

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **TRIBALSCALE INC.**

Applicant

MOTION RECORD

October 27, 2020

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TO: THE SERVICE LIST

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Court File No. CV-20-00645116-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

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Applicant

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TAB 1

Court File No. CV-20-00645116-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **TRIBALSCALE INC.**

Applicant

NOTICE OF MOTION

(Re: Stay Extension and Approval of Restructuring Support Agreement)

TRIBALSCALE INC. (“**Tribalscale**” or the “**Applicant**”) will make a motion to a Judge presiding over the Commercial List on **Friday, October 30, at 12:30 p.m.**, or as soon after that time as the motion can be heard by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as Schedule “**A**” hereto in order to attend the motion and advise if you intend to join the motion by emailing Christel Paul at cpaul@wfkllaw.ca.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form attached at Tab **3** of the Motion Record that, among other things:
 - a) extends the stay of proceedings (the “**Stay Period**”) to and including January 31, 2021, or such other date as determined by the Court; and

- b) authorizes the Applicant to execute a restructuring support agreement (the “**RSA**”) between Tribalscale and 1924191 Ontario Inc. (“**192**”), Tribalscale’s largest secured creditor.
2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

Background

1. Tribalscale is a software engineering and development firm that provides digital product strategy, design, and development services to clients located in Canada and in the United States. Tribalscale specializes in creating enterprise software solutions for large, institutional clients.
2. On May 19, 2020, Tribalscale filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended; MNP LTD (“**MNP**”), was appointed as the proposal trustee in the NOI proceedings.
3. On July 31, 2020, the Honourable Justice Gilmore granted an Order converting the NOI proceeding into a proceeding under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the “**CCAA**”). MNP was appointed as Tribalscale’s CCAA monitor (the “**Monitor**”), and the initial Stay Period covered until and including October 31, 2020.
4. The Applicant has worked diligently and in good faith during the initial Stay Period. Since the Initial Order was granted, the Applicant, together with the Monitor and company counsel, has focused on: (i) continued discussions with 192, including the negotiation of

the RSA; (ii) the performance of current customer contracts, (ii) the execution of new customer contracts; (iii) the collection of outstanding receivables; (iv) the strategic “right-sizing” of the business with the assistance of the Monitor; and the development of a restructuring plan.

5. The Applicant’s next immediate objectives are to (i) finalize the CCAA plan contemplated by the RSA (the “**CCAA Plan**”); and (ii) pursue recovery of its largest outstanding account receivable owed to it by Sirius XM Connected Vehicle Services (“**Sirius**”).
6. In the meantime, the Applicant continues to operate in the ordinary course.

Extension of the Stay Period

7. The Applicant and the Monitor have reviewed the financial information of the Applicant to prepare an updated cash flow forecast for the period from October 12, 2020 to January 31, 2021.
8. The Applicant has not sought debtor-in-possession financing and is reliant on receipts to fund the restructuring proceeding and ongoing operations. The Applicant projects that it will have enough liquidity operate beyond the proposed end of the extended Stay Period (January 31, 2021).
9. The Applicant anticipates that its active business and revenues will increase in the coming months.
10. The current Stay Period expires on October 31, 2020. Without an extension of time, the Applicant will not be able to finalize the CCAA Plan and submit it to a creditor vote, nor will it be able to pursue the Sirius receivable. A complete shut-down and liquidation of the

Applicant will result in the loss of significant value that could be realized from going-concern revenues. There is little to be gained from a liquidation as the Applicant's primary value is in its going concern operations. Bankruptcy will also result in job losses for 30 employees. This outcome is directly contrary to the purpose of these CCAA proceedings.

11. The Applicant intends to return before this Honourable Court in November to:
 - a) File the CCAA Plan; submit it to a creditor vote; and, if it passes, submit it before this Honourable Court for approval; and
 - b) Bring a motion before this Honourable Court regarding the Sirius receivable.
12. The test for an extension of time under Section 11.02(3) of the CCAA is met:
 - a) the order sought is appropriate in the circumstances; and
 - b) the Applicant has acted and continues to act in good faith and with due diligence.

Further Grounds

13. The Monitor supports the relief being sought by the Applicant;
14. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
15. The provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, including 137(2) thereof;
16. Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, RSO 1990, Reg 194, as amended; and

17. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

18. The Affidavit of Sheetal Jaitly, sworn October 27, 2020, with Exhibits attached thereto;
and,
19. The Report of the Monitor, to be filed; and
20. Such further and other evidence as counsel may advise and this Honourable Court may permit.

October 27, 2020

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Lawyers for Tribalscale Inc.

TO: THE SERVICE LIST

Schedule “A”
Conference Details to join Motion via Zoom

Join Zoom Meeting

<https://zoom.us/j/99028805466?pwd=WEV5ZlRncGxNRGk3eXhCN0R2ODY0UT09>

Meeting ID: 990 2880 5466

Passcode: 749651

One tap mobile

+12042727920,,99028805466#,,,,,0#,,749651# Canada

+14388097799,,99028805466#,,,,,0#,,749651# Canada

Dial by your location

+1 204 272 7920 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

Meeting ID: 990 2880 5466

Passcode: 749651

Find your local number: <https://zoom.us/u/acse6kOK>

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No.: CV-20-00645116-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TRIBALSCALE INC. (the "Applicant")

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

NOTICE OF MOTION
(Returnable October 30, 2020)

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Lawyers for Tribalscale Inc.

TAB 2

Court File No. CV-20-00645116-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **TRIBALSCALE INC.**

Applicant

AFFIDAVIT OF SHEETAL JAITLEY
(Sworn October 27, 2020)

I, **SHEETAL JAITLEY**, of the City of Toronto, in the province of Ontario, **MAKE OATH
AND SAY:**

1. I am the Chief Executive Officer of TribalScale Inc. (“**TribalScale**” or the “**Applicant**”), the debtor in these proceedings. I am also the sole director of TribalScale. In my capacity as CEO, I am responsible for all day-to-day operations of the Applicant. Accordingly, I have knowledge of the matters set out below. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. TribalScale is a software engineering and development firm that provides digital product strategy, design, and development services to clients located in Canada and in the United States. TribalScale specializes in creating enterprise software solutions for large, institutional clients. Examples of past work include a project with the PGA Tour to develop voice user interface-based applications to engage fans through Google Assistant and Amazon Alexa, as well as a project with iHeartRadio to develop an application for the Amazon FireTV service.

3. On May 19, 2020 (the “**NOI Filing Date**”), TribalScale filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”). MNP LTD (“**MNP**”) was appointed as the proposal trustee in the NOI proceedings.

4. On July 31, 2020, the Honourable Madam Justice Gilmore granted an Order converting the NOI proceedings into proceedings under the *Companies’ Creditors Arrangement Act*, RSC, 1985, c C-36 (the “**CCAA**”) and provided for, among other things:

- (a) a stay of proceedings up to and including October 31, 2020 (the “**Stay Period**”);
- (b) the appointment of MNP as monitor of the Applicant (the “**Monitor**”);
- (c) that during the Stay Period no person will fail to honour a contract including, but not limited to the payment of amounts due under contract;
- (d) the continuation of the administration charge granted in the NOI proceedings up to a maximum amount of \$125,000; and
- (e) the granting a directors’ and officers’ charge up to the maximum amount of \$125,000.

5. This affidavit is sworn in support of TribalScale’s motion to:

- (a) extend the Stay Period up to and including January 31, 2021 to allow TribalScale to, among other things, implement a restructuring plan that will maximize realization for its stakeholders, as well as to pursue recovery of its outstanding accounts receivable for the benefit of unsecured creditors; and

- (b) approve a restructuring support agreement between TribalScale and 1924191 Ontario Inc. (“192”), TribalScale’s senior secured creditor, in respect to these proceedings.

I. EXTENSION OF THE STAY PERIOD

A. Applicant’s Activities Since Filing

6. Since the filing of the CCAA Application, the Applicant’s restructuring efforts have focused on: (i) continued discussions with its material secured creditor, 192, including the negotiation of a restructuring support agreement; (ii) the performance of current customer contracts, (iii) the execution of new customer contracts; (iv) the collection of outstanding receivables; (v) the strategic “right-sizing” of the business with the assistance of MNP; and (vi) the development of a restructuring plan.

7. As the primary value in TribalScale is its going concern operations, bankruptcy and liquidation of the company is likely to result in minimal recovery for creditors of TribalScale. An extension of the Stay Period to permit TribalScale to propose a plan of arrangement and to continue to recover outstanding receivables is in the best interests of TribalScale’s creditors.

B. Recovery of Outstanding Accounts Receivable

8. A stay extension will give the Applicant time to pursue recovery of accounts receivable owed to it by Sirius XM Connected Vehicle Services (“**Sirius**”). As described in greater detail below, the Applicant expects that any funds collected from Sirius will be distributed to unsecured creditors (less the legal and other fees associated with pursuing the claim) in accordance with the restructuring support agreement.

9. As TribalScale reported at its previous attendance before this Court, its most significant outstanding receivable is owed by Sirius under a Professional Services Agreement (“**PSA**”) and related individual Statements of Work (“**SOWs**”), whereby TribalScale was engaged to develop an in-vehicle e-commerce program. At paragraphs 58 to 67 of my affidavit dated July 24, 2020 (the “**July 24 Affidavit**”), appended here (with selected Exhibits) as **Exhibit “A”**, I provided an overview of the dispute with Sirius. The PSA is appended to the July 24 Affidavit as Exhibit “K”; the relevant SOW that describes the services and outstanding fees is appended as Exhibit “L”.

10. In the July 24 Affidavit I stated that TribalScale was in discussions with Sirius to resolve the dispute. Those discussions have stalled. As such, TribalScale intends to shortly bring a motion within these CCAA proceedings regarding the outstanding Sirius receivable.

II. RESTRUCTURING SUPPORT AGREEMENT

11. At paragraphs 68 through 71 of the July 24 Affidavit, I summarized the terms of a proposed transaction between the Applicant and 192 that would facilitate the Applicant’s emergence from CCAA protection. TribalScale and 192 since continued their negotiations and refined the proposed transaction structure.

12. As of the date of this Affidavit, the Applicant and 192 have agreed upon the terms of a restructuring support agreement (the “**RSA**”), subject to Court approval. An unexecuted copy of the RSA is appended here as **Exhibit “B”**.

13. By way of background, the Applicant has two secured creditors:

- (a) 192, which is owed \$2.648 million CAD (which debt originated as a loan to the Applicant from the Bank of Nova Scotia (“**Scotiabank**”)); and
- (b) the Business Development Bank of Canada (“**BDC**”), which is owed \$112,320 CAD in respect of a lease-loan agreement.

14. TribalScale has approximately \$3.3 million CAD in unsecured liabilities.

15. Among other things, the RSA outlines a transaction (the “**Transaction**”) to:

- (a) restructure the Applicant’s secured indebtedness with 192;
- (b) resolve the Applicant’s secured indebtedness with BDC; and
- (c) vest out, by way of a reverse vesting order, the Applicant’s unsecured debt to a newly incorporated company. Under the RSA, unsecured creditors would receive the proceeds, if any, of the Sirius receivable.

16. The Transaction contemplated by the RSA is similar to the transaction described in the July 24 Affidavit. The main terms of the RSA are as follows:

- (a) 192 will convert 50 % of its debt (the “**Secured Debt**”) into 85% of the equity in the capital of TribalScale on a fully diluted basis;

- (b) the residual 50% of Secured Debt will remain on the balance sheet of TribalScale, with payment of interest accruing on the Secured Debt being deferred until the date that is one year from the closing of the Transaction. 192 will maintain its security over the assets, property and undertaking of TribalScale for all of the obligations in respect to the remaining Secured Debt and for any obligations under the RSA or the Transaction;
- (c) Scotiabank will be issued 5% of the equity in the capital of TribalScale, on a fully diluted basis, in full and final satisfaction of the consideration owed to Scotiabank by TribalScale as a result of the assignment of the Secured Debt from Scotiabank to 192;
- (d) I will be issued 10% of the equity in the capital of TribalScale on a fully diluted basis;
- (e) TribalScale will make a cash payment in the amount of the secured indebtedness owing to BDC, in full and final satisfaction of the indebtedness to BDC;
- (f) TribalScale will incorporate a new company (“**Newco**”) and seek approval from the Court for an Order “vesting out” all unsecured liabilities to Newco, which will then be assigned into bankruptcy;
- (g) TribalScale will issue a promissory note to the unsecured creditors of Newco in the amount of the Sirius receivable, less the fees and costs incurred to collect the Outstanding Amount;
- (h) TribalScale, as approved by 192, will continue payment of the following liabilities:
 - (i). all trade obligations incurred by TribalScale towards its suppliers following the filing of the NOI; and

(ii). all obligations of TribalScale towards its employees;

(i) implementation of the Transaction will be conditional upon approval of the Court.

17. Under the RSA, 192 has agreed to vote all of the Secured Debt in favour of a CCAA plan (the “**Plan**”) to effect the Transaction.

18. It is likely that the parties will shortly be in a position to finalize the Plan, following which TribalScale will return to this Court to seek approval of same. The RSA contemplates the following timeline:

(a) filing of the Plan by no later than November 11, 2020;

(b) meeting of the secured creditors being compromised under the Plan to be held no later than November 13, 2020;

(c) sanctioning of the Plan by the Court no later than November 20, 2020; and

(d) implementation of the Plan by no later than November 27, 2020.

III. CASH FLOW FORECAST

19. TribalScale has prepared a projected cash flow forecast of the Applicant with the assistance of the Monitor (the “**Cash Flow Forecast**”). The Cash Flow Forecast will be provided with the Report of the Monitor, to be filed, prior to the return date of the herein motion.

20. The Updated Cash Flow Forecast demonstrates that TribalScale will have sufficient liquidity to meet its obligations through the end of the proposed stay period.

IV. RELIEF BEING SOUGHT

A. Continued Stay of Proceedings

21. TribalScale requires the assistance of the CCAA court to effect the Transaction and pursue the Sirius receivable. As the primary value in TribalScale is its going concern operations, maintaining these restructuring proceedings under the CCAA is likely to result in greater value to stakeholders than would a bankruptcy and liquidation.

22. No creditors are expected to suffer material prejudice as a result of the extension of the stay period. The Applicant is acting in good faith and with due diligence and will continue to do so during the proposed extension of the stay period through January 31, 2021.

B. Approval of Restructuring Support Agreement

23. I believe that entering into the RSA is in the best interests of TribalScale and its stakeholders because it enhances the prospect of a going-concern restructuring.

SWORN before me by video conference at the city of Toronto in the Province of Ontario this 27th day of October, 2020:

Patrick Corney

Patrick Corney (Oct 27, 2020 12:29 EDT)

A Commissioner for Taking Affidavits
Name:



SHEETAL JAITLEY

THIS IS **EXHIBIT “A”** REFERRED TO IN THE
AFFIDAVIT OF SHEETAL JAITLEY SWORN BEFORE ME,
THIS 27TH DAY OF OCTOBER, 2020

Patrick Corney
Patrick Corney (Oct 27, 2020 12:29 EDT)

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 31-2646144

Estate No. 31-2646144

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)

IN THE MATTER OF THE *BANKRUPTCY AND*
***INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED**

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF TRIBALSCALE INC. OF THE CITY OF TORONTO IN THE
PROVINCE OF ONTARIO

AFFIDAVIT OF SHEETAL JAITLEY
(Sworn July 24, 2020)

I, **SHEETAL JAITLEY**, of the City of Toronto, in the province of Ontario, **MAKE OATH**
AND SAY:

1. I am the Chief Executive Officer of TribalScale Inc. (“**Tribalscale**” or the “**Applicant**”), the debtor in these proceedings. I am also the sole director of Tribalscale. In my capacity as CEO, I am responsible for all day-to-day operations of the Applicant. Accordingly, I have knowledge of the matters set out below. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. On May 19, 2020 (the “**NOI Filing Date**”), TribalScale filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the “**BIA**”). MNP LTD (“**MNP**”), was appointed as the proposal trustee in the NOI proceedings.

3. On June 17, 2020, the Honourable Madam Justice Gilmore granted an Order extending the time for TribalScale to make a proposal under the BIA up to July 31, 2020 and approving an

administration charge over the assets, property and undertakings of the company up to a maximum amount of \$125,000 (generally, the “**NOI Stay Extension Order**”).

4. This affidavit is sworn in support of TribalScale’s application for an Order (the “**Initial Order**”), among other things, continuing the NOI proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “**CCAA**”), and appointing MNP as the court-appointed monitor of the Applicant (in such capacity, the “**Proposed Monitor**”) in the CCAA proceedings, to facilitate the restructuring and recapitalization of the Applicant for the benefit of its stakeholders.

5. All references to currency in this affidavit are references to Canadian dollars unless otherwise indicated.

I. OVERVIEW OF THE APPLICANT

A. The Business of the Applicant

6. TribalScale was incorporated on August 18, 2015 under the Ontario *Business Corporation Act*, with head offices at 1410 – 8 King Street East, Toronto, Ontario, M5C 1B6.

7. The company is a software engineering and development firm that provides services to companies located in Canada and in the United States of America on digital product strategy, design, and development for web, mobile, and emerging technologies.

8. TribalScale specializes in creating bespoke enterprise software solutions for large, institutional clients. Examples of past work include a project with the PGA Tour to develop voice user interface-based applications to engage fans through Google Assistant and Amazon Alexa, as well as a project with iHeartRadio to develop an application for the Amazon FireTV service.

9. I am one of the founders and shareholders of TribalScale and have acted as the sole director of the company since its incorporation. A corporate profile report is attached hereto as **Exhibit “A”**.

10. TribalScale has a subsidiary corporation in the United States in order to facilitate its US customer relations. This entity, TribalScale US Inc. (“**TribalScale US**”), is a wholly owned subsidiary of TribalScale and was incorporated in the State of New York. TribalScale US has no significant assets. The primary purpose of TribalScale US is to facilitate relationships with the Applicant’s American customers. For this purpose, TribalScale US currently employs one employee – a full-time software developer engaged on a project in Chicago, Illinois.

11. Until the recent onset of the COVID-19 public health crisis, all of TribalScale’s substantive business operations were conducted from its leased offices located at Suite 800, 200 Wellington Street, Toronto (the “**Toronto Office**”). As of the date of this Affidavit, the Applicant’s operations have entirely transitioned to remote work-from-home procedures in accordance with Provincial public health guidelines. The Applicant’s computer and office equipment has been moved to off-site storage (described in greater detail below).

B. Employees & Pension Plans

12. TribalScale has significantly scaled-down its workforce since the NOI filing and currently employs approximately 30 full-time employees; TribalScale US also employs one employee based in Chicago, as previously mentioned. The Applicant also contracts with four consultants: 3 consultants through Xxact Inc., who provide back office support for the company, as well as an American sales consultant retained on a limited-term contractual basis out of New York City. Aside from the employee in Chicago, all of TribalScale’s employees are based in Toronto.

13. TribalScale does not have any employees that are unionized or otherwise party to a collective agreement in connection with their employment with TribalScale.

14. The Applicant does not sponsor, administer, or otherwise have a registered or unregistered pension plan for its employees. TribalScale sponsors a group benefits plan for its employees provided through Benecaid Health Benefits Solutions Inc.

C. Cash Management

15. The Applicant has as total of four bank accounts. Two of the accounts are with the Bank of Nova Scotia and two are with CIBC – one Canadian checking account and one US checking account with each bank. The Scotiabank accounts are TribalScale’s main operating accounts used to address the day-to-day cash management requirements of the company and to deposit receipts from Canadian and US clients.

16. TribalScale also has a corporate credit card with the American Express Bank of Canada with a credit limit of \$17,000 (the “**AMEX Card**”). The AMEX Card is primarily used to pay monthly subscription fees for professional enterprise software programs – for example, Slack and Mailchimp. As at the date of this affidavit, a balance of \$11,753.91 has accrued under the AMEX Card.

D. Related Party Transactions

17. All of the substantive business of TribalScale and TribalScale US (as well as any other wholly owned subsidiaries that have operated from time-to-time) is conducted directly through TribalScale as the main operating entity. TribalScale incurs all of the operating liabilities and collects all revenue. To the extent that either entity has required a transfer of funds, such funding is recorded in TribalScale’s

consolidated financial statements. There is no material intercompany debt between TribalScale and TribalScale US.

II. ASSETS AND LIABILITIES

18. Attached hereto as **Exhibits “B”** through **“D”** are copies of TribalScale’s consolidated, (i) audited year-end financial statements for 2018, (ii) unaudited year-end financial statements for 2019, and, (iii) work-in-progress financial statements for the period of October 2019 – May 2020. Given TribalScale’s liquidity crisis, no audited financial statements have been prepared since the 2018 fiscal year end.

A. Assets

19. As a technology service company, TribalScale’s enterprise value is primarily derived from its going concern business, namely its revenue stream and customer contracts. Given the nature of the Applicant’s business, its value lies principally in its employees, customer contracts, intellectual property, goodwill, and accounts receivable.

20. TribalScale also possesses a significant volume of computer hardware and office equipment. However, due to the rapid depreciation and obsolescence of such items, as well as the fact that TribalScale requires much of this equipment to maintain its going-concern operations, the potential realizable value of these assets is likely nominal.

B. Secured Obligations of the Applicant

(i). 1924191 Ontario Inc.

21. TribalScale's only material secured creditor is 1924191 Ontario Inc. ("**192**"), pursuant to an assignment of the debt and security dated April 30, 2020 (the "**Assignment Agreement**") between Scotiabank and 192.

22. As of the date of this Affidavit, TribalScale owes 192 \$2.465 million plus accrued interest and costs.

23. The debt assigned to 192 originated as a loan made by Scotiabank to TribalScale. On June 29, 2018, TribalScale entered a commitment letter with Scotiabank pursuant to which Scotiabank granted TribalScale a \$6 million operating credit facility and a \$500,000.00 business credit line (collectively, the "**Scotia Facility**"). The Scotia Facility was secured over all of the property, assets and undertakings of TribalScale pursuant to a General Security Agreement ("**GSA**") dated July 9, 2018. Copies of the Scotia Facility documents are attached hereto as **Exhibit "E"**.

24. As a result of severe liquidity issues and the breach by TribalScale of several covenants under the Scotia Facility, in and around July 2019, TribalScale commenced discussions with Scotiabank to restructure its operations and the Scotia Facility. The restructuring involved the scaling down of TribalScale's workforce as well as implementation of a sales and investment solicitation process conducted between September 2019 and January 2020. As a result of failed sale process, and just after the COVID pandemic mandated business shutdown, Scotiabank agreed to the Assignment Agreement, transferring TribalScale's indebtedness and security to 192 (hereinafter, the "**192 Indebtedness**"). A copy of the Assignment Agreement is attached hereto as **Exhibit "F"**.

25. The 192 Indebtedness is secured by the following documents (the “**192 Security**”):

- (a) a GSA from TribalScale, granted in favour of Scotiabank and assigned to 192, creating a security interest in all present and after-acquired property of TribalScale, a copy of which is appended as **Exhibit “G”**;
- (b) a guarantee from TribalScale US to TribalScale in respect of all indebtedness to Scotiabank, as assigned to 192. A copy of this guarantee is appended as **Exhibit “H”**; and,
- (c) a GSA from TribalScale US, granted in favour of Scotiabank and assigned to 192, creating a security interest in all present and after-acquired property of TribalScale, a copy of which is appended as **Exhibit “I”**.

(ii). PPSA Registrations

26. Based on searches conducted in the Personal Property Security Registration System, in addition to the security interest of Scotiabank assigned to 192, the following entities have security interest registrations in respect of TribalScale:

- (a) FundThrough, in respect of a discretionary factoring facility to finance certain credit-approved customers accounts with TribalScale for services rendered (the “**FundThrough Facility**”);
- (b) Roynat Capital Inc., in respect of a \$4 Million term facility, dated April 16, 2018 (the “**Roynat Facility**”); and,

- (c) the Business Development Bank of Canada (“**BDC**”), in respect of a lease-loan agreement for certain leasehold improvements, dated April 27, 2017 (the “**BDC Loan**”)

27. As at the date of this Affidavit, approximately \$112,320.00 is outstanding under the BDC Loan. The FundThrough Facility and Roynat Facility have both been paid in full and no further amounts are outstanding.

28. The results of a search of the Personal Property Security Registration System Registry in the Province of Ontario as at June 29, 2020 are attached hereto as **Exhibit “J”**.

C. Unsecured Obligations of the Applicant

29. TribalScale has approximately \$3.3 million in unsecured liabilities.

30. The Applicant’s significant unsecured creditors include Zayo Canada Inc., previously operating under the name Allstream Business Inc. (“**Zayo**”). Zayo was the landlord of TribalScale pursuant to a sublease in respect of TribalScale’s Toronto offices. The sublease was terminated by Zayo prior to the filing of the NOI as a result of non-payment of rent by TribalScale during the COVID crisis.

31. TribalScale is up to date on remittances of HST and source deductions.

D. Contingent Liabilities of the Applicant

32. The Applicant has a share-based option plan for employees and directors (the “**Stock Option Plan**”). Generally, options granted expire ten years from the date of the grant. One quarter of the options granted vest and become exercisable 12 months after the grant date; the remaining options vest

and become exercisable on a pro-rata basis each month, for a period of 36 months, following the first vesting date.

33. The Stock Option Plan limits the maximum number of options outstanding to 44,500,000 options. As at September 30, 2018, the reported number of options outstanding was 33,775,623, with a further 16,192,901 options vested and exercisable.

E. Continuing and Ordinary Course Obligations

(i). Vendors and Suppliers

34. TribalScale relies on a number of vendors and third-party service providers to operate its business. The bulk of trade expenses stem from business software or service subscriptions, as well as to retain third-party professional services to outsource limited enterprise functions – for instance, Xxact Inc. is retained to assist with certain back office tasks.

35. With the breathing room provided by the continued stay of proceedings under the Initial Order, TribalScale will be able to make payments to its suppliers and vendors for post-filing services.

(ii). Employee Obligations

36. As at the date of this Affidavit, TribalScale employs 30 employees who are paid biweekly in the normal course. TribalScale is current on all employee payments.

F. Leases

37. As described above, prior to the NOI filing, TribalScale conducted all of its business operations in the Toronto Office at 200 Wellington Street, under sublease from Zayo. The sublandlord terminated the sublease as the result of non-payment of rent. As a result of the NOI filing, Zayo was stayed from exercising rights of re-entry or distraint.

38. While these insolvency proceedings were ongoing, Zayo demanded that TribalScale vacate the Toronto Office. TribalScale has since moved the entire contents of the Toronto Office, including computer hardware and office equipment, to a warehouse located at 1501 Hopkins St, Whitby, ON L1N 2C2 (the “**Storage Warehouse**”).

39. After being removed by Zayo, TribalScale transitioned to entirely work-from-home operations (“**WFH**”) in accordance the recommendations of public health authorities during the COVID-19 crisis.

40. The company recently secured a new office lease at 207 Queens Quay W Suite 420, Toronto, ON M5J 1A7. TribalScale has negotiated such that it is permitted to occupy this space rent free for one year. The new space offers limited seating and is primarily used to house computer equipment. All surplus computer and office equipment has been moved to the Storage Warehouse and operations are still primarily being conducted as WFH.

41. The Applicants have no other significant leasing obligations.

III. CASH FLOW FORECAST

42. TribalScale has prepared a projected cash flow forecast of the Applicant for the initial period of the CCAA filing with the assistance of MNP in its capacity as Proposal Trustee and as Proposed Monitor (the “**Cash Flow Forecast**”). The Cash Flow Forecast will be provided with the Report of the Proposal Trustee, to be filed, prior to the return date of the herein motion.

43. The Cash Flow Forecast demonstrates that if the relief requested is granted, on the terms described herein, TribalScale will have sufficient liquidity to meet its obligations during the initial period of the CCAA filing without the need for debtor in possession financing.

IV. INSOLVENCY

44. Prior to June 2019, TribalScale began experiencing liquidity issues principally as a result of the loss of two major customer contracts.

45. Prior to losing these contracts, TribalScale had significantly expanded and scaled up its operations following its financial success in the first three years of business. Notwithstanding the loss of these customer contracts and its associated revenue, TribalScale did not go through the much-needed process of scaling back down its operations, including by reducing its head count, to deal with the drops in revenue. This led to a breach by TribalScale of its debt facilities with Scotiabank and a significant cash crunch on the business.

46. To address these issues, since July 2019, TribalScale undertook various steps to restructure its business operations. Namely, TribalScale, with the assistance of its financial advisor at the time, implemented a process to better manage its accounts receivable and accounts payable, reduced its employee headcount, as well as a refocused emphasis on profitable customer contracts.

47. In addition to the above, TribalScale, with the support of Scotiabank, conducted a comprehensive sale and investment marketing process to seek potential investors and purchasers for the business.

48. Between the summer of 2019 through to December 2019, the company was in discussions with various potential purchasers. However, no submitted bid offered recovery sufficient for Scotiabank, the principal secured lender at the time.

49. In January 2020, TribalScale obtained a bid to sell the going concern business to a significant customer of TribalScale. Unfortunately, due to the COVID-19 crisis in the spring of 2020, the potential purchaser opted to not close the transaction.

50. TribalScale's business has also been significantly impacted by the COVID-19 emergency measures imposed by the provincial government. When COVID-19 emergency measures were imposed, TribalScale further reduced its employee headcount and implemented a work-from-home policy to comply with provincial government directives and ensure safety of its staff.

51. On or around May 18, 2020, and notwithstanding that TribalScale was suffering as a result of loss of revenue during the pandemic, TribalScale's landlord, Zayo opted to terminate its sublease with TribalScale, alleging non-payment of rent. As a result, and to avoid further enforcement steps by the sublandlord, TribalScale opted to file for protection under the BIA.

52. Since the NOI Filing on May 19, 2020, TribalScale has continued operating its business at a reduced level. While TribalScale is continuing to service customers and execute new customer contracts and has been able to obtain relief through government subsidies, its revenues have decreased since 2019.

V. OBJECTIVES OF CCAA FILING

Continuation of NOI Proceedings Under the CCAA

53. TribalScale is insolvent and seeks to continue the restructuring efforts initiated through these NOI proceedings under the CCAA, pursuant to section 11.6 of the statute.

54. Thus far, the Applicant's restructuring efforts have focused on: (i) discussions with its material secured creditor, 192; (ii) the performance of current customer contracts, (ii) the execution of new

customer contracts; (iii) the collection of outstanding receivables; and (iv) the strategic “right-sizing” of the business with the assistance of MNP.

55. At the time of this Affidavit, the Applicant’s immediate objectives are to: (i) resolve a dispute with a customer, Sirius XM Connected Vehicle Services (“**Sirius**”), which may require further attendance and recourse to this Court; and, (ii) to implement a transaction with 192, its senior secured creditor (each of these issues are detailed below).

56. I am advised by counsel, and do believe, that the CCAA is the best forum for these insolvency proceedings. I understand that the CCAA provides a court-supervised process to resolve disputes with creditors, including readily available recourse to this Court. Furthermore, I understand that the CCAA is more conducive to negotiating complex commercial agreements, as this process is not subject to the strict procedural requirements applicable under the BIA proposal process, which risk compelling the Applicant into bankruptcy if a material deal falls through when, at this juncture, it is likely that there will not be recovery to unsecured creditors. In addition, the CCAA will allow TribalScale additional breathing room beyond limited 45 day stay extensions. This will assist in conserving cash.

57. As the primary value in TribalScale is its going concern operations, a straight bankruptcy and liquidation is unlikely to maximize value, especially when the value of TribalScale is likely only within the amount outstanding in respect to its secured indebtedness. Accordingly, I believe that the CCAA is the appropriate platform for TribalScale to proceed under in order to maximize value.

(i). Outstanding Receivable Issue

58. As TribalScale reported at its previous attendance before this Court, its most significant outstanding receivable is owed by Sirius under a Professional Services Agreement (“**PSA**”), executed

in April 2019 and further particularized through individual Statements of Work (“**SOWs**”), whereby TribalScale was engaged to develop an in-vehicle e-commerce program (generally, the “**Sirius Project**”). The PSA is appended hereto as **Exhibit “K”**. The relevant SOW that describes the services and outstanding fees is appended hereto as **Exhibit “L”**.

Overview of Dispute Concerning Development Process

59. The Sirius Project contemplated that TribalScale and Sirius would utilize an “Agile Development Process” as described under the PSA and SOW. This Process required ongoing collaboration between TribalScale and Sirius. Significantly, the completion deadline for the software project was estimated within the SOW, though the ultimate deadline for the deliverables was subject to acceptance testing performed solely by Sirius, as stipulated under s. 1.2 of the PSA.

60. TribalScale has fulfilled its obligations under the PSA and SOW in a good workmanlike manner. The project was completed and finalized once Sirius approved the deliverables in February of 2020. Sirius accepted all deliverables completed within each cycle and Sirius did not raise any concerns at any point during the final reporting cycle.

61. TribalScale rendered invoices numbered 2061, 2076, and 2102 for the Project during the period January through to March (the “**Outstanding Invoices**”) in the total amount of \$504,182.77 USD. Copies of these invoices are appended hereto as **Exhibit “M”**.

62. On April 23, 2020, TribalScale provided Sirius with a document titled, “SiriusXM & TribalScale Project Issues” which memorialized the various impediments caused by Sirius through its failure to collaborate with TribalScale as required pursuant to Section 5 of the SOW. A copy of the April 23, 2020 document is appended hereto as **Exhibit “N”**.

63. On May 26, 2020 TribalScale's restructuring counsel wrote to Sirius to demand payment of the Outstanding Invoices. A copy of the letter from Caitlin Fell to John Swanagon dated May 26, 2020 is appended hereto as **Exhibit "O"**.

64. On June 1, 2020, Sirius' general counsel responded to TribalScale's counsel alleging that it was no longer required to pay TribalScale as the result of numerous purported deficiencies in the deliverables under the PSA and SOWs. A copy of Sirius' June 1st letter is appended hereto as **Exhibit "P"**.

65. TribalScale's counsel responded to Sirius on June 9, 2020 stating that Sirius could not now rely on alleged deficiencies to refuse payment, as Sirius had not raised any of the issues during the agreed reporting cycle. In the context of an iterative development process, Sirius was required to raise any issues in a timely manner to ensure issues could be fixed in real time. The failure to raise any material concerns with the work product on any of the reporting dates was tantamount to acceptance of the delivered product. A copy of this letter is attached hereto as **Exhibit "Q"**.

Recent Developments

66. To date, Sirius has not communicated to TribalScale the alleged problems with the software, nor has it described what aspect of the deliverables was unsatisfactory.

67. Since TribalScale's previous attendance before this Court on June 17th, the Applicant has continued discussions with Sirius with a view to resolution of the dispute. No material developments have resulted thus far. Accordingly, it is increasingly likely that TribalScale will bring a motion to compel Sirius to comply with the terms of the PSA and SOWs.

(ii). Proposed CCAA Transaction

68. The Applicant is in the process of negotiating a transaction to resolve the secured indebtedness with 192. This transaction will likely take the form of a conversion of the secured debt of 192 into equity and provide for cash payment to BDC.

69. The main terms proposed transaction may be summarized as follows:

- (a) 192 will acquire substantially all of the property, assets, and undertakings of the Applicant, through a conversion of all of its secured debt into acquisition of 100% of the shares in the capital of TribalScale;
- (b) TribalScale will pay out through a cash payment, the amount of the secured indebtedness owing to BDC;
- (c) TribalScale will look to incorporate a new company (“**Newco**”) and will look to obtain approval from the Court of a “vesting out” of all unsecured liabilities to Newco;
- (d) TribalScale will offer to unsecured creditors of Newco a promissory note based on proceeds received from the recovery of the Sirius outstanding receivable;
- (e) TribalScale, as approved by 192, will continue payment of the following liabilities (hereinafter, collectively the “**Assumed Liabilities**”):
 - (i). all trade obligations incurred by TribalScale towards its suppliers both prior to and following the filing of the NOI; and,
 - (ii). all obligations of TribalScale towards its employees;

- (f) The proposed transaction would be conditional upon, *inter alia*, approval by this Honourable Court at a subsequent attendance.

70. The proposed CCAA transaction is intended to maintain TribalScale as a going-concern in order to preserve the revenue-generating capabilities of the company for the benefit of all stakeholders. I believe that the proposed transaction will achieve these goals, without having an undue and interruptive effect on TribalScale's operations.

71. It is likely that the parties will be in a position to finalize the transaction contemplated under the Proposed SPA within the initial 13-week period of the CCAA, following the granting of the Initial Order and TribalScale will return to this Court to seek approval of such transaction.

VI. RELIEF BEING SOUGHT

A. Continued Stay of Proceedings

72. In order to permit TribalScale to continue operating as a going-concern breathing while it pursues a restructuring, the Applicant is seeking a continuation of the NOI stay of proceedings under the CCAA. The requested stay will provide management with the breathing space it needs continue an orderly restructuring of the business with minimal interruptions to current business operations.

73. Considering that the Applicant is a technology services company with minimal realizable capital assets, the potential for straight-liquidation scenario in a bankruptcy as a result of a failed proposal will be detrimental to the Applicant's fulcrum secured creditors and broader stakeholders. Conversely, a continuation of the stay of proceedings under the CCAA will help to protect the interests of TribalScale's broader stakeholder group, including employees, suppliers, customers (who often require ongoing technology support), and lenders.

B. Continued Administration Charge

74. In connection with the NOI Stay Extension Order of June 17, 2020, Gilmore J. granted an administration charge over the assets, property and undertakings of TribalScale up to a maximum amount of \$125,000 (the “**Administration Charge**”). The Applicant is seeking to continue the Administration charge under these CCAA proceedings. It is proposed that the Administration Charge will retain the first priority ranking over all other charges, as previously granted pursuant to the NOI Stay Extension Order.

75. It is contemplated that the Proposed Monitor, along with its counsel and the Applicants counsel, previously secured by the Administration Charge, will have extensive involvement during the CCAA proceedings. These parties have contributed and will continue to contribute to the restructuring of the Applicants and no unnecessary duplication of roles has been identified to date.

76. I am advised by legal counsel that the Proposed Monitor believes that the proposed quantum of the Administration Charge is reasonable and appropriate in light of the Applicants’ CCAA proceedings, the services provided, and the services to be provided by the beneficiaries of the Administration Charge.

C. The Monitor

77. MNP has consented to act as the Court-appointed Monitor of the Applicants, subject to Court approval. A copy of MNP’s consent is attached hereto as **Exhibit “R”**. I am advised by external counsel that MNP is a trustee within the meaning of section 2 of the BIA, and is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA.

D. D&O Charge

78. I am advised by counsel, and believe that, in certain circumstances, directors and officers can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages and unpaid accrued vacation, pay, together with unremitted excise, sales, goods and services, and harmonized sales taxes.

79. Despite the fact that TribalScale is current on all employee payments and tax liabilities, there is concern that certain directors and officers of the Applicant may discontinue their services during this restructuring unless the Initial Order grants a Directors' Charge (as defined below) to secure the indemnification of directors and officers for potential personal statutory liabilities that may arise post-filing.

80. As TribalScale is primarily in the business of creating and providing ongoing support to proprietary software applications, the current directors and officers' knowledge of the Applicant's business is truly unique. In order to effectively restructure as a going-concern, the Applicant requires the continued participation of their directors and officers who manage TribalScale's business and commercial activities.

81. The Applicants maintain directors' and officers' liability insurance (the "**D&O Insurance**") for their directors and officers. The current D&O Insurance policy is with Beazly Canada Ltd. This policy is valid until December 21, 2020 and provides a total of \$5,000,000 in coverage.

82. The proposed Initial Order contemplates the establishment of a super-priority charge on the Property in the amount of \$125,000 (the "**D&O Charge**") to protect the directors and officers against obligations and liabilities they may incur as directors and officers of the Applicants after the

commencement of the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of the directors' or officers' gross negligence or wilful misconduct.

83. The Applicants worked with the Proposed Monitor in determining the proposed quantum of the Directors' Charge and believe that the Directors' Charge is reasonable and appropriate in the circumstances. The Directors' Charge is proposed to rank behind the Administration Charge, but ahead of any existing security granted by the Applicants in favour of their secured creditors. I have been advised by counsel that the Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances.

84. Although the D&O Insurance is available, the directors and officers of the Applicants do not know whether the insurance providers will seek to deny any coverage. The Applicants may not have sufficient funds to satisfy any contractual indemnities to the directors and officers should the directors or officers need to call upon those indemnities. It is proposed that the Directors' Charge will only be engaged if the D&O Insurance fails to respond to a claim.

E. Proposed Ranking of Court-Ordered Charges

85. To summarize, the proposed ranking of the Administration and D&O Charges (collectively, the "**Super-Priority Charges**") is as follows:

- (a) First, the Administration Charge in the maximum amount of \$125,000; and,
- (b) Second, the D&O Charge in the maximum amount of \$125,000.

VII. CONCLUSION

86. TribalScale seeks an Initial Order under the CCAA substantially similar to the form of the Model Initial Order adopted for proceedings commenced in Toronto, subject to certain limited changes, in the proposed form of order in the Applicant's Motion Record.

87. TribalScale requires the protections provided by the CCAA to develop a viable restructuring transaction with its creditors. As the primary value in TribalScale is its going concern operations, continuing these restructuring proceedings under the CCAA is likely to result in greater value to stakeholders than would a bankruptcy and liquidation.

SWORN before me by video conference at the city of Toronto in the Province of Ontario this 25th day of July, 2020:



A Commissioner for Taking Affidavits
Name:



SHEETAL JAITLEY

THIS IS **EXHIBIT “K”** REFERRED TO IN THE
AFFIDAVIT OF SHEETAL JAITLEY SWORN BEFORE ME,
THIS 24TH DAY OF JULY, 2020



A COMMISSIONER FOR TAKING AFFIDAVITS

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this “Agreement”), effective as of April 26th, 2019 (the “Effective Date”), is made by and between Sirius XM Connected Vehicle Services Inc., a Texas corporation with its principal business offices located at 8550 Freeport Parkway, Irving, Texas 75063 USA (“SXMCV” or “Sirius XM”), which expression includes its parent and subsidiary entities, and their respective successors and permitted assigns) and TribalScale Inc., an Ontario, Canada corporation with its principal business offices at 200 Wellington Street West, Suite 900, Toronto, ON Canada M5V 3C7 (“Contractor”). SXMCV and Contractor are collectively referred to herein as “Parties” and individually as “Party.”

1. SCOPE OF WORK.

- 1.1 Services. In consideration of SXMCV’s payments under this Agreement, Contractor shall provide, in accordance with the terms of this Agreement, the services and/or deliverables (collectively, the “Services”) described in any statement of work (the “Statement of Work” or “SOW”). When providing Services according to any Statement of Work, Contractor shall devote such amount of Contractor’s time as shall be required for Contractor to perform the Services promptly, efficiently and professionally. Notwithstanding any other provision of this Agreement, Contractor understands and agrees that nothing contained herein shall require SXMCV to engage Contractor for a minimum number of hours or be deemed to be a guarantee to Contractor of a minimum number of hours of engagement by SXMCV. Contractor covenants and agrees that Contractor shall not, directly or indirectly, engage or participate in any activities at any time during the term of this Agreement in conflict with the best interests of SXMCV. Contractor will ensure that its employees and agents will, whenever on SXMCV’s premises, obey all reasonable instructions and directions issued by SXMCV.
- 1.2 Acceptance. Acceptance of the Services will occur upon the date on which Contractor demonstrates to SXMCV, by the successful completion of acceptance tests identified by SXMCV, that the Services have been performed in accordance with the applicable Statement of Work and meet any acceptance criteria or specifications set forth therein. If SXMCV conditions its acceptance on the subsequent correction of any non-conformance with the Statement of Work, Contractor will use prompt, diligent efforts to correct any such non-conformance.
- 1.3 Service Levels. Contractor shall perform the Services in accordance with the applicable Statement of Work and shall meet or exceed the Service Levels set forth therein. If SXMCV or Contractor discovers any non-conformance with the Statement of Work or Service Levels, Contractor will use prompt, diligent efforts to correct any such non-conformance at no charge to SXMCV.
- 1.4 Change Control.
 - (a) SXMCV may request a change to the Services by providing written notice to Contractor. Within ten (10) working days of receiving such request from SXMCV, Contractor shall review such request and report to SXMCV in writing (i) whether such change is technically feasible and if technically feasible; (ii) the reasonable impact on the delivery schedule; and (iii) any necessary revision to the Services, deliverables, Contractor obligations, and Fees, as appropriate (“Change Order”).
 - (b) Contractor may request a change to the Services by submitting a Change Order to SXMCV.
 - (c) If SXMCV does not accept or reject the Change Order in writing within thirty (30) days of receipt, then SXMCV shall be deemed to have rejected the Change Order. SXMCV shall be under no obligation to accept any Change Order and Contractor shall be under no obligation to perform any requested change. If the terms of a Change Order are agreed and

signed by the Parties, such Change Order shall be incorporated into the applicable Statement of Work and form part of this Agreement.

2. TERM AND TERMINATION.

2.1 Term. The term of this Agreement shall commence on the Effective Date and shall remain in effect for twenty-four (24) months from such date (the "Initial Term") unless earlier terminated as provided herein. Thereafter, SXMCV may elect to renew the Agreement for additional one (1) year renewal terms (each, a "Renewal Term") by giving Contractor written notice at least forty-five (45) days prior to the end of the Initial Term or of any renewal period. The Initial Term and any Renewal Terms are collectively referred to in this Agreement as the "Term".

2.2 Termination.

(a) SXMCV may terminate this Agreement or any Statement of Work hereunder at any time upon thirty (30) days written notice to the other Party, unless otherwise specified in a SOW.

(b) Either Party may terminate this Agreement or any Statement of Work if the other Party materially breaches the terms of such Agreement or Statement of Work and fails to cure such breach within thirty (30) days from its receipt from the other Party of written notice of such breach. All licenses to use Services and Pre-Existing Works granted under this Agreement shall continue according to their terms following termination of this Agreement or the applicable Statement of Work.

(c) Commencing upon any notice of termination of this Agreement or any Statement of Work, Contractor shall close out any existing activities and provide to SXMCV the reasonable termination assistance requested by SXMCV to allow the Services to continue without interruption or adverse effect and to facilitate the orderly transfer of the Services to SXMCV or its alternate Contractor. Such post-termination services will be provided at the rates set forth in the Statement of Work or if none, the rates consistent with the Fees paid for the Services. SXMCV's maximum obligations for all Fees hereunder shall be solely for the Services properly performed under the applicable Statement of Work and any such post-termination services. Contractor will render a final bill to SXMCV within thirty (30) days of completion of the last Service performed.

3. CONTRACTOR'S FEE.

3.1 Fees. In consideration of Contractor's performance of the Services in accordance with this Agreement, SXMCV shall pay Contractor a fee in U.S. Dollars (the "Fee") determined in accordance with and payable as provided in the applicable Statement of Work. Such compensation constitutes all of the fees and charges for the performance of the Services and will not be increased unless the Parties agree thereto in writing. Contractor represents that the price stated for the Services is at least as favorable as that charged by Contractor to any other customer for the same or similar services.

4. TAXES.

4.1 Each Party shall be responsible for any personal property taxes on property it owns or leases, for franchise and privilege taxes on its business, and for taxes based on its net income or gross receipts.

4.2 The Fees include all national, regional and local taxes, duties, customs and similar liabilities (including VAT where applicable), however designated. Contractor shall be responsible for any sales, use, excise, gross receipts, value-added, services, consumption, and other taxes and duties payable by Contractor on any goods or services used or consumed by Contractor in providing the Services where the tax is imposed on Contractor's acquisition or use of such goods or services and the amount of tax is measured by Contractor's costs in acquiring such goods or services.

- 4.3 The Parties agree to cooperate with each other to enable each to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible. Contractor's invoices shall separately state the amounts of any taxes.

5. CONTRACTOR PERSONNEL.

- 5.1 Contractor shall set forth in each Statement of Work: (i) the names of key personnel performing services under that Statement of Work including the Product Manager and Anchor Engineer, (ii) job role, (iii) the percentage of time each person is dedicated to the applicable project, and (iv) the work location of each such person. Except as may be provided in the applicable SOW, all Contractor personnel shall be based in the United States or Canada.
- 5.2 All Contractor personnel will be properly educated, trained and fully qualified for the services they are to perform. Contractor will ensure appropriate training is in place to meet training requirements of its personnel. Contractor has obtained and will maintain all certifications and licenses required to perform the Services.
- 5.3 Upon SXMCV request, at Contractor's expense, Contractor shall perform background checks which are permitted by applicable law on all personnel providing Services to SXMCV under this Agreement, including without limitation a check of the applicant's criminal history for the previous seven (7) years. Contractor shall not place or retain any personnel for the performance of Services hereunder found to have committed theft, fraud, identity theft, an invasion of privacy, or any crime of fraud or deception, howsoever called.
- 5.4 Contractor shall have full liability for all personnel employed or engaged by Contractor (including any subcontractors) to perform the Services, including liability for personal injury, death and property damage caused by the acts and omissions of such personnel.
- 5.5 Prior to assignment of Contractor personnel to any Services, Contractor shall provide SXMCV with the names of each Contractor program manager, employee and any permitted subcontractors. If SXMCV in good faith objects in writing to a proposed assignment, the Parties shall attempt to resolve SXMCV's concerns on a mutually agreeable basis. If the Parties are not able to resolve SXMCV's concerns within five (5) business days, Contractor shall: (i) not assign the individual to that position; and (ii) propose to SXMCV the assignment of another individual of suitable ability and qualifications.
- 5.6 If the performance of any Contractor personnel is unacceptable to SXMCV, SXMCV may notify Contractor, in writing, of such fact (without waiving any other rights or remedies it may have hereunder) and, if so requested by SXMCV, Contractor shall promptly remove said personnel from performing services under that Statement of Work and provide a qualified replacement, at the same or a lower rate.
- 5.7 Contractor agrees to use reasonable efforts to ensure the continuity of Contractor personnel assigned to perform services under any Statement of Work. Any reassignment by Contractor of those personnel assigned to perform services under any Statement of Work must be with SXMCV's prior written notification no later than one (1) week in advance. If Contractor reassigns any of its personnel assigned to perform services under any Statement of Work, Contractor will promptly provide a replacement acceptable to SXMCV. Contractor shall not remove original personnel until a suitable replacement has been approved by SXMCV and the replacement is fully familiarized with the applicable project and his or her responsibilities.
- 5.8 Except as SXMCV may agree otherwise in writing, Contractor shall not subcontract its obligations under this Agreement.
- 5.9 Non-Compete, Non-Solicitation. Each Party agrees that during the Term of the Agreement and for a period of one (1) year after its termination or expiration, it shall not, without the other Party's

prior written consent, (i) recruit, solicit, or hire, in any capacity whatsoever, any person who during the period of twelve (12) months immediately preceding such time had been employed by the other Party, (ii) interfere with, or attempt to interfere with, the relations between and its resources/subcontractors. Public postings of vacant positions shall not be deemed a violation of this Section 5.9.

6. REIMBURSABLES.

- 6.1 In addition to the Fee, SXMCV shall reimburse Contractor for reasonable and necessary direct expenses to the extent provided in the applicable Statement of Work (such as travel, meal and lodging expenses, with supporting evidence), which have been approved in writing by a SXMCV authorized employee and incurred by Contractor in the performance of the Services (“Reimbursables”). Except as may be provided in the applicable SOW, Reimbursables will be paid only in accordance with SXMCV’s policy for the payment of travel and other expenses to its own employees, a copy of which will be provided to Contractor upon request.

7. INVOICES AND PAYMENT.

- 7.1 Contractor shall invoice SXMCV for sums payable under this Agreement as set forth in the Statement of Work. SXMCV shall pay such invoices net forty-five (45) days from the date the invoice is received by SXMCV. Contractor shall submit invoices for Services monthly in arrears in accordance with the instructions set forth in Section 7.2. Contractor shall provide SXMCV with service reports completed and Reimbursables incurred each month. SXMCV shall reimburse Contractor monthly in arrears. Contractor shall not invoice SXMCV for Services until they are complete and have been accepted in writing by SXMCV.
- 7.2 Contractor will adhere to the following invoicing procedures:
- Contractor shall email all invoices to: SXMradio.image@send2image.com.
 - The attachments **must** be in PDF format. Compressed.zip files are not accepted and will not be processed. Embedded documents are not processed. Text in the e-mail body will not be scanned or acknowledged.
 - *The invoice attachment must contain the name of the internal SXMCV Manager (or such other individual as SXMCV shall designate to Contractor in writing) on the front page of the invoice document.*
 - Each attachment must contain only one invoice/credit/etc. All supporting documentation must be within the same PDF file (Ex: Invoice/Timesheet)
 - Multiple PDF attachments may be attached to a single e-mail message and each PDF attachment is treated as a separate document.
- 7.3 SXMCV shall promptly review Contractor’s invoice and approve for payment such amounts as SXMCV reasonably determines to be properly due under the Agreement.

8. INDEPENDENT CONTRACTOR RELATIONSHIP.

- 8.1 The Parties intend that an independent contractor relationship will be created by this Agreement. Contractor shall have full responsibility for the payment of all federal, state, and local taxes and contributions, including penalties and interest, imposed pursuant to unemployment insurance, social security, income tax, workers’ compensation or any other similar statute. Personnel supplied by Contractor hereunder are not SXMCV’s personnel or agents, and Contractor assumes full responsibility for their acts. Contractor shall be solely responsible for the payment of compensation of Contractor personnel and such personnel shall be informed that they are not entitled to the provision of any SXMCV employee benefits. SXMCV shall not be responsible for payment of

workers' compensation, disability benefits, unemployment insurance and/or for any U.S. or foreign withholding income taxes and social security for any of Contractor personnel. If any federal, national, state, provincial or local government agency or any other applicable any U.S. or foreign entity determines that the personnel provided by Contractor under any Statement of Work are employees of SXMCV for the purpose of withholding tax liability, Contractor agrees to indemnify SXMCV, its affiliates and their respective employees, officers, and directors (collectively, the "SXMCV Indemnitees") against and release the SXMCV Indemnitees from all liabilities, costs, and expenses (including, but not limited to, attorneys' fees) associated with the defense of such claim.

9. CONFIDENTIALITY.

9.1 Contractor's Obligation. Contractor acknowledges that, in and as a result of Contractor's engagement by SXMCV, Contractor shall or may be making use of, acquiring and adding to SXMCV's Confidential Information (as defined below). As a material inducement to SXMCV to engage (and to continue to engage) Contractor and to pay to Contractor compensation for the Services, Contractor covenants and agrees that Contractor shall not, directly or indirectly, disclose, divulge, reveal, report, publish, transfer or use, for any purpose whatsoever, any of the Confidential Information obtained by or disclosed to Contractor as a result of Contractor's engagement by SXMCV. Disclosure of any such information of SXMCV shall not be prohibited if such disclosure is directly pursuant to a valid and existing order of a court or other governmental body or agency within the United States; provided, however, that (i) Contractor shall first have given prompt notice to SXMCV of any such possible or prospective order (or proceeding pursuant to which any such order may result) and (ii) SXMCV shall have been afforded a reasonable opportunity to prevent or limit any such disclosure.

9.2 Definition of Confidential Information. "Confidential Information" means all of the following information (whether or not reduced to writing, marked as proprietary or confidential, and whether or not patentable or protectable by copyright) which Contractor receives, receives access to, conceives, creates or develops or has received, received access to, conceived, created or developed, in whole or in part, directly or indirectly, in connection with Contractor's engagement by SXMCV or in the course of Contractor's engagement by SXMCV (in any capacity whatsoever) or through the use of any of SXMCV's facilities or resources:

- (a) Application, operating system, data base, communication and other computer software, whether now or hereafter existing, developed for use on any operating system, all modifications, enhancements and versions and all options available with respect thereto, and all future products developed or derived therefrom;
- (b) Employee data, manuals, reports and other materials or information relating to SXMCV's business and activities and the manner in which SXMCV does business;
- (c) Any other materials or information related to the business or activities of SXMCV which are not generally known to others engaged in similar businesses or activities or are proprietary to SXMCV; and
- (d) Any information and materials received by SXMCV from third parties in confidence (or subject to non-disclosure or similar covenants).

9.3 Exceptions. For purposes of this Agreement, the term "Confidential Information" shall not include information which is or becomes publicly available without breach of (i) this Agreement, (ii) any other agreement or instrument to which SXMCV is a party or a beneficiary or (iii) any duty owed to SXMCV by Contractor or any third party; provided, however, that Contractor hereby acknowledges and agrees that, if Contractor shall seek to disclose, divulge, reveal, report, publish, transfer or use, for any purpose whatsoever, any Confidential Information, Contractor shall bear

the burden of proving that any such information shall have become publicly available without any such breach. The exceptions set forth in this Section 9.3 shall not apply to PCI or PII under any circumstance.

10. INTELLECTUAL PROPERTY OWNERSHIP.

Unless otherwise agreed in a Statement of Work, the following provisions shall apply to all Services, deliverables and work product, collectively (the “Work Product”) provided by Contractor under this Agreement:

- 10.1 Ownership by SXMCV. Contractor covenants and agrees that all right, title and interest in any Work Product shall be and shall remain the exclusive property of SXMCV. Contractor agrees immediately to disclose to SXMCV all Work Product developed in whole or in part by Contractor for or on behalf of SXMCV, and Contractor hereby assigns to SXMCV any right, title or interest Contractor may have in such Work Product. Contractor agrees to execute any instruments and to do all other things reasonably requested by SXMCV (both during and after Contractor's engagement by SXMCV) in order to vest more fully in SXMCV all ownership rights in those items hereby transferred or required to be transferred by Contractor to SXMCV. This excludes Contractor's current proprietary products.
- 10.2 Works for Hire. Contractor and SXMCV hereby agree that the Work Product of Contractor resulting from the Services is one or more “works made for hire” within such definition in 17 U.S.C. §101, the copyright of which shall be owned solely, completely and exclusively by SXMCV. If any such Work Product is protectable by copyright and is not considered to be included in the categories of works covered by such definition, ownership of and copyrights to such items shall be deemed to be assigned and transferred completely and exclusively to SXMCV by virtue of the execution of this Agreement.
- 10.3 Materials. All notes, data, tapes, reference items, sketches, drawings, memoranda, records, files and other materials in any way relating to any of the Work Product or otherwise to SXMCV's business shall belong exclusively to SXMCV and Contractor agrees to turn over to SXMCV all copies of such materials in Contractor's possession or under Contractor's control at the request of SXMCV or, in the absence of such a request, upon the termination of Contractor's engagement with SXMCV.
- 10.4 Pre-Existing Works. Contractor shall notify SXMCV in writing of the incorporation of any Pre-Existing Work in any Work Product or deliverables. To the extent any pre-existing work of Contractor or the work of any third party (collectively, “Pre-Existing Work”) is incorporated in or otherwise required for the proper performance of any Services, Contractor hereby grants to SXMCV a perpetual, worldwide, fully paid-up, nonexclusive license to use, copy, maintain, modify, enhance and create derivative works of such Pre-Existing Work (including source code, programmer interfaces, available documentation, manuals and other materials necessary for the use thereof).
- 10.5 Open Source Code. Contractor represents that it will not incorporate into any Work Product source code licensed from GNU Public License, the free Software Foundation, or similar public license (collectively, “Open Source Software”) without SXMCV's express written approval. To the extent that Open Source Software is utilized by Contractor with SXMCV's approval, Contractor represents, warrants and covenants that Contractor will at all times implement or use any such Open Source Software in compliance with contributor's use requirements and in a manner that will not subject any unrelated software to the requirements of any Open Source Software licenses.

11. WARRANTIES.

- 11.1 Mutual Warranties. Each Party represents and warrants that: (i) it has the full right, power and authority to enter this Agreement and to perform its obligations hereunder; (ii) this Agreement constitutes its valid and binding obligation; (iii) its execution or performance of this Agreement does not and will not conflict with any other agreement, order or stipulation to which it is a party or by which its property is bound; and (iv) it shall at all times comply with its obligations under this Agreement, and with all applicable laws.
- 11.2 Contractor Warranties. Contractor represents and warrants to SXMCV that (a) each of its personnel assigned to perform services under any Statement of Work shall have the proper skill, training and experience to perform in a competent and professional manner and that all work will be performed in accordance with the applicable Statement of Work; (b) Contractor shall render all Services with promptness and diligence and in a workmanlike manner in accordance with high professional standards; (c) unless expressly specified in any Statement of Work, SXMCV shall receive free, good and clear title to all Services arising therefrom; (d) neither the Services performed pursuant to this Agreement nor any deliverables produced or supplied by Contractor under this Agreement nor SXMCV's use thereof will infringe any patent or copyright or any proprietary rights of any third party or constitute a misuse or misappropriation of a trade secret; (e) each and every deliverable specified in a Statement of Work shall conform in all material respects to the specifications as set forth in the Statement of Work (or if none, to the manufacturer's specifications and warranties) and shall be free from material defects; (f) Contractor shall, at no additional charge, correct any material defects in any deliverables for a period of sixty (60) days from acceptance by SXMCV based on the acceptance criteria set forth in each Statement of Work and shall provide a reasonable period of support thereafter as set forth in the applicable Statement of Work; (g) at the time of delivery, no Services or deliverable shall contain any computer virus nor any codes or instructions that may be used to modify, delete, damage or disable the deliverable or any of SXMCV's property or facilities and Contractor shall exert its best efforts to ensure that no such virus, code or instruction is subsequently introduced; (h) Contractor will not install or bring any hazardous materials or substances to any SXMCV facility and will promptly report the discovery of any such material to SXMCV; (i) Contractor will diligently perform its assigned duties under this Agreement in a cost effective manner consistent with the required level of quality and performance; and (j) Contractor shall comply with all laws, rule and regulations in all jurisdictions in which Services are provided.
- 11.3 Exclusive Warranties. THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES REGARDING THE SERVICES DESCRIBED HEREIN, INCLUDING ANY WARRANTY FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12. NO INFRINGEMENT.

- 12.1 Contractor warrants that neither the Services performed pursuant to this Agreement nor any materials produced or supplied by Contractor under this Agreement will infringe any patent, trademark, copyright or any proprietary rights of a third party or constitute a misuse or misappropriation of a trade secret. SXMCV shall notify Contractor promptly in writing of any action brought against SXMCV based on an allegation that SXMCV's use of any materials or the Services infringes any patent, trademark, copyright, or infringes any right of a third party, or constitutes misuse or misappropriation of a trade secret (an "Infringement"). Contractor will defend, indemnify and hold the SXMCV Indemnitees harmless from any such action at Contractor's sole expense and will pay any costs incurred by the SXMCV Indemnitees, including attorneys' fees, and the costs and damages awarded in such action or the cost of settling such action (collectively, "Losses"), provided that Contractor shall have the sole control of the defense of any such action, all negotiations and/or its settlement, and SXMCV cooperates with Contractor in such

defense. In the event that a final injunction is obtained against SXMCV's use of the Services or the Confidential Information by reason of an Infringement, Contractor shall at its option and expense within sixty (60) days either (a) procure for SXMCV the right to continue to use the Confidential Information or Services that are infringing, or (b) replace or modify the Confidential Information or Services to make its use non-infringing while being capable of performing the same function. If neither option is available to Contractor, then SXMCV, at SXMCV's option, may terminate this Agreement and Contractor shall refund to SXMCV any amounts paid by SXMCV pursuant to this Agreement, plus any loss or damages incurred by SXMCV, including costs and attorneys' fees.

13. OTHER INDEMNIFICATIONS.

- 13.1 SXMCV agrees to indemnify, defend and hold harmless Contractor from any and all Losses to the extent directly arising from any of the following: (a) the death or bodily injury caused by the tortious conduct of SXMCV; or (b) the damage, loss or destruction of any real or tangible personal property caused by the tortious conduct of SXMCV. Contractor shall indemnify, defend and hold harmless the SXMCV Indemnitees from any and all Losses to the extent directly arising from any of the following: (i) the death or bodily injury caused by the tortious conduct of Contractor; (ii) the damage, loss or destruction of any real or tangible personal property caused by the tortious conduct of Contractor, or (iii) Contractor's breach of this Agreement.

14. LIMITATION OF LIABILITY.

- 14.1 OTHER THAN AS SET FORTH IN SECTIONS 12 AND 13, IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER, FOR SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

15. LICENSES AND EXPORT.

- 15.1 Unless expressly specified in any Statement of Work, as part of the Services, Contractor will be responsible for obtaining and paying for all applicable licenses, authorizations, and permits required of Contractor in connection with the performance of the Services and to otherwise carry out Contractor's obligations under each Statement of Work.
- 15.2 The Parties acknowledge that Services may be subject to export controls under the laws and regulations of the United States and other countries. Neither Party shall export or re-export any such Services or any direct product thereof in violation of any such laws or regulations.

16. SECURITY REQUIREMENTS.

- 16.1 Contractor shall maintain technical, organizational, administrative, and human resource security measures which conform to ISO 27001 and 27002, and SXMCV information security policies. Contractor and Contractor personnel will comply with SXMCV's security policies and procedures that are in effect for SXMCV's facilities. Contractor and Contractor personnel will observe the working hours, working rules, and holiday schedules of SXMCV while working on SXMCV's premises.
- 16.2 PCI/PII. The Parties anticipate that Contractor will not have access to payment card data ("PCI") or SXMCV data which may be used to identify an individual ("PII"), as well as SXMCV networks carrying PCI and PII or used to access PCI and PII (collectively, "PII Networks"). Unless

otherwise provided in a written agreement between the Parties which expressly amends this Subsection 16.2, Contractor shall not access PCI, PII, and PII Networks.

- 16.3 Secure Software Development. Contractor shall develop code in a manner consistent with secure software development practices including the most current Open Web Application Security Project (OWASP) Top Ten Vulnerabilities and the OWASP Top 10 Proactive Controls (available as of execution at: https://www.owasp.org/index.php/OWASP_Proactive_Controls).

17. INSURANCE.

- 17.1 During the term of this Agreement, Contractor and any subcontractors hired, engaged or supervised by Contractor shall have and maintain in force the following insurance coverage with an Insurer with an A.M. Best Rating of A- or better:

- (a) Worker's Compensation Insurance, including occupational illness or disease coverage, or other similar social insurance in accordance with the laws of the country, state, or territory exercising jurisdiction over the employee and Employer's Liability Insurance with a minimum limit of \$1,000,000 per occurrence.
- (b) Commercial General Liability Insurance, including Products, Completed Operations Liability and Personal Injury, and Contractual Liability coverage for damages to any property with a minimum combined single limit of \$2,000,000 per occurrence, \$4,000,000 in the aggregate.
- (c) Umbrella Liability Insurance (with following form primary commercial liability and auto liability, or broader) with a minimum limit of \$5,000,000 in excess of the insurance under policies indicated in Sections 17.1(a), 17.1(b), and 17.1(d).
- (d) Automobile Liability Insurance covering use of all owned, non-owned, and hired automobiles with a minimum combined single limit of \$1,000,000 each accident for bodily injury and property damage liability.
- (e) Errors and Omissions/Professional Liability Insurance covering the liability for financial loss due to error, omission, negligent acts, unauthorized access, unauthorized use, breach of duty, virus transmission and machine malfunction in the performance of services or the failure of technology products to perform as intended. Such policy shall be in an amount of not less than \$5,000,000 per claim. Coverage shall include any subcontractors or temporary employees of Contractor.
- (f) Employee Dishonesty and Computer Fraud coverage for loss arising out of or in connection with any fraudulent or dishonest acts committed by the employees or contractors of Contractor, acting alone or in collusion with others, including the property and fund of SXMCV in their care, custody or control, in a minimum amount of \$1,000,000. This policy shall be endorsed to name SXMCV as a loss payee.
- (a) All Risk (Special Form) Insurance on equipment, data, media and valuable papers, including extra expense coverage for the property in which SXMCV has an interest for the full value of that property at replacement cost new, with a minimum amount of \$2,000,000. This policy shall be endorsed to name SXMCV as a loss payee as its interests may appear.

- 17.2 The policies described in Sections 17.1(b), 17.1(c) and 17.1(d) shall be endorsed to name SXMCV, its affiliates and subsidiaries, and the directors, officers, employees and successors and assigns of each, as additional insureds. The foregoing insurance coverage shall be primary and non-contributing with respect to any other insurance or self-insurance that SXMCV may maintain. Contractor shall cause its insurers to issue certificates of insurance evidencing that the coverage and policy endorsements required under the Agreement are maintained in force and that not less

than thirty (30) days written notice shall be given to SXMCV prior to any material modification, cancellation or non-renewal of the policies.

18. AUDIT AND COMPLIANCE.

- 18.1 SXMCV and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial, security, and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of Contractor including, but not limited to those kept by the Contractor, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, security certifications, written policies and procedures; subcontract files, invoices; and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.
- 18.2 Contractor shall ensure that all contractual obligations between Contractor and SXMCV are supplied to and enforced by all Contractor subcontractors. Contractor shall monitor and assess subcontractor compliance with these provisions.

19. DATA BREACH.

- 19.1 Contractor shall immediately notify SXMCV, and in no event take longer than two (2) hours to do so, by telephone with an immediate confirmation in writing of the facts of the call, if Contractor becomes aware of any actual, suspected or alleged unauthorized access to, use, or disclosure of SXMCV Confidential Information either alone or with other information, including a notification of loss or suspected loss of data whether or not such data has been encrypted. Contractor shall cooperate with SXMCV in any manner reasonably requested by SXMCV and in accordance with applicable law and regulations, including: conducting the investigation; cooperating with authorities; and notifying affected persons, credit bureaus, or other persons or entities deemed appropriate by SXMCV. Such cooperation shall include without limitation: (i) Providing SXMCV access to relevant Contractor records and facilities; (ii) Providing all relevant data and reports to SXMCV; and (iii) Providing SXMCV the right to review and approve the content and form of any notifications to impacted individuals and any press releases.

Sirius XM contacts: Mr. Patrick Donnelly, General Counsel, (212) 584-5180;
Ms. Patricia Edfors, Vice President, Information Security, Privacy and Compliance, (202) 380-1297;

or as otherwise updated by Sirius XM in writing.

20. MISCELLANEOUS.

- 20.1 Section Headings. All section headings and captions used in this Agreement are purely for convenience and shall not affect the interpretation of this Agreement.
- 20.2 Statements of Work. All Statements of Work and other documents expressly referenced herein Agreement shall be deemed to be incorporated in and made a part of this Agreement, except that if there are any inconsistencies between this Agreement and the provisions of any Statement of Work, the provisions of the Agreement shall control. Terms used in a Statement of Work and also used in this Agreement shall have the same meaning in the Statement of Work as in this Agreement.
- 20.3 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, USA without regard to or application of any conflict of law principles. Each Party hereby submits to the exclusive jurisdiction of courts located in Dallas County, Texas USA. Each Party waives any right to trial by jury with respect to any dispute arising out of this Agreement.

- 20.4 Modification. Except as otherwise provided, this Agreement shall not be modified except by written agreement signed on behalf of SXMCV and Contractor by their respective authorized officers.
- 20.5 Exclusive Agreement. This Agreement supersedes all prior understandings, representations, negotiations and correspondence between the Parties, constitutes the entire agreement between them with respect to the matters described, and shall not be modified or affected by any course of dealing, course of performance or usage of trade.
- 20.6 Assignment or Delegation. Contractor may not assign or delegate this Agreement or any of its rights, duties or obligations thereunder to any other person without prior written consent of SXMCV.
- 20.7 Language and Communications. All data, documents, descriptions, studies and reports provided by Contractor will be written in English. This Agreement and all documentation and communications required hereunder, will be in the English language.
- 20.8 Public Release of Information. Neither Party shall make or release any public announcement of any kind, including, without limitation, news releases, articles, brochures, advertisements, prepared speeches, external company reports and other information releases in which the other Party is named concerning the work performed under this Agreement, without the other Party's prior written consent.
- 20.9 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired.
- 20.10 Waiver. The failure of either Party at any time to require performance by the other of any provision of this Agreement shall in no way affect that Party's right to enforce such provision, nor shall the waiver by either Party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision or any other provision.
- 20.11 Survival. The provisions of this Agreement, which by their nature extend beyond the expiration or earlier termination of the Agreement will survive and remain in effect until all obligations are satisfied.
- 20.12 Further Assurances. Each Party agrees that it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party during the term of this Agreement.
- 20.13 Counterparts. This Agreement may be executed in any number of counterparts and each fully executed counterpart shall be deemed an original.
- 20.14 Notices. All notices, approvals, requests, consents and other communications given pursuant to this Agreement shall be in writing and shall be effective when received if hand-delivered, sent by a national overnight courier service (with means of tracking) or sent by United States certified or registered mail, addressed as follows:

If to Contractor: TribalScale Inc.
Attn: Jerry Lin
200 Wellington Street West, Suite 900
Toronto, ON Canada M5V3C7

If to SXMCV: Sirius XM Connected Vehicle Services Inc.
Attn: Legal Department
8550 Freeport Parkway
Irving, TX USA 75063

with a copy to: Sirius XM Radio Inc.
 Attn: General Counsel
 1290 Avenue of the Americas, 11th Fl.
 New York, NY USA 10104

If the Parties so specify in an applicable Statement of Work, notice may be provided by email.

20.15 Compliance with the Foreign Corrupt Practices Act. Each Party agrees at all times to comply with applicable laws and regulations in its performance of this Agreement, including, without limitation, the provisions of the United States' Foreign Corrupt Practices Act ("FCPA").

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement effective as of the Effective Date.

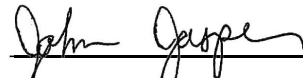
("Contractor")
TRIBALSCALE INC.

By:  _____

Name: Sheetal Jaitly

Title: CEO

("SXMCV")
SIRIUS XM CONNECTED VEHICLE SERVICES INC.

By:  _____

Name: John Jasper

Title: Sr. Vice President

THIS IS **EXHIBIT “L”** REFERRED TO IN THE
AFFIDAVIT OF SHEETAL JAITLEY SWORN BEFORE ME,
THIS 24TH DAY OF JULY, 2020



A COMMISSIONER FOR TAKING AFFIDAVITS

STATEMENT OF WORK #2

This Statement of Work ("Statement of Work" or "SOW") is entered into pursuant to the Professional Services Agreement dated April 26th, 2019 (the "Agreement") between TribalScale Inc. ("Contractor") and Sirius XM Connected Vehicle Services Inc. ("Sirius XM"), which expression includes its parent and subsidiary entities, and their respective successors and permitted assigns. Except as expressly set forth in this Statement of Work, the terms and conditions set forth in the Agreement shall govern the performance of the services described in this Statement of Work. This Statement of Work is effective as of date of signature (the "Effective Date"). All capitalized terms not defined herein will have the meanings given them in the Agreement.

1. TERM

The term of this Statement of Work will commence on the Effective Date and, unless sooner terminated pursuant to the terms and conditions of the Agreement, will continue to remain in full force and effect until terminated according to the terms of the Agreement or all Services to be performed under this Statement of Work have been successfully completed.

2. PERSONNELProject Managers:

Sirius XM: Paul Doucette
 Telephone number: (847) 275-5226
 Email: Paul.Doucette@siriusxm.com

Contractor: Trevor Buckerfield
 Telephone number: 416-797-6493
 Email: tbuckerfield@tribalscale.com

The Project Managers will be the focal point for communications relative to Services under this Statement of Work. Any changes in Project Manager personnel will be communicated in writing by each respective party.

3. SERVICES**3.1. Description of Services.**

Sirius XM desires to engage an expert development team to build an in-vehicle E-Commerce solution, (the "Project"). Contractor will provide Product Management, Engineering, Design, and QA resources for the Project.

Contractor will perform the tasks and responsibilities described below and all associated Contractor obligations set forth in the Agreement.

Contractor will deliver software to Sirius XM according to the requirements set forth in Section 3.2, 3.3, and the timeline set forth in Section 4.1.

3.2. Deliverables and Requirements

The scope of the Services under this SOW is as per the epics listed below. Any changes to the scope/epics shall be managed as described in Section 3.6. It is the responsibility of the joint Sirius XM and Contractor team to prioritize this scope appropriately in the backlog in order to meet certain product milestones.

- Product Epics
 - Onboarding
 - User profile rapid registration, including integration with Sirius XM IDM
 - Integration of token provider widget to capture and tokenize payment method
 - Integration with Wallet system to store generated tokens or token mapping
 - Profile/Role Management

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- Ability for users to manage and change their profile data.
- Ability for users to invite other users, associate them with their primary account, and assign them permissions for what services they can use through Constellation in their car.
- Wallet
 - Token data store, and Merchant-Token mapping
 - APIs to add, retrieve, update, delete one or more tokens to the wallet
 - APIs to generate cryptogram per transaction for a specific token to be able to process a payment
 - Integration with SiriusXM selected Token Management Service (TMS)/Token Gateway (TG)/Token Service Provider (TSP) APIs for token lifecycle management
 - Integration with P97 wallet and payments, as an intermediate solution.
 - Frontend interfaces for users to manage their wallet
- User Preferences
 - User preference data store
 - APIs to add, retrieve, update, delete user preferences
 - Frontend interfaces for users to manage their preferences
 - Update the search API to flag locations matching the user's preferences in the returned result set
 - Update the UI client to display user preferred locations differently, as well as integrate the ability to save a location to user preferences, and to view a list of their preferences
- Loyalty Programs
 - Loyalty program data store
 - APIs to add, retrieve, update, delete user's loyalty programs
 - Frontend interfaces for users to link their loyalty accounts to their Sirius XM Constellation account, and manage their loyalty programs
 - Update the E-Commerce Order process to include loyalty account data when placing orders
- Service Integrations
 - Continue Arrive integration for Parking to cover placing orders to book parking spots.
 - Integrate TravelLink/Infotainment API into search process, to cover more locations for Gas and Parking.
 - Integrate PayTollo service into Constellation platform for toll gate payments.

Contractor shall build all relevant frontend interfaces, referenced in the epics above, as progressive web apps.

Contractor shall follow best practices for AWS architecture in developing the deliverables as further detailed in **Appendix A**. Contractor will also provide production-ready APIs and backend infrastructure.

Contractor will provide scripts/process at the end of each Sprint to allow Sirius XM to build the same environment in its VPC.

Key Assumptions and Risks:

- **Onboarding**
 - Sirius XM's IDM solution should be designed and developed in tandem and delivered by mutually agreed upon schedule in order to enable constellation™ onboarding, user profile management and API authentication.
 - A third party Token Management Service (TMS)/Token Gateway (TG) & Token Service Provider (TSP) solution, that offers a payment method capture widget and provides generated tokens back, will be selected and in place for the onboarding integration.
 - Frontend interfaces will be built as a web application.

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- A single user account per user, without primary account linking or managed roles and permissions within this scope.
- Sirius XM Constellation is not a white-labelled solution, so users will be onboarded as Sirius XM users, into the Sirius XM IDM, and not into an OEM user system.
- **Wallet**
 - The selected third party TG & TSP provider will expose a set of APIs to allow for the generation of cryptograms required to process payments, payment method metadata (e.g. last 4 digits, card art, ...etc.) and for all needed lifecycle management purposes.
 - Frontend interfaces for wallet management will be built as a web application.
- **User Preferences**
 - Data analytics to infer user preferences from their usage patterns will not be covered as part of this scope.
 - Users will add preferences by 'favoriting' locations during the search process.
 - Users will add preferences through a frontend preference management interface.
 - Frontend interfaces for user preference management will be built as a web application.
- **Loyalty Programs**
 - Agreements with the loyalty program(s) to be integrated are in place for the integration.
 - Integration of loyalty programs will happen through verification of a user's mobile number or through logging in to partner accounts.
 - Integration of TWO loyalty programs covered in this scope.
 - Frontend interfaces to manage (link/de-link) loyalty programs will be built as a web application.
- **Service Integrations**
 - Arrive APIs will accept payment tokens and other transaction-required payment attributes from selected TMS/TG/TSP token provider to process payment for parking orders.
 - Arrive APIs will accept transactions for non Arrive/Parkwhiz users.
 - TravelLink/Infotainment APIs will not have integrations with data from the external partners (e.g. P97) yet, so Contractor will aggregate and deduplicate data by excluding partner locations from the TravelLink result set.
 - Sirius XM IDM will provide publicly accessible endpoints that allow the generation of JWT tokens that can be used to authenticate the user with the E-Commerce platform and partner integrations.
 - At this stage, there is no direct integration with VISA; the integration would happen through an intermediary TMS/TG/TSP token provider.
- **Other Assumptions**
 - The application used for the car's Head Unit (e.g. SDL, Android Auto, CarPlay), including the voice interface and navigation, is not part of this scope.

The Parties acknowledge that certain Sirius XM and/or third party application programming interfaces ("APIs") have been or will be provided to Contractor in connection with the Project, and that these APIs as well as any third party content ("Content") that is accessible via these APIs, is Confidential Information.

With respect to the APIs and Content, Contractor will:

- (a) Only use them for the purposes specified by Sirius XM;
- (b) Not pass them to any other third party without the prior written permission of Sirius XM;
- (c) Not use them for commercial purposes;
- (d) Destroy the Content or its derivatives in Contractor's possession
 - a. upon termination or expiration of this SOW, or
 - b. notwithstanding the continuation of this SOW, once development activity utilizing it is complete, or
 - c. if a period of sixty (60) days has elapsed in which Contractor has not needed to access the Content,
 and certify the same to Sirius XM within five (5) business days.

Acceptance of the deliverables shall be in accordance with Section 1.2 of the Agreement. Acceptance criteria shall be mutually agreed no later than two (2) weeks prior to the delivery date. The foregoing is in

addition to, and not a limitation on, Sirius XM's rights of termination under Section 2.2 of the Agreement. The Parties may mutually agree to partial functionality of applications at various stages to satisfy the required timeline and budgetary constraints.

3.3. Development and Validation Process

3.3.1. Agile Development

The following is a description of the Agile development process methodology to be generally followed by the Parties in respect of this SOW, and is not a description of the Services to be provided under this SOW. The product backlog is a list of all the features, tasks and bugs for the application being produced pursuant to a SOW. It is maintained in a strict, linear priority; no two items are equal, as one is before the other. Sirius XM maintains the contents and their priority. Contractor provides estimates for the effort to complete each item. Contractor's Developers also update the status of an item. Each backlog item goes through a basic workflow: unstarted, started, finished, and delivered (made available for review) and then either accepted or rejected by Sirius XM. If the item is rejected, it can be re-prioritized by Sirius XM. All work on the Application is to be done in a mutually agreeable cadence of either 1 or 2 weeks. The basic iteration workflow has a planning meeting at the start of the sprint, when the product backlog is reviewed. In the planning meeting, the focus is the current iteration of work. Questions and discussions about items take place and the intent is for all to have a similar understanding of the week's work. As Contractor's Developers work during the iteration, they make the Application regularly available for review by Sirius XM. These updates range from daily to a few times a week. The entire process is collaborative and Contractor expects the full involvement and engagement of Sirius XM. Sirius XM is obligated to regularly review work and maintain the product backlog. The process also provides significant visibility into the current status and progress of the Application.

3.3.2. Scope of Work to be Performed

The Work Product will be designed pursuant to the Agile development process and is limited to delivery of the functionality agreed by the Parties and includes quality assurance and related project management activities. The Services to be provided pursuant to this SOW are only those that have been agreed upon by both Parties in Pivotal Tracker.

3.3.3. Description of Resources

Sirius XM shall have access to the Contractor resources listed in 4.1 and to Pivotal Tracker for one (1) year from the execution date of this SOW, subject to any applicable terms of use thereof, for the estimated timeline contained herein, and shall direct such Contractor resources to perform Services in accordance with Agile development process.

3.3.4. Open Source Software

The following Open Source Software may be used in connection with the work product. Contractor must receive written authorization from Sirius XM before including any OSS in the work product.

- Artistic License (all versions)
- Apache License (all versions)
- Boost Software License
- BSD
- Common Development and Distribution License (CDDL)
- Common Public License (CPL) or IBM
- Eclipse Public License (EPL)
- FLTK License PSA
- General Public License (GPL)
- Lesser General Public License (LGPL)
- Massachusetts Institute of Technology (MIT)
- Mozilla (MPL) (all versions)
- Open LDAP License
- OpenSSL
- Public Domain

- Python Software Foundation License
- Rdoc
- MySQL2 gem
- SSLeay
- zlib/libpng License

3.4. Defect Management

Contractor's QA process works in tandem with Contractor's engineering team to implement manual and automated test scenarios based on acceptance criteria from the user stories. All bugs reported by Contractor's QA will be resolved by Contractor's engineering team. At the end of each iteration, Sirius XM's approval on the stories will be required to sign off and 'accept' the stories as delivered. Contractor will work with Sirius XM's PMs to ensure the correct acceptance criteria. A final Contractor QA check will be conducted before delivery of major versions, including final release. Any bugs escaping this process into final SOW deliverable caught after final release will be addressed as per the Agreement.

3.5. Release Management

Delivery and validation of code will be released at completion of each iteration. Contractor will coordinate with Sirius XM to ensure timely integration into Sirius XM's Continuous Integration Continuous Deployment (CICD) pipeline. Artifacts to be delivered at end of SOW will include:

- AWS infrastructure that was set up to run the platform
- Git repositories with the code written for the platform
- Infrastructure as code templates
- Any other tools or libraries which may have been used to develop the product.

3.6. Change Management

Any changes to the scope of the SOW shall be done pursuant to the Agile Development Process outlined in Section 3.3.1. herein. Any material changes to the scope of the SOW shall follow the procedures set forth in Section 1.4 of the Agreement.

Sirius XM Connected Vehicle Services Inc. Confidential and Proprietary

4. FEES**4.1. Summary.**

Services will be performed at the rates specified below on a time and material basis for actual time reported against the Project. Sirius XM will be billed for actual time reported against the Project.

Contractor's Fees under the Statement of Work shall not exceed **\$1,824,020** without the prior written consent of Sirius XM. The maximum Contractor Fees under this SOW will not exceed **\$1,864,020**.

Any materials or out-of-pocket expenses provided by Contractor under this Statement of Work shall pass through to Sirius XM without any markup and must be pre-approved by the Sirius XM Project Manager. Email approval will suffice.

Travel Expenses for Contractor personnel under this Statement of Work shall not exceed **\$40,000**. All travel expenses must be pre-approved by Sirius XM and comply with Sirius XM's T&E policy.

No expenses related to Contractor's VPC/AWS development environment will be the responsibility of Sirius XM.

Any other expenses must be pre-approved by an SVP (or higher) at Sirius XM. Email approval will suffice.

The estimated project duration is approximately **26 weeks**.

The resource allocation and estimated cost for a 26-week effort are summarized below:

Resource Role	Quantity	Skill Set	Rate/hr	Total Estimated Hours	Total Estimated Cost
Product Manager	1	Product Management	\$200	936	\$187,200
Project Manager	1	Project Management	\$200	572	\$114,400
Discount - TribalScale to provide a reduced rate for Project Management			(\$100)	572	(\$57,200)
Architect	1	System Architect	\$200	704	\$140,800
Discount - TribalScale to provide System Architecture support at no additional cost			(\$200)	704	(\$140,800)
Engineering Lead	1	Senior Architect/Anchor (Full stack – JavaScript, Node, React, AWS)	\$200	964	\$192,800
Engineer	6	Senior Engineer (Full Stack - JavaScript, Node, React, AWS)	\$180	5621	\$1,011,780
Engineer	2	Intermediate Engineer (Backend - JavaScript, Node, AWS)	\$170	1024	\$174,080
Designer	1	Service Design, Frontend	\$160	312	\$49,920
QA Analyst	3	Testing (Frontend, Backend)	\$160	944	\$151,040
Resource Costs Sub-Total					\$1,824,020
Estimated Travel Expenses*					\$40,000
TOTAL					\$1,864,020

*This is an estimate and Contractor will bill Sirius XM for actual costs incurred for Travel and Expenses. All planned travel will be pre-approved by the Sirius XM Project Manager and any required travel above and beyond the estimate will require written approval from Sirius XM. There is an expectation that the Contractor and Sirius XM teams will work closely together during this engagement to ensure the highest

Sirius XM Connected Vehicle Services Inc. Confidential and Proprietary

level of success and that includes working co-located from time to time. At a minimum, the Parties anticipate six week-long trips for the Contractor team to Sirius XM offices in Dallas.

Contractor shall provide Sirius XM with a weekly report detailing the work completed and actual hours by resource.

4.2. Reimbursables.

Contractor will be paid for Reimbursables according to the terms set forth in Section 6 of the Agreement.

4.3. Invoices.

Upon Sirius XM's acceptance of the deliverables, Contractor will provide Sirius XM with an invoice according to the terms set forth in Section 7 of the Agreement, and any such documents and information as Sirius XM may reasonably request to verify any invoice submitted by Contractor.

5. SIRIUS XM OBLIGATIONS

Sirius XM shall pay Contractor's invoices according to Section 7 of the Agreement.

Sirius XM shall provide the following:

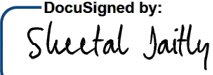
- Weekly touch points to review progress
- Knowledgeable Sirius XM team members available to answer questions as needed
- Timely meetings with key stakeholders (including Sirius XM/third party agencies), delivery of necessary content, assets and instructions, and timely feedback to any outstanding questions
- Necessary equipment and documentation, such as pertinent API specifications, etc.
- Access to necessary project systems, as required to meet the obligations of the SOW
- Sirius XM's Project Manager will be responsible for interfacing with the Contractor team and also responsible for accepting completed stories

6. CONFLICT


In the event of any conflict between the terms of this Statement of Work and the Agreement, the terms of this Statement of Work shall control.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Statement of Work effective as of the Effective Date.

("Contractor")
TRIBALSCALE INC.

DocuSigned by:

By: _____
Name: Sheetal Jaitly
Title: CEO
Date: 11/23/2019

("Sirius XM")
SIRIUS XM CONNECTED VEHICLE SERVICES INC.


By: _____
Name: JOSEPH A. VERISWIDGE
Title: PRESIDENT
Date: 11/12/19

APPENDIX A

CLOUD ARCHITECTURE TECHNICAL REQUIREMENTS

Below is a high-level description of Contractor's proposed approach and best practices for the Services to be provided under SOW #2 which may be subject to change pursuant to the Agile development process and requirements of the Project.

Security

- The proposed architecture shall have the platform running on serverless products, built on top of AWS managed services.
- AWS services come with the standard plan of AWS Shield, for protection against common DDoS attacks. This can be upgraded to the Advanced plan if required.

Frontend

- The currently proposed architecture hosts the frontend app in S3 and serves it out to the user's device through CloudFront. Access to the frontend app files would be restricted as read-only, and only to be served through CloudFront, not directly.

Backend

- The proposed architecture is focused around an event-driven flow, triggered by API calls to an API Gateway that fields incoming requests and then passes them on to be processed by a set of serverless functions. Only requests coming through the API Gateway will be able to trigger the execution of functions.
- The API Gateway endpoints will be secured to only accept specific types of requests over https, from logged-in Sirius XM users, with the calls using valid API keys.
- Access to the DynamoDB database would be locked down to only the lambda functions that require access to it.

High Availability / Scale

Availability Zones

- The core AWS products included in the initially proposed architecture are ones that AWS runs across multiple availability zones within a given region by default, ensuring a higher level of availability.
- These products also automatically scale up and down based on usage to handle the varying number of requests to the service.
- Contractor will adapt the architecture to meet the required availability specified by Sirius XM

Multiple Regions

- For higher availability and/or disaster recovery purposes, the platform can be spun up and ready to use in one or more other AWS regions.
- Most of the core products being used are billed based on usage and would only start incurring cost when requests are actually sent through to them.
- **DynamoDB:** Use of Global Tables provides the ability to run the database across multiple regions, with fully managed replication between them.

- **API Gateway:** Use of regional API endpoints, combined with Route 53, can enable handling either active-active setups or failover between regions.

Disaster Recovery

Failover

- Having the platform set up in at least one other region, as per the Multiple Regions section above, can help provide the ability to failover quickly to the backup region.

Backups

- **Database:** As per the Multiple Regions section above, the data within the database would be replicated across multiple regions. Continuous Backup and Point-in-time-recovery can also be enabled for the DynamoDB database.

Infrastructure as Code

- The infrastructure required to run the platform will be codified in templates that will enable more efficient and predictable deployments, and decreased recovery times.

Operating Costs*

As previously mentioned, most of the products in the proposed architecture are billed based on usage and will scale up and down, based on the volume of requests.

With the platform running at a scale of 1,000,000 user sessions per day, running out of one region only, and excluding voice services, the rough estimate is that it would be running at around \$7500 per month. Many variables affect this though, and the decisions taken while building the system, as well as the actual usage patterns, will give more clarity around what the actual numbers would be.

Spinning the platform up in another region would add some cost for the database replication and storage, but would only start incurring costs for other services if requests are routed to it.

Contractor will adapt the architecture as required to best meet the required operating budget of Sirius XM.

For voice services:

- **Google Dialogflow**, which would be used to handle voice requests; 10,000 requests would cost \$65 (\$0.0065 per request); but once the application scales up to millions of requests per day, the costs would climb, and it might make sense to look at licensing another solution to run internally.
- **Google TTS**, which would be used to handle voice responses to the user; costs can be controlled through standardizing and storing certain messages, that don't require customization for the user's context (e.g. prompts regarding gas pump number, or period of time parking is required for.)
Otherwise, the cost is \$4.00 per 1 million characters.

*Please note that Operating Costs are projections made by Contractor to help Sirius XM with budgeting for infrastructure. The pricing stated is based on the AWS pricing guide and the user quantities are assumptions. Sirius XM will interface directly with AWS for any/all pricing or billing related discussions.

THIS IS **EXHIBIT “B”** REFERRED TO IN THE
AFFIDAVIT OF SHEETAL JAITLEY SWORN BEFORE ME,
THIS 27TH DAY OF OCTOBER, 2020

Patrick Corney
Patrick Corney (Oct 27, 2020 12:29 EDT)

A COMMISSIONER FOR TAKING AFFIDAVITS

RESTRUCTURING SUPPORT AGREEMENT

This Restructuring Support Agreement (as amended, supplemented or otherwise modified from time to time, referred to as this “**Agreement**”) dated as of October __, 2020 (the “**Agreement Date**”) among TribalScale Inc. (the “**Company**”), 1924191 Ontario Inc. (“**192**” or the “**Supporting Creditor**”) describes and addresses the restructuring transaction agreed to by the Company and the Supporting Creditor as described fully in Section 1 hereof (the “**Transaction**”). The Supporting Creditor holds the debt and first priority security over all of the assets, property and undertaking of the Company in the amount of \$2,648,000 million as of the date hereof (the “**Secured Debt**”). The Transaction is to be effected pursuant to a plan of compromise or arrangement (the “**Plan**”) under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), and, if determined necessary or advisable by the Company in conjunction with the Plan, the *Canada Business Corporations Act*, RSC, 1985, c. C-44 to restructure the Secured Debt in accordance with the terms of the Transaction or as such Transaction may be amended in a manner acceptable to the Supporting Creditor and the Company, each acting reasonably.

The Supporting Creditor and the Company are referred to herein as a “**Party**” and, collectively, as the “**Parties**”.

1. Transaction

The principal Transaction terms (which are subject to the other terms and conditions of this Agreement) are as follows:

- (a) the Supporting Creditor will convert 50 % of the Secured Debt into 85% of the equity in the capital of the Company on a fully diluted basis;
- (b) the remaining 50% of Secured Debt will remain on the balance sheet of the Company, with payment of interest accruing on the Secured Debt being deferred until the date that is one year from the closing of the Transaction. The Supporting Creditor will maintain its security over the assets, property and undertaking of the Company for all of the obligations in respect to the remaining Secured Debt and for any obligations under this Agreement or resulting from the Transaction;
- (c) the Bank of Nova Scotia (“**BNS**”) shall be issued 5% of the equity in the capital of the Company on a fully diluted basis in full and final satisfaction of the consideration owed to BNS by the Company as a result of the assignment of the Secured Debt from BNS to 192;
- (d) in consideration of Sheetal Jaitley’s continuing ongoing involvement with the Company:
 - (i) Sheetal Jaitly shall be issued 10% of the equity in the capital of the Company on a fully diluted basis: and

- (ii) the Company shall make a cash payment in the amount the secured indebtedness owing to the Business Development Bank of Canada (“**BDC**”) in respect of a lease-loan agreement, dated April 27, 2017, notwithstanding BDC is second in priority to the indebtedness of the Supporting Creditor;
- (e) a new company (“**Newco**”) will be established by the Company and incorporated as a private company under the Provincial laws of Ontario organized in a manner acceptable to the Supporting Creditor, and satisfactory to the Company, acting reasonably;
- (f) the Company will obtain an Order from the Ontario Superior Court of Justice (the “**Court**”) transferring and vesting out absolutely all unsecured liabilities (the “**Unsecured Liabilities**”) of the Company to Newco and Newco shall file an assignment in bankruptcy under the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended (the “**BIA**”);
- (g) the Company will issue a promissory note to the unsecured creditors of Newco in the amount of the receivable owing by Sirius XM Connected Vehicle Services Inc. (“**Sirius XM**”) to the Company, less the fees and costs incurred to collect or enforce on such receivable (the “**Sirius Receivable**”), which promissory note shall be payable on a pro rata basis to unsecured creditors of Newco upon receipt of the Sirius Receivable or upon determination or settlement of the claim of the Company against Sirius XM in respect to the Sirius Receivable;
- (h) the Company, as approved by the Supporting Creditor, will continue payment of the following liabilities in the ordinary course:
 - (i) all trade obligations incurred by the Company towards its suppliers following May 19, 2020, being the date, the Company filed a Notice of Intention to Make a Proposal pursuant to section 50.4(1) of the BIA; and
 - (ii) all outstanding and continuing obligations of the Company towards its employees; and
- (i) implementation of the Transaction will be conditional upon approval of the Court.

2. The Supporting Creditor’s Representations, Warranties and Acknowledgements

The Supporting Creditor hereby represents and warrants to the Company as of the Agreement Date (and acknowledges that the Company is relying upon such representations and warranties) that:

- (a) the Supporting Creditor:
 - (i) is the sole beneficial owner of the principal amount of the Secured Debt detailed in **Schedule “A”** hereto;
 - (ii) has full power and authority to act on behalf of, vote on and consent to matters concerning such Secured Debt, as applicable, and to dispose of, exchange, assign and transfer such Secured Debt, as applicable; and

- (iii) holds no other unsecured or secured debt in the Company;
 - (A) there is no proceeding, claim or investigation pending before any court, regulatory body, tribunal, agency, government or legislative body, or threatened against it that, individually or in the aggregate, would reasonably be expected to impair the Supporting Creditor's ability to execute and deliver this Agreement and to comply with its terms.
 - (B) the Supporting Creditor has not created nor suffered to be created any liens, charges, encumbrances, obligations or other restrictions that would reasonably be expected to adversely affect the Supporting Creditor's ability to perform its obligations under this Agreement;
 - (C) the Supporting Creditor has not assigned any of its Secured Debt that would, in any manner, restrict the ability of the Supporting Creditor to comply with its obligations under this Agreement;
 - (D) the Supporting Creditor:
- (iv) is a sophisticated party with sufficient knowledge and experience to properly evaluate the terms and conditions of this Agreement;
- (v) has conducted its own analysis and made its own decision, in the exercise of its independent judgment, to enter into this Agreement; and
- (vi) has not relied on the analysis or the decision of any Person other than its own members, employees, representatives or independent advisors;
- (vii) the execution, delivery and performance by the Supporting Creditor of its obligations under this Agreement:
 - (A) are within its corporate power, as applicable;
 - (B) have been duly authorized, by all necessary corporate action, as applicable, including all necessary consents of the holders of its equity or other participating interests where required; and
 - (C) do not:
 - (1) contravene its certificate of incorporation, articles, by-laws or other constating documents, as applicable,
 - (2) violate any judgment, order, notice, decree, statute, law, ordinance, rule or regulation applicable to it or any of its assets, or
 - (3) conflict with or result in the breach of, or constitute a default under, or require a consent under, any contract material to the Supporting Creditor;

- (b) this Agreement constitutes a valid and binding obligation of the Supporting Creditor enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally or by general principles of equity, whether asserted in a proceeding in equity or law;
- (c) the Supporting Creditor is an "accredited investor", as such term is defined in National Instrument 45-106 – *Prospectus and Registration Exemptions* of the Canadian Securities Administrators ("NI 45-106") and it was not created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in NI 45-106; and
- (d) the Supporting Creditor is a resident in the Province of Ontario, Canada.

3. The Company's Representations, Warranties and Acknowledgements

The Company hereby represents and warrants to the Supporting Creditor (and the Company acknowledges that the Supporting Creditor is relying upon such representations and warranties) that:

- (a) there is no proceeding, claim or investigation pending before any court, regulatory body, tribunal, agency, government or legislative body, or threatened against it that, individually or in the aggregate, would reasonably be expected to impair the ability of the Company to execute and deliver this Agreement and to comply with its terms, or which, if the Transaction was consummated, would result in a material adverse effect;
- (b) the execution, delivery and performance by the Company of this Agreement:
 - (i) are within its corporate, partnership, limited partnership or similar power, as applicable;
 - (ii) have been duly authorized by all necessary corporate, partnership, limited partnership or similar action, as applicable, including all necessary consents of the holders of its equity or other participating interests, where required; and
 - (iii) do not
 - (A) contravene its certificate of incorporation, articles of amalgamation, by-laws or other constating documents, as applicable,
 - (B) violate any judgment, order, notice, decree, statute, law, ordinance, rule or regulation applicable to it or any of its properties or assets, or
 - (C) result in the creation or imposition of any lien or encumbrance upon any of the property of the Company.
- (c) the agreements and security comprising the Secured Debt (the "**Credit Documents**") are valid and enforceable in accordance with their terms;

- (d) the Company acknowledges that:
 - (i) there are continuing Events of Default under the Credit Documents;
 - (ii) the Secured Debt is due, owing, and payable pursuant to the Credit Documents; and
 - (iii) but for these proceedings and this Agreement, the Supporting Creditor would be entitled to exercise such rights and remedies as may be provided for at law, equity and pursuant to the Credit Documents to recover the Secured Debt.
- (e) this Agreement constitutes a valid and binding obligation of the Company enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally or by general principles of equity, whether asserted in a proceeding in equity or law.
- (f) the Company does not have any material liability for borrowed money other than pursuant to those banking and other lending agreements that are disclosed on the Monitor's Website.
- (g) the board of directors of the Company has:
 - (i) reviewed the Transaction terms as described in Section 1 hereof;
 - (ii) determined, in its business judgment, that the transactions contemplated by the Transaction terms are in the best interests of the Company;
 - (iii) resolved to recommend approval of this Agreement and the transactions and agreements contemplated hereby to the Supporting Creditor and all other affected creditors; and
 - (iv) approved this Agreement and the implementation of the Transaction;
- (h) other than pursuant to this Agreement, there are no agreements between the Company and any other secured creditor with respect to any restructuring or recapitalization matters.

4. The Supporting Creditor's Covenants and Consents

Subject to the terms of this Agreement, and such Orders of the Court as may have been made in these proceedings with the consent of the Supporting Creditor, the Supporting Creditor covenants and agrees as follows:

- (a) the Supporting Creditor consents and agrees to the terms and conditions of, and the Transaction contemplated by, this Agreement;
- (b) the Supporting Creditor agrees to:
 - (i) vote (or cause to be voted) all of the Secured Debt, in all votes and in each vote, in favour of the approval, consent, ratification and adoption of the Plan and the Transaction contemplated thereby, as the case may be (and any actions required in furtherance of the foregoing);
 - (ii) support the approval of the Plan as promptly as practicable by the Court; and
 - (iii) instruct its legal counsel to support the making of an Order of the Court approving the Plan and Transaction, and any other matters relating thereto, and all other motions filed by the Company in furtherance of the matters contemplated by this Agreement; provided in each case, that such orders and motions are in form and substance satisfactory to the Supporting Creditor;
- (c) the Supporting Creditor agrees not to assign or transfer the Secured Debt in any manner that would restrict its ability to comply with its obligations under this Agreement;
- (d) the Supporting Creditor agrees that it shall:
 - (i) not accelerate or enforce or take any action or initiate any proceeding to accelerate or enforce the payment or repayment of any of its debt against the Company or any of its property;
 - (ii) execute any and all documents and perform any and all commercially reasonable acts required by this Agreement to satisfy its obligations hereunder including any consent, approval or waiver requested by the Company, acting reasonably;
 - (iii) forbear from exercising, any default- related rights, remedies, powers or privileges, or from instituting any enforcement actions or collection actions with respect to any obligations against the Company or any of its property;
 - (iv) not object to, delay, impede or take any other action to interfere with the acceptance or implementation of the Transaction;

- (v) not propose, file, support or vote (or cause to vote) any of the Secured Debt in favour of any alternative offer, restructuring, liquidation, workout or plan of compromise or arrangement or reorganization of the Company that is inconsistent with the Plan or this Agreement;
- (vi) vote (or cause to vote) any of the Secured Debt against and oppose any proceeding under the CCAA or any other legislation in Canada or elsewhere, or any alternative offer, restructuring, liquidation, workout or plan of compromise or arrangement or reorganization of or for the Company, in each case that is inconsistent with the Plan or this Agreement; or
- (vii) not take, or omit to take, any action, directly or indirectly, that is materially inconsistent with, or is intended or is likely to interfere with the consummation of, the Transaction, except as and only to the extent required by applicable law, by any other regulatory authority having jurisdiction over the Supporting Creditor or by any court of competent jurisdiction.

5. The Company's Covenants and Consents

The Company covenants and agrees as follows:

- (a) the Company consents and agrees to the terms and conditions of, and the transactions contemplated by, this Agreement.
- (b) The Company shall pursue the completion of the Transaction in good faith by way of the Plan, in accordance with the Transaction terms, and shall use commercially reasonable efforts (including recommending to any person entitled to vote on the Plan that they vote to approve the Plan) to achieve the following timeline (which may be amended by the Company with the consent of the Supporting Creditor, each acting reasonably):
 - (i) filing of the Plan by no later than November 11, 2020
 - (ii) meeting of the secured creditors being compromised under the Plan by no later than November 13, 2020
 - (iii) sanction of the Plan by the Court by no later than November 20, 2020; and
 - (iv) implementation of the Plan by no later than November 27, 2020
- (c) The Company shall not during the term of this Agreement:
 - (i) prepay, redeem prior to maturity, defease, repurchase or make other prepayments in respect of any indebtedness other than payments permitted or as required hereby;

- (ii) directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any indebtedness of any kind whatsoever (except for indebtedness that is incurred in the ordinary course and that is not material);
 - (iii) create, incur, assume or otherwise cause or suffer to exist or become effective any lien, charge, mortgage, hypothec or security interest of any kind whatsoever on, over or against any of its assets or property (except for any lien, charge, mortgage, hypothec or security interest that is incurred in the ordinary course and that is not material);
 - (iv) issue, grant, sell, pledge or otherwise encumber or agree to issue, grant, sell, pledge or otherwise encumber any securities of the Company, or securities convertible into or exchangeable or exercisable for, or otherwise evidencing a right to acquire, securities of the Company, except in the ordinary course; or
 - (v) enter into any new secured or unsecured lending or credit facilities of any kind, without the consent of the Supporting Creditor.
- (d) other than as contemplated and permitted by this Agreement, the Company shall not, outside of the ordinary course, sell, transfer, lease, license or otherwise dispose of all or any part of its property, assets or undertaking (including, without limitation, by way of any loan transaction) during the term of this Agreement, except on terms acceptable to the Supporting Creditor;
- (e) the Company shall not do or cause to be done and transaction which have the effect or may have the effect of causing harm to the Supporting Creditor in any manner; and
- (f) the Company shall make commercially reasonable efforts to collect all accounts receivable and shall keep the Supporting Creditor informed of their efforts and status regarding same.

6. Mutual Conditions Precedent for the Consummation of the Transaction

- (a) The Transaction shall be subject to the reasonable satisfaction of the following conditions prior to or at the time the Transaction is implemented (the “**Effective Time**”), each of which, if not satisfied on or prior to the Effective Time, can only be waived by both the Company and the Supporting Creditor:
- (i) the Plan shall have been approved by the Supporting Creditor in a form consistent with this Agreement or otherwise acceptable to the Company and the Supporting Creditor, each acting reasonably;
 - (ii) the Court shall have approved the Plan and the Transactions contemplated therein (the “**Plan Approval Order**”) and the Plan Approval Order shall have been entered by the Court in a form consistent with this Agreement or otherwise acceptable to the Company and the Supporting Creditor, each acting reasonably;

- (iii) the Plan Approval Order shall not have been dismissed, reversed, vacated, stayed or be subject to appeal;
- (iv) the constating documents of Newco, to be formed in connection with the Transaction, and all definitive legal documentation in connection with the foregoing, shall be in form and substance reasonably satisfactory to the Company and the Supporting Creditor;
- (v) all Material filings under applicable laws that are required in connection with the Transaction shall have been made and any material regulatory consents or approvals that are required in connection with the Transaction shall have been obtained (including, without limitation, any required consent(s) of the Ontario Securities Commission) and, in the case of waiting or suspensory periods, such waiting or suspensory periods shall have expired or been terminated;
- (vi) there shall not be in effect any preliminary or final decision, order or decree by a governmental entity, and no action shall have been announced, threatened or commenced by any governmental entity, in consequence of or in connection with the Transaction that restrains or impedes, or prohibits (or if granted could reasonably be expected to restrain, impede or inhibit) the Transaction or any material part thereof or requires or purports to require a material variation of the Transaction;
- (vii) there shall not exist or have occurred any material adverse effect;
- (viii) all securities of the Company, Newco and any affiliated or related entities that are formed in connection with the Transaction, when issued and delivered, shall be duly authorized, validly issued and fully paid and non- assessable and the issuance thereof shall be exempt from all prospectus and registration requirements and resale restrictions of applicable securities legislation;
- (ix) BDC shall have received the consideration described in the Transaction terms on the Plan Implementation Date (as defined in section 11 hereto);
- (x) all existing shares and equity interests in the Company, including all existing options, warrants, deferred share units and restricted share units held by current directors and officers or other third parties, and all equity claims shall have been cancelled or extinguished or otherwise dealt with to the satisfaction of the Supporting Creditor, acting reasonably to ensure that no rights in respect thereof attach to the assets and property conveyed to the Supporting Creditor pursuant to the Transaction;
- (xi) the Unsecured Liabilities of the Company shall have been transferred and vested to Newco such that the Unsecured Liabilities shall no longer constitute liabilities of the Company;

- (xii) the Supporting Creditor, acting reasonably, shall be satisfied with the use of proceeds and payments relating to all aspects of the Transaction, including, without limitation, any change of control payments, consent fees, transaction fees or third party fees, payable by the Company to any person (other than a Governmental Entity) in respect of or in connection with the Transaction, including without limitation, pursuant to any employment agreement or incentive plan of the Company; and
- (xiii) the Parties shall have complied in all material respects with each covenant in this Agreement that is to be performed on or before the Effective Time.

7. Conditions Precedent to the Supporting Creditor's Support Obligations for the Transaction

- (a) The obligation of the Supporting Creditor to vote in favour of the Plan and consummate the Transaction shall be subject to the reasonable satisfaction of the following conditions, each of which can only be waived by the Supporting Creditor:
 - (i) the Plan, and all other material filings by or on behalf of the Company, or Orders entered by the Court, in the CCAA proceedings to date, shall have been filed, and the Orders shall have been entered, in form and substance acceptable to the Supporting Creditor, acting reasonably;
 - (ii) the terms and conditions of the Plan shall be consistent with this Agreement or otherwise acceptable to the Supporting Creditor, acting reasonably;
 - (iii) the Company shall have complied in all material respects with each covenant in this Agreement;
 - (iv) Sheetal Jaitly shall have confirmed that he intends to remain with the Company in the post Transaction period in a manner satisfactory to the Supporting Creditor and to devote his undivided time and attention to the management and growth of the Company's business;
 - (v) the representations and warranties of the Company set forth in this Agreement shall be true and correct in all material respects, in each case except:
 - (A) as such representations and warranties may be affected by the occurrence of events or transactions contemplated by this Agreement, and
 - (B) where the failure of such representations and warranties to be so true and correct, individually or in the aggregate, would not reasonably be expected to have a material adverse effect;
 - (vi) the Company shall have paid all reasonable professional fees, costs and expenses of the Supporting Creditor;

- (vii) the Supporting Creditor shall be satisfied that all steps taken in this Transaction shall have no adverse effects, or consequences on the priority, enforceability, and eligibility of the Secured Debt, or in any manner adversely affect the Supporting Creditor except as specifically contemplated in the Transaction or any amendments thereto that have specifically agreed to by the Supporting Creditor; and

8. Conditions Precedent to Company's Obligations to consummate the Transaction

- (a) The obligations of the Company under this Agreement shall be subject to the reasonable satisfaction of the following conditions, each of which, if not satisfied, can only be waived by the Company:
 - (i) the Supporting Creditor shall have complied in all material respects with each of their covenants in this Agreement that is to be performed on or before the Effective Time; and
 - (ii) the representations and warranties of the Supporting Creditor set forth in this Agreement shall be true and correct in all material respects as of the Effective Time, with the same force and effect as if made at and as of such time, except that representations and warranties that are given as of a specified date shall be true and correct in all material respects as of such date.

9. Consenting Party Termination Events

This Agreement may be terminated with respect to the obligations of the Supporting Creditor by the delivery to the Company of a written notice by any such Supporting Creditor in the exercise of its sole discretion, upon the occurrence and, if applicable, continuation of any of the following events:

- (a) the Company takes any action inconsistent with this Agreement or fails to comply with, or defaults in the performance or observance of, any material term, condition, covenant or agreement set forth in this Agreement, which, if capable of being cured, is not cured within ten (10) Business Days after the receipt of written notice of such failure;
- (b) any representation, warranty or acknowledgement of the Company made in this Agreement shall prove untrue in any material respect as of the date when made;
- (c) the Company takes any action inconsistent with this Agreement or fails to comply with, or defaults in the performance or observance of, any material term, condition, covenant or agreement set forth in this Agreement, which, if capable of being cured, is not cured within ten (10) Business Days after the receipt of written notice of such failure or default;
- (d) the amendment, modification or filing of a pleading by the Company seeking to amend or modify the Transaction Terms or the Plan, or any material document or order relating thereto, if such amendment or modification is not acceptable to the Supporting Creditor, acting in a manner consistent with the terms of this Agreement;

- (e) the conditions set forth in Sections 6 and 7 are not satisfied or waived or the Supporting Creditor determines that there is no reasonable prospect that the conditions set forth in Section 6 and 7 will be satisfied or waived.

10. Company Termination Events

This Agreement may be terminated by the delivery to the Supporting Creditor of a written notice by the Company, in the exercise of its sole discretion, upon the occurrence and continuation of any of the following events:

- (a) the Supporting Creditor takes any action inconsistent with this Agreement or fails to comply with, or defaults in the performance or observance of, any material term, condition, covenant or agreement set forth in this Agreement, which, if capable of being cured, is not cured within ten (10) Business Days after the receipt of written notice of such failure or default;
- (b) any representation, warranty or acknowledgement of any of the Supporting Creditor made in this Agreement shall prove untrue in any material respect as of the date when made;
- (c) the amendment, modification or filing of a pleading by any Supporting Creditor seeking to amend or modify Transaction or the Plan, or any material document or order relating thereto, if such amendment or modification is not acceptable to the Company, acting in a manner consistent with the terms of this Agreement;
- (d) if this Agreement is amended, modified or supplemented or any matter herein is approved, consented to or waived such that the Outside Date is extended, or the effect of any such amendment materially adversely changes the fundamental terms of the Transaction as they relate to the Company, in each case without the Company's consent; and
- (e) the conditions set forth in Sections 6 and 8 are not satisfied or waived or the Company determines that there is no reasonable prospect that the conditions set forth in Sections 6 and 8 will be satisfied or waived.

11. Automatic and Mutual Termination Events

- (a) This Agreement shall automatically terminate as to all Parties, without any further required action or notice by any Party, immediately upon the occurrence of any of the following events:
 - (i) the Court denies the Plan Approval Order or if the Plan Approval Order is approved then such Plan Approval Order is subsequently reversed, vacated or otherwise materially modified in a manner inconsistent with this Agreement;
 - (ii) the CCAA Proceedings are dismissed or a receiver, interim receiver, receiver and manager, trustee in bankruptcy, liquidator or administrator is appointed in respect of the Company; and

- (iii) the closing of the Transaction (the “**Plan Implementation Date**”).
- (b) this Agreement, and the obligations of all Parties hereunder, may be terminated by mutual agreement in writing among the Parties.

12. Effect of Termination

- (a) Upon termination of this Agreement, this Agreement shall be of no further force and effect and each Party hereto shall be automatically and simultaneously released from its commitments, undertakings, and agreements under or related to this Agreement, provided, however, that such termination shall not relieve any Party of its breach or non-performance of its obligations hereunder prior to the date of such termination. Upon the occurrence of any termination of this Agreement, each Party shall have the rights and remedies that it would have had it not entered into this Agreement and shall, subject to the CCAA proceedings and the terms of any Court Orders made therein, be entitled to take all actions, whether with respect to the Transaction or otherwise, that it would have been entitled to take had it not entered into this Agreement.
- (b) Upon the occurrence of any termination of this Agreement, any and all consents, votes or support tendered prior to such termination by the Supporting Creditor shall be deemed, for all purposes, null and void from the first instance and shall not be considered or otherwise used in any manner by the Parties in connection with the Transaction, this Agreement, the CCAA proceedings or otherwise.

13. Further Assurances

Each Party shall do all such things in its control, take all such actions as are commercially reasonable, deliver to the other Parties such further information and documents and execute and deliver to the other Parties such further instruments and agreements as another Party shall reasonably request to consummate or confirm the transactions provided for in this Agreement, to accomplish the purpose of this Agreement or to assure to the other Party the benefits of this Agreement.

14. Amendment, Waivers

- (a) This Agreement may not be modified, amended, or supplemented except in writing signed by the Company and the Supporting Creditor.
- (b) The Company shall be permitted to rely upon any written confirmations (including by e-mail).

15. Miscellaneous

- (a) Notwithstanding anything herein to the contrary, this Agreement applies only to the Supporting Creditor with respect to its legal and/or beneficial ownership of, or its investment and voting discretion over the Secured Debt.
- (b) The headings of the Sections of this Agreement have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

- (c) Unless the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing any gender shall include all genders.
- (d) Unless otherwise specifically indicated, all sums of money referred to in this Agreement are expressed in Canadian Dollars (\$CAD).
- (e) This Agreement, and any other agreements contemplated by or entered into pursuant to this Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both oral and written, among the Parties with respect to the subject matter hereof.
- (f) Any Person signing this Agreement in a representative capacity (i) represents and warrants that he/she is authorized to sign this Agreement on behalf of the Party he/she represents and that his/her signature upon this Agreement will bind the represented Party to the terms hereof, and (ii) acknowledges that the other Parties hereto have relied upon such representation and warranty.
- (g) Time is of the essence in the performance of the Parties' respective obligations. Any date, time or period referred to in this Agreement shall be of the essence, except to the extent to which the Parties agree in writing to vary any date, time or period, in which event the varied date, time or period shall be of the essence.
- (h) All notices and other communications which may be or are required to be given pursuant to any provision of this Agreement shall be given or made in writing and shall be deemed to be validly given if served personally or by facsimile transmission, in each case addressed to the particular Party:

- (i) if to the Company:

TribalScale Inc.
420 - 207 Queens Quay West
Toronto, ON M5J 1A7

Attention: Mr. Sheetal Jaitly
Chief Executive Officer
Email: sheetal@tribalscale.com

with a copy by email or fax (which shall not be deemed notice) to:

Weisz Fell Kour LLP
5600-100 King Street West
Toronto, ON M5X 1C9

Attention: Caitlin Fell
Partner
Email: cfell@wfkllaw.ca
Fax: 416-613-8290

- (ii) if to the Supporting Creditor:

1924191 Ontario Inc.
390 Midwest Rd.
Scarborough, ON M1P 3B5

Attention: Brij Sharma
Email: brij.sharma@bdsfleet.com

with a copy by email or fax (which shall not be deemed notice) to:

Goldman, Sloan, Nash and Haber LLP

480 University Ave
Toronto, ON M5G 1V2

Attention: Mario Forte
Email: forte@gsnh.com
Fax: 416.597.3370

- (iii) or at such other address of which any Party may, from time to time, advise the other Parties by notice in writing, given in accordance with the foregoing. The date of receipt of any such notice shall be deemed to be the date of delivery or transmission thereof.
- (i) If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the terms of this Agreement remain as originally contemplated to the fullest extent possible.
- (j) This Agreement shall be binding upon and endure to the benefit of the Parties hereto and each of their respective successors, assigns, heirs and personal representatives, provided that no Party may assign, delegate or otherwise transfer any of its rights, interests or obligations under this Agreement without the prior written consent of the other Parties hereto.
- (k) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to principles of conflicts of law. Each Party submits to the jurisdiction of the courts of the Province of Ontario in any action or proceeding arising out of or relating to this Agreement.

- (l) No director, officer or employee of the Company or any of its legal, financial or other advisors shall have any personal liability to the Supporting Creditor under this Agreement. Similarly, no director, officer or employee of the Supporting Creditor or any or any of its legal, financial or other advisors shall have any personal liability to the Company under this Agreement.
- (m) Where any representation or warranty of the Company contained in this Agreement is expressly qualified by reference to the knowledge of the Company, it refers to the actual knowledge, after due inquiry, of the Chief Executive Officer of the Company, and does not include the knowledge or awareness of any other individual or any constructive, implied, or imputed knowledge.
- (n) Unless expressly stated herein, this Agreement shall be solely for the benefit of the Parties, and no other person or entity shall be a third-party beneficiary hereof.
- (o) This Agreement may be signed in counterparts, each of which, when taken together, shall be deemed an original. Execution of this Agreement is effective if a signature is delivered by facsimile transmission or electronic (e.g., pdf) transmission.

[Remainder of this page intentionally left blank; next page is signature page]

This Agreement has been agreed and accepted on the date first written above.

TRIBALSCALE INC.

By: _____

Name: Sheetal Jaitly

Title: Director

1924191 ONTARIO INC.

By: _____

Name: Brij Sharma

Title:

SCHEDULE “A”**CURRENT VALUE OF SECURED DEBT**

\$2,648,000 CAD

LOAN DOCUMENTS/SECURITY

1. The Letter Agreement;
2. Scotiabank Visa Business Card Agreement dated July 5, 2018;
3. Scotiabank Visa Business Card Agreement – US\$ dated August 1, 2018;
4. General Security Agreement dated July 9, 2018;
5. Priority Agreement between Business Development Bank of Canada, The Bank of Nova Scotia and Tribalscale Inc. dated July 11, 2018;
6. Scotia Leasing Progress Payment Agreement, LID #001-0068567-000 dated November 21, 2018;
7. Scotia Leasing Payment Authorization, LID#: 001-0068567-000 dated November 21, 2018;
8. Scotia Leasing Payment Authorization, LID# 001-0068567-000 dated December 20, 2018;
9. Scotia Leasing Payment Authorization LID #001-0068567-000 dated January 3, 2019.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TRIBALSCALE INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AFFIDAVIT OF SHEETAL JAITLEY

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pcorney@wflaw.ca
Tel: 416.613.8287

Fax: 416.613.8290

Lawyers for TribalScale Inc.

00022970

Final Audit Report

2020-10-27

Created:	2020-10-27
By:	Connie Deng (cdeng@wflaw.ca)
Status:	Signed
Transaction ID:	CBJCHBCAABAAUv8vy78OBv7lQtkvm7kFzz8xcdBm6G0A

"00022970" History

-  Document created by Connie Deng (cdeng@wflaw.ca)
2020-10-27 - 4:21:12 PM GMT- IP address: 38.113.173.169
-  Document emailed to Patrick Corney (pcorney@wflaw.ca) for signature
2020-10-27 - 4:23:01 PM GMT
-  Email viewed by Patrick Corney (pcorney@wflaw.ca)
2020-10-27 - 4:29:33 PM GMT- IP address: 38.113.173.169
-  Document e-signed by Patrick Corney (pcorney@wflaw.ca)
Signature Date: 2020-10-27 - 4:29:58 PM GMT - Time Source: server- IP address: 38.113.173.169
-  Document emailed to Sheetal Jaitly (sheetal@tribalscale.com) for signature
2020-10-27 - 4:30:00 PM GMT
-  Email viewed by Sheetal Jaitly (sheetal@tribalscale.com)
2020-10-27 - 6:35:03 PM GMT- IP address: 66.102.8.13
-  Document e-signed by Sheetal Jaitly (sheetal@tribalscale.com)
Signature Date: 2020-10-27 - 7:53:48 PM GMT - Time Source: server- IP address: 12.26.136.96
-  Agreement completed.
2020-10-27 - 7:53:48 PM GMT

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MADAM)	FRIDAY, THE 30 TH
)	
JUSTICE CONWAY)	DAY OF OCTOBER, 2020

**IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED**

**AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
TRIBALSCALE INC.**

Applicant

**ORDER
(Re Stay Extension and Restructuring Support Agreement)**

THIS MOTION, made by TribalScale Inc. (the “**Applicant**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c C.-36, as amended (the “**CCAA**”), proceeded on this day by videoconference due to the COVID-19 crisis.

ON READING the Affidavit of Sheetal Jaitly affirmed October 27, 2020 (the “**Jaitly Affidavit**”) and on hearing the submissions of counsel for the Applicant and for MNP Inc. in its capacity as the Applicant’s CCAA monitor (the “**Monitor**”), and any other person listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Christel Paul dated October 27, 2020, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF STAY PERIOD

2. **THIS COURT ORDERS** that the stay period referred to in the Initial Order of the Honourable Justice Gilmore dated July 31, 2020 is extended until and including January 31, 2021.

RESTRUCTURING SUPPORT AGREEMENT

3. **THIS COURT ORDERS** that the restructuring support agreement (the “**RSA**”) described in and appended to the Jaitly Affidavit is approved. The Applicant is hereby authorized, empowered, and directed to enter into the RSA, with such minor amendments as the Applicant may deem necessary; and the Applicant is authorized, empowered, and directed to take all steps and actions in respect of, and to comply with its obligations under, the RSA. For greater certainty, this paragraph does not constitute approval of the Transaction (as that term is defined in the RSA).

GENERAL

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective

agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

5. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

6. **THIS COURT ORDERS** that this Order is effective from the date it is made without any need for entry and filing.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, c. C-36, AS AMENDED

Court File No. CV-20-00645116-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TRIBALSCALE INC. (the "Applicant")

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

ORDER
(Re Stay Extension and Restructuring Support Agreement)

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Lawyers for TribalScale Inc.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TRIBALSCALE INC. (the "Applicant")

	<div><div>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</div><div><i>Proceedings commenced at Toronto</i></div><div>NOTICE OF MOTION (Returnable October 30, 2020)</div><div>WEISZ FELL KOUR LLP 100 King Street West, Suite 5600 Toronto, ON M5X 1C9 Sharon Kour - LSO No. 58328D skour@wfkaw.ca Tel: 416.613.8283 Caitlin Fell - LSO No. 60091H cfell@wfkaw.ca Tel: 416.613.8282 Pat Corney - LSO No. 65462N pcorney@wfkaw.ca Tel: 416.613.8287 Fax: 416.613.8290 Lawyers for Tribalscale Inc.</div></div>
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