**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** (the “**Agreement**”) is made the 11th day of November, 2020

**BETWEEN:**

**BDO CANADA LIMITED**, in its capacity as trustee in bankruptcy for **1836816 Ontario Inc.**(the “**Disclosing Party**”)

 - and –

**[CREDITOR]**(the “**Recipient**”)

**WHEREAS** the Disclosing Party has agreed to grant access to the Recipient to certain confidential and proprietary information of **1836816 Ontario Inc** (“**Client**”) in connection with ongoing insolvency proceedings involving the Client (the “**Insolvency Proceedings**”), in respect of which the Recipient is an interested party;

**NOW THEREFORE** in consideration of the disclosure by the Disclosing Party to the Recipient of certain Confidential Information for the purpose of assisting the Recipient to make decisions regarding the Insolvency Proceedings (the “**Purpose**”), the Recipient covenants and agrees as follows:

**1. Confidential Information**

In this Agreement, “**Confidential Information**” means all information in the possession or control of the Disclosing Party regarding the business, affairs and prospects of the Client or its business partners and affiliates, which is disclosed to the Recipient by the Disclosing Party in connection with the Insolvency Proceedings, whether or not marked or identified as “confidential”. For greater certainty, Confidential Information shall include all information or data relating to the Client’s current or proposed products, services, pricing, suppliers, customers, dealers, agents, employees, businesses, business opportunities, communications, networking systems or other systems, specifications, drawings, sketches, designs, charts, diagrams, ideas, creations, inventions, formulas, improvements, models, samples, processes, equipment, methods, techniques, experiments, demonstrations, prototypes, procedures, design methodology, evaluation methodology and criteria, current and historical data, test data, research, technology, computer systems, computer architecture, computer programs, codes, routines and other software, programming techniques, documentation, databases, scientific, computer or engineering information, trade secrets, business operations, reports, plans, forecasts, costs, salaries, sales, income, profit, profitability, financial information, revenue statements, business or marketing plans, distribution and other business strategies, in each case in its original form or whether it is converted to different forms or combined with additional information, and including any information relating to third parties contained therein, and any notes, memoranda, summaries, analyses, compilations or any other writings relating thereto prepared by the Client or by the Disclosing Party or any other party on the Client’s behalf.

**2. Authorized Users**

An “**Authorized User**” shall mean a director, officer, employee, agent, subcontractor, authorized representative or professional advisor of the Recipient which requires the Confidential Information in connection with the Purpose, and who is bound to maintain the Confidential Information in strict confidence under terms and conditions no less stringent than those set out herein. The Recipient may disclose to an Authorized User only on a “need to know” basis, and assumes responsibility for any disclosure of Confidential Information to Authorized Users (including any breach by Authorized Users of the terms of this Agreement).

**3. Obligations of Confidentiality**

The Recipient covenants and agrees that it will keep all Confidential Information disclosed to it strictly confidential, and will not disclose, divulge or otherwise make any Confidential Information available to third parties, other than the Recipient’s Authorized Users. The Recipient shall protect the Confidential Information with the same degree of care as that with which the Recipient protects its own Confidential Information, which in any event shall not be less than a reasonably prudent degree of care.

**4. Limitations on Use and Disclosure**

4.1 The Recipient covenants and agrees that it will not use any of the Confidential Information for any purpose other than in connection with the Purpose.

4.2 Unless otherwise agreed in writing by the Disclosing Party, the Recipient shall not copy or duplicate the Confidential Information or knowingly allow any person or entity to copy or duplicate the Confidential Information. The Recipient shall not alter, decompile, disassemble, reverse engineer or otherwise modify any Confidential Information received under this Agreement.

4.3 In the event that the Disclosing Party, in its sole discretion, so requests in writing to the Recipient, the Recipient will promptly deliver to the Disclosing Party all Confidential Information in the Recipient’s possession or in the possession of any of its Authorized Users, or destroy copies of any Confidential Information that is not capable of being returned. The terms of this Agreement shall remain in full force and effect in respect of any Confidential Information that is not, or is not capable of being, returned or destroyed.

**5. Exceptions**

5.1 This Agreement and the provisions hereof shall be inoperative as to such portions of the Confidential Information that:

(a) are or become generally available to the public other than as a result of any breach of this Agreement by the Recipient or its Authorized Users;

(b) were disclosed to the Recipient on a non-confidential basis by a third party having lawful possession and the right to make such disclosure, who was not under an obligation of confidence regarding the information, who was not identified to the Recipient as an agent of the Disclosing Party and provided that the Recipient would not reasonably expect that such third party had obtained such information in a confidential manner from the Disclosing Party;

(c) are required to be disclosed by any applicable law; however, the Recipient shall promptly inform the Disclosing Party so that the Disclosing Party may interpose an objection or obtain a protective court order; or

(d) are approved in writing by the Disclosing Party for release or other use by the Recipient according to the terms set out in such written approval.

5.2 Confidential Information shall not be deemed to be covered by the exceptions set out in Section 5.1 merely because such information may be construed as being within broader non-confidential information which is covered by any of such items, nor shall a combination of features which form Confidential Information be deemed to be non-confidential merely because the individual features, without being combined, are not confidential.

**6. Warranty and Disclaimer**

The Recipient acknowledges and understands that the Disclosing Party makes no representation or warranty in relation to any of the information disclosed hereunder, its adequacy, accuracy, or suitability for any purpose, and, except as expressly agreed in writing, shall not have any liability or responsibility for any loss or damage arising from any error, omission in, or any use of or reliance on, the information in any respect.

**7. Equitable Remedies**

The Recipient agrees that there can be no adequate remedy at law for any breach of the obligations hereunder and upon any such breach or any threat by the Recipient, the Disclosing Party shall be entitled to appropriate equitable relief, including injunctive relief in addition to whatever other remedies it might be entitled. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorney’s fees, court costs and related expenses.

**8. Termination and Survival**

This Agreement shall become effective as of the date first written above and shall continue in full force and effect during any period in which the Recipient has access to, or is in possession of, Confidential Information.

**9. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereto agree that the Courts of the Province of Ontario shall have exclusive jurisdiction in reference to any matters herein.

**10. No Waiver**

Each party acknowledges and agrees that no failure or delay by a party in exercising any right, power or privilege arising pursuant to or in connection with this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

**11. Severability**

Should any provision of this Agreement be determined to be void, invalid or otherwise unenforceable by a court of competent jurisdiction, such determination shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

**12. Assignment**

The Recipient may not assign this Agreement or the rights and obligations granted hereunder without the prior written consent of the Disclosing Party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

**15. Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any prior agreements, discussions, correspondence, negotiations, arrangements or understandings between them, whether written or oral, relating to such subject matter.

**16. Counterparts and Electronic Signatures**

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement. An electronic copy or facsimile of a party’s signature shall be binding upon the signatory with the same force and effect as an original signature.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first written above.

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|  | **BDO CANADA LIMITED, as trustee in bankruptcy for 1836816 Ontario Inc.**Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title: |
|  | [●]Per: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:Title: |