



## **PRIORITY AGREEMENT**

**THIS AGREEMENT** dated **MARCH 8, 2024**.

**AMONG:**

**BUSINESS DEVELOPMENT BANK OF CANADA**, with a business centre at  
81 BAY STREET, SUITE 3700, TORONTO, ON M5J 0E7

("BDC")

**AND:**

**KW CAPITAL PARTNERS LIMITED**  
201 - 10 WANLESS AVE., TORONTO, ON, M4N 1V6

(the "Lender")

**AND:**

**XEMOTO MEDIA LTD.**  
77 KING STREET WEST SUITE 2905, TORONTO, ON, M5K 1H1

(the "Customer")

**WHEREAS:**

A. The Customer has granted or agreed to grant to BDC security interests in all of the Customer's present and after-acquired personal property to secure present and future debts and obligations of the Customer to BDC;

B. The Customer has granted or agreed to grant to the Lender security interests in all of the Customer's present and after-acquired personal property to secure present and future debts and obligations of the Customer to the Lender;

C. The parties hereto have agreed to enter into this agreement in order to set out the respective priorities of the BDC Security and the Lender Security;

**NOW THEREFORE** in consideration of the premises and other good and valuable consideration, the parties hereto covenant and agree as follows:

### **ARTICLE 1 - CONSENT**

1.01 BDC hereby acknowledges its consent to the creation and issue by the Customer to the Lender of the Lender Security and to the incurring by the Customer of the indebtedness evidenced thereby.

1.02 The Lender hereby acknowledges its consent to the creation and issue by the Customer to BDC of the BDC Security and to the incurring by the Customer of the indebtedness evidenced thereby.

## **ARTICLE 2 - INTERPRETATION**

- 2.01 The preamble hereto forms an integral part of this Agreement.
- 2.02 In this Agreement, the following terms shall have the following meanings:
- (a) “BDC Security” means all registered security interests now or hereafter held by BDC in any or all of the Customer’s present and after acquired personal property to secure present and future debts and obligations of the Customer to BDC;
  - (b) “Lender Security” means all registered security interests now or hereafter held by the Lender in any or all of the Customer’s present and after acquired personal property to secure present and future debts and obligations of the Customer to the Lender;
  - (c) “PPSA” means the applicable *Personal Property Security Act*; and
  - (d) “Secured Parties” means BDC and the Lender, and a “Secured Party” means either one of them, and each of their respective successors and permitted assigns.

## **ARTICLE 3 - PRIORITIES**

- 3.01 The BDC Security is hereby postponed and subordinated to the security constituted by the Lender Security with respect to all of the Customer’s present and after acquired personal property, to the extent of the Customer’s indebtedness to the Lender from time to time, together with all accrued interest thereon and all costs, charges and expenses incurred by the Lender in connection therewith.
- 3.02 The subordinations and postponements herein shall apply in all events and circumstances regardless of:
- (a) the date of execution, attachment, registration or perfection of any security interest held by BDC or the Lender; or
  - (b) the date of any advance or advances made to the Customer by BDC or the Lender; or
  - (c) the date of default by the Customer under any of the BDC Security or the Lender Security or the dates of crystallization of any floating charges held by BDC or the Lender; or
  - (d) any priority granted by any principle of law or any statute, including the PPSA.
- 3.03 Any proceeds, including, without limitation, any insurance proceeds received by the Customer or by BDC or the Lender in respect of the collateral charged by the BDC Security or the Lender Security shall be dealt with according to the preceding provisions hereof as though such proceeds were paid or payable as proceeds of realization of the collateral for which they compensate subject to subparagraphs (a), (b) and (c):
- (a) The Lender’s priorities herein shall not extend to any payments against the Customer’s indebtedness to BDC received by BDC in the ordinary course of business and prior to written notice of the Customer’s default from the Lender.
  - (b) BDC’s priorities herein shall not extend to any payments against the Customer’s indebtedness to the Lender received by the Lender in the ordinary course of business and prior to written notice of the Customer’s default from BDC.

- (c) With the exception of monies deposited in any accounts designated as trust accounts by the Customer for the benefit of BDC, BDC shall not be entitled, notwithstanding anything to the contrary in this Agreement, to make a claim against any monies which are deposited in or disbursed from any account of the Customer maintained with the Lender, except for monies deposited therein after the time the Lender has received written notice from BDC that it is enforcing the BDC Security against the Customer and which are not subject to the security interest and priority of the Lender as set out and agreed to in this Agreement.
- 3.04 If any of the BDC Security or the Lender Security is claimed or found by a trustee in bankruptcy or a court of competent jurisdiction to be unenforceable, invalid, unregistered or unperfected, then the foregoing provisions of this Article 3 shall not apply to such security to the extent that such security is so found to be unenforceable, invalid, unregistered or unperfected as against a third party unless the Secured Party shall be diligently contesting such a claim and has provided the other party with a satisfactory indemnity.
- 3.05 Each of the parties hereto shall permit any of the other parties hereto and their employees, agents and contractors, access at all reasonable times to any property and assets of the Customer upon which it has a prior charge or security interest in accordance with the terms hereof and to permit such other party to remove such property and assets from the premises of the Customer at all reasonable times without interference, provided that such other party shall promptly repair any damage caused to the premises by the removal of any such property or assets.
- 3.06 If any person, other than BDC and the Lender, shall have a valid claim, right or interest in or to any of the present or after-acquired personal property of the Customer which is subject to all or any part of the BDC Security or the Lender Security, as the case may be, in priority to or on a parity with one of the Secured Parties but not in priority to or on a parity with the other Secured Party, then this Agreement shall not apply so as to diminish the rights (as such rights would have been but for this Agreement) of such other Secured Party to such property or the proceeds thereof.
- 3.07 Nothing in this Agreement affects the priority of any security over the Customer's real property interests held by BDC or the Lender. The real property interests of the Customer are excluded from the operation of this agreement.
- 3.08 This Agreement is not intended to affect the priority of any third party claims and no such parties may benefit from anything contained herein.
- 3.09 Nothing in this Agreement shall affect the priority of purchase money security interests (as defined in the PPSA) hereafter acquired by BDC or the Lender in specific equipment of the Customer. As between the parties, where either BDC or the Lender finances the acquisition of equipment by the Customer, BDC or the Lender will be entitled to a purchase money security interest whether they advance their funds before or after the Customer has paid for the equipment and whether or not the funds are paid directly to the vendor so long as the funds are advanced in connection with the acquisition by the Customer of rights in such equipment.

#### **ARTICLE 4 - COVENANTS OF THE CUSTOMER**

- 4.01 The Customer hereby confirms to and agrees with BDC and the Lender that so long as any of the indebtedness of the Customer to BDC and the Lender remains outstanding, it shall stand possessed of its assets so charged for BDC and for the Lender in accordance with their respective interests and priorities as herein set out.

#### **ARTICLE 5- GENERAL**

- 5.01 From time to time upon request therefor BDC and the Lender may advise each other of the particulars of the indebtedness and liability of the Customer to each other and all security held by each therefor.
- 5.02 BDC and the Lender each agree that, except as required by law, it will not transfer or assign any of its security from the Customer without first obtaining from the proposed assignee or transferee an agreement to be bound by the provisions of this Agreement.
- 5.03 Prior to making any demand for payment on the Customer or proceeding to enforce its security, BDC or the Lender, as the case may be, shall provide notice of such demand or enforcement to the other of them, provided, however, that neither shall be liable for any accidental omission to provide the said notice.
- 5.04 Any notice required or permitted to be given pursuant to this Agreement shall be in writing and shall be addressed and delivered to the parties hereto as follows:
- for BDC: 81 BAY STREET, SUITE 3700  
TORONTO, ON, M5J 0E7  
Attention: The Manager
- for the Lender: [REDACTED] **[REDACTED: private contact details]**  
Attention: AARON EISENBERG
- 5.05 Each of the Customer, BDC and the Lender shall do, perform, execute and deliver all acts, deeds and documents as may be necessary from time to time to give full force and effect to the interests of this Agreement; provided however, that no consent of the Customer shall be necessary to any amendment of the terms hereof by BDC and the Lender unless the interests of the Customer are directly affected thereby.
- 5.06 This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and shall be effective as of the formal date hereof.
- 5.07 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 5.08 This Agreement shall be governed by and construed in accordance with the laws of the province in which the business centre of the BDC is located as described on page 1.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement under the hand(s) of their duly authorized officer(s) on the date first above written.

**BUSINESS DEVELOPMENT BANK OF CANADA**

By its authorized signatories

→

\_\_\_\_\_  
PRINT Name:

→

\_\_\_\_\_  
PRINT Name:

PRINT Date: \_\_\_\_\_  
(for manual signature only)

We have the authority to bind the Corporation.

**KW CAPITAL PARTNERS LIMITED**

By its authorized signatory

→

\_\_\_\_\_  
PRINT Name: Yisroel Weinreb

PRINT Date: 03-14-2024  
(for manual signature only)

I have the authority to bind the Corporation.

**XEMOTO MEDIA LTD.**

By its authorized signatory

→ /s/ "Adam Szweras"

\_\_\_\_\_  
**ADAM SZWERAS**

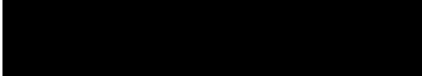
PRINT Date: \_\_\_\_\_  
(for manual signature only)

I have the authority to bind the Corporation.

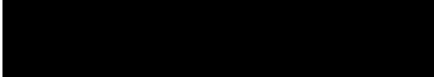
**IN WITNESS WHEREOF** the parties hereto have executed this Agreement under the hand(s) of their duly authorized officer(s) on the date first above written.

**BUSINESS DEVELOPMENT BANK OF CANADA**

By its authorized signatories

→  /s/ "Brad Cheuk"

PRINT Name: \_\_\_\_\_

→  /s/ "John Lintzeris"

PRINT Name: \_\_\_\_\_

PRINT Date: \_\_\_\_\_  
(for manual signature only)

We have the authority to bind the Corporation.

**KW CAPITAL PARTNERS LIMITED**

By its authorized signatory

→ \_\_\_\_\_

PRINT Name: \_\_\_\_\_

PRINT Date: \_\_\_\_\_  
(for manual signature only)

I have the authority to bind the Corporation.

**XEMOTO MEDIA LTD.**

By its authorized signatory

→ \_\_\_\_\_

**ADAM SZWERAS**

PRINT Date: \_\_\_\_\_  
(for manual signature only)

I have the authority to bind the Corporation.