

File No. CI 22-01-38613

THE KING'S BENCH
WINNIPEG CENTRE

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
MANITOBA CLINIC MEDICAL CORPORATION AND THE MANITOBA CLINIC
HOLDING CO. LTD.

(the "**Applicants**")

APPLICATION UNDER: THE *COMPANIES' CREDITORS ARRANGEMENT*
ACT, R.S.C., c. C-36, AS AMENDED

AMENDED AND RESTATED INITIAL ORDER
DATE OF HEARING: THURSDAY, DECEMBER 1, 2022 AT 9:00 A.M.
KROFT, J.

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**THE KING'S BENCH
WINNIPEG CENTRE**

THE HONOURABLE) Wednesday, the 30th day of November,
MR. JUSTICE KROFT) 2022 and Thursday, the 1st day of
December, 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
MANITOBA CLINIC MEDICAL CORPORATION AND THE MANITOBA CLINIC
HOLDING CO. LTD.

(the "**Applicants**")

APPLICATION UNDER: THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C., c. C-36, AS AMENDED

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, in the Province of Manitoba.

ON READING the affidavit of Keith McConnell sworn November 28, 2022 ("McConnell Affidavit") and the Exhibits thereto, and the Pre-filing Report of Alvarez & Marsal Canada Inc. dated November 29, 2022 (the **"Pre-filing Report"**), 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 Applicants, counsel for Alvarez & Marsal Canada

Inc., and counsel for the Canadian Imperial Bank of Commerce (“**CIBC**”), no one else appearing although duly served as appears from the Affidavits of Service of Jami Jacyk affirmed November 29 and 30, 2022 and on reading the consent of Alvarez & Marsal Canada Inc. to act as the Monitor (as hereinafter defined),

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are each a company to which the CCAA applies.

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their respective 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 Applicants shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicants are 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.

5. THIS COURT ORDERS that, subject to paragraph 21 herein, the Applicants 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 Applicants in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, subject to paragraph 21 herein and except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants 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) Goods or services actually supplied to the Applicants following the date of this Order.

7. THIS COURT ORDERS that the Applicants 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 Applicants in connection with the sale of goods and services by the Applicants, 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 Applicants.

8. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants 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 Applicants 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.

9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are 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 Applicants to any of their respective creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their respective Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

10. THIS COURT ORDERS that until and including February 24, 2023, 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 Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business

or the Property are hereby stayed and suspended pending further Order of this Court.

11. THIS COURT ORDERS that notwithstanding the Stay Period, subject to paragraph 9 herein CIBC shall be an unaffected creditor in the within matter for all purposes, and shall not be stayed from commencing or continuing a Proceeding.

NO EXERCISE OF RIGHTS OR REMEDIES

12. THIS COURT ORDERS that, subject to paragraph 11 herein, 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 Applicants (or either of them) or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are 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

13. THIS COURT ORDERS that subject to paragraph 11 herein, 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, contract of insurance, policy or permit in favour of or held by the Applicants or either of them, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

14. THIS COURT ORDERS that subject to paragraph 11 herein, during the Stay Period, all Persons having oral or written agreements with the Applicants 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 Applicants, 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 Applicants, and that the Applicants 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 Applicants in accordance with normal payment practices of the Applicants or such

other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased 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 Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. 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 directors and officers of the Applicants as at the date hereof, the future directors or officers of the Applicants, and the current Chief Executive Officer of the Applicants (together the “**Directors**”) with respect to any claim against the Directors that arose before the date hereof and that relates to any obligations of the Applicants whereby the Directors 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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

17. THIS COURT ORDERS that the Applicants shall indemnify their Directors against obligations and liabilities that they may incur as Directors of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any Directors, the obligation or liability was incurred as a result of the Director's gross negligence or wilful misconduct.

18. THIS COURT ORDERS that the Directors of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the **"Directors' Charge"**) on the Property, which charge shall not exceed an aggregate amount of \$350,000.00, as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

19. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any Directors' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 17 of this Order.

APPOINTMENT OF MONITOR AND ENHANCED POWERS

20. THIS COURT ORDERS that Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their respective shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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.

21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, and without altering in any way the limitations and obligations of the Applicants set out herein, is hereby directed and empowered, but not required, to:

- a) Monitor, review and direct the Applicants' receipts and disbursements and implement such measures of control as the Monitor deems reasonably necessary to ensure the appropriate monitoring of the Applicants' expenses and disbursements, including adding or removing signing authorities to and from the Applicants' bank accounts;
- b) In the Monitor's absolute discretion, pay the True-Up Payments as detailed in the Monitor's Pre-filing Report, to physicians who have not given notice terminating their Service Agreements with Manitoba Clinic Medical Corporation;
- c) 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 Applicants, to the extent that is

necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

- d) Report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- e) Assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- f) Advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- g) Pursue all avenues of refinancing of the Applicants' Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;
- h) Develop and execute a sales and investment process (the "**Sales Process**") in respect of the Applicants' Property including, the marketing of any and all Property and conducting, supervising, and directing the sale, conveyance, transfer, lease, assignment or disposal of any Property of the Applicants or any part or parts thereof, whether or not outside of the ordinary course of business, subject to the approval of this Court;
- i) To exercise any shareholder, partnership, joint venture or other rights of the Applicants;
- j) To negotiate Service Agreements with physicians, with the assistance of the Applicants (as required);
- k) To negotiate leases or subleases in respect of the real property ("**Leasing**");
- l) With the assistance of the Applicants (as required) permanently or temporarily cease, downsize or shut down any of the Applicants' business or operations;
- m) With the assistance of the Applicants (as required) relocate physicians and employees within the real property;

- n) To disclaim, in accordance with the CCAA, any contracts of the Applicants;
- o) To cause the Applicants' to terminate the employment of such of their employees or temporarily lay off such of their employees as it deems appropriate;
- p) Execute, assign, issue and endorse any agreement, amendment, document, lease, instrument or writing in the name of the Monitor or in the name of, and on behalf of the Applicants as may be necessary or desirable in order to carry out the provisions of this Order, including in respect of the Sales Process, the Service Agreements, and the Leasing;
- q) Advise the Applicants in their development of the Plan and any amendments to the Plan;
- r) Assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- s) 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;
- t) Hold funds in trust or in escrow, to the extent required;
- u) Take any steps reasonably incidental to the exercise of these powers or the performance of its statutory obligations; and
- v) Perform such other duties as are required by this Order or by this Court from time to time;

and in each case where the Monitor takes any such actions or steps, it shall be exclusively, authorized and empowered to do so, to the exclusion of all other Persons, including the Applicants and their past or present directors and officers and shareholders, and without interference from any other Person, provided, however, that the Monitor shall comply with all applicable laws and shall not have any authority or power to elect or cause the election or removal of directors of the Applicants or to take any action to restrict or to transfer to the Monitor any of their

powers, duties or obligations, except in accordance with section 11.5(1) of the CCAA.

MONITOR PROTECTIONS

22. THIS COURT ORDERS the enhancement of the Monitor's powers as set forth in this Order, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the employment by the Monitor of any person in connection with its appointment and the performance of its powers and duties shall not constitute the Monitor as the employer, successor employer or related employer of the employees of the Applicants within the meaning of any provincial, federal, or municipal legislation, or common law governing employment, pensions or labour standards or any other statute, regulation or rule of law of equity for any purpose whatsoever or expose the Monitor to liability to any individual arising from or relating to their previous employment by the Applicants. All employees of the Applicants shall remain employees of the Applicants and nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities or duties, including, without limitation, wages, severance pay, termination pay, vacation pay and pension or benefit amounts.

23. THIS COURT ORDERS that the Monitor is not and shall not be deemed to be, a director, officer or employee of either of the Applicants.

24. THIS COURT ORDERS that the Monitor shall take no part whatsoever in the management or supervision of the Business, except as set out in paragraph 21 and shall not take possession of the Property 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, notwithstanding the enhancement of the Monitor's powers and duties as set forth herein, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, the Monitor is not, and shall not be deemed, to be an owner of the Property for any purpose and nothing contained herein 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 Environment Act* (Manitoba), *The Water Resources Conservation Act* (Manitoba), *The Contaminated Sites Remediation Act* (Manitoba), *The Dangerous Goods Handling and Transportation Act* (Manitoba), *The Public Health Act* (Manitoba) or *The Workplace Safety and Health Act* (Manitoba), 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 be entitled to communicate and/or engage with the Applicants' stakeholders and provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants 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 Applicants 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 Applicants 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, in its personal or corporate capacity, 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 Applicants shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA

proceedings), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a semi-monthly basis, or such other basis as may be agreed to by the Monitor, its counsel, Applicants and the DIP Lender.

29. THIS COURT ORDERS that the Monitor and its legal counsel and counsel for the Applicants, 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 this Court, but nothing herein shall fetter this Court's discretion to refer such matters to a Master of this Honourable Court.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicants' 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 \$500,000.00 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 39 and 41 hereof.

DIP FINANCING

31. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from CIBC (the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other

general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$4,000,000.00 unless permitted by further Order of this Court.

32. THIS COURT ORDERS that such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lender dated as of November 30, 2022 (the "**Commitment Letter**"), filed.

33. THIS COURT ORDERS that the Applicants are 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 Applicants are hereby authorized and directed to pay and perform all of their 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, 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 39 and 41 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 Commitment Letter, the Definitive Documents or the DIP Lender's Charge, the DIP Lender may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge (subject to any notice required under the Commitment Letter or Definitive Documents), including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants 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 Applicants (or either of them) and for the appointment of a trustee in bankruptcy of the Applicants (or either of them); 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 Applicants 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 Applicants (or either of them) under the CCAA, or any proposal filed by the Applicants (or either of them) under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

KERP CHARGE

37. THIS COURT ORDERS that the key employee retention plan (“**KERP**”) described in the McConnell Affidavit is hereby approved and the Applicants are authorized and directed to make payments in accordance with the terms thereof.

38. THIS COURT ORDERS that KERP participants shall be entitled to the benefit of and are hereby granted a charge (the “**KERP Charge**”) on the Property which charge shall not exceed \$100,000.00 and that the KERP Charge shall have the priority set out in paragraphs 39 and 41 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

39. THIS COURT ORDERS that the priorities of the Directors’ Charge, the Administration Charge, the DIP Lender’s Charge and the KERP Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000.00);

Second – DIP Lender’s Charge;

Third – Directors’ Charge (to the maximum amount of \$350,000.00);
and

Fourth – KERP Charge (to the maximum amount of \$100,000.00)

40. THIS COURT ORDERS that the filing, registration or perfection of the Directors’ Charge, the Administration Charge, the DIP Lender’s Charge or the KERP 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.

41. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, hypothecs, liens, mortgages, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, save and except for those claims contemplated by section 11.8(8) of the CCAA and those secured creditors who would be materially affected by this Order and who were not given notice of this motion (the "**Unserved Secured Creditors**"), without prejudice to the Applicants', the Monitor's and the Chargees' (as hereinafter defined) abilities to seek an order from this Court to rank in priority to the Encumbrances of Unserved Secured Creditors, on notice.

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

43. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the KERP Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the **"Chargees"**) and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an **"Agreement"**) which binds the Applicants, 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 Applicants 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 Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- c) The payments made by the Applicants pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

SERVICE AND NOTICE

45. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Winnipeg Free Press 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 Applicants 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.

46. THIS COURT ORDERS that the Applicants and the Monitor be at liberty to serve 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, facsimile or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic 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.

47. THIS COURT ORDERS that counsel for the Applicants shall prepare and keep current a service list ("**Service List**") containing the name and contact information (which may include the address, telephone number and facsimile number or email address) for service to: the Applicants; the Monitor; and each creditor or other interested Person who has sent a request, in writing, to counsel for the Applicants to be added to the Service List. The Service List shall indicate whether each Person on the Service List has elected to be served by email or facsimile, and failing such election the Service List shall indicate service by email. The Service List shall be posted on the website of the Monitor at the address indicated in paragraph 48 herein. **For greater certainty, creditors and other interested Persons who have received notice in accordance with paragraph 45(B) of this Order and/or have been served in accordance with paragraph 46 of this Order, and who do not send a request, in writing, to counsel for the Applicants to be added to the Service List, shall not be required to be further served in these proceedings.**

48. THIS COURT ORDERS that the Applicants, the Monitor, and any party on the Service List may serve any court materials in these proceedings by facsimile or by e- mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at www.alvarezandmarsal.com/manitobaclinic. Service shall be deemed valid and sufficient if sent in this manner.

SEALING ORDER

49. THIS COURT ORDERS that Confidential Appendix 1 to the Pre-Filing Report of the Monitor be filed under seal, kept confidential and not form part of the public record, and shall remain stored electronically with this Court on an encrypted basis limiting access to only the Registrar of this Court and the presiding Judge, and shall only be made available or form part of the public record after these restructuring proceedings have been completed or further Order of this Court.

GENERAL

50. THIS COURT ORDERS that the Applicants 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 Applicants, 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 Applicants, 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

53. THIS COURT ORDERS that each of the Applicants 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 Applicants 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. Central Standard Time on the date of this Order.

December 1, 2022

David J. Kroft

J.

Digitally signed by David
J. Kroft
Date: 2022.12.02 11:35:55
-06'00'

I, DAVID R.M. JACKSON, OF THE FIRM OF TAYLOR MCCAFFREY LLP
HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM
OF THE FOLLOWING PARTIES:

J.J. Burnell of MLT Aikins LLP, counsel for CIBC

Craig Frith of McDougall Gauley LLP, counsel for the Monitor

AS DIRECTED BY THE HONOURABLE MR. JUSTICE KROFT.