



FORM 109
(RULE 22-2(2) AND (7))

This is the 7th affidavit
of Robert Kaul in this proceeding
and was made on November 1, 2024

District of British Columbia
Division No.: 02-Victoria
Court No.: B240300
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 a director on the board of directors of Cloud Diagnostics Canada ULC ("Cloud DX"), and as such have personal knowledge of the facts and matters hereinafter deposed to, save and 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. Attached as Exhibit "A" to this Affidavit is a memo which describes the major agreements to which Cloud DX is a party and sets out details regarding the assignability of those agreements. The facts set out in Exhibit "A" are to the best of my knowledge true.

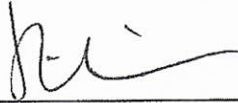
SWORN BEFORE ME at the City of
Vancouver, in the Province of British
Columbia, this 1st day of November,
2024.

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 1st day of November, 2024.

A handwritten signature in black ink, appearing to be 'J. K.', written above a horizontal line.

A Commissioner for taking Affidavits within British Columbia

Memorandum

We have reviewed certain Cloud Diagnostics Canada ULC ("CDC") contracts in assessing the assignability of such contracts in relation to bankruptcy proceedings.

We have reviewed the documents contained in the data room. There are different categories of agreements with varying provisions on assignment. We have grouped the contracts and other documents below by type, and within each type have categorized the documents by the type of assignment provision. We have also received further information directly from the client.

SUMMARY

There are many CDC agreements which require consent of the other party to assign. The majority of CDC's customer contracts include restrictions on assignment except with the consent of the customer. This would be an onerous process as CDC would be dealing with organizations of varying sophistication and size.

For larger organizations such as the companies the software companies providing licenses used by CDC, it may be difficult to reach someone with the ability to provide consent on a timely basis. Obtaining consent for assignments may require documenting the form of assignment in each instance and potentially, if requested by the other parties, payment of any fees associated with the other party having legal counsel review such assignment(s). Any party seeking the benefit of a proposed assignment would be at risk of having consent denied. This is particularly so where the agreements do not require the party considering consent to act reasonably in their decision. The potential time and expense required in obtaining consents for assignments may be untenable for a purchaser of CDC's assets.

A) MASTER DEPLOYMENT AGREEMENTS:

1. Consent for Assignment is Required:

- a. **Master Deployment Agreement between CDC and Oneida Nation Paramedic Services ("ONPS"), dated February 6, 2023, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**

- i. **TERM:** Amendment #1 to the Agreement, dated April 12, 2024, extended the term to March 31, 2025.

- ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.
- b. **Master Deployment Agreement between CDC and Owen Sound Family Health Team, dated January 2, 2023, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** Amendment #3 to the Agreement, dated March 15, 2024, extended the term to March 31, 2025.
 - 1. *NOTE: Amendment #2, referenced as dated October 31, 2023, was not in the data room.*
 - ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.
- c. **Master Deployment Agreement between CDC and University of Ottawa Heart Institute, dated February 24, 2023, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** expired September 30, 2024. Mutual consent was required for two 12-month renewal periods, with a CDC option for an automatic month-to-month extension if no successful renewal negotiations.
 - 1. *NOTE: There is no evidence of renewal or extension.*
 - ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.
- d. **Master Deployment Agreement between CDC and 1191421 Alberta Ltd., dated July 6, 2023, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** Extended pursuant to Amendment #1, dated March 20, 2024, to December 31, 2024.

- ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.
- e. **Master Deployment Agreement between CDC and Brockton and Area Family Health Team, dated October 18th, 2023, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** Extended pursuant to Amendment #1, dated September 15, 2024, to October 31, 2025.
 - ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.
- f. **Master Deployment Agreement between CDC and The Corporation of the County of Brant, dated May 12, 2023, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** Amendment #1 extended the term to May 31, 2026.
 - ii. **ASSIGNMENT:** Pursuant to section 8.1: Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party. For purposes of this paragraph, "transfer" includes a change of ownership to a third party or affiliated entity, whereby 50% or more of the shares of the corporations are transferred.
- g. **Master Deployment Agreement between CDC and The Corporation of the County of Essex, dated March 25, 2022, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** Amendment #2, dated February 28, 2024, extended the term to March 31, 2026.
 - 1. *NOTE: We do not have a copy of Amendment #1.*
 - ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or

right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

h. Master Deployment Agreement between CDC and Guelph Wellington Paramedic Service of the Corporation of the City of Guelph, dated March 21, 2022, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.

i. **TERM:** Amendment #1, dated April 18, 2024, extended the term of March 31, 2026.

ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

i. Master Deployment Agreement between CDC and Hanover Family Health Team, dated October 18, 2023, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.

i. **TERM:** Expires October 17, 2024. In the absence of a renegotiated term, CDC has an option to extend month-to-month.

ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

j. Master Deployment Agreement between CDC and Oxford County Paramedic Services, dated May 17, 2022, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.

i. **TERM:** Amendment #1, dated April 30, 2024, extended the term to May 31, 2026.

ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

- k. **Master Deployment Agreement between CDC and Breathe Easy Lung Rehabilitation, dated August 4, 2021, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** Expires December 22, 2024.
 - ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

- l. **Master Deployment Agreement between CDC and The Corporation of the County of Simcoe, dated September 1, 2022, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** Amendment #1, dated March 26, 2024, extended the term to March 31, 2025.
 - ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

- m. **Master Deployment Agreement between CDC and VHA Home HealthCare, dated December 19, 2023, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** Expires December 18, 2025.
 - ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

- n. **Master Deployment Agreement between CDC and Niagra Medical Group Family Health Team, dated February 25, 2022, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** Amendment #1, dated March 30, 2023, extended the term to March 31, 2024 or such other date as mutually agreed.

1. *NOTE: we do not have evidence of any further extensions.*
- ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.
- o. **Master Deployment Agreement between CDC and Ottawa Hospital Research Institute, dated February 13, 2024, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** Expires February 23, 2029.
 - ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.
- p. **Master Deployment Agreement dated January 27, 2022, between CDC and The Equitable Life Insurance Company of Canada pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** Expires January 26, 2027.
 - ii. **ASSIGNMENT:** Pursuant to section 9.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.
- q. **Master Deployment Agreement dated December 7, 2023, between CDC and Oak Valley Health Markham-Stouffville Hospital pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** Expires December 1, 2026.
 - ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

- iii. *NOTE: References a Data Sharing Agreement between the parties dated October 7, 2019, and provides that it continues in force. We do not have a copy of that agreement.*

- r. **Master Deployment Agreement dated March 15, 2024, between CDC and The Corporation of the County of Northumberland pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories.**
 - i. **TERM:** Expires March 31, 2026

 - ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

- s. **Master Deployment Agreement dated March 15, 2024, between CDC and Beausoleil First Nation Paramedic Service pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories:**
 - i. **TERM:** Expires March 31, 2026.

 - ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

- t. **Master Deployment Agreement dated September 1, 2023, between CDC and Norfolk County Paramedic Services pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories:**
 - i. **TERM:** Expires September 27, 2026.

 - ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

- u. **Master Deployment Agreement dated June 6, 2022, between CDC and Kingston Health Sciences Centre pursuant to which CDC**

provides various remote health and vital sign monitoring products, services, and accessories:

- i. **TERM:** Pursuant Amendment #2 dated October 11, 2024, the term was extended to March 31, 2026.

- 1. *NOTE: We do not have Amendment #1.*

- ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

- v. **Master Deployment Agreement dated November 2, 2022, between CDC and The Ottawa Hospital pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories:**

- i. **TERM:** Expires October 31, 2025

- ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

- w. **Master Deployment Agreement dated July 26, 2023, between CDC and The Governing Council of the University of Toronto, as represented by the Faculty of Kinesiology and Physical Education, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories:**

- i. **TERM:** Expires July 2, 2027

- ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

- x. **Master Deployment Agreement dated February 11, 2021, between CDC and The Lung Health Foundation, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories:**

- i. **TERM:** CDC advises the agreement expires December 31, 2025

- 1. *NOTE: We only have an unexecuted form of agreement, which does not contain signature dates to determine the Effective Date and term.*

- ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

- y. **Master Deployment Agreement dated November 2, 2022, between CDC and The Ottawa Hospital, pursuant to which CDC provides various remote health and vital sign monitoring products, services, and accessories:**

- i. **TERM:** Expires October 31, 2025.

- ii. **ASSIGNMENT:** Pursuant to section 8.1, Neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.

2. Assignment by CDC not addressed:

- a. **Master Deployment Agreement between Cloud DX Inc. and Dr. Anthony DeLorenzo, dated March 3, 2023, pursuant to which Cloud DX Inc. provides various remote health and vital sign monitoring products, services, and accessories.**

- i. **TERM:** Expires March 2, 2026

- ii. **ASSIGNMENT:** Dr. DeLorenzo cannot assign without consent of CDC. The agreement does not address an assignment by CDC.

- iii. *NOTE: This agreement is with Cloud DX Inc. and not CDC.*

- b. **Master Deployment Agreement between Cloud DX Inc. and Dr. Lee S. Freedman, dated January 19, 2024, pursuant to which Cloud DX Inc. provides various remote health and vital sign monitoring products, services, and accessories.**

- i. **TERM:** Expires January 18, 2027.
- ii. **ASSIGNMENT:** Dr. Freedman cannot assign without consent of CDC. The agreement does not address an assignment by CDC.
- iii. *NOTE: This agreement is with Cloud DX Inc. and not CDC.*

B) OTHER FORMS OF CUSTOMER AGREEMENTS:

1. Consent for Assignment is Required, Except for a Change of Control:

- a. **Subscription Services Agreement between Alberta Health Services ("AHS") and CDC dated October 1, 2023, pursuant to which AHS obtained licenses for users to access and use CDC's Cloud DX remote patient monitoring platform and to receive CDC's services on a subscription basis.**

- i. **TERM:** Ends on September 30, 2025

- ii. **ASSIGNMENT:** Pursuant to section 12.1, prior written consent to an assignment is required, and a Change of Control (as defined below) is a deemed assignment. However, an assignment by way of a Change of Control is permitted upon prior notice to AHS and satisfaction of the requirements of 12.1(c)(i)-(iii) below:

12.1(b): Subject to Section 12.1(c), the Provider shall not be entitled to assign this Agreement or any of its rights or obligations hereunder to any person without AHS' prior written consent. A Change of Control by the Provider shall be deemed to be an assignment of this Agreement by the Provider. Subject to Section 12.1(c), any purported assignment by the Provider without AHS' prior written consent shall be void and of no force or effect. Notwithstanding any permitted assignment, the Provider shall remain liable for the performance of the Provider's obligations under this Agreement unless otherwise agreed to in writing by AHS.

12.1(c) Notwithstanding the restriction on assignment set out in Section 12.1(b), the Provider may assign this Agreement to a third party in connection with the sale of all or substantially all of the Provider's business or upon a merger, amalgamation or acquisition of the Provider upon providing prior written notice to AHS provided that:

(i) the assignee agrees in writing to assume all of the rights, obligations and liabilities of the Provider under the Agreement (including those arising prior to the assignment);

(ii) the Provider continues to be bound by the confidentiality and other obligations set out in this Agreement and the Information Management Agreement; and

(iii) the assignee agrees to maintain a development cycle for the Software Platform which is similar to that provided prior to the assignment.

(d) In the event of a proposed Change of Control transaction of the Provider including without limitation, any person who does not hold more than 30% of the issued and outstanding common shares of the Provider acquiring more than 30% of the outstanding common shares in the transaction, then the Provider shall ensure that the terms set out in Section 12.1(c)(i)-(iii) are met if any assignment is required.

“**Change of Control**” in respect of a corporation, partnership, trust or other legal entity shall mean and include: (a) where a legal entity sells, transfers, pledges, assigns or otherwise encumbers the whole or portion of its present or future assets, debts or shares in its capital, other than in the normal course of business, or (b) in the case of a private legal entity, subject to Provider becoming a reporting issuer under Applicable Law, a change of control (whether as part of a single transaction or a series of transactions) of 50% or more of the entity’s issued and outstanding shares, units or other securities whether occurring by way of the acquisition of beneficial ownership and control of the shares, units or other securities of the entity or by way of an amalgamation, arrangement, reorganization, merger or other consolidation of the entity with another entity; provided that any such transaction or series of transactions does not result in a significant change to the executive management of Provider.

2. Consent for Assignment is Required

- a. Agreement No. C03373, Software as a Service Agreement between CDC and the Provincial Health Services Authority (“PHSA”), dated April 23, 2024, pursuant to which PHSA retained CDC for the provision of certain services as set forth in the Agreement.**

- i. **TERM:** Expires March 31, 2027, unless renewed or earlier terminated.
 - ii. **ASSIGNMENT:** Pursuant to section 17.1, there is no ability for CDC to assign, subcontract, or otherwise transfer (whether voluntary, by operation of law, or otherwise) without written consent of PHSA, which consent shall not be unreasonably withheld.
 - b. **Cloud Diagnostics Hosted Service and Support Agreement between CDC and the Government of Yukon (“Yukon”), dated May 2, 2019, pursuant to which Yukon purchased certain Cloud DX Products and Cloud DX Services (as defined in the Agreement).**
 - i. **TERM:** Government Change order, dated February 27, 2024, extended the expiry date to March 31, 2025.
 - ii. **ASSIGNMENT:** Pursuant to section 12.1, neither party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party without the prior written consent of the other party.
 - c. **Services Agreement between Southlake Regional Health Centre and CDC, made as of December 12, 2023.**
 - i. **TERM:** Amending Agreement #1 extended the term to December 31, 2024.
 - ii. **ASSIGNMENT:** Pursuant to section 7.11.1, neither party may assign or subcontract any of its rights or obligations without the prior written consent of the other. Any act in derogation of the foregoing shall be null and void. Southlake may assign to a successor in interest to the assets and obligations of Southlake without consent of CDC.
 - d. **Goods and Services Agreement between The Corporation of the County of Peterborough and CDC, dated March 31, 2022, pursuant to which CDC provides the County with the supply and maintenance of a remote patient monitoring system.**
 - i. **TERM:** Amendment #1 extended the expiry to March 31, 2026.
 - ii. **ASSIGNMENT:** Pursuant to section 11.10, neither party may assign this Agreement or any of its rights or obligations thereunder, in whole or in part, without the prior written consent of the other party, which consent may not be unreasonably withheld. Notwithstanding the foregoing, the County may assign

this Agreement in the event of a corporation reorganization of the County or in connection with the sale or transfer of all or substantially all of the County's assets (and to the recipient of such assets).

e. **Master Corporate Agreement between CDC and Medtronic Canada ULC ("Medtronic"), dated November 30th, 2021.**

- i. **TERM:** Expires on November 29, 2026.
- ii. **ASSIGNMENT:** Pursuant to section 16.2, CDC may not assign or delegate any of its rights or obligations under the agreement, including without limitations, by operation of law, merger, or change of control, without the prior written consent of Medtronic.

3. **No Provisions on Assignment**

a. **Service Terms and Conditions between Mohawk Medbuy Corporation and Cloud DX, effective July 1, 2023.**

- i. **TERM:** Expires June 30, 2026
- ii. **ASSIGNMENT:** There are no provisions expressly on assignment, but CDC is to maintain a list of individuals who have primary responsibility for delivering the contemplated services and is not permitted to replace or substitute any named individual without the consent of the purchaser.
- iv. *NOTE: This agreement is with "Cloud DX" and does not include a full entity name.*

4. **Missing Customer Agreements:**

a. **Master Deployment Agreement between CDC and Hamilton Health Sciences Corporation,**

- i. *NOTE: We have Amendment #3, dated January 17, 2023, which revised the term to March 31, 2024. We do not have Amendments #1 and #2, nor the underlying Master Deployment Agreement*

b. **Information Manager Agreement between Health PEI and CDC, dated November 8, 2023, references other agreements between**

Medbuy, Health PEI, and CDC in relation to services provided by CDC.

- i. *NOTE: We do not have other related agreements.*
- ii. **TERM:** CDC advises the term expires June 30, 2026 and that this agreement relates to Health PEI's purchases under the Mohawk Medbuy agreement.
- iii. **ASSIGNMENT:** Assignment is not expressly contemplated, but the following relate to transfers of information to other parties in the context of a sale of CDC or CDC ceasing operations:

1. Section 15:

- a. On not less than three (3) three months prior written notice to Health PEI, Cloud DX may disclose or transfer the PHI it processes in the context of the Agreement to an acquiring entity in the event of a sale or transfer of all or a portion of its business or assets, provided that such acquiring entity agrees to abide by all of Cloud DX's obligations under the Agreement. Cloud DX will abide by applicable Privacy Law in this case.

2. Section 19:

- a. Should Cloud DX cease operations for any reason, Cloud DX shall provide Health PEI with notice of cessation of operations, or should this Agreement terminate for any reason, Cloud DX or its successor(s), assign(s) or administrator(s) shall cooperate fully with Health PEI or the Privacy Commissioner, as applicable, to safeguard and deliver to Health PEI any and all PHI in the possession or control of Cloud DX, and to ensure the safe destruction of any PHI in any form whatsoever then retained by Cloud DX.

C) LICENSE AGREEMENTS

1. Consent for Assignment is Required

- a. **Amazon Web Services ("AWS") – Service Terms, last updated October 4, 2024**

i. References an **Amazon Customer Agreement, linked version last updated May 17, 2024.**

1. **ASSIGNMENT:** Section 11.1 restricts CDC's assignment of the Amazon Customer Agreement without prior written consent of Amazon Web Services Canada, Inc.

ii. **ASSIGNMENT:** Under section 1.26, AWS consents to the assignment of an AWS account, subject to the terms of the AWS Account Assignment Requirements, which provide:

(1) immediately upon Assignor changing the Transfer Account's root user credentials to credentials controlled by Assignee ("Transfer"), which is permitted for the purpose of complying with these requirements, Assignee must update the Transfer Account with its own account information, including payment, billing, tax, and contact details;

(2) Assignee must be bound by the terms and conditions of the Agreement;

(3) at the time of Transfer, the Transfer Account must not have an outstanding balance;

(4) both Assignor and Assignee must be responsible for all fees, charges, and taxes incurred under the Transfer Account at the time of Transfer, and AWS may seek payment from Assignee for all fees, charges, and taxes incurred under the Transfer Account after Transfer;

(5) if the Transfer Account was receiving AWS Enterprise Support, then Assignor must submit a request to aws-contracts@amazon.com to remove such Transfer Account from Assignor's Support profile prior to Transfer and the level of AWS Support in the Transfer Account's Management Console must reflect that AWS has removed AWS Enterprise Support;

(6) if as a result of the Transfer, the Transfer Account is (or continues to be) associated with the resale of Services, then Assignee must have been authorized by AWS at the time of Transfer to resell such Services and must be complying with all applicable terms, including any necessary authorization to sell to government entities;

(7) if the Transfer Account was receiving discounting under an agreement with AWS and the discounting under such agreement does not apply to Assignee, then the Transfer

Account must have been removed from such agreement prior to Transfer;

(8) if the Transfer Account contains "protected health information" as defined in 45 C.F.R. § 160.103, then immediately upon Transfer, Assignee must ensure that such Transfer Account is covered by a Business Associate Addendum between Assignee and AWS;

(9) if the Transfer Account contains agreements accepted through AWS Artifact ("Artifact Agreements"), then Assignor must have terminated all such agreements applicable to the Transfer Account prior to Transfer and, immediately upon Transfer, Assignee must accept any applicable agreements through AWS Artifact;

(10) the assignment is not made in order to arbitrage, avoid, or profit from pricing commitments to AWS through Transfer, as determined by AWS in its sole discretion; and

(11) if the Transfer Account is linked to an AWS GovCloud (US) account, then prior to Transfer, Assignee must have been deemed eligible for an AWS GovCloud (US) account by AWS, received written confirmation of such from AWS, and provided such written confirmation to Assignor.

b. Adobe Creative Suite – Adobe General Terms of Use, dated June 18, 2024

- i. **ASSIGNMENT:** The Terms may not be assigned or otherwise transferred without the written consent of Adobe Inc.

c. MongoDB Cloud Terms of Service – Last updated June 24, 2021

- i. **ASSIGNMENT:** Section 11(a) provides that the Agreement may not be assigned, delegated, sublicensed without the prior written consent of MongoDB, Inc.

d. Cloudflare – Website and Online Services Terms of Use – Effective September 26, 2024

- i. **ASSIGNMENT:** CDC may not assign or transfer the Terms or their rights thereunder without the prior written consent of Cloudflare Inc. and its affiliates.

e. BambooHR – Terms of Service – Last updated January 26, 2024

- i. **ASSIGNMENT:** CDC may not assign or otherwise transfer (via a change of control or otherwise) any of its rights or obligations under the Agreement without BambooHR's prior written consent, which consent shall not be unreasonably withheld.

f. **Bitwarden – Terms of Service – Effective June 1, 2017**

- i. **ASSIGNMENT:** CDC may not assign or delegate any rights under the Terms of Service or Privacy Policy without Bitwarden's prior written consent.

g. **OpenVPN – Master Product and Services Agreement – Last updated July 29, 2024**

- i. **ASSIGNMENT:** Under section 15(d), CDC may not assign its rights or obligations under the Master Agreement or any Ancillary Agreement without the prior written consent of OpenVPN.

- ii. *NOTE: The data room linked to a general terms of service website with several agreements referenced. It is not clear which may be relevant to CDC.*

h. **OpenVPN – Terms of Use – Effective April 12, 2024**

- i. **ASSIGNMENT:** Under section 24(b), CDC may not assign its rights or obligations under the Terms of Use without the prior written consent of the other party, which consent may be withheld in the other party's sole discretion.

i. **ScreenSteps – Terms of Service – Effective June 7, 2024**

- i. **ASSIGNMENT:** CDC may not assign or delegate any rights or obligations under the Terms or Privacy Policy without the ScreenSteps' prior written consent.

2. No Provisions on Assignment

a. **Zoho One – General Terms of Service**

- i. **ASSIGNMENT:** Assignment is not expressly contemplated but the Terms of Service provide that the Services (being the provision of cloud software and applications for business, including associated offline and mobile applications) may not be transferred or otherwise made available to a third party.

3. Consent/Notice Not Required for Merger/Sale

a. Threatdown/Malware Bites – ThreatDown Support Services Agreement

- i. **ASSIGNMENT:** Neither party may assign the Agreement without prior written consent of the other party. Notwithstanding that restriction, either party may assign the Agreement without the other party's consent, to an entity that acquires all or substantially all of the business and/or assets of such party, to an entity that acquires more than 50% of the equity securities of such party, and/or to the surviving entity in a merger to which such party is a merged entity.

4. Assignment Permitted on Notice in the Event of Merger/Sale

a. Mailgun – Sinch Email's Terms of Service – Last revised January 16, 2023

- i. **ASSIGNMENT:** Section 13 provides that neither party may assign the Agreement or any Service Orders without the prior written consent of the other party except to an Affiliate or successor as part of a corporate reorganization or a sale of some or all of its business, provided the assigning party notifies the other party of such change of control.

b. Grafana Labs Master Services Agreement

- i. **ASSIGNMENT:** Section 13.5 provides that the Agreement is assignable by either party only with the other party's prior written consent, however either party may, upon written notice and without the prior written approval of the other party, (A) assign the Agreement to an Affiliate so long as the Affiliate has sufficient assets to satisfy its obligations under this Agreement and the scope of Grafana Product(s) is not affected; or (B) assign the Agreement pursuant to a merger, consolidation, reorganization, change of control, or sale of all or substantially all of such party's assets or stock.

c. Gurock – Master Software as a Service Subscription Agreement

- i. **ASSIGNMENT:** Section 17(a) provides that CDC may not assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations thereunder to any other person or entity,

whether by contract, merger, or operation of the law, without Gurock's prior written consent. In the event of any merger of CDC or a sale of substantially all of the assets of CDC in which CDC is not the surviving entity, CDC may assign or transfer any licenses granted under this Agreement, provided that CDC provides Gurock with written notice of such transfer within 30 days of such merger or sale.

- ii. *NOTE: The data room linked to a general terms of service website with several agreements referenced. It is not clear which may be relevant to CDC.*

d. Gurock – Master Software Subscription License Agreement

- i. **ASSIGNMENT:** Section 17(a) provides that CDC may not assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations thereunder to any other person or entity, whether by contract, merger, or operation of the law, without Gurock's prior written consent. In the event of any merger of CDC or a sale of substantially all of the assets of CDC in which CDC is not the surviving entity, CDC may assign or transfer any licenses granted under this Agreement, provided that CDC provides Gurock with written notice of such transfer within 30 days of such merger or sale.

- ii. *NOTE: The data room linked to a general terms of service website with several agreements referenced. It is not clear which may be relevant to CDC.*

e. Talent LMS – Terms of Service – Last updated June 29, 2024

- i. **ASSIGNMENT:** The Agreement is not assignable or transferable by CDC except with the Supplier's prior written consent, provided that CDC may, upon written notice to the Supplier, transfer and assign its rights and obligations under the Agreement to an Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets to which the Agreement relates. If such a transfer is made in favour of a direct competitor of Supplier, Supplier may terminate the Agreement upon written notice to CDC.

f. Atlassian Customer Service Agreement – Effective June 5, 2024

- i. **ASSIGNMENT:** CDC may not assign or transfer any of its rights or obligations under the Agreement or an Order without Atlassian's prior written consent. However, CDC may assign this Agreement in its entirety (including all Orders) to its successor

resulting from a merger, acquisition, or sale of all or substantially of all of CDC's assets or voting securities, provided that CDC provides prompt written notice of the assignment and the assignee agrees in writing to assume all of CDC's obligations under the Agreement and complies with Atlassian's procedural and documentation requirements to give effect to the assignment.

g. **Zoom – Video SDK Terms of Service – Updated September 26, 2023**

i. **ASSIGNMENT:** CDC may not transfer or assign the SDK Terms and any of its rights and obligations thereunder without Zoom's written consent.

ii. *NOTE: This term only applies to the extent that the same subject matter is not covered in a Service Agreement between CDC and Zoom. It is not clear if such an agreement exists.*

h. **JumpCloud – Terms of Service – Last updated August 1, 2024**

i. **ASSIGNMENT:** CDC may not assign or transfer, by operation of law or otherwise, the Agreement, or any of its rights under the Agreement or delegate any of its duties under the Agreement to any third party without the other party's prior written consent, except that consent will not be required in connection with an assignment pursuant to a transfer of all or substantially all of such party's business and asset to which this Agreement relates, whether by merger, sale of assets, sale of stock, or otherwise, provided that the assignee assumes all obligations under the Agreement.

5. No Provisions on Assignment

a. **Support Services Agreement between Cloud DX and Invero Digital Inc., dated October 26, 2023**

i. **ASSIGNMENT:** The Agreement does not expressly contemplate assignment.

ii. *NOTE: This Agreement is with "Cloud DX" and does not include a full entity name.*

b. **Veracode – Terms of Use**

- i. **ASSIGNMENT:** The Terms do not expressly contemplate assignment.
 - ii. *NOTE: This appears to be Veracode's general website terms of use. It is not clear whether any other agreement may contain applicable provisions.*
- c. **Nextgen – Terms and Conditions of Use – dated September 26, 2024**
 - i. **ASSIGNMENT:** Assignment is not expressly contemplated, but the terms provide that a user cannot sell, lease, traffic in, sublicense, or otherwise transfer to any person or entity, except as CDC's license agreement expressly permits, either: (i) the rights to access to use the Company Site granted thereunder or (ii) any password, username, or other information or device used to authorize access to and use of the Company Site.
 - ii. *NOTE: We do not have a copy of the noted License Agreement in the event one exists.*

6. MISSING LICENSE AGREEMENTS

a. Intuit – Quickbooks online

- i. *NOTE: No terms are linked and no agreement provided in the data room.*

b. ConnectWise – Terms of Use

- i. **ASSIGNMENT:** Does not expressly contemplate assignment but notes that any use of software is subject to the terms of a software license agreement.
- ii. *NOTE: we do not have a copy of the relevant software license agreement.*

c. Mahost – Terms of Service

- i. *NOTE: The website linked in the data room appears to be down.*

D) HEALTH CANADA MEDICAL DEVICE ESTABLISHMENT LICENCE

7. Medical Device Establishment Licence – Licence Number 6984, issued July 27, 2017

a. **ASSIGNMENT:** This license is issued in accordance with the *Medical Device Regulations* (the "**Regulations**") of the *Food and Drugs Act* (the "**Act**").

i. Under the Regulations, if, following the issuance of an establishment licence, there is a change to any of the information submitted in accordance with paragraph 45(a) or (b) of the Regulations, the holder of the establishment licence shall submit the new information to the Minister within 15 days of the change. Sections 45(a) and (b) of the Regulations provide:

45 A person who wishes to apply for an establishment licence shall submit an application to the Minister, in a form established by the Minister, that contains the following information and documents:

(a) the name and address of the establishment;

(b) the name, title and telephone number of the representative of the establishment to contact for any information concerning the application;

E) INTELLECTUAL PROPERTY

The data room contains a list of intellectual property owned by CDC. The intellectual property is largely content-related, including documentation, videos, and images. The only registered intellectual property is noted as a perpetual, fully paid up license for use in Canada to specific trademarks including Cloud Diagnostics ® and Cloud DX®, both owned by Cloud DX, Inc. (Delaware).

This is the 7th Affidavit of
Robert Kaul in this proceeding
and was made on November 1, 2024.

District of British Columbia
Division No.: 02-Victoria
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

OWEN BIRD LAW CORPORATION
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Vancouver Centre II
2900 – 733 Seymour Street
Vancouver, BC V7B 0S6
Attention: Jonathan L. Williams
File No. 41286-0000
