



This is the 3rd Affidavit of Robert Kaul in this proceeding and was made on June 26, 2024.

District of British Columbia
Division No.: 03-Vancouver
Court No.: B-240300
Estate No.: 11-3089419
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF CLOUD DIAGNOSTICS CANADA ULC**

AFFIDAVIT

I, ROBERT KAUL, care of 2900 – 733 Seymour Street, Vancouver, in the Province of British Columbia SWEAR THAT:

1. I am the CEO and president of Cloud Diagnostics Canada ULC (“**Cloud DX**”), and as such I have personal knowledge of the facts and matters hereinafter deposed to, except where the same are stated to be based upon information and belief, and where so stated I verily believe the same to be true.
2. Funds in this Affidavit are in Canadian dollars, unless otherwise specified.

Interim Financing

3. As stated in my Affidavit #1 sworn herein, Cloud DX requires interim financing to continue operating through these proceedings and to advance an eventual sales process, with a view to maintaining going concern value and formulating and presenting a proposal to Cloud DX’s creditors. Funding is required to pay Cloud DX’s employees, suppliers and other obligations including restructuring costs and professional fees in these proceedings.
4. By way of an order made by Madam Justice Sharma on June 11, 2024 herein, an interim financing charge of \$120,000 over the property of Cloud DX has been ordered (the “**First DIP**”).

Charge”) as contemplated by the Cash Flow Statement.

5. By way of an order made by Mister Justice Kent on June 14, 2024 herein, an interim financing charge of \$400,000 over the property of Cloud DX has been ordered (the “**Second DIP Charge**”) as contemplated by the Cash Flow Statement.

6. Cloud DX requires further interim financing and has now secured an agreement with lenders for a third tranche of interim financing (the “**Third DIP Loan**”).

7. For the Third DIP Loan, Cloud DX has secured interim financing for \$700,000, instead of the \$450,000 which was planned for in the Cash Flow Statement. The higher amount is required in order to pay directors’ and officers’ insurance (the “**Insurance**”).

8. The Insurance will cover the directors of Cloud DX, but also three directors of Cloud DX Inc., the publicly owned parent company, the directors of which act as de facto directors of the Cloud DX. Cloud DX requires the guidance of all directors in order to continue operating, and in order to make important decisions in the restructuring process.

9. Attached and marked as Exhibit “A” to this affidavit is a true copy of a term sheet for interim financing.


10. The lenders under the First DIP Loan and Second DIP Loan have been provided with a copy of Exhibit A; consented to the Third DIP Loan and Third DIP Charge having priority over the First DIP Loan, the First DIP Charge, the Second DIP Loan, and the Second DIP Charge.

SWORN BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 16 day of June, 2024.



A Commissioner for taking Affidavits for British Columbia

JONATHAN L. WILLIAMS
Barrister & Solicitor
P.O. Box 1
2900-733 SEYMOUR STREET
VANCOUVER, B.C. V6B 0S6
(604) 691-7562



ROBERT KAUL

This is Exhibit "A" referred to in the affidavit of Robert Kaul sworn before me at Vancouver, B.C. this 26th day of June, 2024.



A Commissioner for taking Affidavits within British Columbia

Debtor-in-Possession Facility Term Sheet – DIP 3

June 28, 2024

Cloud Diagnostics Canada ULC.
Attention: CEO

The Lender is pleased to confirm that it will make available to the Borrower the credit facilities described below on, and subject to, the terms and conditions described in this Term Sheet and the attached Schedule A (together, this “**Term Sheet**”).

1. **Borrower:** Cloud Diagnostics Canada ULC., a corporation incorporated under the laws of the Province of British Columbia (the “**Borrower**”) with a mailing address at 100-72 Victoria Street South, Kitchener, Ontario, N2G 4Y9
2. **Lender:** The Parties listed in Schedule ‘A’ (collectively the “**Lender**”).
3. **Principal Amount:** \$700,000.00 [excluding fees.]
4. **Instrument:** Debtor in possession loan (the “**Interim Loan**”), in the form of a non-revolving facility, subject to a satisfactory order (the “**Interim Loan Approval Order**”) of the Supreme Court of British Columbia made in *Bankruptcy and Insolvency Act* proposal proceedings to be initiated by the Borrower (the “**BIA Proceedings**”) approving the Interim Loan and granting the Lender a first-place super priority charge over the assets of the Borrowers (the “**Interim Lender’s Charge**”) in form and substance acceptable to the Lender in its sole discretion.
5. **Use of Proceeds:** Working capital.
6. **Closing Date:** As required by the Borrower, subject to fulfilment of the conditions precedent set forth in this Commitment Letter.
7. **Maturity:** The Interim Loan, including any outstanding principal, interest and fees becomes fully due and payable upon a date (the “**Maturity Date**”) which is the earlier of:
 - a) September 28, 2024; or
 - b) such further defaults as may be customary in the Lender’s form of loan agreement.
8. **Accelerated Maturity:** The Interim Loan shall be suspended, and the Maturity Date may be accelerated (at the option of the Lender) upon the occurrence of a Default.
9. **Defaults:** Any of the following will constitute defaults (collectively, the “**Defaults**”):

- a) if the Interim Loan Approval Order has been vacated, stayed or otherwise caused to be ineffective or is otherwise amended in a manner not approved by the Lender (which approval may be withheld in the sole discretion of the Lender);
- b) the issuance of an order terminating the BIA Proceedings or lifting the stay in the BIA Proceedings to permit the enforcement of any security against the Borrower or the assets of the Borrower, or the appointment of a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against a Borrower or the assets of the Borrower;
- c) any steps are taken by the Borrower or any other person to challenge the Interim Loan Approval Order or the validity, enforceability or priority of the Interim Lender's Charge; or
- d) failure of the Borrower to comply in any way with: (i) any Cash Flow Forecast; (ii) the requirements and procedures set out herein for the drawdown of the Interim Loan; or (iii) failure of the Borrower to perform or comply with any other term or covenant under this Commitment Letter.

- 10. **Waiver:** The Defaults may be waived by the Lender in its sole discretion.
- 11. **Repayment:** The full amount of all outstanding principal and interest will be repaid on the Maturity Date. There is no right of prepayment.
- 12. **Interest:** The Interim Loan shall bear interest at the rate of 11% per annum calculated monthly and in arrears on any amounts disbursed to the Borrower. If the effective annual rate of interest calculated in accordance with generally accepted actuarial practice and principles exceeds sixty per cent on the credit advanced under this agreement, then this agreement shall be read down so that the effective annual rate of interest shall be 59%.
- 13. **Fees and expense:** A closing fee of \$84,000 is to be paid by the Borrowers to the Lender on the Maturity Date. The Borrower will reimburse the Lender for all reasonable and customary legal, professional and other due diligence costs associated with the Interim Loan and the BIA Proceedings.
- 14. **Additional Agreements and Security:** If required by the Lender, the Borrower will execute the following additional agreements and obtain the following security:
 - a) a loan agreement;
 - b) the Interim Lender's Charge whereby all other charges other than an administration charge in the amount of \$200,000.00, securing the Borrower's obligations to its

legal counsel, the proposal trustee and the proposal trustee's legal counsel, shall be subordinated to the Interim Lender's Charge, and for greater certainty, the previous interim lenders' charges in the amount of \$120,000.00 and \$400,000, shall be subordinated to the Interim Lender's Charge; and

- c) such other security instruments as the Lender may reasonably require.

15. Debt Covenants:

The debt covenants associated with the Interim Loan shall include, but are not limited to, the following (collectively, the "**Debt Covenants**");

- a) prepare and deliver to the Proposal Trustee from time to time as required by the Proposal Trustee a cash flow forecast and updates (each a "**Cash Flow Forecast**");
- b) operate in compliance with the most current Cash Flow Forecast;
- c) report to the Lender upon request by the Lender as set out in **Schedule "B"** hereto (the "**Reporting**");
- d) comply with the provisions of any orders of the court made in the BIA Proceedings;
- e) conduct all activities in accordance with the Borrower's Cash Flow Forecast;
- f) keep the Lender informed of the Borrower's activities and consult the Lender with respect to any matters that could reasonably be expected to affect the Lender; and
- g) no further encumbrances of the assets of the Borrower.

16. Conditions:

In addition to the matters described elsewhere in this Term Sheet, the completion of the transaction and each drawdown of the Interim Loan will be subject to the following conditions:

- a) the granting by the court in the BIA Proceedings of the Interim Loan Approval Order, including approval of this Commitment Letter and granting the Interim Lender's Charge;
- b) the approval by the Lender, in writing and in its sole discretion, of each Cash Flow Forecast;
- c) payment of all fees and expenses related to the financing; and
- d) compliance with the Debt Covenants.

- 17. **Representation and Warranties:** As normal for a transaction of this nature (which shall be, in each case, subject to materiality qualifiers, exceptions, thresholds and limitations to be mutually agreed upon).
- 18. **Confidentiality:** Except as otherwise provided herein, unless and until such time as approval of this Commitment Letter is sought in the BIA Proceedings, the Borrower, its shareholders, employees and other representatives will not disclose the existence or contents of this Commitment Letter except to their advisors and representatives who need to know the existence and contents hereof in order to facilitate the completion of the Interim Loan by the Lender.
- 19. **No Broker:** The Borrower represents and warrants that no commissions or other payments shall be due to any broker, consultant or any other third party in connection with this Interim Loan.
- 20. **Further Assurances:** The Borrower will, at its expense, do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all and every such further and other acts, agreements, instruments, registrations, filings and assurances as the Lender may require for the purpose of giving effect to this Term Sheet.
- 21. **Governing Law:** This Term Sheet and all related agreements shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

Yours truly,

LENDER

The undersigned hereby acknowledges, accepts and agrees to the terms and conditions of this Term Sheet (including Schedule A & B attached hereto) this 25th day of June 2024.

Cloud Diagnostics Canada ULC
by its authorized signatory:

Name:
Title:

SCHEDULE "A"**PARTIES INCLUDED IN THIS TRANSACTION AS "LENDERS"**

1. **Constantine Zachos**, 11 Longthorpe Court, Aurora ON, L4G 0K4
2. **Gaurav Puri**, PH1 – 95 Bathurst Street, Toronto ON, M5V 2P9
3. **Mitchell Whyne**, 480 Huronia Road, Barrie ON L4N 9B3
4. **James Ku**, 155 Dalhousie St #1106 Toronto ON M5B 2P7
5. **Larry Johnson**, 17 Sunset Bay Drive, Belleair FL 89124 USA
6. **Kelly Lipp**, 25652 N Desoto Lane Rio Verde AZ 85263 USA
7. **Karl Tourville**, 1206 East Ridgewood Street Orlando FL 32803 USA
8. **Spencer Goldsmith**, 5208 S Bur Oak Pl Ste 200 Sioux Falls SD 51708 USA
9. **B&M Miller Equity Holdings Ltd**, 2200-1710 Bayshore Drive, Vancouver BC V6G 3G4
10. **Konstantin Othmer**, 200 Hoover Ave. Unit 2107, Las Vegas NV, 89101 USA

SCHEDULE "B"
REPORTING REQUIREMENTS

The Borrower will provide the following, or any portion thereof, on request of the Lenders:

- a) internal financial statements as at the close of business of the previous Friday;
- b) copies of all bank statements showing the prior week's transactions;
- c) detailed aged accounts receivable and accounts payable listings; and
- d) a complete inventory listing by location identified by Borrower and identifying which are subject to purchase money security interests;

In addition to the above, and unless cancelled by the Lender, a Director of the Borrower will attend a weekly call every Wednesday after the Closing Date to discuss any questions that the Lender or its advisors may have.

