

This is the 1<sup>st</sup> Affidavit of Robert Kaul in this proceeding and was made on June 7, 2024.



District of British Columbia  
Division No.: 02 - Vancouver *Vic*  
Court No.: VL-5-B-246902  
Estate No.: 11-308-9419  
*Vancouver* Registry  
*Victoria*

**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.

**Operations and History**

*Ownership Structure*

3. Cloud DX is an unlimited liability company registered and in good standing under the laws of the Province of British Columbia.
4. As a result of a reverse takeover (RTO) transaction in 2021 Cloud DX Inc., a corporation registered under the *Canada Business Corporations Act* (the “CBCA”) became publicly listed on the Toronto Venture Exchange under the symbol (CDX). The subsidiaries of Cloud DX Inc. are

12632926 Canada Ltd., a corporation registered under the CBCA, which owns Cloud DX, Inc. (“Cloud DX USA”) a US company registered in Delaware, which owns Cloud DX.

### *Operations*

5. Cloud DX is a technology company in the regulated field of Remote Patient Monitoring (“RPM”). Cloud DX developed a Connected Health Platform (“CHP”), which is a platform that provides for streamlined and effective RPM services.

6. Using its CHP, Cloud DX makes available medical devices and kits, intuitive mobile apps, smart notification systems and integration to electronic medical record systems (which are software platforms used by doctors and hospitals for care planning, record keeping and billing). Cloud DX supplied devices and apps are used to monitor patients at home whereby biometric data is collected and streamed back to clinical teams to monitor health and provide early warning signs to clinicians of deterioration of the patient’s health when the patient is not in a clinical setting.

7. The CHP’s smart notification system promptly alerts clinicians if a patient’s readings deviate from set parameters, allowing for timely interventions. The CHP’s privacy-compliant video telemedicine and chat communication ensures that patients can easily reach out and be connected to their health care providers.

8. RPM systems are known to reduce costs to the healthcare system and improve patient outcomes overall by, amongst other things, reducing the length of hospital stays, reducing emergency department visits and improving patient outcomes overall and streamline clinical workflows. The CHP is particularly tailored for an older, geriatric population.

9. Cloud DX customers include a combination of hospitals, provincial government health authorities (in [REDACTED] and the [REDACTED]), municipal government and academic institutions.

10. Cloud DX USA has operations in the United States with an office in Brooklyn, New York. This operation is smaller with just two (2) active customers, which are primary care clinics.
11. Cloud DX earns revenue three (3) ways:
  - a. the purchase or rental of Connected Health Kits containing a combination of medical devices and a tablet computer by a customer (“Product Revenue”);
  - b. when a Connected Health Kit is prescribed by a clinician to a patient and the patient pays a subscription fee (“Subscription Revenue”); and
  - c. work completed by Cloud DX employees on the Connected Health platform whereby new features are programmed into the software as well as the integration of Cloud DX software into hospital electronic medical records systems, and other custom services including support services (“Professional Services Revenue”).

### *History*

12. Cloud DX was founded in British Columbia in September, 2014. From 2014 to 2018 Cloud DX was primarily engaged in research and development and received substantial grants to fund its CPS, medical devices and software products.
13. Cloud DX has received many awards for its innovative excellence and won the global innovation competition, Qualcomm Tricorder XPRIZE, causing Cloud DX to receive additional funding for research and development with the University of California, San Diego.
14. Cloud DX has a Medical Device Establishment License (“MDEL”) which is required by Health Canada to operate an RPM system in Canada.
15. In 2018 Cloud DX began making commercial sales, which increased during and after the COVID pandemic. In the years 2023 and 2024 the number of contracts signed with Cloud DX and the value of those contracts has steadily increased.

16. Cloud DX is an industry leader due to its innovative approach, with a track record of reducing hospital readmissions, and improving patient satisfaction, particularly for patients with chronic diseases. Notably, Cloud DX's CHP has been successful in improving patient care in rural and remote communities.

17. Cloud DX is committed to research and development to ensure it remains at the forefront of technological advancement.

18. Cloud DX has received overwhelming positive feedback, including in numerous published surveys, academic papers and customer testimonials, for its services.

### **Management and Employees**

19. Cloud DX Inc., the publicly traded company (CDX), has had a board of seven directors. Two of the directors resigned on June 5, 2024. Consequently, there are now five directors.

20. The board of directors of Cloud DX Inc. is also the controlling board of the subsidiary corporations, including Cloud DX. The management of Cloud DX reports to the board of Cloud DX Inc.

21. As at June 1, 2024, Cloud DX has thirty-one (31) full time employees, eight (8) part-time hourly employees, a CEO (myself), COO (Anthony Kaul) and CFO (Simon Selkrig).

22. Cloud DX's employees are located across Canada from Halifax, Nova Scotia to Victoria, British Columbia. The CEO and COO reside in British Columbia and the CFO resides in Ontario.

23. Cloud DX is managed by its executive team consisting of its CEO, COO and CFO.

### **Significant Operating Agreements**

24. Cloud DX's significant agreements include the agreements described below.

### *Master Deployment Agreements*

25. Cloud DX is party to approximately forty (40) Master Deployment Agreements (“MDA”). The MDAs set out the terms and conditions between Cloud DX and its customers with respect to Connected Health Kits, fees for Cloud DX’s Product, Subscription and Professional Services Revenues. In addition to services and fees, MDAs provide for, amongst other things:

- a. terms ranging from one (1) to four (4) years, with renewal clauses between one (1) and three (3) years; and
- b. title to and ownership of Cloud DX’s services, digital platform, software integrations and all intellectual property rights remain the property of Cloud DX.

The MDAs are governed by the laws of the province where the customer is located.

### *Software Licensing Agreements*

26. Cloud DX has user license agreements with approximately 50 different software suppliers. The software provided by these suppliers is required by Cloud DX to deliver services to its customers, develop improvements to its main service digital platform and to provide electronic communications necessary for employees to work remotely.

### *Agreement with [REDACTED]*

27. Cloud DX’s agreement with [REDACTED] provides cellular connectivity to tablet computers deployed to patients as part of their Connected Health Kits.

### *Agreement with [REDACTED]*

28. [REDACTED] is a reseller for Microsoft. Under this agreement, Cloud DX acquires [REDACTED] cloud-computing infrastructure that Cloud DX’s software runs on.

*Health Canada Medical Device Establishment License*

29. A Health Canada Medical Device Establishment License is required by Health Canada for Cloud DX to supply medical devices and is necessary for Cloud DX to continue to run its operations.

**Key Customer Agreements**

30. Cloud DX's key customer agreements include the agreements described below.

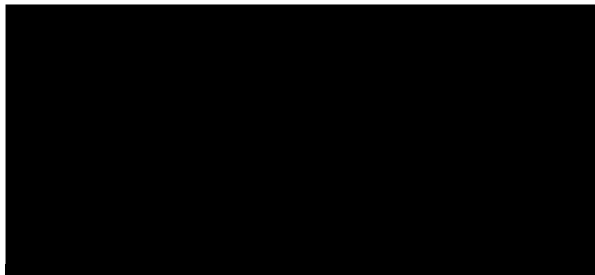
*Provincial Health Authorities*

31. Cloud DX has won competitive RFPs and is the RPM provider for five (5) provincial/territorial health authorities.

32. Terms of these agreements are from three (3) to five (5) years with renewal clauses, set out how the health authority purchases hard goods such as vital sign monitoring equipment and tablet computers, and license access to the Cloud DX platform for clinical teams and patients.

33. Cloud DX's health authority customers are:

- a.
- b.
- c.
- d.
- e.



*Large Hospital Systems and Research Institutes*

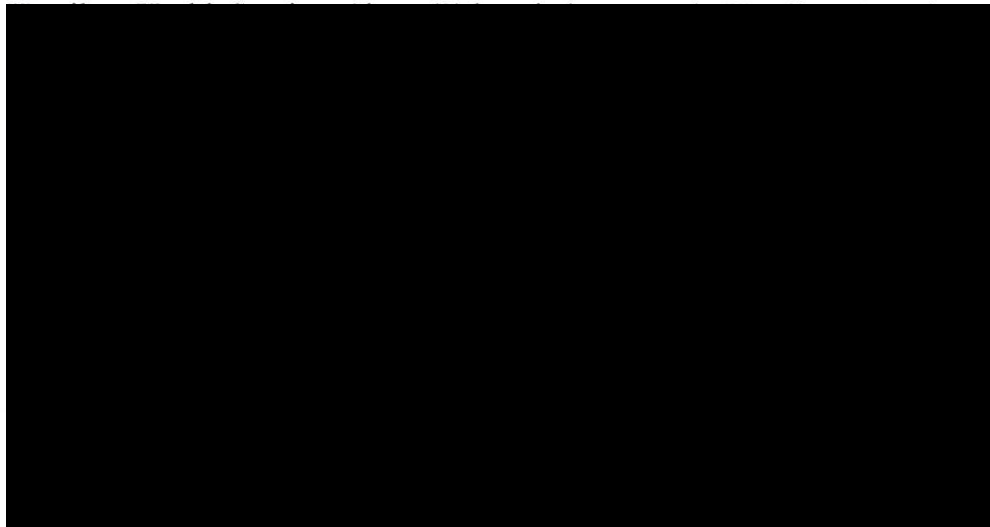
34. Cloud DX is the virtual care supplier for RPM provider for large hospital systems in



35. The terms of these agreements are from one (1) to three (3) years with renewal clauses, set out licensing fees, hardware costs and service fees.

36. Cloud DX's customers in this area are:

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.
- i.
- j.



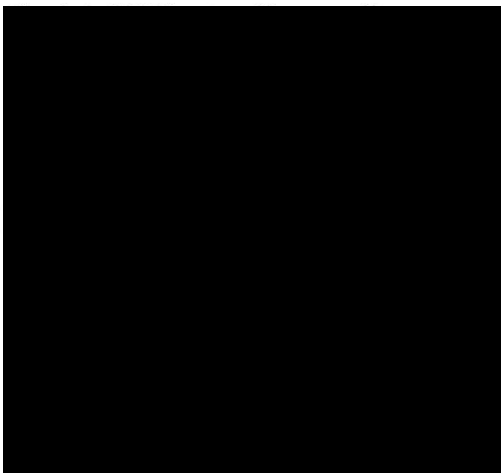
*Community Pandemic Organizations*

37. Cloud DX won, through competitive RFPs, 80% of the market share in the delivery of RPM through Community Pandemic Organizations in Ontario.

38. The terms of these agreements are from one (1) to three (3) years with renewal clauses and set out licensing fees, hardware costs and service fees.

39. Cloud DX's customers in this area are:

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.
- i.



40. Through all of their contracts, Cloud DX provided care for over 5,000 patients in 2023 and currently has 1700 patients on its systems receiving RPM care.

## **Liabilities**

### *Secured Creditors*

41. Cloud DX has seventy-two (72) debenture holders owed approximately \$9,441,999 in principal and \$1,944,000 in interest. Cloud DX, Inc. and Cloud DX USA are also debtors under this obligation.

42. RBC Bank is secured by a \$60,000 GIC against two (2) corporate credit cards, with balances of \$31,579 CAD and \$25,142 USD.

### *Government Creditors*

43. Cloud DX owes approximately \$1,247,866 to Canada Revenue Agency for unremitted payroll deductions and approximately \$92,500 to the Ontario Ministry of Finance for unremitted Employer Health Tax.

### *Unsecured Creditors*

44. Cloud DX owes approximately \$4,022,000 to unsecured debenture holders, \$1,865,500 to various suppliers and service providers and \$84,375 to the COO in unpaid bonuses.

### *Contingent Claims*

45. A private placement of units was announced on April 8, 2024, extended to May 27, 2024, and is now suspended due to Cloud DX's filing a notice of intention to make a proposal.

46. As a result of that announcement, investors had advanced Cloud DX funds upon signing a subscription agreement.

47. Cloud DX anticipates contingent claims arising from this.



## Use of Funds

48. Cloud DX used the funds raised from the above sources to fund working capital and investments in its operation, including administrative costs, sales and marketing costs and product development.

## Assets

49. Cloud DX's primary asset is its intellectual property, goodwill with customers and its value as a business as a going concern.

50. Over the past six (6) months Cloud DX has had a strong period of acquiring and renewing customer contracts, valuing approximately \$14,000,000, which are set to be deployed over the next three (3) to five (5) years.

51. Cloud DX has regulatory clearances including SOC 2.0 Certification, Health Canada MDEL license and FDA registration. These assets are difficult to acquire and the clearances pose significant barriers to entry to potential competitors with long lead times.

52. Cloud DX has license agreements including software license agreements, and licenses to integrate medical devices on its platform.

53. Cloud DX is in the final stages of completing two (2) integrations into medical records systems including an integration into the [REDACTED]. This project has been in development for seven (7) months and is set to go online in July, 2024.

54. Due to the nature of the assets and the business, I believe it to be likely for the liquidation value of Cloud DX to be minimal. However, there is significant potential value for Cloud DX to continue operating as a going concern post-restructuring.

55. Upon a successful restructuring, I believe that Cloud DX will be cash flow positive in 2025 and that these restructuring proceedings will allow Cloud DX to maximize value, maintain continuity for employees, health authorities and patients and allow Cloud DX to ultimately achieve its full potential.

### **Financial Difficulties and Restructuring Efforts to Date**

56. Cloud DX began operations on September 15, 2014. From that time until May 31, 2024, on a consolidated basis the company incurred revenues of \$7,112,117 and net operating losses of \$53,686,788.

57. The main operating expenses of Cloud DX are salaries and employee wages, consulting fees for contractors, and professional services fees related to being a public company. These fees include legal fees related to fund raising activities, accounting fees related to annual financial audits, finder's fees and commissions related to fund raising, and general legal and accounting fees. In fiscal year 2023 professional services fees equaled \$1,413,096.

58. The primary reason for these losses has been Cloud DX's inability to generate sufficient revenue or gross profits to cover its operating expenses as the company starts up. Historically Cloud DX's sale and revenue projections were too optimistic and its estimated costs too low.

59. In May, 2023, Cloud DX initiated a cost reduction program whereby some real estate leases were re-negotiated and approximately 20% of staff were laid off to reduce the cost of payroll. Cloud DX also created savings by replacing expensive software with lower cost or open source alternatives.

60. Cloud DX has funded its operating losses through the issuance of common shares, the sale of convertible debentures (both secured and unsecured), and the unsecured debt noted above.

61. In the spring of 2024 Cloud DX recognized that it would require an immediate \$3 million to \$3.3 million in new funds to meet its current operating costs, minimum payments on trade

payables in arrears, and inventory costs for open orders. Accordingly, Cloud DX received TSXV approval to offer a private placement of Units consisting of 1 common share and 1 warrant, priced at \$0.12 per unit, for gross proceeds of up to \$3.3 million. The offering was announced on April 8, 2024, with a closing date of April 28, 2024. The offering was then extended to a closing date of May 31, 2024 and further extended to a closing date of June 30, 2024. Unfortunately, by June 4, 2024 the amount of investment committed to the financing was less than \$500,000, which was insufficient to meet Cloud DX's needs.

62. Although Cloud DX has implemented further cost cutting by reducing staff, and has received short-term loans from certain secured creditors, further funding is required. Secured creditors noted above indicated that they are unwilling to continue funding Cloud DX without a clear path forward towards either restructuring or selling the business.

63. Accordingly, on June 5, 2024, Cloud DX filed a Notice of Intention to make a Proposal pursuant to the *Bankruptcy and Insolvency Act*.

64. It is Cloud DX's intention to eventually obtain a Court approved sale and investment solicitation process ("SISP") and having a document outlining the procedures for a SISP is expected to be attached to the Proposal Trustee's report to eventually be filed in these proceedings.

65. In the interim, Cloud DX intends to use the interim financing, discussed below, to continue to operate Cloud DX as a going concern and work, with the Proposal Trustee and its counsel, to organize its affairs and prepare a Court application for a SISP.

66. Given the specialized and regulated nature of Cloud DX's business, it is difficult to assess value without a SISP to canvass market value.

### **Importance of maintaining operations**

67. It is essential for Cloud DX to continue its operations during this restructuring proceeding. Cloud DX provides active care to thousands of high-risk patients. Many patients

remain stable at home with late-stage chronic diseases, such as Chronic Obstructive Pulmonary Disease and that stability comes from Cloud DX's CHP and the feedback loops between those patients and their clinical team.

68. Post-surgical patients are at especially high risk, typically being discharged from hospital 1.9 days early on average. In this "hospital at home" use case immediate shutdown would push all of those patients into harm's way. Sudden shutdown would put these patients and hundreds of others into acute health danger.

69. The hospital systems that use Cloud DX rely on its platform to increase surgical throughput, reduce acute care utilization and reduce costs. Sudden shutdown of our platform would push hundreds of patients into acute care stressing health systems even further than they are stressed now.

### **Interim Financing**

70. 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.

71. In consultation with the Proposal Trustee, Cloud DX is preparing a cash flow statement to be filed by Cloud DX pursuant to s.50.4(2)(a) of the BIA. This statement will be attached to a report of the Proposal Trustee and filed in these proceedings, demonstrating that Cloud DX requires funding for its operations and expenses.

72. Approximately \$120,000 is intended to be advanced to Cloud DX and used for payroll and costs to service customers as short term financing.

73. I expect that the key terms of the DIP loan will include:
- a. demand loan;
  - b. 25% interest;
  - c. \$120,000; and
  - d. first charge over all creditors other than CRA.

74. Given the intangible and specialized nature of Cloud DX's business and assets, I believe that its greatest value is as a going concern, and that the best option to achieve value for stakeholders (including creditors and employees) is to allow Cloud DX to eventually advance a sales process in these proceedings. In order to do so, Cloud DX requires the DIP loan to meet its obligations and maintain value.

75. I have had discussions with Cloud DX's largest secured creditors namely Brad Miller, Konstantine Othmer, Constantine Zachos, Gaurav Puri, and Karl Tourville. Based on these discussions, I believe that the secured creditors do not object to the interim financing and are supportive of Cloud DX continuing its operations while advancing the sales process.

#### **Administration Charge**

76. Cloud DX seeks a charge on its property assets and undertakings in the maximum amount of \$75,000.00 (the "Administration Charge") to secure the fees of Cloud DX's legal counsel, Owen Bird Law Corporation ("Company's Counsel"), the Proposal Trustee and the Proposal Trustee's legal counsel.

77. I believe that it is critical to the success of these proceedings and the proposal to have the Administration Charge in place and to ensure that the Proposal Trustee and Company's Counsel are protected with respect to their fees and disbursements. The professionals that are the proposed beneficiaries of the Administration Charge have contributed, and continue to contribute, to these proceedings and the restructuring of Cloud DX. Further, I believe that the joint efforts of the Proposal Trustee and Company's Counsel are necessary to facilitate a better overall result.



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This is the 1<sup>st</sup> Affidavit of  
Robert Kaul in this proceeding  
and was made on June 7, 2024.

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