



This is the 1st Affidavit of Kim MacDonald in this proceeding and was made on June 10, 2024.

District of British Columbia
Division No.: 02 Victoria
Court No.: VC-5-B-246902
Estate No.: 11-3089419
Victoria 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**

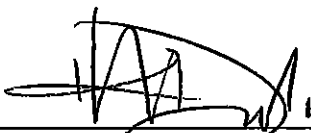
AFFIDAVIT

I, KIM MACDONALD, of 2900 - 733 Seymour Street, Vancouver, B.C., SWEAR THAT:

1. I am a legal assistant of the law firm of Owen Bird Law Corporation, solicitors for Cloud Diagnostics Canada ULC, 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 and marked as Exhibit "A" to this affidavit is a true copy of a proposed Loan Agreement between Cloud Diagnostics Canada ULC, Brad Miller, Michele Middlemore, Guarav Puri and Constatine Zachos.
3. Attached and marked as Exhibit "B" to this affidavit is a true copy of a draft Promissory Note in favour of Brad Miller, Michele Middlemore, Guarav Puri and Constatine Zachos.
4. Attached and marked as Exhibit "C" to this affidavit is a true copy of a Personal Property Registry Search Result for Cloud Diagnostics Canada ULC as at May 30, 2024.

SWORN BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 10 day of June, 2024.


A Commissioner for taking Affidavits for British Columbia


KIM MACDONALD

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

①

This is Exhibit "A" referred to in the affidavit of Kim MacDonald sworn before me at Vancouver, B.C. this 10 day of June, 2024.



A Commissioner for taking Affidavits within British Columbia

LOAN AGREEMENT

THIS AGREEMENT is made effective as of the 7th Day of June, 2024.

BETWEEN:

Cloud Diagnostics Canada ULC, a corporation under the laws of the Province of British Columbia
(the "**Borrower**")

AND:

Brad Miller, Michele Middlemore, Guarav Puri and Constatine Zachos
(collectively, the "**Lender**")

WHEREAS:

- A. The Borrower wishes to borrow certain sums of money from the Lender from time to time to finance operations.
- B. The Lender has agreed to lend certain sums to the Borrower from time to time on the terms of this Agreement, with each loan amount evidenced by a promissory note executed by the Borrower in the form attached hereto as Schedule "A".

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to the premises and in consideration of the mutual covenants hereinafter contained and the agreement of the Lender to advance funds to the Borrower, the receipt and sufficiency of which are hereby acknowledged by each party, the parties hereto covenant and agree as follows:

1. Interpretation

1.1. In this Agreement, in addition to those terms defined elsewhere in this Agreement:

- (a) "**Banking Day**" means any day that is not a Saturday, Sunday or statutory holiday in British Columbia;
- (b) "**Effective Date**" means the date first written above;
- (c) "**Event of Default**" means as set out in Section 9 hereto;
- (d) "**Loan Documents**" means, collectively, this Agreement and the documents and instruments comprising the Security;
- (e) "**Loan Obligations**" means the aggregate amount of the unpaid amount of the Principal together with any and all interest accrued but unpaid thereon and costs as set out hereto in connection therewith;
- (f) "**Proposal Trustee**" means Crowe Mackay and Company Ltd.; and
- (g) "**Security**" means as set out in Section 4 hereto.

1.2. Unless the context requires otherwise, words in the singular include the plural and vice versa. The word "**person**" includes any individual, corporation, partnership, limited partnership, joint venture, society, trust or any other type of entity.

- (c) the issuance of any order terminating restructuring proceedings entered into by the Borrower, or the expiration of any legislated period (subject to court ordered extension(s) within which the Borrower may file a proposal.

10. Remedies for Events of Default

Upon the occurrence of an Event of Default, the Lender may:

- (a) forthwith declare due and payable the outstanding balance of the Loan Obligations and any accrued interest without presentment of any notes evidencing the same, and without demand, protest or other notices of any kind, all of which are hereby expressly waived; and
- (b) exercise any and all rights, powers, remedies and recourses available to the Lender under this Agreement, including the schedules thereto, at law, in equity or otherwise.

11. Waiver of Default

The Lender may by written instrument in its absolute discretion at any time and from time to time waive any breach by the Borrower of any of the covenants herein, provided that any such waiver shall not be a continuing waiver and shall not constitute a waiver of any other term or provision hereof.

12. Liability to Advance

Neither this Agreement nor the advance of any monies shall bind the Lender to make any advance or loan or further advance or loan, or renew any note or extend any time for payment of any indebtedness or liability of the Borrower to the Lender, and any such advances, loans, renewals or extensions shall remain in the sole discretion of the Lender, which may be unreasonably withheld.

13. No Waiver

No failure or delay on the part of the Lender in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly specified are cumulative and not exclusive of any rights or remedies which the Lender would otherwise have. The acceptance by the Lender of any payment of or on account of the Loan Obligations after a default or of any payment on account of any partial default shall not be construed to be a waiver of any right in relation to any future default or any past default not completely cured thereby. The Lender may exercise any and all rights, powers, remedies and recourses available to it under this Agreement, or any other remedy available to it, concurrently or individually without the necessity of an election.

14. Currency

All references to dollars or currency in this Agreement are to Canadian dollars.

15. Governing Law

This Agreement shall in all respects be governed by and be construed solely in accordance with the laws of British Columbia, without reference to its conflicts of laws rules, and the laws of Canada applicable therein

16. Severability

If any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect in any jurisdiction, the validity, legality and enforceability of such provision or provisions shall not in any way be affected or impaired thereby in any other jurisdiction and the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

2. Loan Terms

- 2.1. *Loan Amount and Term.* Subject to the terms and conditions of this Loan Agreement, the Lender hereby agrees to lend to the Borrower certain sums from time to time, as evidenced by promissory notes executed by the Borrower in favour of the Lender (the "**Principal**") for a term (the "**Term**") commencing as of the date hereof (the "**Advancement Date**") and ending on the date on which is the earlier of (i) the occurrence of an event of default hereunder, (ii) the making of a proposal by the Borrower under the *Bankruptcy and Insolvency Act*; or (iii) the date that is 90 days from the date of the initial advance hereunder (the "**Loan Due Date**").
- 2.2. *Interest.* The Loan shall bear interest at the rate of 25.00% per annum, compounded monthly, not in advance, to and including the date repayment is made hereunder.
- 2.3. *Use of funds.* The Loan shall be used to fund ongoing operations of the Borrower while it pursues a restructuring under the *Bankruptcy and Insolvency Act*, and may be used, in the discretion of the Borrower, in consultation with the Proposal Trustee, to fund operating expenses, and to pay employees and suppliers.

3. Repayment, Prepayment and Maturity

- 3.1. The Borrower shall fully repay to the Lender the Loan Obligations on or before the Loan Due Date.
- 3.2. Notwithstanding the foregoing, the Borrower shall have the privilege, without notice or penalty, of repaying the Loan Obligations in part or in full before the Loan Due Date.
- 3.3. All Loan Obligations shall be immediately due and owing in full on the Loan Due Date unless extended in writing by the Lender on or before that date pursuant to the terms of this Agreement, in which case that extended date shall become the new Loan Due Date.
- 3.4. Each payment or prepayment required or permitted to be made by the Borrower under this Agreement (whether on account of principal, interest, costs, or any other amount) shall be made to the Lender at its address as set out on the first page hereof not later than 5:00 p.m. (Pacific Time) on the date for payment of the same in immediately available funds.
- 3.5. Whenever any payment to be made under this Agreement is due on a day that is not a Banking Day, such payment shall be made on the day immediately following Banking Day unless the following Banking Day falls in another calendar month, in which case payment shall be made on the immediately preceding Banking Day.
- 3.6. All payments to be made pursuant to this Agreement including principal and costs will, except as otherwise expressly provided herein, be payable in Canadian dollars and all payments to be made pursuant to this Agreement are to be made in immediately available funds and without set-off, right of compensation, withholding or deduction of any kind whatsoever.

4. Security

The Loan Obligations shall be secured by:

- a) one or more promissory notes in the form attached hereto as Schedule "A";
- b) a general security agreement granted by the Borrower to the Lender in the form attached hereto as Schedule "B"; and
- c) a first priority charge (with the exception of the Canada Revenue Agency) in favour of the Lender granted by the Supreme Court of British Columbia over all present and after acquired property of the Borrower securing the obligations of the Borrower to the Lender (the "**Security**").

5

5. Release and Discharge

Upon the full repayment of the Loan Obligations, the Lender will sign and deliver to the Borrower or its legal counsel a release and authorization (if necessary) to evidence the repayment of the Loan Obligations and the discharge of the Security.

6. Financial Statements and Other Information

The Borrower covenants and agrees with the Lender that until the Loan Obligations are repaid in full, the Borrower shall deliver, or cause to be delivered, to the Lender such financial statements as the Lender may reasonably request from time to time.

7. Representations & Warranties

The Borrower hereby makes the following representations and warranties as of the Effective Date:

- (a) the Borrower has due and sufficient right and authority to enter into this Agreement and grant the Security on the terms and conditions set forth in this Agreement and to perform its obligations under this Agreement;
- (b) to the Borrower's knowledge, there are no known or probable instances of non-compliance by the Borrower with the requirements of regulatory and governmental authorities; and
- (c) to the Borrower's knowledge, there are no actions, suits or proceedings, pending or threatened against or affecting, or which could affect, the Borrower or their respective assets by or on behalf of any government authority, employee, contractor, worker, sub-trade or otherwise.

8. Covenants

The Borrower covenants and agrees with the Lender that, so long as the Loan Obligations or any part thereof shall be outstanding, the Borrower will do the following:

- (a) forthwith upon becoming aware of an Event of Default, or becoming aware of any event which would constitute an Event of Default with the lapse of time, give to the Lender notice of the Event of Default or the event which would constitute an Event of Default with the lapse of time; and
- (b) make such filings as are required by and pay and/or remit all taxes, premiums, contributions, levies, fees and other amounts which the Borrower are required to pay and/or remit under the *Income Tax Act* (Canada), *Excise Tax Act* (Canada), *Income Tax Act* (British Columbia), any regulations under the foregoing or under any other legislation, rule or order, to any taxing authority having jurisdiction.

9. Events of Default

Each of the following events shall constitute an "Event of Default" under this Agreement unless within fifteen (15) days after notice from the Lender the default specified in such notice has been cured or the Lender agrees to waive such default:

- (a) the Borrower has failed to repay the Principal, or any part thereof, to the Lender in accordance with this Agreement;
- (b) the Borrower defaults in the performance of any other term, covenant, condition, agreement, undertaking or provision of the Loan Documents; or

- (c) the issuance of any order terminating restructuring proceedings entered into by the Borrower, or the expiration of any legislated period (subject to court ordered extension(s) within which the Borrower may file a proposal.

10. Remedies for Events of Default

Upon the occurrence of an Event of Default, the Lender may:

- (a) forthwith declare due and payable the outstanding balance of the Loan Obligations and any accrued interest without presentment of any notes evidencing the same, and without demand, protest or other notices of any kind, all of which are hereby expressly waived; and
- (b) exercise any and all rights, powers, remedies and recourses available to the Lender under this Agreement, including the schedules thereto, at law, in equity or otherwise.

11. Waiver of Default

The Lender may by written instrument in its absolute discretion at any time and from time to time waive any breach by the Borrower of any of the covenants herein, provided that any such waiver shall not be a continuing waiver and shall not constitute a waiver of any other term or provision hereof.

12. Liability to Advance

Neither this Agreement nor the advance of any monies shall bind the Lender to make any advance or loan or further advance or loan, or renew any note or extend any time for payment of any indebtedness or liability of the Borrower to the Lender, and any such advances, loans, renewals or extensions shall remain in the sole discretion of the Lender, which may be unreasonably withheld.

13. No Waiver

No failure or delay on the part of the Lender in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly specified are cumulative and not exclusive of any rights or remedies which the Lender would otherwise have. The acceptance by the Lender of any payment of or on account of the Loan Obligations after a default or of any payment on account of any partial default shall not be construed to be a waiver of any right in relation to any future default or any past default not completely cured thereby. The Lender may exercise any and all rights, powers, remedies and recourses available to it under this Agreement, or any other remedy available to it, concurrently or individually without the necessity of an election.

14. Currency

All references to dollars or currency in this Agreement are to Canadian dollars.

15. Governing Law

This Agreement shall in all respects be governed by and be construed solely in accordance with the laws of British Columbia, without reference to its conflicts of laws rules, and the laws of Canada applicable therein

16. Severability

If any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect in any jurisdiction, the validity, legality and enforceability of such provision or provisions shall not in any way be affected or impaired thereby in any other jurisdiction and the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

7

17. Headings

The headings to the clauses of this Agreement are inserted for convenience only and shall not affect the construction hereof.

18. Gender, Plural and Singular

In this Agreement, the masculine includes the feminine and the neuter genders and the plural includes the singular and vice versa and modifications to the provisions of this Agreement may be made accordingly as the context requires.

19. Notice

Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been given if delivered by hand, transmitted by email (provided that receipt is acknowledged) or mailed by prepaid registered post in Canada, to the address or email address of each party set out on the first page hereof or to such other address or email address number as either party may designate in the manner set out above. Any notice or communication will be considered to have been received:

- (a) if delivered by hand during business hours on a Banking Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business on the next Banking Day;
- (b) if sent by email transmission during business hours on a Banking Day, upon the sender receiving confirmation of the email, and if not transmitted during business hours, upon the commencement of business on the next Banking Day; and
- (c) if mailed by prepaid registered post in Canada, upon the date of posting; except that, in the case of a disruption or an impending or threatened disruption in postal services every notice or communication will be delivered by hand or sent by email.

20. Co-operation

Each of the parties hereto shall execute all such further documents and do all such further things as may reasonably be required by another party or as are ordered by, or made in reasonable contemplation of any order made by the Supreme Court of British Columbia in restructuring proceedings involving the Borrower, in order to give full effect to this Agreement including specifically, but not limited to, any document, form or instrument required to register any unregistered security interest granted to the Lender pursuant hereto upon the reasonable request of the Lender.

21. No Prejudice

Nothing contained in this Agreement shall prejudice or impair any other right or remedy which the Lender may otherwise have with respect to the Loan hereunder or any rights or remedies the Lender may have with respect to other loans which may be made to the Borrower.

22. No Assignment

The Borrower shall have no right to assign or transfer its rights hereunder or any portion of the Loan unless agreed by all the parties hereto in writing.

23. Enurement

This Agreement shall be binding upon and enure to the benefit of the Borrower and the Lender and their respective successors, executors, administrators, and personal representatives, as applicable.

24. Conflict

In the event of a conflict between the provisions of this Agreement and the Security, the terms of this Agreement will prevail.

25. Time

Time shall be of the essence of this Agreement.

26. Delivery

This Agreement may be delivered in counterparts and by facsimile transmission or in file of Portable Document Format (PDF) attached to an email, with the same effect as if both parties had each signed an original copy of the same document, and all counterparts will be construed together as one and the same agreement.

AS EVIDENCE OF THEIR AGREEMENT the parties hereto have caused this Agreement to be executed and delivered effective as of the date first written above.

Cloud Diagnostics Canada ULC

Per: _____
Authorized Signatory

Brad Miller

Michele Middlemore

Guarav Puri

Constatine Zachos

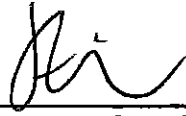
9

SCHEDULE "A"
FORM OF PROMISSORY NOTE

SCHEDULE "B"
FORM OF GENERAL SECURITY AGREEMENT

11

This is Exhibit "B" referred to in the affidavit of
Kim MacDonald sworn before me at Vancouver,
B.C. this 11 day of June, 2024.



*A Commissioner for taking Affidavits within British
Columbia*

PROMISSORY NOTE

\$ _____

Reference Date: June 7, 2024

FOR VALUE RECEIVED, the undersigned (the "Borrower") covenants and agrees to comply with the terms of this Promissory Note and promises to pay Brad Miller, Michele Middlemore, Guarav Puri and Constatine Zachos (collectively, the "Lender") at Vancouver, BC, or such other place as the Lender may designate, or order, the sum of _____ DOLLARS with interest (the "Loan"), in the manner and upon the terms as follows:

- a) Interest shall be payable on the Loan from the date of the advance of the Loan at the rate of 25.00% per annum, compounded monthly, not in advance, to and including the day of demand.

Interest on any advance of Loan shall commence to accrue as and from the day any advance of the Loan is forwarded to the Lender's solicitors following a request for a Loan advance by the Borrower, notwithstanding that the proceeds of the Loan advance may not actually be received by the Borrower until a date subsequent to the date any advance of the Loan proceeds is forwarded to the Lender's solicitor.

All amounts outstanding under the Loan and related security documents shall be repaid on the Loan Maturity Date, as defined in the loan agreement among the Borrower and Lender made on June 7, 2024 (the "Loan Agreement").

The Borrower will have the right to prepay the whole or any part of the Loan (and unpaid interest to and including the date of such prepayment on the amount paid) before the Loan Maturity Date without penalty.

All monies due and owing hereunder shall, at the option of the Lender, become immediately due and payable and the Borrower shall be in default hereunder in the event that:

- (i) the Borrower defaults under the Loan Agreement or under any other provision hereunder;
- (ii) the Borrower is in default under the provisions of any collateral security granted to or held by the Lender to secure the performance of obligations and/or the repayment of monies owed by the Borrower to the Lender; or
- (iii) any party providing collateral security to the Lender to secure the performance of obligations and/or the repayment of any monies owed by the Borrower to the Lender is in default under the provisions of the collateral security.

The Borrower will promptly pay all costs, charges and expenses, including legal costs, of the Lender incidental to any proceedings taken to enforce its remedies under this Promissory Note or under any collateral security by reason of non-payment or procuring payment of the principal, interest or any other amount payable hereunder. The Borrower consents to all such legal costs being charged and

13

fixed on a solicitor to his own client, lump sum basis in accordance with the provisions of the Legal Profession Act (B.C.).


The Borrower waives presentment for payment, notice of non-payment, notice of dishonour, protest and notice of protest and does hereby agree to all extensions and renewals hereof, without notice.

Cloud Diagnostics Canada ULC

Per: _____
Authorized Signatory

14

This is Exhibit "C" referred to in the affidavit of Kim MacDonald sworn before me at Vancouver, B.C. this 10 day of June, 2024.



A Commissioner for taking Affidavits within British Columbia

Business Debtor - "Cloud Diagnostics Canada ULC"

Search Date and Time: May 30, 2024 at 2:57:31 pm Pacific time
Account Name: OWEN BIRD LAW CORPORATION
Folio Number: 15148-0000

TABLE OF CONTENTS

2 Matches in 2 Registrations in Report

Exact Matches: 2 (*)

Total Search Report Pages: 6

	Base Registration	Base Registration Date	Debtor Name	Page
1	<u>921021M</u>	April 23, 2021	* CLOUD DIAGNOSTICS CANADA ULC	<u>2</u>
2	<u>780516P</u>	September 11, 2023	* CLOUD DIAGNOSTICS CANADA ULC	<u>4</u>

Base Registration Number: 921021M

Registration Description: PPSA SECURITY AGREEMENT
Act: PERSONAL PROPERTY SECURITY ACT
Base Registration Date and Time: April 23, 2021 at 12:06:33 pm Pacific time
Current Expiry Date and Time: April 23, 2026 at 11:59:59 pm Pacific time
Expiry date includes subsequent registered renewal(s)
Trust Indenture: No

CURRENT REGISTRATION INFORMATION
(as of May 30, 2024 at 2:57:31 pm Pacific time)

Secured Party Information

ROYAL BANK OF CANADA

Address

36 YORK MILLS ROAD, 4TH FLOOR
TORONTO ON
M2P 0A4 Canada

Debtor Information

CLOUD DIAGNOSTICS CANADA ULC

Address

36 MCKENZIE CRES
SIDNEY BC
V8L 5Y7 Canada

Vehicle Collateral

None

General Collateral

Base Registration General Collateral:

MONEYS OR AMOUNTS THAT MAY FROM TIME TO TIME BE ON DEPOSIT IN THE NAME OF DEBTOR WITH OR OWED TO DEBTOR BY SECURED PARTY, ROYAL BANK MORTGAGE CORPORATION, THE ROYAL TRUST COMPANY OR ROYAL TRUST CORPORATION OF CANADA OR ANY TWO OR MORE OF THEM, AND IN THE DEBTOR'S RIGHTS IN THOSE MONEYS OR ,THOSE AMOUNTS. PROCEEDS: ALL PROCEEDS INCLUDING, WITHOUT LIMITATION, GOODS (INCLUDING INVENTORY AND EQUIPMENT (EQUIPMENT INCLUDES, WITHOUT LIMITATION, MACHINERY, TOOLS, APPARATUS, PLANT, FURNITURE, FIXTURES, AIRCRAFT AND VEHICLES OF ,WHATSOEVER NATURE AND KIND) BUT EXCLUDING CONSUMER GOODS), MONEY, CHATTEL PAPER, DOCUMENTS OF TITLE, INSTRUMENTS AND SECURITIES.

Original Registering Party

ROYAL BANK OF CANADA

Address

36 YORK MILLS ROAD, 4TH FLOOR
TORONTO ON
M2P 0A4 Canada

Base Registration Number: 780516P

Registration Description: PPSA SECURITY AGREEMENT
Act: PERSONAL PROPERTY SECURITY ACT
Base Registration Date and Time: September 11, 2023 at 1:35:11 pm Pacific time
Current Expiry Date and Time: September 11, 2027 at 11:59:59 pm Pacific time
Expiry date includes subsequent registered renewal(s)
Trust Indenture: No

CURRENT REGISTRATION INFORMATION
(as of May 30, 2024 at 2:57:31 pm Pacific time)

Secured Party Information

ODYSSEY TRUST COMPANY

Address

300 5TH AVENUE SW SUITE 1230
CALGARY AB
T2P 3C4 Canada

Debtor Information

CLOUD DIAGNOSTICS CANADA ULC

Address

72 VICTORIA STREET SOUTH, SUITE 100
KITCHENER ON
N2G 4Y9 Canada

Vehicle Collateral

None



19

General Collateral

September 13, 2023 at 10:56:17 am Pacific time

DELETED

As per the security agreement dated September 8, 2023.

ADDED

A security interest in all presently owned and hereafter acquired personal property of Cloud Diagnostics Canada ULC

Base Registration General Collateral:

As per the security agreement dated September 8, 2023.

Original Registering Party

DYE & DURHAM CORPORATION

Address

DYE & DURHAM
199 BAY ST, SUITE 4610
TORONTO ON
M5L 1E9 Canada

HISTORY

(Showing most recent first)

AMENDMENT - COLLATERAL AMENDED

Registration Date and Time: September 13, 2023 at 10:56:17 am Pacific time
Registration Number: 785474P
Description:

General Collateral

September 13, 2023 at 10:56:17 am Pacific time

DELETED

As per the security agreement dated September 8, 2023.

ADDED

A security interest in all presently owned and hereafter acquired personal property of Cloud Diagnostics Canada ULC

Registering Party Information

DYE & DURHAM CORPORATION

Address

DYE & DURHAM
199 BAY ST, SUITE 4610
TORONTO ON
M5L 1E9 Canada

