables**”); and
 - iii. the amount of \$1,079,818.85 as a credit bid on account of the Purchaser Debt (the “**Credit Bid Amount**”).
31. The Stalking Horse Bidder has requested that the Company and the Monitor consider a transaction structure that minimizes costs and the tax impacts associated with asset sales including taking necessary steps to preserve crucial regulatory approvals from the U.S. Food and Drug Association and the Asia Approvals. The transaction structure proposed by the Stalking Horse Bidder is in the form of a reverse vesting order that allows the Company to retain its assets and vest out its liabilities and, most importantly, preserve the existing regulatory approvals currently in place.
32. The Company and the Stalking Horse Bidder have advised the Monitor that they require additional time beyond the timelines provided for in the Sale Process to settle the transaction documentation, seek court approval of the transaction, and close the transaction contemplated by the Stalking Horse Agreement. As the Sale Process was approved by the Court and there is no mechanism of extension by the Monitor, the Company is

seeking this Court's approval of a revised timetable for closing to permit the sale transaction to close by February 8, 2022.

33. The Monitor is of the view that such extension is reasonable in the circumstances and should provide the Company with enough time to finalize the transaction structure, complete the required transaction documentation, seek the Court's approval of the transaction and close the transaction. The Monitor believes that the parties have conducted and continue to conduct themselves in good faith and with due diligence in pursuit of a transaction for the benefit of the Company's stakeholders, and that the proposed extension is favourable to that end.

VI. CASH FLOW FORECAST

34. The Company has prepared the Updated Cash Flow Projection for the period to and including March 4, 2022. The Updated Cash Flow Projection and the Company's statutory report on the Updated Cash Flow Forecast pursuant to Section 10(2)(b) of the CCAA are provided in **Appendices "F" and "G"**, respectively.
35. The Monitor has reviewed the Updated Cash Flow Projection, which indicates no sales until the completion of the sale transaction to the Stalking Horse Bidder. The cash flow requirement of the Company is anticipated to be covered by the DIP financing previously approved by the Court.
36. Based on the Monitor's review of the Updated Cash Flow Projection, there are no material assumptions which seem unreasonable. The Monitor's statutory report on the cash flow is attached hereto at **Appendix "I"**.

VII. ACTIVITIES OF THE COMPANY AND THE MONITOR

Overview of Activities since the First Report

37. Since the Initial Order was granted, the Company has, among other things:
- (a) communicated with the Monitor and the Company's counsel on various matters in connection with the CCAA proceedings;
 - (b) assisted the Monitor in preparation of materials with respect to the Sale Process including preparation of the teaser document and the electronic data room; and
 - (c) worked with the Monitor to prepare the Updated Cash Flow Projection.
38. In addition to assisting the Company and its legal counsel in connection with the above, the Monitor has been engaged in, among other things:
- (a) establishing and maintaining the Case Website where material documents pertaining to these proceedings are available in electronic form;
 - (b) conducting the Sale Process as described in this Second Report;
 - (c) implementing procedures for the monitoring of the Company's cash flows and for ongoing reporting of variances;
 - (d) assisting the Company with preparing the Updated Cash Flow Projection;

- (e) meeting and corresponding with the Company and its legal counsel regarding the Updated Cash Flow Projection, cash management, supplier issues, landlord matters and various other matters in connection with the Company's operations and its CCAA proceedings;
- (f) responding to calls and enquiries from creditors and other stakeholders in connection with the CCAA proceedings; and
- (g) reviewing materials filed with the Court in respect of the CCAA proceedings, and this Motion with respect to the requested stay extension.

VIII. CONCLUSION AND RECOMMENDATIONS

39. Based on the foregoing, the Monitor respectfully recommends that this Court issue an order extending the Stay Period to and including February 8, 2022.

Dated at Toronto this 4th day of January, 2022

msi Spergel inc.
as the Monitor of Medifocus Inc.
and not in its personal or
corporate capacities

Per:



Mukul Manchanda, CPA, CIRP, LIT

APPENDIX “E”

Asset Profits Limited and/or its permitted assignee

the Purchaser

and

Medifocus Inc.

the Vendor

STALKING HORSE ASSET PURCHASE AGREEMENT

October 5, 2021

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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.

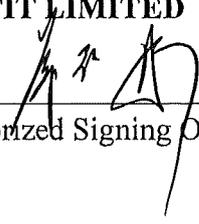
This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed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

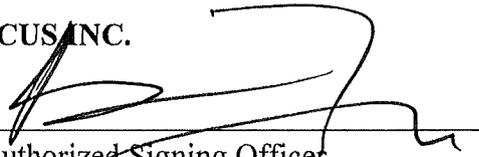
By:



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.

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.

APPENDIX “F”

Integer/Lake Region Medical (parts and supplier sourcing charges)	-	-	-	-	-	-	-	-
Total Parts/Tooling Investment	-	-	-	-	-	-	-	-
Professional Fees	-	-	53,868	69,600	-	-	-	123,468
Total Disbursements	9,984	4,100	83,888	80,605	25,244	7,500	23,524	234,846
Net Change in Cash	(9,984)	(4,100)	(83,888)	(80,605)	(25,244)	(7,500)	(23,524)	(234,846)
Net Change in Cash	(9,984)	(4,100)	(83,888)	(80,605)	(25,244)	(7,500)	(23,524)	(234,846)
Opening Cash	3,250	3,266	39,166	5,277	4,672	9,428	1,928	3,250
DIP Financing	10,000	40,000	50,000	80,000	30,000	-	25,000	235,000
Ending Cash	3,266	39,166	5,277	4,672	9,428	1,928	3,404	3,404

Dated the 3rd day of February, 2022.

Douglas G. Liu, VP Finance
Medifocus Inc.

APPENDIX “G”

Report on Cash-Flow Statement by the Insolvent Company
(Paragraph 10(2) of the CCAA)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C. C-36, AS AMENDED
(the "CCAA")

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

The management of Medifocus Inc. (the "**Company**") has developed the assumptions and prepared the attached statement of projected cash flow as of the 3rd day of February, 2022 consisting of statement of Projected Cash Flow for the period from January 29, 2022 to March 18, 2022 (the "**Cash Flow**").

The hypothetical assumptions are reasonable and consistent with the purpose of the projection described in the notes attached, and the probable assumptions are suitably supported and consistent with the plans of the Company and provide a reasonable basis for the projection. All such assumptions are disclosed in the notes attached.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in the notes attached, using a set of hypothetical and probable assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Columbia in the Province/State of Maryland, this 3rd day of February, 2022.

Medifocus Inc.

Per:



Douglas G. Liu, VP Finance

Report on Cash-Flow Statement by the Insolvent Company
(Paragraph 10(2) of the CCAA)

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.

Purpose

1. The Purpose of the projection is to present the Cash Flow of the Company in accordance with the requirements of Section 10(2)(b) of the CCAA.

Projections Notes

2. The Cash Flow should be read in conjunction with the Monitor's Report on the Cash Flow Statement and the assumptions below.
3. The Cash Flow is made during a global pandemic due to the novel coronavirus, known as COVID-19 (the "Pandemic") and during a time in which the Province of Ontario has issued certain emergency orders requiring mandatory closures of businesses, including the Company's. As a result of the Pandemic, the situation continues to evolve and many uncertainties remain as to the effect of the Pandemic on the Company and the economic conditions, which could have material impacts on the Company and the projections in the Cash Flow.

Assumptions

4. The main purpose of the Cash Flow is to provide the stakeholders with information with respect to the cash requirements of the Company until a sale can be finalized. It is anticipated that the previously approved DIP financing will be sufficient to fund the cash flow requirements of the Company during the stay extension sought by the Company.
5. Amounts owing to Canada Revenue Agency and/or Internal Revenue services with respect to payroll source deductions will continue to be paid in the ordinary course.
6. Creditors continue to provide same terms as prior to this filing, with the exception of critical suppliers who may be paid upon delivery of goods.

7. Payroll costs are based on limited staffing due to the Pandemic and that a sale of the assets of the Company is imminent.

Dated at the City of Columbia in the Province/State of Maryland, this 3rd day of February, 2022.

Medifocus Inc.

Per:



Douglas G. Liu, VP Finance

APPENDIX “H”

Report on Cash-Flow Statement by the Monitor
(Paragraph 23(1)(b) of the CCAA)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C. C-36, AS AMENDED
(the "**CCAA**")

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

The attached statement of projected cash flows of Medifocus Inc. (the "**Company**") as of the 3rd day of February 2022, consisting of statement of Projected Cash Flow for the period from January 29, 2022 to March 18, 2022 (the "**Cash Flow**") has been prepared by the management of the Company for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by the management and employees of the Company. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow. We have also reviewed the support provided by management for the probable assumptions and preparation and presentation of the Cash Flow.

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

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow;
- b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the Company or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurances as to whether the Cash Flow will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report.

The Cash Flow has been prepared solely for the purpose described in the notes attached, using a set of hypothetical and probable assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Toronto in the Province of Ontario, this 3rd day of February, 2022.

msi Spergel inc

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

Per:



Mukul Manchanda, CPA, CIRP, LIT

Report on Cash-Flow Statement by the Monitor
(Paragraph 23(1)(b) of the CCAA)

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.

Purpose

1. The Purpose of the projection is to present the Cash Flow of the Company in accordance with the requirements of Section 10(2)(b) of the CCAA.

Projections Notes

2. The Cash Flow should be read in conjunction with the Monitor's Report on the Cash Flow Statement and the assumptions below.
3. The Cash Flow is made during a global pandemic due to the novel coronavirus, known as COVID-19 (the "Pandemic") and during a time in which the Province of Ontario has issued certain emergency orders requiring mandatory closures of businesses, including the Company's. As a result of the Pandemic, the situation continues to evolve and many uncertainties remain as to the effect of the Pandemic on the Company and the economic conditions, which could have material impacts on the Company and the projections in the Cash Flow.

Assumptions

4. The main purpose of the Cash Flow is to provide the stakeholders with information with respect to the cash requirements of the Company until a sale can be finalized. It is anticipated that the previously approved DIP financing will be sufficient to fund the cash flow requirements of the Company during the stay extension sought by the Company.
5. Amounts owing to Canada Revenue Agency and/or Internal Revenue services with respect to payroll source deductions will continue to be paid in the ordinary course.
6. Creditors continue to provide same terms as prior to this filing, with the exception of critical suppliers who may be paid upon delivery of goods.

7. Payroll costs are based on limited staffing due to the Pandemic and that a sale of the assets of the Company is imminent.

Dated at the City of Toronto in the Province of Ontario, this 3rd day of February, 2022.

msi Spergel inc

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

Per:



Mukul Manchanda, CPA, CIRP, LIT

APPENDIX “I”

**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.

AFFIDAVIT OF MUKUL MANCHANDA
(Sworn February 3, 2022)

I, **MUKUL MANCHANDA**, of the City of Brampton, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Licensed Insolvency Trustee with msi Spergel inc. ("**Spergel**"), the court-appointed Monitor (in such capacity, the "**Monitor**") of Medifocus Inc. (the "**Debtor**"), and as such have knowledge of the matters to be deposed herein, except where such knowledge is stated to be based on information and belief, in which case I state the source of the information and verily believe such information to be true.

2. In connection with the CCAA proceedings of the Debtor for the period to and including January 31, 2021, fees of \$62,520.37 (inclusive of HST and disbursements) were charged by Spergel as detailed in the billing summary and time dockets attached hereto as **Exhibit "1"** to this, my Affidavit. This represents 127 hours at an effective rate of \$395.89 per hour.

3. The hourly billing rates detailed in this Affidavit are comparable to the hourly rates charged by Spergel for services rendered in relation to similar proceedings.

4. Assuming that this Honourable court grants an Order as requested, without opposition, the proposed accrual of Monitor's fees (including the fees for bankruptcy of the ResidualCo) to the discharge of Monitor is \$28,250 inclusive of HST and disbursements.

5. I make this Affidavit for no improper purpose.

SWORN before me at the City of
Toronto, in the Province of Ontario
this day of February, 2022.

B. Eileen Sturge

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)
)
)
)



Mukul Manchanda

Commissioner for Taking Affidavits

Barbara Eileen Sturge, a Commissioner, etc.,
Province of Ontario, for msi Spergel inc.
and Spergel & Associates inc.
Expires September 21, 2022.

**This is Exhibit "1" of the Affidavit of
Mukul Manchanda
Sworn before me on this 3rd day of February, 2022**

B. Eileen Sturge

A Commissioner, Etc.

Barbara Eileen Sturge, a Commissioner, etc.,
Province of Ontario, for msi Spergel inc.
and Spergel & Associates inc.
Expires September 21, 2022.



October 21, 2021

Invoice #: 12187

Medifocus Inc.
130 King Street West
Toronto, ON M5X2A2

Invoice

RE: Medifocus Inc.

FOR PROFESSIONAL SERVICES RENDERED for the period to and including October 1, 2021 with respect to the CCAA proceeding of Medifocus.

	Hours	Hourly Rate	Total
Gillian Goldblatt, CPA, CA, CIRP, LIT	20.80	\$375.00	\$7,800.00
Mukul Manchanda, CPA, CIRP, LIT	40.40	450.00	18,180.00
Eileen Sturge	2.40	250.00	600.00
Others	3.40	473.65	1,610.40
Total Professional fees	67.00	\$420.75	\$28,190.40
HST			3,664.75
Reimbursable Expenses			
Miscellaneous			\$4,177.06
Total Reimbursable expenses			\$4,177.06
HST on expenses			\$543.02
Total			\$36,575.23

HST Registration #R825172935

(AAMEDI-M)

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

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

Filters Used:

- Time Entry Date: 1/01/70 to 10/01/21
- File Client ID: AAMEDI-M to AAMEDI-M
- Time Entry Bill Status: Un-Billed to Un-Billed
- Time Entry Bill Status: Un-Billed to Un-Billed

File Name (ID): Medifocus Inc. (AAMEDI-M:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Bank Reconciliations (BREC)					
Fri	10/01/2021	Admin Charge	1.00	\$1,342.40	\$1,342.40
Bank Reconciliations (BREC)			1.00		\$1,342.40
Eileen Sturge (EST)					
Wed	09/01/2021	Prepare Form 33 and Directors Resolution; provide format for creditors list	0.70	\$250.00	\$175.00
Tues	09/07/2021	Update creditor list	1.00	\$250.00	\$250.00
Wed	09/08/2021	Finalize creditor list; e-file NOI	0.50	\$250.00	\$125.00
Thur	09/16/2021	E-file cash flow documents	0.20	\$250.00	\$50.00
Eileen Sturge (EST)			2.40		\$600.00
Gillian Goldblatt (GGO)					
Tues	06/08/2021	review initial documents provided by Douglas Liu; discuss same with M. Manchanda.	1.00	\$375.00	\$375.00
Tues	06/15/2021	review of additional documentation provided by company;	1.00	\$375.00	\$375.00
Tues	06/15/2021	review and approve disbursement.	0.10	\$375.00	\$37.50
Mon	06/21/2021	conference call with Douglas Lui, M. Manchanda, re:next steps, 13 week cash flow.	0.50	\$375.00	\$187.50
Tues	06/22/2021	review of operation expenses prepared by debtor; compare expenses to previous budget provided; discussion with M. Manchanda re:outstanding items.	0.50	\$375.00	\$187.50
Thur	06/24/2021	revise cash flow and review with M. Manchanda;	1.00	\$375.00	\$375.00
Fri	06/25/2021	review and approve disbursements.	0.30	\$375.00	\$112.50
Tues	07/20/2021	review and approve disbursements.	0.20	\$375.00	\$75.00
Wed	07/21/2021	review and approve disbursement.	0.10	\$375.00	\$37.50
Wed	08/18/2021	Review of APA, DIP term sheet, loan agreement, asset profit loan agreements, security agreements, PPSA, GSA; discussion with M. Manchanda re:same.	2.70	\$375.00	\$1,012.50
Mon	09/13/2021	instruct staff as to mailing requirements; review final package and affidavit.	0.80	\$375.00	\$300.00
Tues	09/14/2021	review and approve disbursements.	0.30	\$375.00	\$112.50
Thur	09/16/2021	Draft copy for website, instruct marketing as to web engagement setup, documents, partners.	0.60	\$375.00	\$225.00
Tues	09/28/2021	email copy of signed cash flow to S. Parsons at WFK; review of amended affidavit; review motion record; draft outline for first report to court.	2.30	\$375.00	\$862.50
Wed	09/29/2021	Begin drafting first report to court.	2.90	\$375.00	\$1,087.50
Thur	09/30/2021	Finish drafting First Report to Court.	6.40	\$375.00	\$2,400.00
Fri	10/01/2021	review of email from T. Presutti, email to M. Manchanda re:same.	0.10	\$375.00	\$37.50
Gillian Goldblatt (GGO)			20.80		\$7,800.00
Hinna Shaikh (HSH)					
Fri	09/17/2021	updated site	0.30	\$120.00	\$36.00
Wed	09/29/2021	updated site	0.10	\$120.00	\$12.00
Hinna Shaikh (HSH)			0.40		\$48.00
Mukul Manchanda (MMA)					

Filters Used:

- Time Entry Date: 1/01/70 to 10/01/21
- File Client ID: AAMEDI-M to AAMEDI-M
- Time Entry Bill Status: Un-Billed to Un-Billed
- Time Entry Bill Status: Un-Billed to Un-Billed

File Name (ID): Medifocus Inc. (AAMEDI-M:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Mukul Manchanda (MMA)					
Tues	06/08/2021	Time spent prior to receipt of retainer including multiple email exchanges regarding engagement, preparation of information request letter, review of timeline prepared by counsel and discussions with counsel. Receipt and review of an email from D. Liu containing link to a dropbox account with financial information.. Downloaded the financial information. Review of accounts receivable aging, internally prepared financial statements as at March 31, 2021, fixed assets continuity schedule, intangible asset schedule, bank statements, budget and discussion regardig same with G. Goldblatt.	3.20	\$450.00	\$1,440.00
Fri	06/11/2021	Receipt and review of an email from D. Liu containing further information. Continue review of financial information provided to date.	1.40	\$450.00	\$630.00
Thur	06/17/2021	Receipt and review of additional information from D. Liu. Sent an email to D. Liu asking to set up a call for Monday to discuss the file.	1.00	\$450.00	\$450.00
Fri	06/18/2021	Receipt and review of an email from D. Liu providing further information regarding payables and amounts outstanding to the landlord. Set up a call for Monday to discuss.	0.20	\$450.00	\$90.00
Mon	06/21/2021	Review of information in advance of the call with D. Liu. Participated in a conference call with D. Liu and G. Goldblatt.	1.50	\$450.00	\$675.00
Tues	06/22/2021	Receipt and review of an email from D. Liu containing the 13-week forecast. Discussion with G. Goldblatt regarding same.	1.00	\$450.00	\$450.00
Wed	06/23/2021	Review of the forecast. Discussion with C. Fell regarding the forecast.	0.50	\$450.00	\$225.00
Thur	06/24/2021	Review and edit the cash flow forecast. Review the revised forecast with G. Goldblatt. Sent an email to D. Liu containing the revised forecast and additional questions. Receipt and review of an email from D. Liu containing answers to the questions. Revised the forecast accordingly. Discussion with C. Fell regarding the cash flow. Review of email exchanges between C. Fell and R. Tong regarding go forward strategy.	1.80	\$450.00	\$810.00
Wed	06/30/2021	Participated in a conference call with C. Fell and R. Tong. Email exchanges with C. Fell regarding filing the NOI.	0.30	\$450.00	\$135.00
Tues	07/13/2021	Email exchanges with C. Fell regarding the cash flow forecast.	0.50	\$450.00	\$225.00
Thur	07/15/2021	Receipt and review of an email from C. Fell answering questions regarding DIP and security agreement.	0.20	\$450.00	\$90.00
Fri	07/16/2021	Receipt and review of the DIP agreement. Receipt and review of an email from R. Tong regarding the amendment to the cash flow forecast.	0.50	\$450.00	\$225.00
Tues	07/20/2021	Review of email exchanges between C. Fell and M. Cheng regarding an employee benefit plan.	0.20	\$450.00	\$90.00
Wed	07/21/2021	Receipt and review of an email from D. Liu regarding pension obligations to employees. Review of further email exchanges between C. Fell and D. Liu regarding same.	0.20	\$450.00	\$90.00
Mon	07/26/2021	Receipt and review of an email from C. Fell to R. Tong containing the Asset Purchase Agreement and providing details regarding the strategy. Receipt and review of an email from D. Liu providing a list of material contracts. Further email exchanges between C. Fell and D. Liu regarding relevant contracts to be preserved as part of the restructuring.	1.30	\$450.00	\$585.00
Tues	07/27/2021	Revised the forecast and email same to C. Fell. Receipt and review of email exchanges between C. Fell and D. Li regarding assignment of contracts.	1.80	\$450.00	\$810.00
Thur	07/29/2021	Receipt and review of email exchanges between C. Fell and D. Liu.	0.20	\$450.00	\$90.00

Filters Used:

- Time Entry Date: 1/01/70 to 10/01/21
- File Client ID: AAMEDI-M to AAMEDI-M
- Time Entry Bill Status: Un-Billed to Un-Billed
- Time Entry Bill Status: Un-Billed to Un-Billed

File Name (ID): Medifocus Inc. (AAMEDI-M:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Mukul Manchanda (MMA)					
Fri	08/13/2021	Receipt and review of an email from S. Parsons containing the draft DIP term sheet and APA. EMail exchanges with K. PLunkett regarding same.	1.20	\$450.00	\$540.00
Tues	08/17/2021	Call with K. PLunkett regarding the file. Participated in a conference call with C. Fell and K. Plunkett regarding the APA and DIP term sheet. Receipt and review of an email from S. PARSONS containing the loan and security package of Assets Profits Limited. Email exchanges with K. PLunkett regarding Asset Profits security.	1.90	\$450.00	\$855.00
Tues	08/24/2021	Receipt and review of comments from K. Plunkett regarding the DIP financing document.	0.50	\$450.00	\$225.00
Fri	08/27/2021	Receipt and review of an email from S. Parson requesting additional information. Sent an email to D. Liu and asked him to provide the requested information. Receipt of an email from D. Liu containing answers, forwarded same to S. Parson.	0.40	\$450.00	\$180.00
Mon	08/30/2021	Email exchanges with C. Fell regarding preparation of a revised cash flow forecast. Email exchanges with D. Liu regarding same. Prepared a revised forecast and emailed same to D. Liu for comments.	0.80	\$450.00	\$360.00
Wed	09/01/2021	Revise cash flow forecast, review additional documentation in advance of filing the NOI. Prepare relevant documents for filing the NOI. Email exchanges with C. Fell regarding same. Receipt and review of an email from S. Downey containing the corporate search. Sent an email to D. Liu containing the information required from him for the filing and providing him with the documents to be signed by the directors. Further email exchanges with D. Liu regarding the filing.	2.30	\$450.00	\$1,035.00
Thur	09/02/2021	Receipt and review of an email from D. Liu containing the signed Form 33. Email exchanges with D. Liu regarding resolution of board of directors for insolvency.	0.20	\$450.00	\$90.00
Fri	09/03/2021	Email exchanges with D. Liu regarding resolution of directors.	0.20	\$450.00	\$90.00
Tues	09/07/2021	Receipt and review of an email from D. Liu containing the creditor listing. Continue preparation of the filing documents. Review of filing documents with E. Sturge. Email exchanges with D. Liu regarding filing documents.	1.20	\$450.00	\$540.00
Wed	09/08/2021	Receipt and review of the finalized filing documents. Signed the EIS and consent to act. Receipt and review of the signed documents from D. Liu. Email exchanges with D. Liu regarding updating the cash flow forecast. Receipt and review of the updated cash flow forecast from D. Liu. Instructed E. Sturge to file with the OSB. Receipt and review of the certificate of appointment from the OSB. Emailed same to D. Liu and C. Fell. Email exchanges with D. Liu regarding the proceedings and DIP funding.	0.90	\$450.00	\$405.00
Thur	09/09/2021	Email exchanges with D. Liu regarding funding from Asset Profits.	0.20	\$450.00	\$90.00
Fri	09/10/2021	Email exchanges with D. Liu regarding preparation of cash flow and related documents to be filed within 10 days of filing the NOI. Sent an email to K. Plunkett providing the certificate of NOI filing.	0.30	\$450.00	\$135.00
Mon	09/13/2021	Review and revise the cash flow statement. Prepare the debtor's confirmation of the cash-flow. Prepared the Form 29 and 30. Email exchanges regarding mailing of the NOI documents to the creditors. Sent an email to D. Liu providing the cash flow, the debtor's confirmation letter and Form 29.	2.60	\$450.00	\$1,170.00

Filters Used:

- Time Entry Date: 1/01/70 to 10/01/21
- File Client ID: AAMEDI-M to AAMEDI-M
- Time Entry Bill Status: Un-Billed to Un-Billed
- Time Entry Bill Status: Un-Billed to Un-Billed

File Name (ID): Medifocus Inc. (AAMEDI-M:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Mukul Manchanda (MMA)					
Wed	09/15/2021	Receipt and review of an email from S. Parson regarding available dates for a stay extension / CCAA conversion hearing. Email exchanges with K. Plunkett regarding same. Participated in a call with K. Plunkett and M. Spence regarding the relief being sought by the Company and the information required in order to assess same. Receipt and review of the comments from K. Plunkett on the Asset Purchase Agreement. Sent an email providing further comments.	1.70	\$450.00	\$765.00
Thur	09/16/2021	Receipt and review of the MEdia Release. Email exchanges with C. Fell regarding the mailing to creditors and other statutory filings. Revise the cash flow forecast, prepare form 29 and 30. Prepare representation and debtor confirmation letters. Sent an email to D. Liu containing same. Receipt and review of an email from C. Fell containing the media release. Receipt and review of an email from D. Liu providing the signed cash flow, representation and Form 30. Arranged to have same e-filed with the OSB.	2.80	\$450.00	\$1,260.00
Fri	09/17/2021	Receipt, review and approve posting of certain information on the case website. Receipt and review of an email from K. Plunkett to C. Fell providing collective comments to the Asset Purchase Agreement. Review of email exchanges with respect to the tax language. Receipt and review of an email from S. Parsons containing the draft Sale Process.	1.20	\$450.00	\$540.00
Mon	09/20/2021	Email exchanges with K. Plunkett regarding the Sale Process. Receipt and review of an email from D. Liu with certain questions. Sent an email to D. Liu providing the answers.	0.30	\$450.00	\$135.00
Tues	09/21/2021	Participated in a conference call with K. Plunkett and T. Dolny regarding the Sale Process. Receipt and review of comments from K. Plunkett regarding the Sale Process.	0.80	\$450.00	\$360.00
Thur	09/23/2021	Receipt and review of an email from Amex requesting further information of the proceedings. Receipt and review of the draft affidavit of D. Liu regarding the upcoming hearing.	0.70	\$450.00	\$315.00
Fri	09/24/2021	Receipt and review of an email from S. Parsons requesting the total requirement of DIP. Telephone discussion with S. Parsons regarding same. Receipt and review of an email from S. Parsons containing revised affidavit and Sale Process.	1.30	\$450.00	\$585.00
Mon	09/27/2021	Receipt and review of an email from K. Plunkett requesting the draft form of order to be sought at the hearing. Receipt and review of an email from S. Parsons requesting information regarding source deductions and hst. Sent an email to S. Parsons providing the requested information. Receipt and review of an email from D. Liu regarding FDA approvals and the process required upon change of ownership. Forwarded same to K. Plunkett. Receipt and review of an email from S. Parsons containing the draft initial order. Receipt and review of an email from M. Spence requesting a fully executed copy of the DIP term sheet and a consent to act for Spengel. Email exchanges with K. Plunkett regarding purpose of converting the proceedings to CCAA. Receipt and review of an email from S. Parsons containing a further revised version of the affidavit. Receipt and review of an email from K. Plunkett containing comments regarding the affidavit.	1.70	\$450.00	\$765.00

Filters Used:

- Time Entry Date: 1/01/70 to 10/01/21
- File Client ID: AAMEDI-M to AAMEDI-M
- Time Entry Bill Status: Un-Billed to Un-Billed
- Time Entry Bill Status: Un-Billed to Un-Billed

File Name (ID): Medifocus Inc. (AAMEDI-M:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Mukul Manchanda (MMA)					
Tues	09/28/2021	Receipt and review of an email from K. Plunkett regarding the initial order. Discussions with M. Spence regarding the order. Receipt and review of an email from S. Parsons requesting the creditor listing. Sent an email providing the requested information. Receipt and review of the updated affidavit from S. Parsons. Telephone call from S. parson requesting a copy of the cash flow forecast. Instructed G. Goldblatt to provide S. Parson with a copy of the signed cash flow forecast. Receipt review and execute the consent to act and emailed same to M. Spence. Receipt and review of an email from M. Spence to S. Parsons providing comments on the initial order. Receipt and review of the Motion Record of the company. Arranged to have same posted on the case website.	1.40	\$450.00	\$630.00
Mukul Manchanda (MMA)			40.40		\$18,180.00
Yulia Golbom (YGO)					
Mon	09/13/2021	General	2.00	\$110.00	\$220.00
Yulia Golbom (YGO)			2.00		\$220.00
Total for File ID AAMEDI-M:			67.00		\$28,190.40
Grand Total:			67.00		\$28,190.40



December 15, 2021

Invoice #: 12241

Medifocus Inc.
130 King Street West
Toronto, ON M5X2A2

Invoice

RE: Medifocus Inc.

FOR PROFESSIONAL SERVICES RENDERED for the period from October 2, 2021 to and including December 1, 2021 with respect to the CCAA proceeding of Medifocus.

	Hours	Hourly Rate	Total
Gillian Goldblatt, CPA, CA, CIRP, LIT	7.30	\$375.00	\$2,737.50
Mukul Manchanda, CPA, CIRP, LIT	26.40	450.00	11,880.00
Eileen Sturge	2.70	250.00	675.00
Paula Amaral	2.40	250.00	600.00
Others	8.90	102.02	908.00
Total Professional fees	47.70	\$352.21	\$16,800.50
HST			2,184.07
Reimbursable Expenses			
Corporate Profile Search			\$24.65
Miscellaneous			\$716.34
Postage			\$214.64
Total Reimbursable expenses			\$955.63
HST on expenses			\$30.06
Total			\$19,970.26

HST Registration #R825172935

(AAMEDI-M)

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

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

Filters Used:

- Time Entry Date: 10/02/21 to 12/01/21
- File ID: AAMEDI-M: to AAMEDI-M:

File Name (ID): Medifocus Inc. (AAMEDI-M:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Bank Reconciliations (BREC)					
Wed	12/01/2021	Admin Charge	8.00	\$100.00	\$800.00
Bank Reconciliations (BREC)			8.00		\$800.00
Eileen Sturge (EST)					
Thur	10/07/2021	Update creditor mailing list; prepare list of creditors with incorrect address in preparation for next mailing	0.50	\$250.00	\$125.00
Fri	10/08/2021	E-file initial order/endorsement to OSB; emails/telephone calls re: ad in the Globe and Mail; prepare mailing and affidavit.	0.70	\$250.00	\$175.00
Mon	10/18/2021	Admin on file	0.50	\$250.00	\$125.00
Mon	10/18/2021	Admin on file	0.50	\$250.00	\$125.00
Tues	10/19/2021	Arrange for ads in the Washington Post and Baltimore Sun re sales process	0.50	\$250.00	\$125.00
Eileen Sturge (EST)			2.70		\$675.00
Gillian Goldblatt (GGO)					
Tues	10/05/2021	receipt and review of emails from D. Lui and M. Manchanda re:Amex card number; review of email re:case website posting of first report.	0.20	\$375.00	\$75.00
Thur	10/07/2021	receipt and review of Initial Order and Endorsement; receipt and review of email from M. Manchanda re:case website posting.	0.20	\$375.00	\$75.00
Fri	10/08/2021	receipt and review of emails from M. Manchanda, S. Parsons, and K. Plunkett re:Globe and Mail Notice to Creditors, service list, sales process procedure posting, and case website postings.	0.20	\$375.00	\$75.00
Mon	10/11/2021	Draft Teaser Document.	4.20	\$375.00	\$1,575.00
Tues	10/12/2021	email counsel with draft Teaser document.	0.10	\$375.00	\$37.50
Wed	10/13/2021	receipt and review of email from K. Plunkett and M. Manchanda re: teaser document comments.	0.20	\$375.00	\$75.00
Thur	10/14/2021	receipt and review of emails from K. Plunkett, C. Fell, and D. Lui re: teaser document.	0.20	\$375.00	\$75.00
Fri	10/15/2021	receipt and review of email from M. Manchanda re: teaser document.	0.10	\$375.00	\$37.50
Mon	10/18/2021	Receipt and review of emails from D. Lui, M. Manchanda, and C. Fell regarding sales process.	0.20	\$375.00	\$75.00
Tues	10/19/2021	Receipt and review of emails from D. Lui and M. Manchanda, regarding Baltimore Sun and Washington Post ads.	0.20	\$375.00	\$75.00
Tues	11/09/2021	call with counsel re:RVO.	0.50	\$375.00	\$187.50
Thur	11/18/2021	receipt and review of email from Douglas Lui and M. Manchanda; forward most recent US tax filings to Maxime-Jean Gerin.	0.50	\$375.00	\$187.50
Tues	11/23/2021	Receipt and review of emails from company and counsel re:next steps; discussion with M. Manchanda re:same.	0.50	\$375.00	\$187.50
Gillian Goldblatt (GGO)			7.30		\$2,737.50
Hinna Shaikh (HSH)					
Tues	10/05/2021	updated site	0.10	\$120.00	\$12.00
Fri	10/08/2021	updated site	0.80	\$120.00	\$96.00
Hinna Shaikh (HSH)			0.90		\$108.00
Mukul Manchanda (MMA)					

Filters Used:

- Time Entry Date: 10/02/21 to 12/01/21
- File ID: AAMEDI-M: to AAMEDI-M:

File Name (ID): Medifocus Inc. (AAMEDI-M:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Mukul Manchanda (MMA)					
Mon	10/04/2021	Review of the motion materials in advance of reviewing the report to court. Receipt, review and edit the report to court. Review and prepared appendices. Prepared statutory documents to accompany the report. Receipt and review of comments from K. Plunkett and M. Spence on the report. Further revisions to the report. Email exchanges with C. Fell regarding appendices to the report and availability of the sworn affidavit. Email exchanges with K. Plunkett regarding duties of the monitor.	4.30	\$450.00	\$1,935.00
Tues	10/05/2021	Email exchanges with K. Plunkett regarding further revision to the report. Receipt and review of an email from C. Fell providing some factual information and requesting revisions to the report. Receipt and review of an email from P. Corney containing comments regarding the report. Telephone discussion with P. Corney regarding same. Email exchanges regarding the break fee in the stalking horse agreement and expense reimbursement in the DIP term sheet. Amended the report accordingly and prepared an executed copy along with appendices and emailed same to M. Spence for service. Review of email exchanges between C. Fell and K. Plunkett regarding the stalking horse agreement. Receipt and review of an email from Amex regarding the insolvency. Email exchanges with D. Liu regarding the Amex number.	2.60	\$450.00	\$1,170.00
Wed	10/06/2021	Email exchanges with D. Liu and C. Fell regarding funding. Participated in a conference call with K. Plunkett and M. Spence. Receipt and review of the factum of Medifocus. Email exchanges with D. Liu and C. Fell regarding funding as per the cash flow.	1.60	\$450.00	\$720.00
Thur	10/07/2021	Review of materials in advance of the court hearing. Attended the court hearing. Receipt and review of an email from Justice Cavanagh containing the signed initial order and the endorsement. Email exchanges with S. Parsons regarding the service list. Email exchanges with C. Fell, R. Tong and D. Liu regarding the cash flow forecast. Instructions to staff regarding preliminary filings and postings in relation to CCAA documents. Email exchanges with E. Sturge regarding updating addresses of creditors where mail was not delivered.	1.90	\$450.00	\$855.00
Fri	10/08/2021	Prepare and file Form 1 and 2 with the OSB. Completed the CCAA online filing as required by the OSB. Prepared and arranged to have the Notice of the Initial Order and the Sale Process posted in the Globe and Mail. Prepared the Notice to Creditors and the Creditor listing and arranged to have same posted on the case website. Arranged to have multiple documents posted on the Case Website as required by the Initial Order. Lengthy call with CRA regarding the CCAA filing and the Sale Process. Email exchanges with the Company regarding the Sale Process. Email exchanges with the OSB regarding conversion of NOI proceedings to CCAA. Provided the requested documents. Email exchanges with K. Plunkett regarding the process. Receipt and review of the draft NDA from T. Dolny. Prepare the creditor listing and notice to creditors to be posted on the case website.	5.40	\$450.00	\$2,430.00
Mon	10/11/2021	Receipt and review of an email from J. Aceves of California Department of Tax regarding the company's account and updating outstanding filings. Sent an email to D. Liu regarding same. Receipt and review of the response from D. Liu.	0.20	\$450.00	\$90.00
Tues	10/12/2021	Receipt and review of the Notice of Appearance from Z. SSternberg.	0.10	\$450.00	\$45.00

Filters Used:

- Time Entry Date: 10/02/21 to 12/01/21
 - File ID: AAMEDI-M: to AAMEDI-M:

File Name (ID): Medifocus Inc. (AAMEDI-M:)

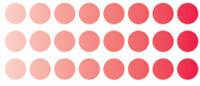
Day	Date	Memo	B-Hrs	B-Rate	Amount
Mukul Manchanda (MMA)					
Wed	10/13/2021	Receipt and review of the draft teaser document from G. Goldblatt. Provided comments regarding same. Receipt and review of comments from K. Plunkett regarding the teaser documents. Discussion with G. Goldblatt regarding same. Sent an email to D. Liu and C. Fell containing the draft teaser document.	1.80	\$450.00	\$810.00
Thur	10/14/2021	Receipt and review of comments from D. Liu and C. Fell regarding the teaser document. Finalize the document and arranged to have same posted to the case website.	0.30	\$450.00	\$135.00
Fri	10/15/2021	Sent an email to D. Liu, C. Fell and K. PLunkett containing the final teaser document and asking D. Liu to provide information regarding any industry specific publication where an ad can be placed. Email exchanges with H. Louis regarding posting an ad in the Insolvency Insider. Posted the sale process on the aset for sale section on the Monitor's website. Email exchanges regarding M Partners.	0.60	\$450.00	\$270.00
Mon	10/18/2021	Email exchanges with A., Spergel regarding payment of the Globe and Mail expense. Instructed E. Sturge to record the expense as a recoverable expense. Sent an email to D. Liu asking him to provide publication where we can place an ad for the Sale Process. Prepare online data room and upload relevant information. Sent an email to D. Liu providing him with access to the data room. Receipt and review of the non-disclosure agreement. Email exchanges with D. Liu regarding posting an ad in local newspaper.	1.40	\$450.00	\$630.00
Tues	10/19/2021	Sent an email to D. Liu asking him to post an ad in Baltimore Sun and Washington Post with respect to the Sale Process. Email exchanges with D. Liu regarding frequency of ad. Multiple email exchanges regarding posting the ad. Prepared the ad to be posted in Baltimore Sun and Washington Post. Instructed E. Sturge to reach out to each newspaper and arrange to have the ad posted. Multiple email exchanges with Baltimore Sun and Washington Post regarding the ad. Approved the proof and confirmed publication this week.	1.30	\$450.00	\$585.00
Thur	10/21/2021	Receipt and review of the proof of ad in the Baltimore Sun. Receipt and review of an email from M. Mazallupo requesting NDA. Prepare and send the NDA to M. Mazallupo. Provided access to data room upon receipt of fully signed NDA.	0.50	\$450.00	\$225.00
Mon	10/25/2021	Receipt and review of an email from H. Dascal regarding the sale process. Sent an email to H Dascal providing the NDA.	0.20	\$450.00	\$90.00
Tues	10/26/2021	Email exchanges with K. Plunkett regarding the proceedings.	0.20	\$450.00	\$90.00
Thur	10/28/2021	Receipt and review of an email from L. Karaleva containing a claim along with supporting documents. Sent an email to L. Karaleva advising that no claims process has been approved by the court and we will keep her claim on file in case a claim process if approved by the court.	0.30	\$450.00	\$135.00
Tues	11/02/2021	Receipt and review of an email from D. Liu requesting answers to certain questions.	0.20	\$450.00	\$90.00
Thur	11/04/2021	Email exchanges with D. Liu regarding the California Sales Tax. Provided D. Liu with contact information of the assigned agent.	0.10	\$450.00	\$45.00
Mon	11/08/2021	Email exchanges with K. Plunkett regarding the file.	0.10	\$450.00	\$45.00
Tues	11/09/2021	Email exchanges with K. Plunkett regarding go forward strategy on the file. Participated in a call with K. Plunkett and G. Goldblatt regarding RVO.	0.50	\$450.00	\$225.00
Wed	11/10/2021	Email exchanges with D. Liu regarding the RVO. Discussion with C. Fell regarding same. Discussion with K. Plunkett regarding same.	1.00	\$450.00	\$450.00
Fri	11/12/2021	Email exchanges with Finalta Capital regarding sale process. Prepared and emailed the NDA. Receipt and review of the signed NDA. Provided access to the data room.	0.40	\$450.00	\$180.00

Filters Used:

- Time Entry Date: 10/02/21 to 12/01/21
- File ID: AAMEDI-M: to AAMEDI-M:

File Name (ID): Medifocus Inc. (AAMEDI-M:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Mukul Manchanda (MMA)					
Mon	11/15/2021	Receipt and review of additional information from D. Liu. Forwarded same to Finalta Capital. Review of email exchanges between J. Aceves and D. Liu regarding closure of the California sales and use tax permit.	0.70	\$450.00	\$315.00
Tues	11/16/2021	Receipt and review of additional information from D. Liu. Forwarded same to Finalta Capital. Email exchanges with S. Parsons regarding the sale process.	0.30	\$450.00	\$135.00
Tues	11/23/2021	Review of email exchanges between C. Fell and D. Liu. Email exchanges with K. Plunkett regarding preparation of a security opinion.	0.20	\$450.00	\$90.00
Tues	11/30/2021	Review of email exchanges between D. Liu and C. Fell.	0.20	\$450.00	\$90.00
Mukul Manchanda (MMA)			2.40		\$1,180.00
Paula Amaral (PAM)					
Mon	10/18/2021	Prepare requisitions as per bank statements for posting.	0.50	\$250.00	\$125.00
Thur	10/21/2021	C	0.50	\$250.00	\$125.00
Mon	11/22/2021	Prepare requisitions for debit and credit bank transactions.	0.30	\$250.00	\$75.00
Tues	11/23/2021	Calculation of WSIB premium and report online.	0.30	\$250.00	\$75.00
Thur	11/25/2021	Prepare requisition for WSIB payment. Prepare RT 0002 HST filing and submit using Nefile.	0.80	\$250.00	\$200.00
Paula Amaral (PAM)			2.40		\$600.00
Total for File ID AAMEDI-M:			47.70		\$16,800.50
Grand Total:			47.70		\$16,800.50



February 03, 2022

Invoice #: 12283

Medifocus Inc.
130 King Street West
Toronto, ON M5X2A2

Invoice

RE: Medifocus Inc.

FOR PROFESSIONAL SERVICES RENDERED for the period from December 2, 2021 to and including January 31, 2022 with respect to the CCAA proceeding of Medifocus.

	Hours	Hourly Rate	Total
Gillian Goldblatt, CPA, CA, CIRP, LIT	0.50	\$375.00	\$187.50
Mukul Manchanda, CPA, CIRP, LIT	11.10	450.00	4,995.00
Others	0.70	150.00	105.00
Total Professional fees	12.30	\$429.88	\$5,287.50
HST			687.38
Total			\$5,974.88

HST Registration #R825172935

(AAMEDI-M)

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

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

Filters Used:

- Time Entry Date: 1/01/70 to 1/31/22
- File ID: AAMEDI-M: to AAMEDI-M:
- Time Entry Bill Status: Un-Billed to Un-Billed
- Time Entry Bill Status: Un-Billed to Un-Billed

File Name (ID): Medifocus Inc. (AAMEDI-M:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Gillian Goldblatt (GGO)					
Thur	12/02/2021	receipt and review of security opinion; discussion with M. Manchanda re:same.	0.50	\$375.00	\$187.50
			0.50		\$187.50
Haran Sivanathan (HSI)					
Tues	12/14/2021	Bank reconciliation/Posting cheques/Deposit	0.70	\$150.00	\$105.00
			0.70		\$105.00
Mukul Manchanda (MMA)					
Thur	12/02/2021	Receipt and review of an email from D. Liu containing updated financial information. Review of email exchanges between C. Fell and K. Plunkett regarding the security opinion and credit bid. Receipt and review of an email from K. Plunkett containing the security opinion. Discussion with G. Goldblatt regarding same.	0.70	\$450.00	\$315.00
Mon	12/13/2021	Email exchanges with K. Plunkett regarding the file.	0.20	\$450.00	\$90.00
Wed	12/29/2021	Receipt and review of draft materials from A. Angle. Email exchanges with K. Plunkett regarding same.	1.00	\$450.00	\$450.00
Thur	12/30/2021	Receipt and review of comments to the order from K. Plunkett.	0.20	\$450.00	\$90.00
Fri	12/31/2021	Email exchanges with D. Liu regarding preparation of a revised cash flow forecast.	0.20	\$450.00	\$90.00
Tues	01/04/2022	Draft second report of the Monitor and emailed same to K. Plunkett. Review and revise the cash flow forecast. Prepared statutory reporting. Telephone call with D. Liu regarding the cash flow forecast. Review of comments from K. Plunkett regarding the report. Prepared appendices to the report. Prepared final executed copy of the report and emailed same to K. Plunkett.	6.50	\$450.00	\$2,925.00
Fri	01/07/2022	Review of materials in advance of the court hearing. Attended the court hearing. Telephone call with C. Fell regarding approval motion.	0.50	\$450.00	\$225.00
Tues	01/18/2022	Email exchanges with C. Fell regarding priority payables. Review of email exchanges between D. Liu and C. Fell.	0.20	\$450.00	\$90.00
Tues	01/25/2022	Email exchanges with K. Plunkett regarding the file. Receipt and review of an email from A. Angel containing notice of motion. Review of email exchanges between C. Fell and the company. Receipt and review of an email from A. Angle containing the draft affidavit. Email exchanges with K. Plunkett regarding same. Receipt and review of an email from K. Plunkett containing comments on the notice of motion.	0.80	\$450.00	\$360.00
Fri	01/28/2022	Prepare a spreadsheet outlining the outstanding fees and payments received to date. Sent an email to D. Liu providing the spreadsheet and information with respect to the Administrative Charge and the impact of same on closing of the transaction.	0.80	\$450.00	\$360.00
			Mukul Manchanda (MMA)	11.10	\$4,995.00
			Total for File ID AAMEDI-M:	12.30	\$5,287.50
			Grand Total:	12.30	\$5,287.50

APPENDIX “J”

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.

AFFIDAVIT OF KYLE PLUNKETT

(sworn February 2, 2022)

I, **KYLE PLUNKETT**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a partner at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP has acted as counsel for msi Spergel Inc., in its capacity as Monitor (in such capacity, the “**Monitor**”), of Medifocus Inc. (the “**Debtor**”), and continues to do so

2. Aird & Berlis LLP has prepared statements of account in connection with its mandate as counsel to the Monitor, detailing its services rendered and disbursements incurred, namely (collectively, “**Statements of Account**”):

- (a) an account dated September 30, 2021, which captures the fees rendered for the period from August 17, 2021 to September 29, 2021 in the amount of \$12,957.67, inclusive of HST and disbursements;
- (b) an account dated October 29, 2021, which captures the fees rendered for the period from July 28, 2021 to October 15, 2021 in the amount of \$12,597.81, inclusive of HST and disbursements;
- (c) an account dated November 30, 2021, which captures the fees rendered for the period from October 27, 2021 to November 30, 2021 in the amount of \$4,077.88, inclusive of HST and disbursements;

- (d) an account dated December 15, 2021, which captures the fees rendered for the period from December 2, 2021 to December 2, 2021 in the amount of \$740.15, inclusive of HST and disbursements; and
- (e) an account dated January 31, 2022, which captures the fees rendered for the period from December 4, 2021 to January 25, 2022 in the amount of \$8,664.28, inclusive of HST and disbursements.

3. Attached hereto and marked as **Exhibit "A"** to this affidavit are copies of the aforementioned Statements of Account.

4. Attached hereto and marked as **Exhibit "B"** to this affidavit a summary with a breakdown of timekeepers which have worked on this file for the period referenced above. The average hourly rate is \$525.72.

5. Assuming that this Honourable Court grants an Order as requested, without opposition, the proposed accrual of legal fees and disbursements to capture the period from and after January 31, 2022 to the discharge of the Monitor is \$15,000, exclusive of disbursements and HST.

6. This Affidavit is made in support of a motion to, *inter alia*, approve the attached Statements of Account of Aird & Berlis LLP and the fees and disbursements detailed therein, and for no improper purpose.

SWORN before me at the City of)
 Toronto, in the Province of Ontario,)
 this 2nd day of February, 2022)


 _____)
 Commissioner for Taking Affidavits (or as)
 may be))
 A. Collins


 _____)
KYLE PLUNKETT

Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF KYLE PLUNKETT

Sworn before me

This ^{2nd} day of February, 2022



Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

msi Spergel inc.
200-505 Consumers Road
North York, ON
M2J 4V8

Attention: Mr. Mukul Manchanda

Invoice No.: 724078

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 13225/163794
Client No.: 13225
Matter No.: 163794

September 30, 2021

Re: CCAA Filing of Medifocus Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended September 29, 2021:

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JEM	17/08/21	\$265.00	0.10	\$26.50	Order, review and report on PPSA search
KBP	17/08/21	\$550.00	1.10	\$605.00	Attend call with client to discuss status and draft SPA and Term Sheet re DIP; email to WFK.
JEM	18/08/21	\$265.00	0.10	\$26.50	Order, review and report on AB PPSA search
KBP	18/08/21	\$550.00	0.60	\$330.00	Attend call with C. Fell to discuss draft SPA and Term Sheet; discuss same with client.
KBP	19/08/21	\$550.00	1.50	\$825.00	Review and provide comments on draft DIP term sheet to client.
KBP	24/08/21	\$550.00	0.30	\$165.00	Circulate comments on DIP term sheet to debtor side; email exchange with client regarding same.
KBP	30/08/21	\$550.00	1.00	\$550.00	Email to client; review and consider draft SPA.
KBP	09/09/21	\$550.00	1.00	\$550.00	Review and consider email from client regarding filing of NOI; review SPA; discuss same with M. Spence.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SRM	15/09/21	\$625.00	1.20	\$750.00	Review of share purchase agreement and attending to various correspondence with respect to the same
KBP	15/09/21	\$550.00	2.50	\$1,375.00	Review and provide comments on draft SPA re stalking horse; discuss same with corporate partner, S. Mason; review and respond to emails from WFK team regarding application and relief.
MES	15/09/21	\$550.00	0.30	\$165.00	Review emails re scheduling court date and finalizing term sheet and DIP agreement
KBP	17/09/21	\$550.00	1.00	\$550.00	Review and consider draft Sale Process form; email exchanges with WFK regarding materials and relief.
KBP	20/09/21	\$550.00	0.30	\$165.00	Revise and circulate updated draft form of Sale Process to client.
TMD	21/09/21	\$350.00	2.60	\$910.00	Correspondence with K. Plunkett; update Sales Process Procedure; call with client; correspondence with S. Parsons re: change
KBP	21/09/21	\$550.00	1.00	\$550.00	Attend call with client to discuss draft Sale Process; review and revise updated draft.
KBP	24/09/21	\$550.00	2.00	\$1,100.00	Review and provide comments on draft court materials for motion returnable October 7, 2021; email exchange with client.
KBP	27/09/21	\$550.00	3.00	\$1,650.00	Review and respond to emails from WFK; revise and circulate comments on draft court materials; discuss same with client.
MES	27/09/21	\$550.00	0.50	\$275.00	Review emails and discussion with K. Plunkett re finalizing materials for motion to convert to CCAA
KBP	28/09/21	\$550.00	1.00	\$550.00	Review and respond to emails from client regarding materials; revise and provide comments on same.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	29/09/21	\$550.00	0.60	\$330.00	Review and provide comments on draft Report; email exchanges with WFK regarding same.
TOTAL:			21.70	\$11,448.00	

OUR FEE \$11,448.00
 HST at 13% \$1,488.24

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Search Under P.P.S.A. \$9.00

Subject to HST

Service Provider Fee \$11.00

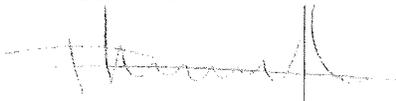
HST at 13% \$1.43

AMOUNT NOW DUE \$12,957.67

SUMMARY

Name	Year of Call	Hours	Rate	Value
Jenaya E. McLean (JEM)		0.20	\$265.00	\$53.00
Kyle B. Plunkett (KBP)	30/07/11	16.90	\$550.00	\$9,295.00
Sean R. Mason (SRM)	01/07/07	1.20	\$625.00	\$750.00
Miranda E. Spence (MES)	01/08/11	0.80	\$550.00	\$440.00
Tamie M. Dolny (TMD)	01/09/19	2.60	\$350.00	\$910.00

THIS IS OUR ACCOUNT HEREIN
 Aird & Berlis LLP



Kyle B. Plunkett
 /ph
 E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.
 GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

msi Spergel inc.
200-505 Consumers Road
North York, ON
M2J 4V8

Attention: Mr. Mukul Manchanda

Invoice No.: 727401

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 13225/163794
Client No.: 13225
Matter No.: 163794

October 29, 2021

Re: CCAA Filing of Medifocus Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended October 15, 2021:

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	28/07/21	\$550.00	0.30	\$165.00	Email exchange with client to discuss pre-filing administrative matters.
TMD	27/09/21	\$350.00	0.20	\$70.00	Review correspondence; Respond to correspondence
MES	28/09/21	\$550.00	1.40	\$770.00	Telephone call with M. Manchanda re materials for motion to convert to CCAA proceeding; Draft consent to act as receiver and circulate to M. Manchanda, applicant's counsel; Review and comment on form of affidavit and order; Review served materials for motion
KBP	30/09/21	\$550.00	0.70	\$385.00	Email exchange regarding draft materials; email exchange with C. Fell.
KBP	04/10/21	\$550.00	2.00	\$1,100.00	Review and provide comments on draft first report to court regarding motion returnable October 7, 2021.
MES	04/10/21	\$550.00	1.60	\$880.00	Revise pre-filing report of the Proposed Monitor; Calls with M. Manchanda re same; Exchange emails with K. Plunkett, M. Manchanda re same

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
DRE	05/10/21	\$895.00	1.00	\$895.00	Review draft court material and reports; Send comments to C. Carpe and M. Spence; Discuss with K. Plunkett
KBP	05/10/21	\$550.00	1.10	\$605.00	Revise and update Report; various email exchanges regarding same; review factum.
MES	05/10/21	\$550.00	1.10	\$605.00	Exchange emails with M. Manchanda, K. Plunkett, WFK Team re First Report; Revise and compile First Report; Arrange for service and filing of First Report
DRE	06/10/21	\$895.00	0.30	\$268.50	Discuss with K. Plunkett; Review messages
KBP	06/10/21	\$550.00	0.90	\$495.00	Attend prep call with client to discuss motion returnable October 7, 2021; email exchanges with C. Fell regarding same.
MES	06/10/21	\$550.00	1.00	\$550.00	Call with K. Plunkett and M. Manchanda re preparation for motion to convert to CCAA; Review materials in preparation for hearing
PLW	06/10/21	\$225.00	0.40	\$90.00	Submitted First Report of Receiver for filing
TMD	07/10/21	\$350.00	3.40	\$1,190.00	Ing NDA; Correspondence to K. Plunkett and M. Spence re file
KBP	07/10/21	\$550.00	0.40	\$220.00	Review and provide comments on draft Notice and publication materials.
MES	07/10/21	\$550.00	1.00	\$550.00	Prepare for and attend hearing re motion to convert to CCAA; Review endorsement of Justice Cavanagh; Discussion with M. Manchanda re next steps
KBP	08/10/21	\$550.00	1.00	\$550.00	Review and provide comments on sale process materials; review and provide comments on draft NDA; email exchange with M. Manchanda.
MES	08/10/21	\$550.00	0.50	\$275.00	Review and comment on proposed notice for Globe and Mail, and exchange emails re same

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	13/10/21	\$550.00	0.90	\$495.00	Review and provide comments on draft sale process ancillary materials; attend call with client to discuss same.
KBP	14/10/21	\$550.00	1.50	\$825.00	Revise and provide comments on draft teaser letter; review and consider emails from WFK; discuss updates with client.
KBP	15/10/21	\$550.00	0.30	\$165.00	Review and respond to client team regarding sale materials.

TOTAL: 21.00 \$11,148.50

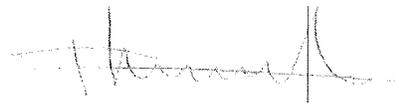
OUR FEE \$11,148.50
 HST at 13% \$1,449.31

AMOUNT NOW DUE \$12,597.81

SUMMARY

Name	Year of Call	Hours	Rate	Value
Kyle B. Plunkett (KBP)	30/07/11	9.10	\$550.00)	\$5,005.00)
Tamie M. Dolny (TMD)	01/09/19	3.60	\$350.00)	\$1,260.00)
Miranda E. Spence (MES)	01/08/11	6.60	\$550.00)	\$3,630.00)
D. R. English (DRE)	01/01/80	1.30	\$895.00)	\$1,163.50)
Patrick L. Williams (PLW)		0.40	\$225.00)	\$90.00)

THIS IS OUR ACCOUNT HEREIN
 Aird & Berlis LLP



Kyle B. Plunkett
 /ph
 E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference. 46404070.1

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

msi Spergel inc.
200-505 Consumers Road
North York, ON
M2J 4V8

Attention: Mr. Mukul Manchanda

Invoice No.: 731940

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 13225/163794
Client No.: 13225
Matter No.: 163794

November 30, 2021

Re: CCAA Filing of Medifocus Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended November 30, 2021:

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	27/10/21	\$550.00	0.30	\$165.00	Review and consider emails from client regarding updates on sale process.
KBP	08/11/21	\$550.00	0.30	\$165.00	Review and consider email from company regarding sale process and post-closing corporate structure.
KBP	09/11/21	\$550.00	1.00	\$550.00	Prepare and attend call with client to discuss status of sale process and post-closing corporate structure.
KBP	10/11/21	\$550.00	0.40	\$220.00	Email exchanges with client regarding administrative matters; email exchange with C. Fell.
TMD	23/11/21	\$350.00	0.30	\$105.00	Email correspondence to K. Plunkett and S. Morris
SRM	23/11/21	\$395.00	0.20	\$79.00	Review email; Conduct prelim, order profile and PPSA searches and review same
KBP	23/11/21	\$550.00	1.00	\$550.00	Review and consider updates on sale process and results; email exchange with C. Fell regarding same; review and instruct T. Dolny to prepare security opinion.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	23/11/21	\$550.00	0.20	\$110.00	Review emails from M. Manchanda, K. Plunkett, C. Fell re conclusion of sale process and next steps
SRM	24/11/21	\$395.00	1.00	\$395.00	Begin review of security; Conduct high-level IP searches; Prepare draft security opinion and circulate same for review and comments
TMD	30/11/21	\$350.00	2.50	\$875.00	Review security opinion, security agreements and relevant searches; Update, draft and edit security review; Correspondence to K. Plunkett
TMD	30/11/21	\$350.00	0.90	\$315.00	Review of case law re compelling examination in preparation for motion and factum
SRM	30/11/21	\$395.00	0.10	\$39.50	Review emails and comments on security opinion
TOTAL:			<u>8.20</u>	<u>\$3,568.50</u>	

OUR FEE \$3,568.50
 HST at 13% \$463.91

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Search Under P.P.S.A.	\$16.00	
Due Diligence-Gov Fee	\$8.00	
Total Agency Costs		\$24.00

Subject to HST

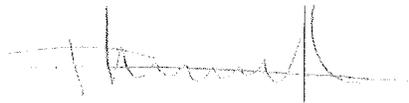
Service Provider Fee	\$9.00	
Due Diligence	\$10.00	
Total Disbursements		\$19.00
HST at 13%		\$2.47

AMOUNT NOW DUE \$4,077.88

SUMMARY

Name	Year of Call	Hours	Rate	Value
Kyle B. Plunkett (KBP)	30/07/11	3.00	\$550.00)	\$1,650.00)
Tamie M. Dolny (TMD)	01/09/19	3.70	\$350.00)	\$1,295.00)
Shannon R. Morris (SRM)		1.30	\$395.00)	\$513.50)
Miranda E. Spence (MES)	01/08/11	0.20	\$550.00)	\$110.00)

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Kyle B. Plunkett
/ph
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

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46802849.1

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

msi Spergel inc.
200-505 Consumers Road
North York, ON
M2J 4V8

Attention: Mr. Mukul Manchanda

Invoice No.: 733539

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 13225/163794
Client No.: 13225
Matter No.: 163794

December 15, 2021

Re: CCAA Filing of Medifocus Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended December 2, 2021:

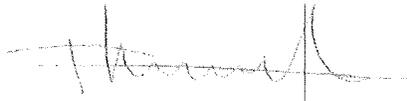
LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
TMD	02/12/21	\$350.00	0.30	\$105.00	Review security opinion; Correspondence to K. Plunkett
KBP	02/12/21	\$550.00	1.00	\$550.00	Revise and finalize security opinion re Asset Profits Ltd.; email exchange with C. Fell regarding financial information relating to loans.
TOTAL:			<hr/> 1.30	<hr/> \$655.00	

OUR FEE	\$655.00
HST at 13%	\$85.15
AMOUNT NOW DUE	<hr/> \$740.15 <hr/>

SUMMARY

Name	Year of Call	Hours	Rate	Value
Tamie M. Dolny (TMD)	01/09/19	0.30	\$350.00)	\$105.00)
Kyle B. Plunkett (KBP)	30/07/11	1.00	\$550.00)	\$550.00)

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Kyle B. Plunkett
/ph
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

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46927812.1

IN ACCOUNT WITH:



Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

msi Spergel inc.
200-505 Consumers Road
North York, ON
M2J 4V8

Attention: Mr. Mukul Manchanda

Invoice No.: 738590

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 13225/163794
Client No.: 13225
Matter No.: 163794

January 31, 2022

Re: CCAA Filing of Medifocus Inc.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended January 25, 2022:

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
PLW	04/12/21	\$225.00	0.40	\$90.00	Submitted 2nd Report of Monitor MSI
KBP	30/12/21	\$550.00	2.50	\$1,375.00	Review and provide comments on draft motion materials for extension; email to client regarding same.
KBP	31/12/21	\$550.00	1.00	\$550.00	Email exchange with client regarding cash flow and report; review and consider emails from WKF team.
KBP	03/01/22	\$595.00	0.60	\$357.00	Review and consider motion record; email exchanges with client regarding second report.
KBP	04/01/22	\$595.00	2.20	\$1,309.00	Review and provide comments on draft second report; review comments on report from WKF; serve second report on service list.
MES	04/01/22	\$595.00	0.20	\$119.00	Address filing of Monitor's report
KBP	05/01/22	\$595.00	0.30	\$178.50	Finalize and file court materials; email exchanges with client regarding same.
MES	05/01/22	\$595.00	0.20	\$119.00	Address Caselines filing of Monitor's Second Report

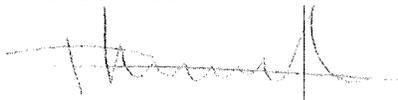
LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	06/01/22	\$595.00	0.70	\$416.50	Review materials for motion; email exchange with WKF team.
KBP	07/01/22	\$595.00	1.00	\$595.00	Prepare and attend approval motion for stay extension.
KBP	24/01/22	\$595.00	0.30	\$178.50	Email to client regarding updates on proposed sale transaction.
KBP	25/01/22	\$595.00	2.00	\$1,190.00	Review and provide comments on draft NOA; review and provide comments on draft Affidavit for motion approving RVO transaction.
KBP	25/01/22	\$595.00	2.00	\$1,190.00	Review and provide comments on court materials; email exchange with WFK and client;
TOTAL:			13.40	\$7,667.50	

OUR FEE	\$7,667.50
HST at 13%	\$996.78
AMOUNT NOW DUE	\$8,664.28

SUMMARY

Name	Year of Call	Hours	Rate	Value
Patrick L. Williams (PLW)		0.40	\$225.00)	\$90.00)
Kyle B. Plunkett (KBP)	30/07/11	12.60	\$582.50)	\$7,339.50)
Miranda E. Spence (MES)	01/08/11	0.40	\$595.00)	\$238.00)

THIS IS OUR ACCOUNT HEREIN
 Aird & Berlis LLP



Kyle B. Plunkett
 /ph
 E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

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GST / HST Registration # 12184 6539 RT0001

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 47463208.1

Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF KYLE PLUNKETT

Sworn before me

This *2nd* day of February, 2022

Aaron Gill

Commissioner for taking Affidavits, etc

**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**")

SUMMARY OF TIME INCURRED

LAWYER	CALL TO BAR	HOURS	RATE	VALUE
Kyle B. Plunkett	2011	42.60	550.00	23,430.00
Miranda E. Spence	2011	8.0	550.00	4,400.00
Tamie M. Dolny	2019	10.20	350.00	3,570.00
Sean R. Mason	2007	1.20	625.00	750.00
D.R. English	1980	1.30	895.00	1,163.50
CLERK				
Patrick L. Williams		0.8	225.00	180.00
Jenaya E. McLean		0.2	265.00	53.00
Shannon Morris		1.30	395.00	513.50

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

Applicant

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

AFFIDAVIT OF KYLE PLUNKETT

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle B. Plunkett (LSO # 61044N)

Tel: (416) 865-3406

Fax: (416) 863-1515

Email: kplunkett@airdberlis.com

Miranda Spence (LSO # 60621M)

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: mspence@airdberlis.com

Lawyers for the Monitor