

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

**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  
2800741 ONTARIO INC.**

**FIFTH REPORT TO THE COURT  
SUBMITTED BY MNP LTD.,  
IN ITS CAPACITY AS COURT APPOINTED MONITOR  
IN THE CCAA PROCEEDINGS**

**JUNE 25, 2021**

**I. INTRODUCTION**

1. On May 19, 2020 (the “**NOI Filing Date**”), TribalScale Inc. (“**TribalScale**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). MNP Ltd. (“**MNP**”) was named proposal trustee in the NOI proceeding. TribalScale’s NOI proceedings are referred to herein as the “**NOI Proceedings**”.
2. On July 31, 2020, the Court issued an order that, *inter alia*, ordered:
  - a. a stay of proceedings in favour of TribalScale until October 31, 2020 (the “**Stay Period**”);

- b. declaring that the NOI Proceedings be continued under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. C-36, as amended (the "CCAA");
  - c. the appointment of MNP as the Monitor (the "**Monitor**") in the CCAA proceedings (the "**CCAA Proceedings**"); and
  - d. charges on the properties, assets and undertakings of the Company (collectively the "**Property**"), in the following order of priority:
    - i. Administration Charge - to the maximum amount of \$125,000; and
    - ii. Directors' Charge - to the maximum amount of \$125,000.
3. Prior to this Report the Monitor has filed four (4) reports in respect of the CCAA Proceedings, as summarized below:
- a. On October 28, 2020, the Monitor filed its first report (the "**First Report**") in support of the Company's motion to approve, *inter alia*: (i) extending the Stay Period until January 31, 2021; and (ii) the Restructuring Support Agreement between TribalScale and its senior secured creditor, 1924191 Ontario Inc. ("**192**") (the "**RSA**"). On October 30, 2020, the Court approved the RSA and granted the requested extension of the Stay Period.
  - b. On November 24, 2020, the Monitor filed its second report (the "**Second Report**") in support of the Company's motion to seek a Court order, *inter alia*, (i) authorizing the filing of TribalScale's Plan of Compromise and Arrangement; (ii) authorizing the Company, with the assistance of the Monitor, to call, hold and conduct a meeting of creditors (the "**Meeting**") to consider and vote on the TribalScale's Plan of Compromise and Arrangement dated November 22, 2020 (as amended on January 4, 2021) (the "**Plan**"); and (iii) approving the procedures to be followed at the Meeting, including the voting procedures. On November 25, 2020, the Court granted an Order in respect of the foregoing, a copy of which is enclosed as **Appendix "A"**.

- c. On January 9, 2021, the Monitor issued its third report (the “**Third Report**”) in support of the TribalScale’s motion to seek a Court order, *inter alia*, (i) sanctioning the Plan; (ii) approving the Releases (as such term is defined in the Plan) contained in the Plan; (iii) adding a newly incorporated subsidiary company of TribalScale, 2800741 Ontario Inc. (“**280 ON**”, and collectively with TribalScale, the “**Companies**”), as an Applicant in the CCAA Proceedings; and approving the vesting in 280 ON of: (i) all of TribalScale’s unsecured liabilities (the “**Unsecured Liabilities**”), and (ii) TribalScale’s claims against Sirius XM Connected Vehicle Services (“**SiriusXM**”), which include (among other things) any actions, claims, rights or lawsuits of any nature owing to TribalScale by SiriusXM under a professional services agreement dated April 26, 2019 (the “**Professional Services Agreement**”) as further particularized through individual statements of work including the statement of work effective November 23, 2019 (the “**SiriusXM Receivable**”). On January 11, 2021, the Court granted an Order in respect of the foregoing (the “**Sanction Order**”), a copy of which is enclosed as **Appendix “B”**.
- d. On January 27, 2021, the Monitor filed its fourth report (the “**Fourth Report**”) in support of the Companies’ motion to seek, among other things, (i) an extension of the Stay Period through June 30, 2021; (ii) approval of the litigation funding agreement (“**LFA**”); (iii) TribalScale’s discharge from the CCAA Proceedings; and (iv) TribalScale’s removal as an applicant in the CCAA Proceedings. On January 28, 2021, the Court granted an Order in respect of the foregoing (the “**TribalScale Discharge and LFA Approval Order**”), a copy of which is appended as **Appendix “C”** to this Report. The First Report, Second Report, Third Report and Fourth Report, each without appendices, (collectively the “**Reports**”) are attached as **Appendices “D”, “E”, “F” and “G”,** respectively.
4. Information regarding the NOI Proceedings and the CCAA Proceedings has been posted to the Monitor’s case website (the “**Case Website**”) at <https://mnpdebt.ca/en/corporate/corporate-engagements/TribalScale-inc.>

5. As noted in the Jaitly Affidavits (as such term is defined below), the primary objectives of the CCAA Proceedings (the “**CCAA Objectives**”) were to create a stabilized environment for TribalScale to continue operating as a going concern business while TribalScale worked with the Monitor and other advisors to (i) resolve a dispute with SiriusXM; and (ii) to implement the RSA by way of a plan of arrangement under the CCAA (the RSA was enclosed as Exhibit “A” of the November Affidavit (as such term is defined below)).

## II. RESTRICTIONS

6. In preparing this Fifth Report and making the comments herein, the Monitor has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the affidavits of Sheetal Jaitly, TribalScale’s CEO, dated June 15, 2020 and July 25, 2020 filed in the NOI Proceedings and the affidavits of Sheetal Jaitly, dated October 27, 2020, November 22, 2020 (the “**November Affidavit**”), January 6, 2021, January 26, 2021 and June 23, 2021 (the “**June 23<sup>rd</sup> Affidavit**”) in connection with the CCAA Proceedings (collectively, the “**Jaitly Affidavits**”), TribalScale’s books and records, discussions with the Companies’ management (“**Management**”) and information from other third-party sources (collectively, the “**Information**”). Except as specifically noted in this Report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.
7. The Monitor also bases its report on the Companies’ cash flow projections and underlying assumptions and notes that its review and commentary thereon were performed in accordance with the requirements set out in the Canadian Association of Insolvency and Restructuring Professionals’ Standards of Professional Practice No. 9 (Cash Flow Statement). Certain of the information referred to in this Fifth Report consists of financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been performed. Future oriented financial information referred to in this Fifth Report was prepared based on estimates and assumptions provided

by Management. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material. On March 17, 2020, the Province of Ontario declared a state of emergency due to the COVID-19 pandemic. The effect of this declaration along with other federal, provincial and municipal actions regarding the COVID-19 pandemic on the Companies' business and the economy in general has yet to be determined. In developing the cash flow projections, Management has reflected its current view of the potential impact of the COVID-19 pandemic on its cash flow. However, the ongoing uncertainty and instability caused by the COVID-19 pandemic and various government regulatory actions in response thereto, may cause actual results to differ from the projected amounts and these variations may be material.

8. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars.
9. Capitalized terms not defined in this Report have the meaning ascribed to them in the Plan.

### **III. PURPOSE OF THIS REPORT**

10. The purpose of this Report (the "**Fifth Report**") is to:
  - a. Update, and provide the Court with information with respect to:
    - i. the activities of the Companies and the Monitor since the Fourth Report;
    - ii. 280 ON's extended cash flow projection through June 30, 2022 (the "**Extended 280 ON Cash Flow Projection**");
  - b. provide the Monitor's support for, and observations in respect of 280 ON's request that the Court grant an order, *inter alia*:
    - i. approving the Fifth Report and the activities of the Monitor as described in the Reports and herein;

- ii. extending the Stay Period until June 30, 2022 (the “**Requested Stay Extension**”); and
- iii. providing certain other related and ancillary relief.

#### **IV. BACKGROUND INFORMATION**

11. TribalScale is an Ontario corporation that until May 19, 2020 was carrying on business out of leased premises located at 200 Wellington Street West, Toronto, Ontario.
12. TribalScale is a technology innovation firm providing services to companies located in Canada and United States on digital product strategy, design and development for web, mobile and emerging tech. The Company partners with large enterprises and works with them to release digital products to market that satisfy their consumers.
13. As reported previously in the Reports and the Jaitly Affidavits, in accordance with the RSA and the Plan, TribalScale incorporated 280 ON, a subsidiary corporation of TribalScale. As part of the Sanction Order the Court granted a reverse vesting order:
  - a. vesting out absolutely all the Unsecured Liabilities from TribalScale to 280 ON; and
  - b. vesting the SiriusXM Receivable in 280 ON.
14. Since the Fourth Report, TribalScale has Implemented the Plan on January 27, 2021, and accordingly, has been discharged from the CCAA Proceedings.
15. 280 ON’s only asset is the SiriusXM Receivable. As detailed below, 280 ON is pursuing collection of the SiriusXM Receivable as part of the CCAA Proceedings.

#### **V. ACTIVITIES OF TRIBALSCALE**

16. Since the Fourth Report, TribalScale has, *inter alia*:
  - a. continued operating without CCAA protection;
  - b. entered into the LFA with 280 ON; and

- c. Implemented the Plan on January 27, 2021, and accordingly, has been discharged from the CCAA Proceedings.

## **ACTIVITIES OF THE MONITOR**

17. The Monitor has undertaken the following activities since the Fourth Report, *inter alia*:

- a. updated the Case Website, as necessary;
- b. monitored 280 ON's cash flow and assisted in the preparation of the Extended 280 ON Cash Flow Projection, as discussed in greater detail later in this Report;
- c. on January 27, 2021, issued the Monitor's certificate wherein it certified that Tribalscale implemented the Plan;
- d. as detailed below, developed a process to formulate the creditors' committee;
- e. engaged in discussions with the Companies and their counsel, the creditors' committee, and the Monitor's counsel with regard to the collection of the SiriusXM Receivable; and
- f. prepared this Report.

## **ACTIVITIES OF 280 ON**

18. 280 ON has undertaken the following activities since the Fourth Report, *inter alia*:

- a. entered into the LFA with TribalScale;
- b. consulted with its counsel, the creditors' committee, and the Monitor in respect of 280 ON's pursuing recovery of the SiriusXM Receivable; and
- c. as detailed below and through counsel, communicated with counsel for SiriusXM in respect of the litigation.

## **THE SIRIUSXM RECEIVABLE**

19. To date, SiriusXM has not remitted payment of the SiriusXM Receivable to TribalScale or 280 ON. The Monitor notes that SiriusXM disputes TribalScale's claim and alleges there were deficiencies with respect to TribalScale's performance in completing the contract with SiriusXM.
20. Under the LFA:
- a. TribalScale is funding 280 ON on an as needed basis to pursue recovery of the SiriusXM Receivable;
  - b. 280 ON is, at regular intervals during the litigation, and in any event prior to any key steps in the litigation, to report to the Monitor and TribalScale on the status of the litigation, including 280 ON's ongoing assessment of the merits of the litigation; and
  - c. 280 ON, under the direction of a creditors' committee and with the oversight of the Monitor, shall remain in control of the SiriusXM litigation.

### ***Selection of the Creditors Committee***

21. The Monitor has consulted with 280 ON's counsel in order to develop a process to formulate the creditors' committee which is to provide advice and direction with regard to the conduct of the SiriusXM litigation.
22. After this consultation and in order to solicit interest in having creditors serve on the creditors' committee, on March 23, 2021, the Monitor directed an email (the "**March 23<sup>rd</sup> Email**") to representatives of twelve (12) of 280 ON's creditors, having an aggregate claim of approximately \$1,243,575 of the estimated unsecured claims against 280 ON (excluding potential claims of parties dealing at non-arms' length). These creditors represent approximately 88% in value and 24% of the number of the unsecured creditor pool (excluding potential claims of parties dealing at non-arms' length), as declared by TribalScale (which liabilities have since vested in 280 ON pursuant to the Sanction Order) at the outset of the NOI Proceedings.



23. In addition to soliciting participation on the creditors' committee, the March 23<sup>rd</sup> Email advised recipients that the creditors' committee will be comprised of up to five (5) unsecured creditors. The recipients were further advised if they wished to participate in the Creditors' Committee, that they must inform the Monitor by 5:00 EST on March 26, 2021 and that if more than five (5) creditors apply, the five (5) largest creditors by claim value will be selected.
24. In response to its March 23<sup>rd</sup> Email, only Matthew Di Giovanni of Pricewaterhouse Coopers LLP expressed an interest in serving on the creditors' committee and is the sole member of the creditors' committee.

### ***SiriusXM Litigation***

25. Since forming the creditors' committee, a number of meetings have taken place involving counsel for 280 ON, the creditors' committee, the Monitor, and its counsel and TribalScale relating to the SiriusXM Receivable.
26. Settlement offers exchanged between Sirius XM and 280 ON have not resolved the dispute relating to the SiriusXM Receivable.
27. On May 25, 2021, SiriusXM filed an Original Petition with the District Court of Dallas County, Texas, asserting claims under Texas Civil Practices and Remedies Code Chapter 37 (*Uniform Declaratory Judgments Act*), seeking a declaration that the "exclusive jurisdiction" for any lawsuit brought by TribalScale and 280 ON lies with "courts located in Dallas County, Texas" pursuant to the Professional Services Agreement.

### ***Retention of Texan Counsel***

28. Given the efforts to resolve the SiriusXM dispute through negotiation were not fruitful, 280 ON intends to litigate to recover the SiriusXM Receivable. Recognizing the Professional Services Agreement is governed by the laws of Texas, 280 ON intends to pursue the SiriusXM Receivable issue in Texas. Any litigation to resolve the Sirius XM Receivable is expected to be prolonged.
29. After consulting the creditors' committee and the Monitor, 280 ON has retained a Texas-based legal firm to represent it in its efforts to litigate and recover the SiriusXM Receivable.

## Cash Flow Projections

30. 280 ON, with the assistance of the Monitor, prepared the 280 cash flow projections for the period from January 25, 2021 to July 4, 2021 and were prepared using the probable and hypothetical assumptions set out in the notes attached to the projections.
31. In support of 280 ON's motion returnable June 28, 2021 seeking, among other things, the Requested Stay Extension, 280, with the assistance of the Monitor has prepared the Extended 280 ON Cash Flow Projection. A copy of the Extended 280 ON Cash Flow Projection is attached as **Appendix "H"**.
32. The Monitor's review of the Extended 280 ON Cash Flow Projection consisted of enquiries, analytical procedures and discussions related to information supplied to us by 280 ON. Since hypothetical assumptions need not be supported, the procedures with respect to those assumptions were limited to evaluating whether they were consistent with the purpose of the forecast. The Monitor has also reviewed the support for the probable assumptions and the preparation and presentation of the forecast. The assumptions include that 280 ON's only expenses will be the professional fees related to the SiriusXM litigation and any such expenses will be funded by TribalScale pursuant to the LFA. However, in developing the Extended 280 ON Cash Flow Projection and given the uncertainty over the timing of the SiriusXM litigation, the Extended 280 ON Cash Flow Projection does not estimate the quantum of professional fees that will likely be incurred in connection with the SiriusXM litigation.
33. Counsel for 280 ON, the Monitor and the Monitor's counsel have rendered periodic accounts to 280 ON. These invoices have been paid in a timely manner.
34. Based on our review, nothing has come to the attention of the Monitor that causes the Monitor to believe that, in all material respects:
  - a. the hypothetical assumptions are not consistent with the purpose of the forecast;
  - b. as at the date of the Report, the probable assumptions used in developing the Extended 280 ON Cash Flow Projection are not suitably supported and consistent

with 280 ON's plans, or do not provide a reasonable basis for the forecast, given the hypothetical assumptions; and

- c. the Extended 280 ON Cash Flow Projection does not reflect the probable and hypothetical assumptions.

## **X. EXTENSION OF THE STAY PERIOD**

- 35. Pursuant to the TribalScale Discharge and LFA Approval Order, the Court extended the Stay Period until June 30, 2021;
- 36. Originally, 280 ON requested the extension to June 30, 2021 to allow it to pursue adjudication of the SiriusXM Receivable within the CCAA proceeding.
- 37. As noted previously, 280 ON intends to continue to pursue the recovery of the SiriusXM Receivable and seeks the Requested Stay Extension to provide it additional time to litigate the SiriusXM Receivable claim.
- 38. The Monitor is of the view that no creditor will be materially prejudiced by the Requested Stay Extension as 280 ON's professional fees related to the SiriusXM litigation are being funded under the LFA. To date, Tribalscale has been paying the ongoing obligations under the LFA. Based on the June 23<sup>rd</sup> Affidavit, Tribalscale's business is thriving and appears to have the means of meeting its obligations under the LFA.
- 39. The Monitor is of the view that 280 ON has acted and is continuing to act in good faith and with due diligence and supports the Requested Stay Extension.

## **XII. CONCLUSION AND RECOMMENDATION**

- 40. Based on the foregoing, the Monitor respectfully recommends that the Court make an order granting the relief detailed in paragraph 10 of this Report.

All of which is respectfully submitted on this 25<sup>th</sup> day of June 2021.

**MNP LTD.,**  
in its capacity as Court Appointed Monitor of  
2800741 Ontario Inc.  
and not in its personal or corporate capacity

Per:

A handwritten signature in blue ink, appearing to read "Sheldon Title".

Sheldon Title  
Licensed Insolvency Trustee

# Appendix "A"

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

THE HONOURABLE MR. ) WEDNESDAY, THE 25TH  
JUSTICE KOEHNEN ) DAY OF NOVEMBER, 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

**MEETING ORDER**

**THIS MOTION**, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "CCAA"), for an order, *inter alia*, (a) if necessary, abridging the time for service of the Notice of Motion and the Motion Record and validating service thereof; (b) accepting the filing of a Plan of Compromise and Arrangement of the Applicant, dated November 22, 2020 (the "**Plan**") pursuant to the CCAA, and attached hereto as **Schedule "A"**; (c) authorizing the Applicant to establish two classes of Affected Secured Creditors (as defined below) for the purpose of considering and voting on a resolution to approve the Plan, (d) authorizing the Applicant to call, hold and conduct a meeting (the "**Creditors' Meeting**") of Affected Secured Creditors (as defined in the Plan) to consider and vote on a resolution to approve the Plan; (e) approving the procedures to be followed with respect to the calling and conduct of the Creditors' Meeting; (f) setting the date for the hearing of the Applicant's

motion seeking an order to sanction the Plan (the “**Sanction Order**”), and (g) approving the second report of the MNP LTD. in its capacity as court appointed monitor (“**Monitor**”) (the “**Second Report**”) and the activities as set out therein, was heard this day via Zoom, due to the COVID-19 pandemic.

**ON READING** the within Notice of Motion, the Affidavit of Sheetal Jaitly, affirmed on November 22, 2020 including the exhibits thereto, the Second Report, and upon hearing the submissions of counsel for the Applicant and counsel for the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Christel Paul, affirmed November 23, 2020:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time and method for service of the Notice of Motion and the Motion Record herein is hereby validated so that this Motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.
2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Meeting Order will have the meanings ascribed to them in the Plan.

#### **PLAN OF COMPROMISE AND ARRANGEMENT**

3. **THIS COURT ORDERS** that the Plan is hereby accepted for filing, and the Applicant is hereby authorized to seek approval of the Plan from the Affected Secured Creditors in the manner set forth herein.
4. **THIS COURT ORDERS** that the Applicant, subject to the provisions of the Plan, be and are hereby authorized to make and to file a modification or restatement of, or amendment

or supplement to, the Plan (each a “**Plan Modification**”) prior to or at the Creditors’ Meeting, in which case any such Plan Modification will, for all purposes, be and be deemed to form part of and be incorporated into the Plan.

5. **THIS COURT ORDERS** that notice of such a Plan Modification will be sufficient at or before the Creditors’ Meeting if, prior to or at the Creditors’ Meeting: (a) the Chair (as defined in this Meeting Order) communicates the details of the Plan Modification to Affected Secured Creditors and other persons present at the Creditors’ Meeting prior to any vote being taken at the Creditors’ Meeting; (b) the Applicant provides notice to the Applicant’s CCAA proceeding service list (as amended from time to time, the “**Service List**”) of any such Plan Modification and files a copy thereof with the Court forthwith and in any event prior to the Court hearing the motion seeking the Sanction Order (the “**Sanction Motion**”); and (c) the Monitor posts an electronic copy of the Plan Modification on the Monitor's website, <https://mnpdebt.ca/en/corporate/corporate-engagements/tribalscale-inc> (the “**Website**”) forthwith and in any event prior to the Court hearing the Sanction Motion.
6. **THIS COURT ORDERS** that after the Creditors’ Meeting (and both prior to and subsequent to the obtaining of any Sanction Order), the Applicant may at any time, subject to the provisions of the Plan, effect a Plan Modification: (a) pursuant to an Order of the Court, or (b) without further Court Order, where such Plan Modification concerns a matter which, in the opinion of the Applicant and the Monitor, is of an administrative nature required to better give effect to the implementation of the Plan or the Sanction Order, or to cure any errors, omissions or ambiguities, and in either circumstance is not materially adverse to the financial or economic interests of the Affected Secured Creditors. The



Monitor will forthwith post on the Website any such Plan Modification, with notice of such posting forthwith provided to the Service List.

#### **FORMS OF DOCUMENTS**

7. **THIS COURT ORDERS** that the Notice of Creditors' Meeting and Sanction Hearing substantially in the form attached hereto as **Schedule "B"**, the proxy form substantially in the form attached hereto as **Schedule "C"** (the "**Proxy**"), and the form of voting resolution substantially in the form attached hereto as **Schedule "D"** (the "**Plan Resolution**"), are each hereby approved and the Applicant, with the consent of the Monitor, is authorized to make such changes to such forms of documents as it considers necessary or desirable to conform the content thereof to the terms of the Plan or this Meeting Order.

#### **CLASSIFICATION OF CREDITORS**

8. **THIS COURT ORDERS** that for the purposes of considering and voting on the Plan, the Affected Secured Creditors will be classified into two classes: (a) one class of creditors (the "**Converting Secured Creditor Class**") consisting of 1924191 Ontario Inc.; and (b) one class of creditors consisting of the Business Development Bank of Canada ("**BDC**" and the "**Paid-Out Secured Creditor Class**").

#### **NOTICE OF CREDITORS' MEETING**

9. **THIS COURT ORDERS** that in order to effect notice of the Creditors' Meeting, the Monitor will cause to be sent by e-mail copies of the Notice of Creditors' Meeting and Sanction Hearing, the Meeting Order, the Plan, and the Proxy (together, the "**Voting Package**") as soon as practicable after the granting of this Meeting Order and, in any event, no later than 4:00pm EST on December 8, 2020, to each Affected Secured Creditor.

10. **THIS COURT ORDERS** that the Monitor will forthwith post an electronic copy of the Voting Package (and any amendments made thereto in accordance with paragraph 7 hereof) on the Website.
11. **THIS COURT ORDERS** that the delivery of the Voting Package in the manner set out in paragraph 9 hereof, and the posting of the Voting Package on the Website in accordance with paragraph 10 hereof, will constitute good and sufficient service of this Meeting Order, the Plan, and good and sufficient notice of the Creditors' Meeting on all persons who may be entitled to receive notice thereof in these proceedings or who may wish to be present in person or by Proxy at the Creditors' Meeting, and no other form of notice or service need be made on such persons.
12. **THIS COURT ORDERS** that no later than one business day before the Creditors' Meeting, the Monitor will serve a report regarding the Plan on the Service List and cause such report to be posted on the Website.

#### **CONDUCT AT THE CREDITORS' MEETING**

13. **THIS COURT ORDERS** that the Applicant is hereby authorized to call, hold and conduct the meeting of the Affected Secured Creditors via Zoom (or any other videoconferencing service the Monitor, with the consent of the Applicant, deems appropriate) on December 10, 2020 at 4:00pm EST for the purpose of considering and voting on, with or without variation, the Plan Resolution to approve the Plan.
14. **THIS COURT ORDERS** that a representative of the Monitor, designated by the Monitor, will preside as the chair of the Creditors' Meeting (the "**Chair**") and, subject to any further Order of this Court, will decide all matters relating to the conduct of the Creditors' Meeting.

15. **THIS COURT ORDERS** that the Chair is authorized to accept and rely upon Proxies, or such other forms as may be acceptable to the Chair.
16. **THIS COURT ORDERS** that the quorum required at the Creditors' Meeting will be one (1) representative of the Converting Secured Creditor Class; present at such meeting in person or by Proxy.
17. **THIS COURT ORDERS** that the Monitor may appoint scrutineers for the supervision and tabulation of the attendance at, quorum at, and votes cast at the Creditors' Meeting (the "Scrutineers"). A Person designated by the Monitor will act as secretary at the Creditors' Meeting (the "Secretary").
18. **THIS COURT ORDERS** that if (a) the requisite quorum is not present at the Creditors' Meeting, or (b) the Creditors' Meeting is postponed by the request of the Applicant, then the Creditors' Meeting will be adjourned by the Chair to such time and place as the Chair deems necessary or desirable.
19. **THIS COURT ORDERS** that the Chair, with the consent of the Applicant, is hereby authorized to adjourn, postpone or otherwise reschedule the Creditors' Meeting on one or more occasions to such time(s), date(s) and place(s) as the Chair, with the consent of the Applicant, deems necessary or desirable (without the need to first convene such Creditors' Meeting for the purpose of any adjournment, postponement or other rescheduling thereof). None of the Applicant, the Chair or the Monitor will be required to deliver any notice of the adjournment of the Creditors' Meeting or adjourned Creditors' Meeting, provided that the Monitor will:
  - (a) forthwith post notice of the adjournment on the Website; and

(b) forthwith provide notice of the adjournment to the Service List.

Any Proxies validly delivered in connection with the Creditors' Meeting will be accepted as Proxies in respect of any adjourned Creditors' Meeting.

20. **THIS COURT ORDERS** that the only persons entitled to attend and speak at the Creditors' Meeting are the Affected Secured Creditors (or their respective duly appointed proxyholder), representatives of the Monitor, the Applicant, and all such parties' financial and legal advisors, the Chair, the Secretary and Scrutineers and their respective legal counsel and advisors. Any other person may be admitted to the Creditors' Meeting on invitation of the Applicant or the Chair.

#### **VOTING PROCEDURE AT THE CREDITORS' MEETING**

21. **THIS COURT ORDERS** that the Chair and the Monitor be and are hereby authorized to direct a vote by confidential written ballot or by such other means as the Chair or Monitor may consider appropriate, with respect to the Plan Resolution.
22. **THIS COURT ORDERS** that any Proxy for an Affected Secured Creditor must be received by the Monitor by 4:00 pm EST on December 9, 2020, or 24 hours (excluding Saturdays, Sundays and statutory holidays) prior to any adjourned, postponed or rescheduled Creditors' Meeting (the "**Proxy Deadline**").
23. **THIS COURT ORDERS** that, in the absence of instruction to vote for or against the approval of the Plan Resolution in a duly signed and returned Proxy, the Proxy will be deemed to include instructions to vote for the approval of the Plan Resolution, provided the Proxy holder does not otherwise exercise its right to vote at the Creditors' Meeting.

24. **THIS COURT ORDERS** that to the extent that the Monitor is in receipt of more than one Proxy in respect of the same Affected Secured Creditor, the last properly signed and returned Proxy will be deemed to be such Affected Secured Creditor's voting instructions with respect to the Plan Resolution.
25. **THIS COURT ORDERS** that each Affected Secured Creditor will be entitled to one vote equal to the aggregate dollar value of its outstanding debt, which will not include fractional numbers and be rounded down to the nearest whole dollar amount.
26. **THIS COURT ORDERS** that only Affected Secured Creditors will be entitled to vote on the Plan Resolution.

#### **APPROVAL OF THE PLAN**

27. **THIS COURT ORDERS** that for the Plan to be approved, the Plan Resolution must receive the affirmative vote of each class of Affected Secured Creditors by the majorities required under section 6(1) of the CCAA.
28. **THIS COURT ORDERS** that BDC shall be deemed to have voted in favour of the Plan such that the required majority vote of the Paid-Out Secured Creditor Class shall have been obtained.
29. **THIS COURT ORDERS** that following the votes at the Creditors' Meeting, the Monitor will tally the votes and determine whether the Plan has been approved in accordance with paragraph 27 hereof.
30. **THIS COURT ORDERS** that the results of and all votes provided at the Creditors Meeting will be binding on all Affected Secured Creditors, whether or not any such Affected Secured Creditor is present or voting at the Creditors' Meeting.

## SANCTION HEARING

31. **THIS COURT ORDERS** that in the event the Plan has been approved by the Affected Secured Creditors in accordance with this Meeting Order, the Applicant may bring the Sanction Motion before this Court on December 15, 2020, or such later date as the Applicant or the Monitor may advise the Service List in these proceedings, provided that such later date will be acceptable to the Applicant and the Monitor.
32. **THIS COURT ORDERS** that any person intending to oppose the Sanction Motion will, no later than three (3) calendar days before the Sanction Motion, (a) serve a Notice of Appearance upon the Service List; and (b) serve upon the Service List a notice setting out the basis for such opposition and a copy of the materials to be used to oppose the Sanction Motion.
33. **THIS COURT ORDERS** that if the Sanction Motion is adjourned, only those persons appearing on the Service List as of the date of service will be served with notice of the adjourned date.
34. **THIS COURT ORDERS** that, subject to any further Order of the Court, in the event of any conflict, inconsistency, ambiguity or difference between the provisions of the Plan and this Meeting Order, the terms, conditions and provisions of the Plan will govern and be paramount, and any such provision of this Meeting Order will be deemed to be amended to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

## **MONITOR'S ROLE**

35. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and the Initial Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Meeting Order.
36. **THIS COURT ORDERS** that: (i) in carrying out the terms of this Meeting Order, the Monitor will have all the protections given to it by the CCAA and the Initial Order, and as an officer of the Court, including the stay of proceedings in its favour; (ii) the Monitor will incur no liability or obligation as a result of carrying out the provisions of this Meeting Order, save and except for any gross negligence or wilful misconduct on its part; (iii) the Monitor will be entitled to rely on the books and records of the Applicant and any information provided by the Applicant and any information acquired by the Monitor as a result of carrying out its duties under this Meeting Order without independent investigation; and (iv) the Monitor will not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

## **APPROVAL OF ACTIVITIES**

37. **THIS COURT ORDERS** that the Second Report and the actions, conduct and activities of the Monitor described therein be and are hereby approved.

## **GENERAL PROVISIONS**

38. **THIS COURT ORDERS** that the Applicant and the Monitor will use reasonable discretion as to the adequacy of compliance with respect to the manner in which any forms hereunder are completed and executed and the time in which they are submitted and may

waive strict compliance with the requirements of this Meeting Order including with respect to the completion, execution and time of delivery of required forms.

39. **THIS COURT ORDERS** that the Applicant or the Monitor may, from time to time, apply to this Court to amend, vary, supplement or replace this Meeting Order or for advice and directions concerning the discharge of their respective powers and duties under this Meeting Order or the interpretation or application of this Meeting Order.
40. **THIS COURT ORDERS** that any notice or other communication to be given under this Meeting Order by Affected Secured Creditors to the Monitor or the Applicant will be in writing in substantially the form, if any, provided for in this Meeting Order and will be sufficiently given only if given by prepaid ordinary mail, registered mail, courier, personal delivery or e-mail addressed to:

**Weisz Fell Kour LLP**

5600-100 King Street West

Toronto, ON M5X 1C9

Attention: Caitlin Fell and Pat Corney

Email: cfell@wfkllaw.ca / pcorney@wfkllaw.ca

Counsel to the Applicant

**Borden Ladner Gervais LLP**

3400-22 Adelaide St West

Attention: Alex MacFarlane

Toronto, ON M5H 4E3

Email: amacfarlane@blg.com

Counsel to the Monitor

41. **THIS COURT ORDERS** that any notice or other communication delivered under this Meeting Order will be deemed to have been received: (a) if sent by prepaid ordinary mail or registered mail, on the third Business Day after mailing in Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day



after mailing internationally; (b) if sent by courier or personal delivery, on the next Business Day following dispatch; and (c) if delivered by facsimile transmission or email, by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

42. **THIS COURT ORDERS** that if the day on which any notice or communication delivered under this Meeting Order is not a Business Day, then such notice or communication will be required to be delivered on the next Business Day.
43. **THIS COURT ORDERS** that if, during any period during which notices or other communications are being given pursuant to this Meeting Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail and then not received will not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or postal work stoppage of general application will only be effective if given by courier, personal delivery or e-mail in accordance with this Meeting Order.
44. **THIS COURT ORDERS** that all references to time in this Meeting Order will mean prevailing local time in Toronto, Ontario and any references to an event occurring on a Business Day will mean prior to 5:00 p.m. on the Business Day unless otherwise indicated.
45. **THIS COURT ORDERS** that references to the singular will include the plural, references to the plural will include the singular and to any gender will include the other gender.
46. **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 Meeting Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Meeting 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 Meeting 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 Meeting Order.

47. **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 Meeting Order and for assistance in carrying out the terms of this Meeting 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.
48. **THIS COURT ORDERS** that this Meeting Order is effective from the date it is made without any need for entry and filing.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:  
NOV 25 2020



PER / PAR: C.D.

**Schedule "A"**  
**Plan of Arrangement**

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

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

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

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

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**PLAN OF COMPROMISE AND ARRANGEMENT**  
**OF THE APPLICANT, TRIBALSCALE INC.,**  
**PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT***

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NOVEMBER 22, 2020

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## PLAN OF COMPROMISE AND ARRANGEMENT

### RECITALS

**WHEREAS** Tribalscale Inc. (the “**Applicant**” or “**Tribalscale**”) is a debtor company pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “**CCAA**”);

**AND WHEREAS**, on July 31, 2020, the Honourable Madam Justice Gilmore of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Initial Order pursuant to the provisions of the CCAA and appointed MNP Ltd. as the monitor in these proceedings (the “**Monitor**”);

**AND WHEREAS** on October 30, 2020, the Court approved a Restructuring Support Agreement between the Applicant and its senior secured creditor, 1924191 Ontario Inc. (“**192**”), which was executed on November 3, 2020 (the “**RSA**”).

**AND WHEREAS**, on November 25, 2020, the Applicant will seek a Meeting Order (the “**Meeting Order**”) pursuant to which, among other things, the Applicant will be authorized to file a Plan (as defined in Schedule “A” hereto) and authority to convene a meeting of Affected Secured Creditors (as defined herein) to consider and vote on the Plan.

**AND WHEREAS** the purpose of the Plan is to facilitate the continuation of the business of the Applicant as a going concern, to address certain liabilities of the Applicant, and to effect a recapitalization transaction pursuant to and in accordance with the terms of the RSA on an expedited basis in order to provide a stronger financial foundation for the Applicant going forward, as well as additional liquidity to allow the Applicant to continue to work towards its operational and financial goals from and after the Implementation Date (as defined in Schedule “A”) of the Plan;

**NOW THEREFORE** the Applicant hereby proposes and presents this Plan pursuant to and in accordance with the provisions of the CCAA.

### ARTICLE 1 - INTERPRETATION

#### 1.1 Certain Rules of Interpretation

For the purposes of this Plan:

- (a) In this Plan and the Recitals thereto, unless otherwise stated or the subject matter or context otherwise requires, all terms defined herein have their meanings ascribed thereto on **Schedule “A”**;
- (b) Any reference in this Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means such document shall be substantially in such form or substantially on such terms and conditions;

- (c) Unless otherwise expressly provided herein, any reference in this Plan to an instrument, agreement or an Order or an existing document or exhibit filed or to be filed means such instrument, agreement, Order, document or exhibit as it may have been or may be amended, modified, or supplemented in accordance with its terms;
- (d) The division of this Plan into Articles and Sections is for convenience of reference only and does not affect the construction or interpretation of this Plan, nor are the descriptive headings of Articles and Sections intended as complete or accurate descriptions of the content thereof;
- (e) The use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of this Plan to such Person (or Persons) or circumstances as the context otherwise permits;
- (f) The words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (g) Unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day;
- (h) Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends;
- (i) Unless otherwise provided, any reference to a statute or other enactment of parliament, a legislature or other Governmental Entity includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;
- (j) References to a specific Recital, Article, or Section shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specific Recital, Article or Section of this Plan, whereas the terms "this Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to this Plan and not to any particular Recital, Article, Section or other portion of this Plan and include any documents supplemental hereto; and
- (k) The word "or" is not exclusive.



## **1.2 Governing Law**

This Plan shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. All questions as to the interpretation or application of this Plan and all proceedings taken in connection with this Plan and its provisions shall be subject to the jurisdiction of the Court.

## **1.3 Currency**

Unless otherwise stated, all references in this Plan to sums of money are expressed in, and all payments provided for herein shall be made in, Canadian dollars.

## **1.4 Date for Any Action**

If the date on which any action is required to be taken hereunder by a Person is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

## **1.5 Time**

Time shall be of the essence in this Plan.

## **ARTICLE 2 - PURPOSE AND EFFECT OF THIS PLAN**

### **2.1 Purpose**

The purpose of this Plan is to effect a restructuring of the secured indebtedness of the Applicant with the expectation that Persons who have an economic interest in the Applicant, when considered as a whole, will derive a greater benefit from the implementation of this Plan than would result from a bankruptcy of the Applicant.

### **2.2 Effectiveness**

Subject to the satisfaction, completion or waiver of the conditions precedent set out herein, this Plan will become effective in the sequence described in **ARTICLE 7** below from and after the Implementation Date and on the Implementation Date each Affected Secured Claim will be fully and finally compromised, released, settled and discharged under the Plan. The Plan shall be binding on and enure to the benefit of the Applicant, the Affected Secured Creditors, all Existing Equity Holders, all holders of Equity Claims, the Released Parties, and all other Persons as provided for herein, or subject to, this Plan and their respective successors and assigns and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

### 2.3 Persons Not Affected

This Plan does not affect Unaffected Creditors to the extent of their Unaffected Claims. Nothing in this Plan shall affect the Applicant's rights and defences, both legal and equitable, with respect to any Unaffected Claims, including, but not limited to, all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims. Nothing herein shall constitute a waiver of any rights of any of the Applicants to dispute the quantum or validity of an Unaffected Claim.

## ARTICLE 3 - CLASSIFICATION, VOTING CLAIMS AND RELATED MATTERS

### 3.1 Classes

For the purposes of considering, voting on, and receiving distributions under this Plan, the Affected Secured Creditors shall constitute two classes, as follows:

- (a) one class of Creditors consisting of 192 (the "**Converting Secured Creditor Class**"); and
- (b) one class of Creditors consisting of BDC (the "**Paid-Out Secured Creditor Class**").

### 3.2 Guarantees

No Person who has a Claim under a guarantee in respect of any Claim which is compromised or otherwise dealt with under the Plan (a "**Principal Claim**") or who has any right to or claim over in respect of or to be subrogated to the rights of any Person in respect of a Principal Claim, shall: (a) be entitled to any greater rights as against the Applicant than the Person holding the Principal Claim; (b) be entitled to vote on this Plan to the extent that the Person holding the Principal Claim is voting on this Plan; or (c) be entitled to receive any distribution under this Plan to the extent that the Person holding the Principal Claim is receiving a distribution.

### 3.3 Claims of Affected Secured Creditors

Except as otherwise provided in the Meeting Order, Affected Secured Creditors shall be entitled to vote their Proven Claims at the Creditors' Meetings in respect of this Plan and shall be entitled to receive distributions on account of their Proven Claims as provided under and pursuant to this Plan.

### **3.4 Creditors' Meeting**

- (a) The Creditors' Meeting shall be held in accordance with this Plan, the Meeting Order, and any further Order in the CCAA Proceedings.
- (b) If this Plan is approved by the Required Majorities in each voting class, then this Plan shall be deemed to have been agreed to, accepted and approved by the Affected Secured Creditors and shall be binding upon all Affected Secured Creditors immediately upon the delivery of the Monitor's Certificate.

### **3.5 Existing Equity Holders and Holders of Equity Claims**

Existing Equity Holders and holders of Equity Claims shall not be entitled to attend or vote in respect of their Existing Shares, Existing Share Options or Equity Claims any meeting to consider and approve this Plan and shall not receive any distribution under the Plan on account of their Existing Shares, Existing Share Options or Equity Claims.

### **3.6 Crown Claims**

All federal and provincial government claims of the kind described in subsection 6(3) of the CCAA that were outstanding at the Filing Date shall be paid in full within six months after the Sanction Order, as required by subsection 6(3) of the CCAA.

### **3.7 Payments to Employees**

If not already paid, then immediately after the date of the Sanction Order, the Applicant will pay in full all employee-related payments required by subsection 6(5) of the CCAA.

### **3.8 Determination of Affected Secured Claims**

For the purposes of rights, entitlements and distributions under this Plan, the amount of an Affected Secured Claim shall be determined on the basis of the principal amount outstanding as of the Filing Date plus any accrued interest up to the Implementation Date.

## **ARTICLE 4 - TREATMENT OF CLAIMS**

### **4.1 Treatment of Converting Creditor Class**

- (a) On the Implementation Date and in accordance with the steps and sequence set forth in this Plan, the Converting Creditor shall be entitled to receive in exchange for all of its right, title and interest in and to the Affected Secured Claim, a distribution of:
  - (i). New Common Shares representing ninety percent (90%) of the total issued and outstanding shares in the capital of the Applicant; and

- (ii). the New Senior Secured Note.
- (b) The Converting Creditor shall assign such number of New Common Shares that it holds in the capital of the Applicant to The Bank of Nova Scotia (“**Scotiabank**”) such that Scotiabank will hold New Common Shares in the Applicant equivalent to five percent (5%) of the total issued and outstanding shares in the capital of the Applicant.
- (c) On the Implementation Date, each of the Converting Creditor and Scotiabank shall become a party to a unanimous shareholders agreement (the “**Shareholders Agreement**”), each in its capacity as a holder of New Common Shares and (ii) the constating documents of Applicant shall contain the terms in respect to the New Common Shares which shall apply to each of the Converting Creditor, Scotiabank and Jaitly in their capacity as a holder of New Common Shares.

#### **4.2 Treatment of the Paid-Out Secured Creditor Class**

On the Implementation Date and in accordance with the steps and sequence set forth in this Plan, the Paid-Out Secured Class shall be entitled to receive in full satisfaction of its right, title and interest in and to its Affected Secured Claim, a cash distribution in the amount of C\$115,300.

#### **4.3 Equity Claims**

All Equity Claims, and all Claims that are based on or related to Equity Claims, shall and shall be deemed to be fully, finally and irrevocably and forever compromised, released, discharged, settled, extinguished, cancelled and barred on the Implementation Date. Holders of Equity Claims shall not receive any consideration or distributions under this Plan and shall not be entitled to vote on this Plan at the Creditors’ Meeting.

#### **4.4 Calculation and Quantum of Claims**

For the purposes of all distributions under this Plan, all Affected Secured Claims shall be calculated and quantified as of the Filing Date, which shall be deemed to mean as of 12:01 am on May 19, 2020. To the extent that interest or other amounts accrue as part of any Affected Secured Claim, such interest or other amounts shall be calculated up to and including the Implementation Date.

#### **4.5 Extinguishment of Claims**

On the Implementation Date, in accordance with this Plan and the provisions of the Sanction Order, the treatment of the Affected Secured Creditors in respect to their Affected Secured Claims shall be final and binding on Tribalscale, all Affected Secured Creditors (and their respective heirs, executors, administrators, legal personal representatives, successors and assigns), and any Person holding a Released Claim. All Released Claims shall be fully, finally, irrevocably and forever released, discharged, cancelled and barred, and the Released Parties shall thereupon have no further obligation whatsoever in respect of the Affected Secured Claims and the Released Claims, as applicable.

### **ARTICLE 5 - REORGANIZED EQUITY OF TRIBALSCALE**

#### **5.1 Amended Articles**

In accordance with the Plan, the Amended Articles shall be received for deposit at the records office of Tribalscale, with the effect as of the time of the Implementation specified in Section 7.1 of the Plan.

#### **5.2 Converting Creditor Shares**

The Converting Creditor Shares shall be distributed to the Converting Creditor in accordance with the Plan.

#### **5.3 Remaining Shares**

- (a) The Converting Creditor shall assign to Scotiabank such number of New Common Shares held by the Converting Creditor as is equivalent to five percent (5%) the total issued and outstanding shares in the capital of the Applicant.
- (b) In consideration of Jaitly's continuing ongoing involvement with the Applicant, Jaitly shall be issued New Common Shares equal to 10% of the total issued New Common Shares.

### **ARTICLE 6- CONDITIONS PRECEDENT TO IMPLEMENTATION OF THE PLAN**

#### **6.1 Pre-Implementation Date Conditions**

- (a) The Plan is subject to the satisfaction of the following conditions (the "**Plan Implementation Conditions**"):
  - (i) the Plan must be approved by the Required Majority of the Affected Secured Creditors of the Applicants;

- (ii). the Sanction Order and the Reverse Vesting Order must be granted by the Court, consistent with the terms of Section 10.1;
  - (iii). the existing shareholders agreement of Tribalscale dated December 8, 2015, as amended shall be deemed to be terminated pursuant to the Sanction Order;
  - (iv). Tribalscale shall file articles of amendment to: (i) restate the rights, privileges, restrictions and conditions attaching to the Common Shares;
  - (v). all applicable appeal periods in respect of the Sanction Order and the Reserve Vesting Order will have expired and any appeals therefrom will have been finally disposed of by the applicable appellant tribunal;
  - (vi). all relevant Persons will have executed, delivered and filed all documents and other instruments that, in the opinion of the Applicants and the Monitor, are necessary to implement the provisions of the Plan, the Sanction Order or the Reverse Vesting Order;
  - (vii). no action or proceeding will be pending by any third party to enjoin or prohibit the Plan; and
  - (viii). Such other conditions precedent listed in Article 6 of the RSA but not described in this **ARTICLE 6**, which conditions may be dispensed with or varied with the mutual consent of the Applicant and the Converting Creditor.
- (b) Upon satisfaction of the Implementation Conditions, the Applicant will proceed to implement the Plan. In consultation with the Monitor, the Applicant will designate the Implementation Date and will implement the Plan on that date in accordance with the terms and conditions hereof.

## **ARTICLE 7 - IMPLEMENTATION DATE TRANSACTIONS**

### **7.1 Implementation Date Events**

Commencing on the Implementation Date, the following events or actions will occur, or be deemed to have occurred and be taken and at such other times, intervals, or order as the Applicant and the Monitor may agree, without any further act or formality required on the part of any Person, except as may be expressly provided herein:

- (a) the following shall occur concurrently (collectively, the “**Share Consolidation**”):
  - (i). all Existing Shares shall be cancelled and shall be deemed to be cancelled without payment of any consideration therefor;

- (ii). the Existing Share Options shall be cancelled and shall be deemed to be cancelled without any repayment of capital thereof or compensation therefor and shall cease to be of any further force or effect;
  - (iii). any existing agreements among the Existing Equity Holders with respect to their Existing Shares or Existing Share Options shall and shall be deemed to be cancelled and terminated; and
  - (iv). all Equity Claims, including indemnity claims of Directors or Officers that are based on or related to Equity Claims, shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without any repayment of capital thereof or compensation therefor;
- (b) the Applicant shall, where necessary, file and deposit amended articles of incorporation (the "**Amended Articles**") at the records office of Tribalscale, which Amended Articles shall do all such things as are necessary to consummate or confirm the transactions provided for in this Plan, to accomplish the purpose of this Plan, or to assure to the affected parties the benefits of this Plan;
  - (c) in exchange for, and in full and final settlement of the claims of 192, the Applicant shall issue new common shares in the capital of the Applicant ("**New Common Shares**") to 192, in the proportions stipulated under Section 4.1 herein. No fractional New Common Shares shall be issued under this Plan;
  - (d) the Applicant shall issue New Common Shares to Scotiabank, in the proportions stipulated under Section 4.1 herein;
  - (e) all New Common Shares issued as part of the implementation of this Plan shall be deemed to be issued and outstanding as fully-paid and non-assessable;
  - (f) in exchange for, and in full and final settlement of the claims of BDC, the Applicant shall make a one-time cash payment in accordance with Section 4.2 herein;
  - (g) any right of indemnity or contribution of a Director, Officer or employee against the Applicant of any nature whatsoever (whether pursuant to a written contract or agreement or otherwise, and whether present or future or known or unknown) shall be fully, finally, irrevocably and forever terminated, extinguished, compromised, released, discharged, cancelled and barred without any liability, payment or other compensation in respect thereof and each Director, Officer or employee shall be permanently barred, estopped, stayed and enjoined, on and after the Implementation Date, from asserting any such right of indemnity or contribution against the Applicant;
  - (h) Tribalscale shall distribute the New Common Shares in accordance with this Plan;

- (i) the following shall occur concurrently:
  - (i). the Reverse Vesting Order shall become effective and all claims of the General Unsecured Creditors shall be transferred to Newco;
  - (ii). the Applicant shall issue the Newco Note to 192;
- (j) Newco shall be added as an applicant in the CCAA Proceeding; and
- (k) the releases and injunctions referred to under **ARTICLE 10** shall become effective.

## **7.2 Amended Articles**

In accordance this Plan, the Amended Articles shall be received for deposit at the records office of Tribalscale, with effect as of the time on the Implementation Date specified in Section 7.1 of this Plan.

## **7.3 Administration Charge**

On the Implementation Date, all outstanding, invoiced obligations, liabilities, fees and disbursements secured by the Administration Charge shall be fully paid by the Applicant. Upon receipt by the Monitor of confirmation from each of the beneficiaries of the Administration Charge that payments of the amounts secured by the Administration Charge have been made, the Administration Charge shall be and be deemed to be discharged from the assets of the Applicant, without the need for any other formality; provided however that this Section shall not apply to the Monitor and its legal counsel in respect of any acts or steps required to be taken by the Monitor or its counsel after the Implementation Date and, for greater certainty, the Monitor and its legal counsel shall continue to have the benefit of the Administration Charge so long as (i) the Monitor has not been discharged from its duties as Monitor in these CCAA Proceedings, and (ii) any fees and disbursements of the Monitor or its counsel (including fees and disbursements incurred after the Implementation Date) remain unpaid by the Applicant.

Notwithstanding Plan Implementation or the reduction of the Administration Charge, Tribalscale shall continue to pay the reasonable costs, fees and disbursements incurred by its counsel, Weisz Fell Kour LLP (“WFK”), whether incurred prior to or after the Implementation Date, where such costs, fees and disbursements relate to the implementation of this Plan or any of the transactions contemplated herein.

## **7.4 Monitor’s Certificate of Plan Implementation**



Upon written notice from the Applicant (or counsel on their behalf) to the Monitor and the Supporting Creditor that the conditions to Plan implementation set out in Section 6.1 have been satisfied or waived, the Monitor shall, as soon as possible following receipt of such written notice, deliver to the Applicant and the Supporting Creditor, as well as file with the Court, a certificate (the "**Monitor's Certificate**") which states that all conditions precedent set out in **ARTICLE 6** have been satisfied or waived and that the Implementation Date (which shall be set out on the certificate) has occurred.

#### **7.5 No Exercise of Right or Remedy**

Subject to the performance by the Applicant of its obligations under the Plan, and except as provided in the Plan, all obligations, agreements, contracts or arrangements to which the Applicant is a party on the Implementation Date shall be and remain in full force and effect, unamended, as at the Implementation Date and no Person, including any party thereto, shall on or following the Implementation Date, accelerate, terminate, refuse to renew, rescind, refuse to perform, cancel or otherwise disclaim or resiliate its obligations or the Applicant's interests thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy (including any right to receive any change of control, assignment or similar payment) under or in respect thereof by reason:

- (a) of any event that occurred prior to the Implementation Date;
- (b) that the Applicant is or was insolvent, or that the Applicant sought or obtained relief or took steps as part of the Plan or during the CCAA Proceeding and the preceding NOI Proceeding;
- (c) of any default, event of default or circumstance of non-compliance arising as a result of the financial condition or insolvency of the Applicant, the CCAA Proceeding or the NOI Proceeding;
- (d) of the effect upon the Applicant of the completion of any of the transactions approved in the CCAA Proceeding or the NOI Proceeding, or contemplated by the Plan, including, without limitation, as a result of a change of control of the Applicant; or
- (e) of any compromises, settlements, restructurings, recapitalizations or reorganizations effected pursuant to the Plan.

**ARTICLE 8 -  
CONSTITUTION OF NEWCO**

**8.1 Incorporation**

Newco will be incorporated as a private company under the laws of Ontario, organized in a manner acceptable to 192 and the Applicant, acting reasonably.

**8.2 Newco Further Assurances**

Newco shall agree to 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 Plan, to accomplish the purpose of this Plan or to assure to the other Party the benefits of this Plan.

**ARTICLE 9 -  
DISTRIBUTIONS AND DISBURSEMENTS**

**9.1 Delivery of New Common Share Certificates**

The obligations of Tribalscale shall to deliver New Common Shares pursuant to this Plan shall be satisfied by the delivery of share certificates representing the New Common Shares to each of 192 and Scotiabank on the Implementation Date in accordance with Section 4.1.

**9.2 Delivery of Payment to BDC**

On the Implementation Date Tribalscale shall distribute, by electronic wire transfer, a one-time cash payment to BDC in accordance with Section 4.2 herein.

**9.3 Delivery of the Newco Note**

On the Implementation Date and in accordance with this Plan, Tribalscale will unconditionally and irrevocably issue the Newco Note to Newco in the amount of the receivable owing to Tribalscale by SiriusXM less the legal fees and costs incurred to collect or enforce on such receivable, which promissory note shall be payable on a *pro rata* basis to the General Unsecured Creditors upon receipt of the Sirius Proceeds.

## **ARTICLE 10 - RELEASES**

### **10.1 Plan Releases**

At the Implementation Date, the Applicant, the Applicant's present and former employees, the Directors and Officers and each of their respective financial advisors, legal counsel and agents (collectively, the "**Released Parties**") shall be released and discharged from any and all rights and claims of any holder of an Affected Secured Claim, whether or not any such right or Claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, where such right or Claim is based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, or after the Implementation Date in furtherance of the Plan and that is in any way relating to, arising out of or in connection with (i) Affected Secured Claims; (ii) RSA, (iii) Equity Claims; (iv) Existing Shares; (v) Existing Share Options; (vi) this Plan; (vii) the CCAA Proceedings; and (viii) the NOI Proceedings, provided, however, that nothing in this Section will release or discharge:

- (a) any Unaffected Claim;
- (b) Tribalscale of or from its obligations under this Plan, under any Order, or under any document delivered by Tribalscale on the Implementation Date pursuant to this Plan;
- (c) Newco from its obligations under this Plan, under any Order, or under any document delivered by Newco on the Implementation Date pursuant to this Plan;  
or
- (d) a Released Party if the Released Party is adjudged by the express terms of a judgment rendered on a final determination on the merits to have committed fraud, gross negligence or wilful misconduct.

### **10.2 Cancellation of Outstanding Indebtedness**

From and after the Implementation Date, any loan documents, debentures or other evidences of indebtedness in relation to any Affected Secured Creditors shall be cancelled and will thereupon be null and void, and the obligations of the Applicant thereunder or in any way related thereto shall be satisfied and discharged, except to the extent expressly preserved by this Plan. For further clarity, the Newco Note is explicitly excluded from this Section and is intended to survive this Plan.

### 10.3 Injunction

Subject to the exceptions stated in sub-paragraphs (a) through (d) of Section 10.1 of this Plan, all Persons, along with their respective affiliates, present and former officers, directors, employees, associated individuals, auditors, beneficiaries, financial advisors, legal counsel, other professionals, sureties, insurers, indemnitors, agents, dependents, heirs, executors, administrators, representatives, successors and assigns, as applicable, are permanently and forever barred, estopped, stayed and enjoined, on and after the Implementation Date, with respect to the Affected Claims and the Released Claims, from:

- (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suit, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative, regulatory or other forum) against any of the Released Parties or their property;
- (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property;
- (c) commencing, conducting or continuing in any manner, directly or indirectly, any action, suit or demand (including by way of contribution or indemnity or other relief, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation) or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative, regulatory or other forum) against any Person who makes such a Claim or might reasonably be expected to make such a Claim in any manner or forum, against one or more of the Released Parties;
- (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind; or
- (e) taking any action to interfere with the implementation or consummation of this Plan (including the Implementation Date Transactions);

and any such proceedings will be deemed to have no further effect against the Applicant or any of their assets and will be released, discharged or vacated without cost to the Applicant. All Persons shall cooperate with the Applicant and the Monitor in lifting any lien or discontinuing any proceeding filed or commenced prior to the Implementation Date, as the Applicant or the Monitor may reasonably request. The Applicant may apply to the Court to obtain a discharge or dismissal of any such proceedings, if necessary, without notice to any Person.

### 10.4 Timing of Releases and Injunctions

All releases and injunctions set forth in this **ARTICLE 10** shall become effective on the Implementation Date.

## **10.5 Knowledge of Claims**

Each Person to which Section 10.1 hereof applies shall be deemed to have granted the releases set forth in Section 10.1 notwithstanding that it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such party expressly waives any and all rights that it may have under any Applicable Law which would limit the effect of such releases to those Claims or causes of action known or suspected to exist at the time of the granting of the release.

## **ARTICLE 11 - GENERAL**

### **11.1 Deeming Provisions**

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

### **11.2 Claims Bar**

Nothing in this Plan extends or shall be interpreted as extending, amending, or giving any rights to any Person in respect of Claims that have been barred or extinguished.

### **11.3 Non-Consummation**

If the Implementation Date does not occur on or before the Outside Date (as the same may be extended in accordance with the terms hereof), or if this Plan is otherwise withdrawn in accordance with its terms: (a) this Plan shall be null and void in all respects, and (b) nothing contained in this Plan, and no acts taken in preparation for consummation of this Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against the Applicant, its respective successors or any other Person; (ii) prejudice in any manner the rights of the Applicant, its respective successors or any other Person in any further proceedings involving the Applicant or its respective successors; or (iii) constitute an admission of any sort by the Applicant, its respective successors or any other Person.

### **11.4 Modification of Plan**

- (a) The Applicant may propose a variation or modification of, or amendment or supplement to this Plan at or prior to the Creditors' Meetings, in consultation with the Monitor, provided that notice of such variation, modification, amendment or supplement is given to all Creditors entitled to vote and present in person at the applicable Creditors' Meetings prior to the vote being taken. Any variation, amendment, modification or supplement at a Creditors' Meetings shall be posted

promptly on the Monitor's Website, served by email to the Service List and filed with the Court as soon as practicable following the applicable Creditors' Meetings and in any event prior to the Court hearing the Sanction Motion.

- (b) After the Creditors' Meetings (and both prior to and subsequent to the obtaining of any Sanction Order), the Applicant may at any time and from time to time, amend, restate, vary, modify or supplement this Plan: (a) pursuant to an Order of the Court, or (b) without further Court Order, where such amendment to this Plan concerns a matter which, in the opinion of the Applicant and the Monitor, is of an administrative nature required to better give effect to the implementation of this Plan or the Sanction Order or to cure any errors, omissions or ambiguities, and in either circumstance is not materially adverse to the financial or economic interests of the Affected Secured Creditors. The Monitor shall forthwith post on the Monitor's Website any such amendment to this Plan, with notice of such posting forthwith provided to the Service List.

#### **11.5 Severability of Plan Provisions**

If, prior to the Implementation Date, any term or provision of this Plan is held by the Court to be invalid, void or unenforceable, at the request of the Applicant with the consent of the Supporting Creditor, the Court shall have the power to either:

- (a) sever such term or provision from the balance of this Plan and provide the Applicant with the option to proceed with the implementation of the balance of this Plan as of and with effect from the Implementation Date, or
- (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, and provided that this Plan is implemented, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

#### **11.6 Preservation of Rights of Action**

Except as otherwise provided in this Plan or in the Sanction Order, or in any contract, instrument, release, indenture or other agreement entered into in connection with this Plan, following the Implementation Date, the Applicant will retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights or causes of action, suits and proceedings, whether in law or in equity, whether known or unknown, that the Applicant may hold against any Person or entity without further approval of the Court.

#### **11.7 Responsibilities of Monitor**

The Monitor is acting and will continue to act in all respects in its capacity as Monitor in the CCAA Proceedings with respect to the Applicant and not in its personal or corporate capacity, and shall have no liability in connection with the implementation of this Plan, including without limitation with respect to making distributions pursuant to and in accordance with this Plan, or the timing or sequence of this Plan's transaction steps, in each case save and except for gross negligence and wilful misconduct. The Monitor will incur no personal liability whatsoever whether on its own part or in respect of any failure on the part of the Applicant to observe, perform or comply with any of its obligations under this Plan. The Monitor shall not be responsible or liable whatsoever for any obligations of the Applicant. The Monitor shall at all times have the powers and protections granted to it by this Plan, the CCAA, the Initial Order, and any other Order made in the CCAA Proceedings.

### **11.8 Different Capacities**

Persons who are affected by this Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by a Person in writing or unless its Claims overlap or are otherwise duplicative.

### **11.9 Notices**

Any notice or other communication to be delivered hereunder must be in writing and refer to this Plan and may, as hereinafter provided, be made or given by personal delivery, ordinary mail, email or by facsimile addressed to each of the respective parties as follows:

(a) If to the Applicant:

**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@wfklaw.ca

Fax: 416-613-8290

(b) If to the Monitor:

**MNP Ltd.**

300 – 111 Richmond Street West  
Toronto, ON M5H 2G4

Attention: Mr. Sheldon Title  
Senior Vice-President

Email: Sheldon.Title@mnp.ca

Fax: 416.323.5240

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

**Borden Ladner Gervais LLP**  
East Tower Bay Adelaide Centre  
22 Adelaide St. W. Suite 3400  
Toronto, ON M5H 4E3

Attention: Alex MacFarlane

Email: AMacFarlane@blg.com

Fax: 416.367.6749

or to such other address as any party may from time to time notify the others in accordance with this Section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or emailing, provided that such day in either event is a Business Day and the communication is so delivered, faxed or emailed before 5:00 p.m. EST on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

#### **11.10 Paramountcy**

- (a) From and after the Implementation Date, any conflict between (i) this Plan and (ii) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, note, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between any Person and the Applicant as at the Implementation Date, will be deemed to be governed by the terms, conditions and provisions of this Plan and the Sanction Order, which shall take precedence and priority.



- (b) From and after the granting of the Sanction Order, any conflict between (i) this Plan and (ii) the Sanction Order, will be deemed to be governed by the terms, conditions and provisions of the Sanction Order, which shall take precedence and priority.

#### **11.11 Further Assurances**

Notwithstanding that the transactions and events set out herein will occur and be deemed to occur in the order set out in this Plan without any further act or formality, each of the Persons named or referred to in, or subject to, this Plan will make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them to carry out the full intent and meaning of this Plan and to give effect to the transactions contemplated herein.

**DATED** this 22<sup>nd</sup> day of November, 2020.

## SCHEDULE "A"

### *Definitions*

"192" has the meaning given to that term in the recitals;

"Administration Charge" has the meaning given to that term in the Initial Order;

"Affected Secured Claim" means the Claims of: (i) 192 in the amount equal to C\$2,648,000 and (ii) BDC in the amount equal to C\$115,300.

"Affected Secured Creditor" means the holder of an Affected Secured Claim in respect, and to the extent of, such Affected Secured Claim;

"Amended Articles" have the meaning ascribed to that term in Section 7.1(b);

"Applicable Law" means, with respect to any Person, property, transaction, event or other matter, any Law relating or applicable to such Person, property, transaction, event or other matter, including, where appropriate, any interpretation of the Law (or any part thereof) by any Person, court or tribunal having jurisdiction over it, or charged with its administration or interpretation;

"Applicant" has the meaning given to that term in the recitals;

"BDC" means the Business Development Bank of Canada;

"BIA" means the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended;

"Business Day" means any day, other than a Saturday, or a Sunday or a statutory or civic holiday, on which banks are generally open for business in Toronto, Ontario;

"Cash" means cash, certificates of deposit, bank deposits, and other cash equivalents;

"CCAA" has the meaning set out in the recitals;

"CCAA Proceedings" means the proceedings commenced by the Applicant under the CCAA as contemplated by the Initial Order;

"Charges" has the meaning ascribed to that term in the Initial Order;

**“Claim”** any right of any Person with indebtedness, liability or obligation of any kind against the Applicant which indebtedness, liability or obligation is in existence at the Filing Date, whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by surety or otherwise and whether or not such a right is executory in nature including, without limitation, the right or ability of any Person to advance a Claim for contribution or indemnity or otherwise with respect to any matter, action, cause, chose in action, whether existing at present or commenced in the future based in whole or in part on facts which exist prior to or at the Filing Date.

**“Converting Creditor”** means 192;

**“Converting Creditor Shares”** means New Common Shares representing ninety percent (90%) of the total issued and outstanding shares in the capital of the Applicant;

**“Converting Secured Creditor Class”** has the meaning given to that term in Section 3.1(a);

**“Court”** has the meaning given to that term in the recitals;

**“Creditor”** means any Person having a Claim and includes, without limitation, the transferee or assignee of a Claim or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;

**“Creditors’ Meeting”** means the meeting of the Affected Secured Creditors called for the purpose of considering and voting upon this Plan;

**“Crown”** means Her Majesty in right of Canada or a province of Canada;

**“Crown Priority Claim”** means any Claim of the Crown, for all amounts that were outstanding at the Filing Date and are of a kind that could be subject to a demand under:

- (a) subsection 224(1.2) of the ITA;
- (b) any provision of the Canada Pension Plan or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee’s premium, or employer’s premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of the *Employment Insurance Act* and of any related interest, penalties or other amounts;
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
  - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA; or

- (ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a “province providing a comprehensive pension plan” as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a “provincial pension plan” as defined in that subsection;

“**Director**” means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or de facto director of the Applicant;

“**Employee Priority Claims**” means, with respect to Creditors who are or were employees of the Applicant the following claims:

- (a) Claims of the Applicant’s employees and former employees equal to the amounts that such employees and former employees would have been qualified to receive under paragraph 136(l)(d) of the BIA if the Applicant had become bankrupt on the Filing Date; and
- (b) Claims of the Applicants’ employees and former employees for wages, salaries, commissions or compensation for services rendered by them after the Filing Date and on or before the date of the Sanction Order, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the Applicant’s business during the same period.

“**Equity Claim**” has the meaning set forth in section 2(1) of the CCAA;

“**Existing Equity Holder**” means a Person with an equity interest in the Applicant as at the Filing Date;

“**Existing Shares**” mean shares, of any kind, in the equity of the Applicant as at the Filing Date;

“**Existing Share Options**” mean share options, of any kind, applicable to the equity of the Applicant;

“**Filing Date**” means May 19, 2020, the date the Applicant’s proposal proceedings commenced under Part III of the BIA;

“**General Unsecured Claim**” means any Claim other than a Converting Creditor Claim;

“**General Unsecured Creditor**” means the holder of a General Unsecured Claim in respect of and to the extent of such General Unsecured Claim;

“**Governmental Entity**” means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy,

regulatory or taxing authority or power;

**“Implementation Date”** means the Business Day on which this Plan becomes effective, which shall be the day indicated on the certificate which the Monitor shall file with the Court as contemplated herein;

**“Implementation Date Transactions”** means, collectively, the transactions contemplated under Section 7.1 herein;

**“Initial Order”** means the Order of the Honourable Madam Justice Gilmore of the Ontario Superior Court of Justice (Commercial List), dated July 31, 2020, which declared Tribalscale a company to which the CCAA applies;

**“ITA”** means the *Income Tax Act*, RSC 1985, c.1 (5th Supp), as amended, and any regulations thereunder;

**“Jaitly”** means Sheetal Jaitly, in his capacity as chief executive officer of the Applicant;

**“Law”** means any law, statute, order, decree, consent decree, judgment, rule regulation, ordinance or other pronouncement having the effect of law whether in Canada or any other country, or any domestic or foreign state, county, province, city or other political subdivision or of any Governmental Entity;

**“Meeting Order”** has the meaning given to that term in the recitals;

**“Monitor”** means MNP Ltd., in its capacity as court-appointed Monitor of the Applicant;

**“Monitor’s Certificate”** has the meaning ascribed to that term in Section 7.4 hereof;

**“Monitor’s Website”** means <<https://mnpdebt.ca/en/corporate/engagements/tribalscale-inc>>;

**“New Senior Secured Note”** means a secured promissory note issued by the Applicant to the Converting Creditor in the principal amount of \$1,400,000 with interest accruing annually beginning on a date that is one year from the Implementation Date at a rate of 2% per annum, which promissory note shall be effective from and after the Implementation Date;

**“Newco”** means a new company incorporated by the Applicant as a private company under the Provincial laws of Ontario in accordance with this Plan;

**“Newco Note”** has the meaning ascribed to that term under Section 9.3 hereof;

**“New Common Shares”** refers to new common shares in the capital of the Applicant issued or to be issued to the Converting Creditor in exchange for, and in full and final settlement of its Claims, in accordance with this Plan;

**“NOI Proceedings”** means the proceedings commenced by Tribalscale by the filing of a Notice of Intention to Make a Proposal under BIA;

**“Officer”** means anyone who is or was, or may be deemed to be or have been, whether by

statute, operation of law or otherwise, an officer or *de facto* officer of the Applicant;

“**Order**” means any order of the Court in these CCAA Proceedings or the proposal proceedings under the BIA referenced in the Initial Order;

“**Outside Date**” means December 3, 2020 (or such other date as the Applicant, the Monitor and the Supporting Creditor may agree);

“**Paid-Out Secured Creditor Class**” has the meaning provided to it in Section 3.1(b);

“**Person(s)**” is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Governmental Entity or any agency, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status;

“**Plan**” means this Plan of Compromise and Arrangement, including any amendments, restatements, modifications or supplements hereto made from time to time in accordance with the terms hereof or made at the direction of the Court in the Sanction Order or otherwise;

“**Priority Claim**” means a Crown Priority Claim or an Employee Priority Claim;

“**Proven Claim**” as used in relation to any Claim means such Claim as finally accepted or determined by the Monitor and each Affected Secured Claim shall constitute a Proven Claim;

“**Recitals**” mean those Recitals stated on the first page of this Plan;

“**Released Claims**” means the matters that are subject to release and discharge pursuant to Section 10.1 hereof;

“**Released Parties**” has the meaning ascribed to that term in Section 10.1 hereof;

“**Released Party**” means each of the Released Parties;

“**Required Majority**” means a majority in number of Affected Secured Creditors within a class representing at least two thirds in value of the Voting Claims of such Creditors who actually vote (in person or by proxy) at the Creditors’ Meeting;

“**RSA**” has the meaning given to that term in the recitals;

“**Sanction Motion**” means the Applicant’s motion for an order sanctioning this Plan and granting the Reverse Vesting Order;

“**Sanction Order**” means an order acceptable in form and substance to the Applicant, the Monitor, and the Supporting Creditor sanctioning the Plan and the transactions contemplated therein;

“**Scotiabank**” means The Bank of Nova Scotia;

“**Shareholders Agreement**” has the meaning ascribed to that term in Section 4.1(c), which agreement shall be in form and substance satisfactory to 192;

“**Service List**” means the service list maintained by the Monitor in respect of these CCAA Proceedings;

“**Sirius Proceeds**” mean the proceeds of a receivable owing by SiriusXM to the Applicant, including such proceeds received in respect of a settlement or determination of the claim of the Applicant against SiriusXM;

“**SiriusXM**” means Sirius XM Connected Vehicle Services Inc. and its affiliates.

“**Support Agreement**” has the meaning provided to it in the recitals;

“**Supporting Creditor**” means 192 pursuant to and in accordance with the Support Agreement;

“**Tax**” or “**Taxes**” means any and all taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever, including all interest, penalties, fines, additions to tax or other additional amounts in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, Quebec and other government pension plan premiums or contributions;

“**Taxing Authority**” means any of Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, any municipality of Canada, the Canada Revenue Agency, the Canada Border Services Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof and any Canadian or foreign government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation making entity exercising taxing authority or power;

“**Tribalscale**” has the meaning given in the recitals;

“**Unaffected Claim**” means:

- (a) any Claims secured by any of the Charges;
- (b) any Claims that cannot be compromised pursuant to subsection 19(2) of the CCAA;
- (c) any Priority Claims;
- (d) any Claims vested out pursuant to the Reverse Vesting Order; and
- (e) the Unaffected Trade Obligations

**“Unaffected Creditor”** means a Person who has an Unaffected Claim, but only in respect of and to the extent of such Unaffected Claim;

**“Unaffected Trade Obligations”** refer to all trade obligations owed by the Applicant to its suppliers, incurred at any time, which the Applicant will continue to pay notwithstanding anything in this Plan;

**“Reverse Vesting Order”** means an Order of the Court permitting the transferring and vesting out absolutely, without formal legal conveyance, all claims of General Unsecured Creditors to Newco, as contemplated under this Plan and in the Reverse Vesting Order;

**“Voting Claim”** means the amount of an Affected Secured Claim of an Affected Secured Creditor against the Applicant as finally accepted and determined for the purposes of voting at the Creditors’ Meeting, in accordance with this Plan and the CCAA; and

**“WFK”** means the Applicant’s counsel, Weisz Fell Kour LLP.



**Schedule "B"**  
**Notice of Creditor Meeting**

**NOTICE OF CREDITORS' MEETING AND SANCTION MOTION**  
**IN THE MATTER OF THE PROPOSED PLAN OF COMPROMISE OR**  
**ARRANGEMENT OF TRIBALSCALE INC.**

TO: The Affected Secured Creditors of TRIBALSCALE INC. ("**TribalScale**")

**NOTICE IS HEREBY GIVEN** that a meeting of the Affected Secured Creditors will be held on December 10, 2020 at 4:00 p.m. EST via Zoom due to the COVID-19 pandemic, the details of which can be found at Schedule A to this Notice, for the following purposes:

1. to consider and, if deemed advisable, to pass, with or without variation, a resolution (the "**Resolution**") approving the Plan of Compromise and Arrangement of TribalScale, dated November 22, 2020, pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") (as amended, restated, modified and/or supplemented from time to time in accordance with the terms thereof, the "**Plan**"); and
2. to transact such other business as may properly come before either of the Creditors' Meetings or any adjournment or postponement thereof.

The Creditors' Meetings are being held pursuant to an order (the "**Meeting Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on November 25, 2020.

Capitalized terms used and not otherwise defined in this Notice have the respective meanings given to them in the Plan.

The Plan contemplates the compromise and/or release of claims held by Affected Secured Creditors. Quorum for the Creditors' Meeting has been set by the Meeting Order as the presence, in person or by Proxy, at the meeting of the Affected Secured Creditors of (1) representative of the Converting Secured Creditor Class; present at such meeting in person or by Proxy.

In order for the Plan to be approved and binding in accordance with section 6(1) of the CCAA, each class of Affected Secured Creditors must approve the Resolution by that number of Affected Secured Creditors representing at least a majority in number of Affected Secured Claims, whose claims represent at least two-thirds in value of the Affected Secured Claims of Affected Secured Creditors who validly vote (in person or by Proxy) on the Resolution at the Creditors' Meeting or were deemed to vote on the Resolution as provided for in the Meeting Order (each a "**Required Majority**"). Each Affected Secured Creditor will be entitled to one vote at the Creditors' Meeting equal to the aggregate dollar value of its outstanding debt, which will not include fractional numbers and be rounded down to the nearest whole dollar amount. If approved by each of the Required Majorities, the Plan must also be sanctioned by the Court under the CCAA. Subject to the satisfaction of the other conditions precedent to implementation of the Plan, all Affected Secured Creditors will then receive the treatment set forth in the Plan.

### **Forms and Proxies for Affected Secured Creditors**

**An Affected Secured Creditor may attend at the Creditors' Meeting in person or may appoint another person as its proxyholder by inserting their name or the name of such person in the space provided in the form of Proxy provided to Affected Secured Creditors, or by completing another valid form of Proxy.**

In order to be effective, Proxies must be received by the Monitor MNP LTD. (Attention: Sheldon Title) via email to [Sheldon.Title@mnp.ca](mailto:Sheldon.Title@mnp.ca) prior to the Proxy Deadline. Persons appointed as proxyholders need not be Affected Secured Creditors.

If an Affected Secured Creditor at the Creditors' Meeting (other than those who are deemed to vote in favour of the Plan as set in the Meeting Order) specifies a choice with respect to voting on the Resolution on a Proxy, the Proxy will be voted in accordance with the specification so made. **In absence of such specification, a Proxy will be voted FOR the Resolution provided that the proxyholder does not otherwise exercise its right to vote at the Creditors' Meeting.**

**NOTICE IS ALSO HEREBY GIVEN** that if the Plan is approved by each of the Required Majorities at the Creditors' Meeting, the Applicant intends to bring a motion before the Court on **December \_\_, 2020 at \_\_ EST**, or such later date as may be posted on the Monitor's website, via Zoom (the details of which can be found at Schedule A hereto). The motion will be seeking the Sanction Order sanctioning the Plan under the CCAA and for ancillary relief consequent upon such sanction. Any Affected Secured Creditor that wishes to appear or be represented, and to present evidence or arguments, at such Court hearing must file with the Court a Notice of Appearance and serve such Notice of Appearance on the Service List at least three (3) calendar days before such Court hearing. Any Affected Secured Creditor that wishes to oppose the relief sought at such Court hearing shall serve on the Service List a notice setting out the basis for such opposition and a copy of the materials to be used at such hearing at least three (3) calendar days before the date set for such hearing, or such shorter time as the Court, by Order, may allow. A copy of the Service List may be obtained from the Monitor's website at <https://mnpdebt.ca/en/corporate/corporate-engagements/tribalscale-inc> (the "**Website**") together with copies of other materials related to this process.

This Notice is given by the Applicant as of **November \_\_, 2020**.

**Schedule "C"**

**Proxy**

**PROXY AND INSTRUCTIONS  
FOR AFFECTED SECURED CREDITORS  
IN THE MATTER OF THE PROPOSED  
PLAN OF COMPROMISE AND ARRANGEMENT OF  
TRIBALSCALE INC.**

**MEETING OF AFFECTED SECURED CREDITORS**

to be held pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made on November 25, 2020 (the “Meeting Order”) in connection with the Plan of Compromise and Arrangement of TribalScale Inc. (as amended, restated, modified and/or supplemented from time to time, the “Plan”) on December 10, 2020 at 4:00 p.m. EST via Zoom due to the COVID-19 pandemic (the details of which can be found at Schedule A hereto) and at any adjournment, postponement or other rescheduling thereof (the “Creditors’ Meeting”)

PLEASE COMPLETE, SIGN AND DATE THIS PROXY AND RETURN IT TO THE MONITOR, MNP LTD., BY 4:00 P.M. EST ON DECEMBER 9, 2020, OR 24 HOURS (EXCLUDING SATURDAYS, SUNDAYS AND STATUTORY HOLIDAYS) PRIOR TO ANY ADJOURNED, POSTPONED OR RESCHEDULED CREDITORS’ MEETING (THE “PROXY DEADLINE”). PLEASE RETURN YOUR PROXY SO THAT IT IS ACTUALLY RECEIVED BY THE MONITOR OR THE CHAIR ON OR BEFORE THE PROXY DEADLINE.

Please use this Proxy form if you do not wish to attend the Creditors’ Meeting to vote in person but wish to appoint a proxyholder to attend the Creditors’ Meeting, vote your claim to accept or reject the Plan and otherwise act for and on your behalf at the Creditors’ Meeting and any adjournment(s), postponement(s) or rescheduling(s) thereof.

The Plan is included in the Voting Package delivered to all Affected Secured Creditors, copies of which you have received. All capitalized terms used but not defined in this Proxy shall have the meanings ascribed to such terms in the Plan.

You should review the Plan before you vote. In addition, the Meeting Order establishes certain procedures for the conduct of the Creditors’ Meeting, a copy of which is included in the Voting Package. The Meeting Order contains important information regarding the voting process. Please read the Meeting Order and the instructions sent with this Proxy prior to submitting this Proxy.

**If the Plan is approved by the Required Majorities, is sanctioned by the Court, and is implemented, it will be binding on you whether or not you vote.**

**APPOINTMENT OF PROXYHOLDER AND VOTE**

By checking one of the two boxes below, the undersigned Affected Secured Creditor hereby revokes all proxies previously given and nominates, constitutes and appoints either (if no box is checked, the Monitor will act as your proxyholder):

\_\_\_\_\_, or

a representative of MNP LTD. in its capacity as Monitor of TribalScale Inc.

as proxyholder, with full power of substitution, to attend, vote and otherwise act for and on behalf of the undersigned at the at the Creditors' Meeting and at adjournment(s), postponement(s) and rescheduling(s) thereof, and to vote the amount of the Affected Secured Creditors' claim. Without limiting the generality of the power hereby conferred, the person named as proxyholder is specifically directed to vote as shown below. The person named as proxyholder is also directed to vote at the proxyholder's discretion and otherwise act for and on behalf of the undersigned with respect to any amendments or variations to the Plan and to any matters that may come before the Creditors' Meeting or at any adjournment, postponement or rescheduling thereof and to vote the amount of the Affected Secured Creditor's claim as follows (mark only one):

- Vote **FOR** the approval of the Plan, or
- Vote **AGAINST** the approval of the Plan

**Please note that if no specification is made above, the Affected Secured Creditor will be deemed to have voted FOR approval of the Plan at the Creditors' Meeting provided unless the Affected Secured Creditor otherwise exercises its right to vote at the Creditors' Meeting.**

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**AFFECTED SECURED CREDITOR'S SIGNATURE:**

\_\_\_\_\_

(Print Legal Name of Affected Secured Creditor)

\_\_\_\_\_

(Print Legal Name of Assignee, if applicable)

\_\_\_\_\_

(Signature of the Affected Secured Creditor/Assignee or an  
Authorized Signing Officer of the Affected Secured  
Creditor/Assignee)

\_\_\_\_\_

(Print Name and Title of Authorized Signing Officer of the Affected  
Secured Creditor/Assignee, if applicable)

\_\_\_\_\_

(Mailing Address of the Affected Secured Creditor/Assignee)

\_\_\_\_\_

(Telephone Number and E-mail of the Affected Secured  
Creditor/Assignee or Authorized Signing Officer of the Affected  
Secured Creditor/Assignee)

**YOUR PROXY MUST BE RECEIVED BY THE MONITOR AT THE EMAIL ADDRESS LISTED BELOW OR BEFORE THE PROXY DEADLINE.**

sheldon.title@mnp.ca

**IF YOU HAVE ANY QUESTIONS REGARDING THIS PROXY OR THE VOTING PROCEDURES, OR IF YOU NEED AN ADDITIONAL COPY OR ADDITIONAL COPIES OF THE ENCLOSED MATERIALS, PLEASE CONTACT THE MONITOR AT THE EMAIL ADDRESS ABOVE OR VISIT THE MONITOR'S WEBSITE AT <https://mnpdebt.ca/en/corporate/corporate-engagements/tribalscale-inc>**

**INSTRUCTIONS FOR COMPLETION OF PROXY FOR AFFECTED SECURED CREDITORS**

1. All capitalized terms used but not defined in this Proxy shall have the meanings ascribed to such terms in the Plan, a copy of which you have received.
2. The aggregate amount of your Affected Secured Claim in respect of which you are entitled to vote shall be your proven claim.
3. Affected Secured Creditors are entitled to vote at the Creditors' Meeting in respect of their Affected Secured Claims (except the Affected Secured Creditor deemed by the Meeting Order to have voted in favour of the Plan).
4. Check the appropriate box to vote for or against the Plan. **If you do not check either box, you will be deemed to have voted FOR approval of the Plan provided you do not otherwise exercise your right to vote at the Creditors' Meeting.**
5. Each Affected Secured Creditor who has a right to vote at the Creditors' Meeting has the right to appoint a person (who need not be an Affected Secured Creditor) to attend, act and vote for and on behalf of the Affected Secured Creditor and such right may be exercised by inserting in the space provided the name of the person to be appointed, or to select a representative of the Monitor as its proxyholder. If no proxyholder is selected, the Affected Secured Creditor will be deemed to have appointed any officer of MNP LTD., in its capacity as Monitor, or such other person as MNP LTD. may designate, as proxyholder of the Affected Secured Creditor, with power of substitution, to attend on behalf of and act for the Affected Secured Creditor at the Creditors' Meeting to be held in connection with the Plan and at any and all adjournments, postponements or other rescheduling thereof.
6. Please read and follow these instructions carefully. Your completed Proxy must actually be received by the Monitor sheldon.title@mnp.ca prior to 4:00 pm EST on December 9, 2020 or 24 hours (excluding Saturdays, Sundays and statutory holidays) which is the Proxy Deadline, prior to the time of any adjournment, postponement or rescheduling of the Creditors' Meeting (the "**Proxy Deadline**"). If your Proxy is not received by the Proxy Deadline, unless such time is extended, your Proxy will not be counted.

7. Sign the Proxy - your original signature is required on the Proxy to appoint a proxyholder and vote at the Creditors' Meeting. If you are completing the proxy as a duly authorized representative of a corporation or other entity, indicate your relationship with such corporation or other entity and the capacity in which you are signing, and if subsequently requested, provide proof of your authorization to so sign. In addition, please provide your name, mailing address, telephone number and e-mail address.
8. If you need additional Proxies, please immediately contact the Monitor.
9. If multiple Proxies are received from the same person with respect to the same claim(s) prior to the Proxy Deadline, the latest dated, validly executed Proxy timely received will supersede and revoke any earlier received Proxy. However, if a holder of claims casts Proxies received by the Monitor dated with the same date, but which are voted inconsistently, such Proxies will not be counted. If a Proxy is not dated in the space provided, it shall be deemed dated as of the date it is received by the Monitor.
10. If an Affected Secured Creditor validly submits a Proxy to the Monitor and subsequently attends the Creditors' Meeting and votes in person inconsistently, such Affected Secured Creditor's vote at the Creditors' Meeting will supersede and revoke the earlier received Proxy.
11. Proxies may be accepted for purposes of an adjourned, postponed or other rescheduled Creditors' Meeting if received by the Monitor by the Proxy Deadline.
12. Any Proxy that is illegible or contains insufficient information to permit the identification of the claimant will not be counted.
13. After the Proxy Deadline, no Proxy may be withdrawn or modified, except by an Affected Secured Creditor voting in person at the Creditors' Meeting, without the prior consent of the Monitor and the Applicants.

**IF YOU HAVE ANY QUESTIONS REGARDING THIS PROXY OR THE VOTING PROCEDURES, OR IF YOU NEED AN ADDITIONAL COPY OR ADDITIONAL COPIES OF THE ENCLOSED MATERIALS, PLEASE CONTACT THE MONITOR AT [sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca) OR VISIT THE MONITOR'S WEBSITE AT <https://mnpdebt.ca/en/corporate/corporate-engagements/tribalscale-inc>**



**Schedule "D"**  
**Plan Resolution**

## FORM OF RESOLUTION

### BE IT RESOLVED THAT:

1. The Plan of Compromise and Arrangement of TribalScale Inc. (the “**Company**”) pursuant to the *Companies’ Creditors Arrangement Act* (Canada) dated November 22, 2020 (the “**Plan**”), which Plan has been presented to this meeting (as such Plan may be amended, restated, supplemented and/or modified as provided for in the Plan), be and it is hereby accepted, approved, agreed to and authorized; and
2. one director or officer of the Company be and is hereby authorized and directed, for and on behalf of the Company (whether under its respective corporate seal or otherwise), to execute and deliver, or cause to be executed and delivered, any and all documents and instruments and to take or cause to be taken such other actions as he or she may deem necessary or desirable to implement this resolution and the matters authorized hereby, including the transactions required by the Plan, such determination to be conclusively evidenced by the execution and delivery of such documents or other instruments or the taking of any such actions.

**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*

**MEETING ORDER**

**WEISZ FELL KOUR LLP**  
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**Lawyers for the Applicant, TribalScale Inc.**

## **Appendix “B”**

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



THE HONOURABLE )  
JUSTICE CAVANAGH )

MONDAY, THE 11<sup>TH</sup>  
DAY OF JANUARY, 2021

**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

**SANCTION ORDER**

**THIS MOTION**, made by TribalScale Inc. ("**TribalScale**" or the "**Applicant**") for an order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), among other things, sanctioning the Amended Plan of Compromise and Arrangement dated January 4, 2021 (as amended, varied or supplemented from time to time in accordance with the terms thereof, and together with all schedules thereto, the "**Plan**"), which Plan is attached as **Schedule "A"** hereto; and granting related relief.

**ON READING** the Notice of Motion, the Affidavit of Sheetal Jaitly sworn January 6, 2021, the Third Report of MNP Inc. in its capacity as monitor of the Applicant (the "**Monitor**"), and the Second Report of the Monitor; and on hearing the submissions of respective counsel for the Applicant, the Monitor, and such other counsel as were present, and on being advised that the Service List was served with the Motion Record herein:

## **DEFINED TERMS**

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to such terms in the Plan.

## **SERVICE, NOTICE AND MEETINGS**

2. **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 that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.
3. **THIS COURT ORDERS** that there has been good and sufficient notice, service and delivery of the Voting Materials (as defined in the Meeting Order granted by this Court on November 25, 2020 (the “**Meeting Order**”)), the Meeting Order and the Plan to all Persons upon which notice, service and delivery were required.
4. **THIS COURT ORDERS** that the Creditors’ Meeting was duly called, convened, held and conducted, all in conformity with the CCAA and the Orders of this Court made in the CCAA Proceedings, including, without limitation, the Meeting Order.

## **SANCTION OF THE PLAN**

5. **THIS COURT ORDERS** that the Plan, in the form appended here as **Schedule “A”**, is accepted for filing and replaces the plan of compromise and arrangement appended to the Meeting Order.

6. **THIS COURT ORDERS** that:

- (a) the Plan has been approved by the Required Majorities of Affected Secured Creditors as required by the Meeting Order, and in conformity with the CCAA;
- (b) the Applicant has complied with the provisions of the CCAA and the Orders of the Court made in the CCAA Proceedings in all respects;
- (c) the Court is satisfied that the Applicant has not done or purported to do anything that is not authorized by the CCAA; and
- (d) the Applicant has acted in good faith and with due diligence, and the Plan and the transactions, terms and conditions contemplated therein are fair and reasonable.

7. **THIS COURT ORDERS** that the Plan and all associated steps, compromises, transactions, arrangements, releases contemplated therein are hereby sanctioned and approved pursuant to Section 6 of the CCAA.

**PLAN IMPLEMENTATION**

8. **THIS COURT ORDERS** that each of the Applicant, Newco, their respective directors and officers, and the Monitor is authorized and directed to take all steps and actions (including, without limitation, the Implementation Date Transactions), and to do all things, necessary or appropriate to implement the Plan in accordance with its terms and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, disbursements, payments, deliveries, allocations, instruments and agreements contemplated pursuant to the Plan, and such steps and actions are hereby authorized, ratified and approved. None of the Applicant, Newco, or their respective directors and officers, or the Monitor shall incur any liability as a result of acting in accordance with the

terms of the Plan and this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of such parties.

9. **THIS COURT ORDERS** that the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby (including, without limitation, the Implementation Date Transactions) are hereby approved, shall be deemed to be implemented without the need for any corporate formality and shall be binding and effective as of the Effective Time in accordance with the terms of the Plan or at such other time, times or manner as may be set forth in the Plan in the sequence provided therein, and shall enure to the benefit of and be binding and effective upon the Applicant, Newco, the Affected Secured Creditors, the Released Parties, and all other Persons and parties named or referred to in, affected by, or subject to the Plan.
10. **THIS COURT ORDERS** that: (i) the Applicants and the Monitor, and any other Person required to make any distributions, deliveries or allocations or take any steps or actions related thereto pursuant to the Plan are hereby authorized and directed to complete such distributions, deliveries or allocations and to take any such related steps or actions, as the case may be, in accordance with the terms of the Plan, and such distributions, deliveries and allocations, and steps and actions related thereto, are hereby approved; and (ii) such distributions, deliveries or allocations shall be free and clear of all claims, rights and interests of any Person, including, without limitation, any super-priority CCAA charges.
11. **THIS COURT ORDERS** that upon delivery to the Monitor of written notice by the Applicant and the Supporting Creditor of the fulfilment or waiver of the conditions precedent to implementation of the Plan, the Monitor shall deliver to the Applicant a certificate signed by the Monitor confirming that all of the conditions precedent set out in



Article 6 of the Plan have been satisfied or waived, as applicable, in accordance with paragraph 7.3 of the Plan, and that the Implementation Date has occurred and the Plan is effective in accordance with its terms and the terms of this Order (the “**Monitor’s Implementation Date Certificate**”), a form of which is appended here as **Schedule “B”**. The Monitor is hereby directed to file the Monitor’s Implementation Date Certificate with the Court as soon as reasonably practicable on or forthwith following the Implementation Date after delivery thereof and shall post a copy of same, once filed, on the Website and provide a copy to the Service List.

12. **THIS COURT ORDERS** that the form of Monitor’s Implementation Date Certificate is hereby approved.
13. **THIS COURT ORDERS** that (i) the existing shareholder rights agreement among TribalScale and all of the shareholders of TribalScale dated December 8, 2015, as amended, (ii) the Right of First Refusal and Co-Sale Agreement among TribalScale and all of the shareholders of TribalScale dated December 8, 2015, and (iii) the Voting Agreement among TribalScale and all of the shareholders of TribalScale dated December 8, 2015, shall be deemed to be terminated.

#### **COMPROMISE OF CLAIMS AND EFFECT OF PLAN**

14. **THIS COURT ORDERS** that, pursuant to and in accordance with the terms of the Plan, on the Implementation Date, all Released Claims shall be fully, finally, irrevocably and forever compromised, discharged and released with prejudice, and the ability of any Person to proceed against the Released Parties in respect of or relating to any such Affected Claims shall be and shall be deemed forever discharged, extinguished, released and restrained, and all proceedings with respect to, in connection with or relating to such Released Claims shall

permanently be stayed against the Released Parties, subject only to the right of Affected Secured Creditors to receive the distributions and deliveries pursuant to the Plan and this Order in respect of their Proven Claims, in the manner and to the extent provided for in the Plan. For the avoidance of doubt, the terms “distributions” and “deliveries” shall include all elements of the transactions contemplated in the Plan and this Order to be issued or delivered to an Affected Secured Creditor including the New Senior Secured Note and General Security Agreement.

15. **THIS COURT ORDERS** that the determination of Proven Claims shall be final and binding on the Applicant and all Affected Secured Creditors.
16. **THIS COURT ORDERS** that nothing in the Plan extends to or shall be interpreted as extending, amending, or giving any rights to any Person in respect of Claims that have been barred or extinguished.
17. **THIS COURT ORDERS** that each Person named or referred to in, or subject to, the Plan shall be and is hereby deemed to have consented and agreed to all of the provisions in the Plan, in its entirety, and each Person named or referred to in, or subject to, the Plan shall be and is hereby deemed to have executed and delivered to the Applicant all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.
18. **THIS COURT ORDERS AND DECLARES** that all distributions or payments to Affected Secured Creditors under the Plan are for the account of the Applicant and the fulfillment of its obligations under the Plan.
19. **THIS COURT ORDERS** that sections 95 to 101 of the BIA and any other federal or provincial law relating to preferences, fraudulent conveyances or transfers at undervalue,

shall not apply to the Plan or to any transactions, distributions or settlement payments implemented pursuant to the Plan.

20. **THIS COURT ORDERS AND DECLARES** that the Applicant shall be authorized, in connection with the making of any payment or distribution, and in connection with the taking of any step or transaction or performance of any function under or in connection with the Plan, to apply to any Governmental Authority for any consent, authorization, certificate or approval in connection therewith.
  
21. **THIS COURT ORDERS AND DECLARES** that any distributions, disbursements or payments made under the Plan or this Order shall not constitute a “distribution” by any person for the purposes of any tax statute or regulation, and the Applicant, in making any such distributions, disbursements or payments, as applicable, is merely a disbursing agent under the Plan and is not exercising any discretion in making payments under the Plan and no person is “distributing” such funds for the purpose of any tax statute or regulation, and the Applicant and any other person shall not incur any liability under any tax statute or regulation in respect of distributions, disbursements or payments made by it and the Applicant and any other person is hereby forever released, remised and discharged from any claims against it under or pursuant to any tax statute or regulation or otherwise at law, arising in respect of or as a result of distributions, disbursements or payments made by it in accordance with the Plan and this Order and any claims of this nature are hereby forever barred.

## **RELEASES**

22. **THIS COURT ORDERS AND DECLARES** that the compromises and releases set out in Article 10 of the Plan are approved and shall be binding and effective as at the Implementation Date, in accordance with the Plan.
23. **THIS COURT ORDERS** that from and after the Implementation Date any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative: hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Released Party in respect of all Claims that are released pursuant to paragraph 22 of this Order and Article 10 of the Plan or discharged, compromised or terminated pursuant to the Plan.

## **THE MONITOR**

24. **THIS COURT ORDERS** that in addition to its prescribed rights and obligations under the CCAA and the Orders of the Court made in these CCAA Proceedings, the Monitor is granted the powers, duties and protections contemplated by and required under the Plan and that the Monitor be and is hereby authorized, entitled and empowered to perform its duties and fulfil its obligations under the Plan to facilitate the implementation thereof, including without limitation:
- (a) to take all such actions to pursue any outstanding accounts receivable owing to any of the Applicant and/or Newco, or to assist the Applicant and/or Newco with respect thereto;

- (b) to act, if required, as trustee in bankruptcy, liquidator, receiver or a similar official of the Applicant; and
  - (c) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under any other Order granted by this Court including for advice and directions with respect to any matter arising from or under the Plan.
25. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order or the provisions of any other Order granted in the CCAA Proceeding, including this Order, the Applicant shall remain in possession and control of the Property (as defined in the Initial Order) and that the Monitor shall not take possession or be deemed to be in possession and/or control of the Property.
26. **THIS COURT ORDERS AND DECLARES** that the Monitor shall be authorized, in connection with the taking of any step or transaction or performance of any function under or in connection with the Plan, to apply to any Governmental Authority for any consent, authorization, certificate or approval in connection therewith.
27. **THIS COURT ORDERS AND DECLARES** that: (i) in carrying out the terms of this Order and the Plan, the Monitor shall have all the protections given to it by the CCAA, the Initial Order, and as an officer of the Court, including the Stay of Proceedings in its favour; (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of this Order and/or the Plan, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor; (iii) the Monitor shall be entitled to rely on the books and records of the Applicant and any information provided by the Applicant without independent investigation; and (iv) the Monitor shall not be liable for

any claims or damages resulting from any errors or omissions in such books, records or information.

28. **THIS COURT ORDERS AND DECLARES** that in no circumstance will the Monitor have any liability for any of the Applicant's tax liabilities regardless of how or when such liability may have arisen.
29. **THIS COURT ORDERS** that the Monitor is hereby directed to post a copy of the Monitor's Implementation Date Certificate, once filed, on the Website and provide a copy to the Service List.

#### **ADDITION OF NEWCO AS CCAA APPLICANT**

30. **THIS COURT ORDERS** that,
- (a) Newco is a company to which the CCAA applies;
  - (b) Newco shall be an Applicant in these CCAA proceedings and any reference in any Order of this Court in respect of these CCAA proceedings to an "Applicant" shall refer to Newco, *mutatis mutandis*; and
  - (c) The full legal name of Newco, being 2800741 Ontario Inc., shall be added to the title of these proceedings after TribalScale, and any document filed thereafter in these proceedings shall be filed using the revised title of proceedings.

#### **REVERSE VESTING**

31. **THIS COURT ORDERS** that on the Implementation Date, all Claims of General Unsecured Creditors shall vest absolutely and exclusively in Newco, such that the these Claims shall become obligations of Newco and shall no longer be obligations of TribalScale, and the Applicant and all of its assets, licenses, undertakings and properties of

every nature and kind whatsoever and wherever situate (the “**Applicant’s Property**”) shall be and are hereby forever released and discharged from such Claims and all related Claims and all encumbrances affecting or relating to the Applicant’s Property are hereby expunged and discharged as against the Applicant’s Property.

32. **THIS COURT ORDERS** that on the Implementation Date, all rights and benefits of TribalScale relating to a professional services agreement between TribalScale and Sirius XM Connected Vehicle Services Inc. (“**SiriusXM**”) dated April 26, 2019 as further particularized through individual statements of work including the statement of work effective November 23, 2019 (the “**SiriusXM Contract**”) are hereby vested in Newco, including without limitation, (i) TribalScale’s right to receive interest, penalties and fees, (ii) any actions, claims, rights or lawsuits of any nature whatsoever, whether against SiriusXM or any other party, arising out of or in connection with SiriusXM Contract (collectively, the “**Claims**”), (iii) all cash, securities, instruments and other property which may be paid or issued by SiriusXM under the SiriusXM Contract or in satisfaction of the Claims, and (iv) all proceeds of the foregoing. For greater clarity, Newco is hereby empowered to pursue and prosecute all claims available to TribalScale against SiriusXM and its affiliates.

## **CONTRACTS**

33. **THIS COURT ORDERS** that subject to the performance by the Applicant of its obligations under the Plan, all contracts, leases, agreements and other arrangements to which the Applicants, or any of them, are a party and that have not been terminated or disclaimed pursuant to the applicable paragraph of the Initial Order and related provision of the CCAA will be and remain in full force and effect as of the Effective Time, and no

Person who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

- (a) any event that occurred on or prior to the Implementation Date and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the Applicant);
- (b) the insolvency of the Applicant or the fact that the Applicant sought or obtained relief under the CCAA;
- (c) any steps, compromises, releases, discharges, cancellations, transactions, arrangements or reorganizations effected pursuant to the Plan or any action taken or transaction effected pursuant to the Plan; or (d) any change of control of the Applicant arising from the implementation of the Plan; or
- (d) any change of control of the Applicant arising from the implementation of the Plan.

#### **GENERAL**

- 34. **THIS COURT ORDERS** that the Applicant, Newco, and the Monitor may apply to this Court from time to time for advice and direction with respect to any matter arising from or under the Plan or this Order.
- 35. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories of Canada and abroad as against all persons and parties against whom it may otherwise be enforced.



36. **THIS COURT ORDERS** that the Applicant and/or Newco (in the sole discretion of either) are hereby authorized to seek an order of any court of competent jurisdiction to recognize the Plan and this Order, to confirm the Plan and this Order as binding and effective in any appropriate foreign jurisdiction, and to assist the Applicant, Newco, the Monitor and their respective agents in carrying out the terms of the Plan and this Order.
37. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to recognize and give effect to the Plan and this Order, to confirm the Plan and this Order as binding and effective in any appropriate foreign jurisdiction, and to assist the Applicant, Newco, the Monitor and their respective agents in carrying out the terms of the Plan and 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.
38. **THIS COURT ORDERS** that this Order is effective from the date it is made without any need for entry and filing.

Peter Cavanagh Digitally signed by Peter  
Cavanagh  
Date: 2021.01.11 10:51:06 -05'00'

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**SCHEDULE "A"**

*Amended Plan of Compromise and Arrangement of the Applicant, Tribalscale Inc.*

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

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

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

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

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**AMENDED PLAN OF COMPROMISE AND ARRANGEMENT  
OF THE APPLICANT, TRIBALSCALE INC.,  
PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT***

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January 4, 2021

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## AMENDED PLAN OF COMPROMISE AND ARRANGEMENT

### RECITALS

**WHEREAS** TribalScale Inc. (the “**Applicant**” or “**TribalScale**”) is a debtor company pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “**CCAA**”);

**AND WHEREAS**, on July 31, 2020, the Honourable Madam Justice Gilmore of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Initial Order pursuant to the provisions of the CCAA and appointed MNP Ltd. as the monitor in these proceedings (the “**Monitor**”);

**AND WHEREAS** on October 30, 2020, the Court approved a Restructuring Support Agreement between the Applicant and its senior secured creditor, 1924191 Ontario Inc. (“**192**”), which was executed on November 3, 2020 (the “**RSA**”).

**AND WHEREAS**, on November 25, 2020, the Applicant obtained a Meeting Order (the “**Meeting Order**”) pursuant to which, among other things, the Applicant was authorized to file the Plan (as defined in Schedule “A” hereto) and to convene a meeting of Affected Secured Creditors to consider and vote on the Plan.

**AND WHEREAS** the Meeting Order states that the Applicant may effect a Plan Modification (as defined in the Meeting Order) prior to or at the Creditors’ Meeting (as defined herein), in which case any such Plan Modification will, for all purposes, be and be deemed to form part of and be incorporated into the Plan.

**AND WHEREAS** the purpose of this Plan is to facilitate the continuation of the business of the Applicant as a going concern, to address certain liabilities of the Applicant, and to effect a recapitalization transaction pursuant to and in accordance with the terms of the RSA on an expedited basis in order to provide a stronger financial foundation for the Applicant going forward, as well as additional liquidity to allow the Applicant to continue to work towards its operational and financial goals from and after the Implementation Date (as defined in Schedule “A”) of the Plan;

**NOW THEREFORE** the Applicant hereby proposes and presents this amended Plan pursuant to and in accordance with the provisions of the CCAA.

### ARTICLE 1 - INTERPRETATION

#### 1.1 Certain Rules of Interpretation

For the purposes of this Plan:

- (a) In this Plan and the recitals herein, unless otherwise stated or the subject matter or context otherwise requires, all terms defined herein have their meanings ascribed thereto on **Schedule “A”**;

- (b) Any reference in this Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means such document shall be substantially in such form or substantially on such terms and conditions;
- (c) Unless otherwise expressly provided herein, any reference in this Plan to an instrument, agreement or an Order or an existing document or exhibit filed or to be filed means such instrument, agreement, Order, document or exhibit as it may have been or may be amended, modified, or supplemented in accordance with its terms;
- (d) The division of this Plan into Articles and Sections is for convenience of reference only and does not affect the construction or interpretation of this Plan, nor are the descriptive headings of Articles and Sections intended as complete or accurate descriptions of the content thereof;
- (e) The use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of this Plan to such Person (or Persons) or circumstances as the context otherwise permits;
- (f) The words “includes” and “including” and similar terms of inclusion shall not, unless expressly modified by the words “only” or “solely”, be construed as terms of limitation, but rather shall mean “includes but is not limited to” and “including but not limited to”, so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (g) Unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day;
- (h) Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends;
- (i) Unless otherwise provided, any reference to a statute or other enactment of parliament, a legislature or other Governmental Entity includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;
- (j) References to a specific Recital, Article, or Section shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specific Recital, Article or Section of this Plan, whereas the terms “this Plan”, “hereof”, “herein”, “hereto”, “hereunder” and similar expressions shall be deemed to refer generally to this Plan and not to any particular Recital, Article, Section or other portion of this Plan and include any documents supplemental hereto; and



(k) The word "or" is not exclusive.

## **1.2 Governing Law**

This Plan shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. All questions as to the interpretation or application of this Plan and all proceedings taken in connection with this Plan and its provisions shall be subject to the jurisdiction of the Court.

## **1.3 Currency**

Unless otherwise stated, all references in this Plan to sums of money are expressed in, and all payments provided for herein shall be made in, Canadian dollars.

## **1.4 Date for Any Action**

If the date on which any action is required to be taken hereunder by a Person is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

## **1.5 Time**

Time shall be of the essence in this Plan.

## **ARTICLE 2 - PURPOSE AND EFFECT OF THIS PLAN**

### **2.1 Purpose**

The purpose of this Plan is to effect a restructuring of the secured indebtedness of the Applicant with the expectation that Persons who have an economic interest in the Applicant, when considered as a whole, will derive a greater benefit from the implementation of this Plan than would result from a bankruptcy of the Applicant.

### **2.2 Effectiveness**

Subject to the satisfaction, completion or waiver of the conditions precedent set out herein, this Plan will become effective in the sequence described in **ARTICLE 7** below from and after the Implementation Date and on the Implementation Date each Affected Secured Claim will be fully and finally compromised, released, settled and discharged under the Plan. The Plan shall be binding on and enure to the benefit of the Applicant, the Affected Secured Creditors, all Existing Equity Holders, all holders of Equity Claims, the Released Parties, and all other Persons as provided for herein, or subject to, this Plan and their respective successors and assigns and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

### 2.3 Persons Not Affected

This Plan does not affect Unaffected Creditors to the extent of their Unaffected Claims. Nothing in this Plan shall affect the Applicant's rights and defences, both legal and equitable, with respect to any Unaffected Claims, including, but not limited to, all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims. Nothing herein shall constitute a waiver of any rights of any of the Applicants to dispute the quantum or validity of an Unaffected Claim.

### 2.4 Corporate Approvals

The execution, delivery, implementation, and consummation of all matters contemplated under this Plan involving corporate action of the Applicant, Newco, 192, BDC, Scotiabank or any other entity subject to this Plan, including the steps outlined in Section 7.1 of this Plan, will be authorized and approved under this Plan and by the Court as part of the Sanction Order in all respects and for all purposes without any requirement of further action by any Person.

## ARTICLE 3 - CLASSIFICATION, VOTING CLAIMS AND RELATED MATTERS

### 3.1 Classes

For the purposes of considering, voting on, and receiving distributions under this Plan, the Affected Secured Creditors shall constitute two classes, as follows:

- (a) one class of Creditors consisting of 192 (the "**Converting Secured Creditor Class**"); and
- (b) one class of Creditors consisting of BDC (the "**Paid-Out Secured Creditor Class**").

### 3.2 Guarantees

No Person who has a Claim under a guarantee in respect of any Claim which is compromised or otherwise dealt with under the Plan (a "**Principal Claim**") or who has any right to or claim over in respect of or to be subrogated to the rights of any Person in respect of a Principal Claim, shall: (a) be entitled to any greater rights as against the Applicant than the Person holding the Principal Claim; (b) be entitled to vote on this Plan to the extent that the Person holding the Principal Claim is voting on this Plan; or (c) be entitled to receive any distribution under this Plan to the extent that the Person holding the Principal Claim is receiving a distribution.

### 3.3 Claims of Affected Secured Creditors

Except as otherwise provided in the Meeting Order, Affected Secured Creditors shall be entitled to vote their Proven Claims at the Creditors' Meeting in respect of this Plan and

shall be entitled to receive distributions on account of their Proven Claims as provided under and pursuant to this Plan.

### **3.4 Creditors' Meeting**

- (a) The Creditors' Meeting shall be held in accordance with this Plan, the Meeting Order, and any further Order in the CCAA Proceedings.
- (b) If this Plan is approved by the Required Majorities in each voting class, then this Plan shall be deemed to have been agreed to, accepted and approved by the Affected Secured Creditors and shall be binding upon all Affected Secured Creditors immediately upon the delivery of the Monitor's Certificate.

### **3.5 Existing Equity Holders and Holders of Equity Claims**

Existing Equity Holders and holders of Equity Claims shall not be entitled to attend or vote in respect of their Existing Shares, Existing Share Options or Equity Claims any meeting to consider and approve this Plan and shall not receive any distribution under the Plan on account of their Existing Shares, Existing Share Options or Equity Claims.

### **3.6 Crown Claims**

All federal and provincial government claims of the kind described in subsection 6(3) of the CCAA that were outstanding at the Filing Date shall be paid in full within six months after the Sanction Order, as required by subsection 6(3) of the CCAA.

### **3.7 Payments to Employees**

If not already paid, then immediately after the date of the Sanction Order, the Applicant will pay in full all employee-related payments required by subsection 6(5) of the CCAA.

### **3.8 Determination of Affected Secured Claims**

For the purposes of rights, entitlements and distributions under this Plan, the amount of an Affected Secured Claim shall be determined on the basis of the principal amount outstanding as of the Filing Date plus any accrued interest up to the Implementation Date.

**ARTICLE 4 -  
TREATMENT OF CLAIMS**

**4.1 Treatment of Converting Secured Creditor Class**

- (a) On the Implementation Date and in accordance with the steps and sequence set forth in this Plan, 192 shall be entitled to receive in exchange for all of its right, title and interest in and to the Affected Secured Claim, a distribution from the Applicant of:
- (i) 8,990,000 Voting Common Shares representing eighty-nine and nine tenths percent (89.9%) of the total number of Voting Common Shares that will be issued and outstanding immediately following the completion of the steps outlined in Section 7.1 of the Plan;
  - (ii) 732,000 Preferred Shares representing one hundred percent (100%) of the total number of Preferred Shares that will be issued and outstanding immediately following the completion of the steps outlines in Section 7.1 of the Plan; and
  - (iii) the New Senior Secured Note and the General Security Agreement.

**4.2 Treatment of the Paid-Out Secured Creditor Class**

On the Implementation Date and in accordance with the steps and sequence set forth in this Plan, the Paid-Out Secured Class shall be entitled to receive in full satisfaction of its right, title and interest in and to its Affected Secured Claim, a Cash distribution in the lesser amount of: (i) C\$115,300, or (ii) the actual amount outstanding and owing to the Paid-Out Secured Creditor Class pursuant to a payout statement received from the Paid-Out Secured Creditor Class (the “BDC Payment”).

**4.3 Equity Claims**

All Equity Claims, and all Claims that are based on or related to Equity Claims, shall and shall be deemed to be fully, finally and irrevocably and forever compromised, released, discharged, settled, extinguished, cancelled and barred on the Implementation Date. Holders of Equity Claims shall not receive any consideration or distributions under this Plan and shall not be entitled to vote on this Plan at the Creditors’ Meeting.

**4.4 Calculation and Quantum of Claims**

For the purposes of all distributions under this Plan, all Affected Secured Claims shall be calculated and quantified as of the Filing Date, which shall be deemed to mean as of 12:01 am on May 19, 2020. To the extent that interest or other amounts accrue as part of any Affected Secured Claim, such interest or other amounts shall be calculated up to and including the Implementation Date.

#### 4.5 Extinguishment of Claims

On the Implementation Date, in accordance with this Plan and the provisions of the Sanction Order, the treatment of the Affected Secured Creditors in respect to their Affected Secured Claims shall be final and binding on TribalScale, all Affected Secured Creditors (and their respective heirs, executors, administrators, legal personal representatives, successors and assigns), and any Person holding a Released Claim. All Released Claims shall be fully, finally, irrevocably and forever released, discharged, cancelled and barred, and the Released Parties shall thereupon have no further obligation whatsoever in respect of the Affected Secured Claims and the Released Claims, as applicable.

### ARTICLE 5 - REORGANIZED EQUITY OF TRIBALSCALE

#### 5.1 Amended Articles

In accordance with the Plan, TribalScale shall pre-file articles of amendment (the “**Amended Articles**”) with the applicable branch of the Ministry of Government Services (Ontario) to take effect as of the Implementation Date to authorize the issuance of the Preferred Shares and state the rights, privileges, restrictions and conditions attaching thereto.

#### 5.2 Reorganization of Equity

On the Implementation Date and in accordance with the steps and sequence set forth in this Plan:

- (a) the Applicant shall issue from treasury to 192 8,990,000 Voting Common Shares representing eighty-nine and nine tenths percent (89.9%) of the total number of Voting Common Shares that will be issued and outstanding immediately following the completion of the steps outlined in Section 7.1 of the Plan;
- (b) the Applicant shall issue from treasury to Jaitly Trust 1,010,000 Voting Common Shares representing ten and one tenth percent (10.1%) of the total number of Voting Common Shares that will be issued and outstanding immediately following the completion of the steps outlined in Section 7.1 of the Plan;
- (c) pursuant to a share purchase agreement between 192 and Scotiabank (the “**Share Purchase Agreement**”), 192 shall sell 490,000 Voting Common Shares to Scotiabank, such that immediately following the completion of the steps outlined in Section 7.1 of the Plan, Scotiabank will hold 490,000 Voting Common Shares and 192 will hold 8,500,000 Voting Common Shares, representing five percent (4.9%) and eighty-five percent (85%), respectively, of the total number of Voting Common Shares that will be issued and outstanding immediately following the completion of the steps outlined in Section 7.1 of the Plan; and

- (d) the Applicant shall issue from treasury 732,000 Preferred Shares to 192 representing one hundred percent (100%) of the total number of Preferred Shares that will be issued and outstanding immediately following the completion of the steps outlined in Section 7.1 of the Plan.

### **5.3 Capitalization**

Immediately following the completion of the steps outlined in Section 7.1 of the Plan, there will be 10,000,000 Voting Common Shares, 732,000 Preferred Shares and no Non-Voting Common Shares of the Applicant issued and outstanding.

### **5.4 No Fractional Shares**

No fractional shares in the capital of the Applicant shall be issued under this Plan.

### **5.5 Shareholders' Agreement**

On the Implementation Date and in accordance with the steps and sequence set forth in this Plan, 192, Scotiabank and Jaitly Trust shall become party to a unanimous shareholders' agreement (the "**Shareholders' Agreement**"), each in his or its capacity as a holder of shares in the capital of the Applicant.

## **ARTICLE 6- CONDITIONS PRECEDENT TO IMPLEMENTATION OF THE PLAN**

### **6.1 Pre-Implementation Date Conditions**

- (a) The Plan is subject to the satisfaction of the following conditions (the "**Plan Implementation Conditions**"):
  - (i) the Plan must be approved by the Required Majority of the Affected Secured Creditors of the Applicants;
  - (ii) the Sanction Order and the Reverse Vesting Order must be granted by the Court, consistent with the terms of Section 10.1;
  - (iii) the existing shareholder rights agreement among TribalScale and all of the shareholders of TribalScale dated December 8, 2015, as amended, the Right of First Refusal and Co-Sale Agreement among TribalScale and all of the shareholders of TribalScale dated December 8, 2015, and the Voting Agreement among TribalScale and all of the shareholders of TribalScale dated December 8, 2015, shall be deemed to be terminated pursuant to the Sanction Order;
  - (iv) TribalScale shall have pre-filed the Amended Articles with the applicable branch of the Ministry of Government Services (Ontario) to take effect as of the Implementation Date;

- (v) all claims of the General Unsecured Creditors shall be transferred to Newco pursuant to the Reverse Vesting Order and the Reverse Vesting Order shall be effective;
  - (vi) Newco shall be added as an applicant in the CCAA Proceeding;
  - (vii) all applicable appeal periods in respect to the Reverse Vesting Order will have expired and any appeals therefrom will have been finally disposed of by the applicable appellant tribunal;
  - (viii) all relevant Persons will have executed, delivered and filed all documents and other instruments that, in the opinion of the Applicants and the Monitor, are necessary to implement the provisions of the Plan, the Sanction Order or the Reverse Vesting Order;
  - (ix) no action or proceeding will be pending by any third party to enjoin or prohibit the Plan; and
  - (x) to the extent not listed above and without duplication, the conditions precedent listed in Article 6, Article 7, and Article 8 of the RSA, which conditions may be satisfied or varied in accordance with the terms of the RSA.
- (b) Upon satisfaction of the Implementation Conditions, the Applicant will proceed to implement the Plan. In consultation with the Monitor, the Applicant will designate the Implementation Date and will implement the Plan on that date in accordance with the terms and conditions hereof.

## ARTICLE 7 - IMPLEMENTATION DATE TRANSACTIONS

### 7.1 Implementation Date Events

Commencing on the Implementation Date, the following events or actions will occur, or be deemed to have occurred and be taken and at such times, intervals, or order as the Applicant and the Monitor may agree, without any further act or formality required on the part of any Person, except as may be expressly provided herein:

- (a) the following shall occur concurrently (collectively, the “Share Consolidation”):
  - (i) all Existing Shares shall be cancelled without payment of any consideration therefor;
  - (ii) the Existing Share Options shall be cancelled without any repayment of capital thereof or compensation therefor and shall cease to be of any further force or effect;

- (iii) any existing agreements among the Existing Equity Holders with respect to their Existing Shares or Existing Share Options shall be cancelled and terminated; and
  - (iv) all Equity Claims, including indemnity claims of Directors or Officers that are based on or related to Equity Claims, shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without any repayment of capital thereof or compensation therefor;
- (b) the Amended Articles shall become effective;
  - (c) the Applicant shall issue and deliver to 192 and Jaitly Trust, respectively, the number of Voting Common Shares stipulated under Section 5.2 herein;
  - (d) the Applicant shall issue and deliver the New Senior Secured Note and the General Security Agreement to 192 stipulated under Section 5.2 herein;
  - (e) the Applicant shall issue and deliver the Preferred Shares to 192 stipulated under Section 5.2 herein;
  - (f) pursuant to the Share Purchase Agreement, 192 shall sell to Scotiabank the number of Voting Common Shares stipulated under Section 5.2 herein and deliver such shares to Scotiabank;
  - (g) all Voting Common Shares and Preferred Shares issued as part of the implementation of this Plan shall be deemed to be issued and outstanding as fully paid and non-assessable shares in the capital of the Applicant;
  - (h) the Applicant shall wire transfer an amount equal to the BDC Payment to BDC in accordance with Section 4.2 herein;
  - (i) any right of indemnity or contribution of a Director, Officer or employee against the Applicant of any nature whatsoever (whether pursuant to a written contract or agreement or otherwise, and whether present or future or known or unknown) shall be fully, finally, irrevocably and forever terminated, extinguished, compromised, released, discharged, cancelled and barred without any liability, payment or other compensation in respect thereof and each Director, Officer or employee shall be permanently barred, estopped, stayed and enjoined, on and after the Implementation Date, from asserting any such right of indemnity or contribution against the Applicant;
  - (j) all applicable appeal periods in respect to the Sanction Order will have expired and any appeals therefrom will have been finally disposed of by the applicable appellant tribunal;
  - (k) the SiriusXM Claim shall be assigned from TribalScale to Newco pursuant to the terms of the Reverse Vesting Order; and



- (l) the releases and injunctions referred to under **ARTICLE 10** shall become effective.

## **7.2 Administration Charge**

On the Implementation Date, all outstanding, invoiced obligations, liabilities, fees and disbursements secured by the Administration Charge shall be fully paid by the Applicant. Upon receipt by the Monitor of confirmation from each of the beneficiaries of the Administration Charge that payments of the amounts secured by the Administration Charge have been made, the Administration Charge shall be and be deemed to be discharged from the assets of the Applicant, without the need for any other formality; provided however that this Section shall not apply to the Monitor and its legal counsel in respect of any acts or steps required to be taken by the Monitor or its counsel after the Implementation Date and, for greater certainty, the Monitor and its legal counsel shall continue to have the benefit of the Administration Charge so long as (i) the Monitor has not been discharged from its duties as Monitor in these CCAA Proceedings, and (ii) any fees and disbursements of the Monitor or its counsel (including fees and disbursements incurred after the Implementation Date) remain unpaid by the Applicant or Newco.

Notwithstanding Plan Implementation or the reduction of the Administration Charge, TribalScale shall continue to pay the reasonable costs, fees and disbursements incurred by its counsel, Weisz Fell Kour LLP, whether incurred prior to or after the Implementation Date, where such costs, fees and disbursements relate to the implementation of this Plan or any of the transactions and activities contemplated herein.

## **7.3 Monitor's Certificate of Plan Implementation**

Upon written notice from the Applicant (or counsel on their behalf) to the Monitor and 192 that the conditions to Plan implementation set out in Section 6.1 have been satisfied or waived, the Monitor shall, as soon as possible following receipt of such written notice, deliver to the Applicant and 192, as well as file with the Court, a certificate (the "**Monitor's Certificate**") which states that all conditions precedent set out in **ARTICLE 6** have been satisfied or waived and that the Implementation Date (which shall be set out on the certificate) has occurred.

## **7.4 No Exercise of Right or Remedy**

Subject to the performance by the Applicant of its obligations under the Plan, and except as provided in the Plan, all obligations, agreements, contracts or arrangements to which the Applicant is a party on the Implementation Date shall be and remain in full force and effect, unamended, as at the Implementation Date and no Person, including any party thereto, shall on or following the Implementation Date, accelerate, terminate, refuse to renew, rescind, refuse to perform, cancel or otherwise disclaim or resiliate its obligations or the Applicant's interests thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy (including any right to receive any change of control, assignment or similar payment) under or in respect thereof by reason:

- (a) of any event that occurred prior to the Implementation Date;
- (b) that the Applicant is or was insolvent, or that the Applicant sought or obtained relief or took steps as part of the Plan or during the CCAA Proceeding and the preceding NOI Proceeding;
- (c) of any default, event of default or circumstance of non-compliance arising as a result of the financial condition or insolvency of the Applicant, the CCAA Proceeding or the NOI Proceeding;
- (d) of the effect upon the Applicant of the completion of any of the transactions approved in the CCAA Proceeding or the NOI Proceeding, or contemplated by the Plan, including, without limitation, as a result of a change of control of the Applicant; or
- (e) of any assignments, compromises, settlements, restructurings, recapitalizations or reorganizations effected pursuant to the Plan.

## **ARTICLE 8 - CONSTITUTION OF NEWCO**

### **8.1 Incorporation**

Newco will be incorporated under the laws of Ontario as a private, wholly owned subsidiary of the Applicant and organized in a manner acceptable to 192 and the Applicant, acting reasonably.

### **8.2 Newco Further Assurances**

Newco shall agree to 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 Plan, to accomplish the purpose of this Plan or to assure to the other party the benefits of this Plan.

## **ARTICLE 9 - DISTRIBUTIONS AND DISBURSEMENTS**

### **9.1 Delivery of Shares by TribalScale**

The obligation of TribalScale to deliver Voting Common Shares and Preferred Shares pursuant to this Plan shall be satisfied by the provision of electronic scans of share certificates representing such shares to each of 192 and the Jaitly Trust.

## 9.2 Delivery of Shares by 192

The obligation of 192 to deliver Voting Common Shares to Scotiabank pursuant to this Plan shall be satisfied by the delivery of the share certificate representing such shares accompanied by an irrevocable stock transfer power of attorney duly executed by 192 to Scotiabank.

## 9.3 Delivery of the New Senior Secured Note and General Security Agreement

The obligation of TribalScale to deliver the New Senior Secured Note and General Security Agreement to 192 pursuant to this Plan shall be satisfied by the provision of an electronically signed copy of the New Senior Secured Note and General Security Agreement to 192.

## 9.4 Delivery of Payment to BDC

The obligation of TribalScale to make the BDC Payment in accordance with Section 4.2 herein shall be satisfied by the arrangement of a wire transfer as directed by BDC on the Implementation Date and the provision of a wire confirmation to BDC therefor.

## ARTICLE 10- RELEASES

### 10.1 Plan Releases

At the Implementation Date, the Applicant, the Applicant's present and former employees and contractors, the Directors and Officers and each of their respective financial advisors, legal counsel and agents (collectively, the "**Released Parties**") shall be released and discharged from any and all rights and claims of any holder of an Affected Secured Claim (the "**Released Claims**"), whether or not any such right or Claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, where such right or Claim is based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, or after the Implementation Date in furtherance of the Plan and that is in any way relating to, arising out of or in connection with (i) Affected Secured Claims; (ii) RSA, (iii) Equity Claims; (iv) Existing Shares; (v) Existing Share Options; (vi) this Plan; (vii) the CCAA Proceedings; and (viii) the NOI Proceedings, provided, however, that nothing in this Section will release or discharge:

- (a) any Unaffected Claim;
- (b) TribalScale of or from its obligations under this Plan, under any Order, or under any document delivered by TribalScale on the Implementation Date pursuant to this Plan;

- (c) Newco from its obligations under this Plan, under any Order, or under any document delivered by Newco on the Implementation Date pursuant to this Plan;
- (d) a Released Party if the Released Party is adjudged by the express terms of a judgment rendered on a final determination on the merits to have committed fraud, gross negligence, or wilful misconduct; and
- (e) to the extent not captured above, claims prohibited from release by operation of subsection 5.1(2) of the CCAA.

## **10.2 Cancellation of Outstanding Indebtedness**

From and after the Implementation Date, any loan documents, debentures or other evidences of indebtedness in relation to any Affected Secured Creditors shall be cancelled and will thereupon be null and void, and the obligations of the Applicant thereunder or in any way related thereto shall be satisfied and discharged, except to the extent expressly preserved by this Plan.

## **10.3 Injunction**

Subject to the exceptions stated in sub-paragraphs (a) through (d) of Section 10.1 of this Plan, all Persons, along with their respective affiliates, present and former officers, directors, employees, associated individuals, auditors, beneficiaries, financial advisors, legal counsel, other professionals, sureties, insurers, indemnitors, agents, dependents, heirs, executors, administrators, representatives, successors and assigns, as applicable, are permanently and forever barred, estopped, stayed and enjoined, on and after the Implementation Date, with respect to the Affected Claims and the Released Claims, from:

- (a) commencing, conducting or continuing in any manner, directly or indirectly, any action, suit, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative, regulatory or other forum) against any of the Released Parties or their property;
- (b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property;
- (c) commencing, conducting or continuing in any manner, directly or indirectly, any action, suit or demand (including by way of contribution or indemnity or other relief, in common law, or in equity, breach of trust or breach of fiduciary duty or under the provisions of any statute or regulation) or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative, regulatory or other forum) against any Person who makes such a Claim or might reasonably be expected to make such a Claim in any manner or forum, against one or more of the Released Parties;

- (d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind; or
- (e) taking any action to interfere with the implementation or consummation of this Plan (including the Implementation Date Transactions);

and any such proceedings will be deemed to have no further effect against the Applicant or any of their assets and will be released, discharged or vacated without cost to the Applicant. All Persons shall cooperate with the Applicant and the Monitor in lifting any lien or discontinuing any proceeding filed or commenced prior to the Implementation Date, as the Applicant or the Monitor may reasonably request. The Applicant may apply to the Court to obtain a discharge or dismissal of any such proceedings, if necessary, without notice to any Person.

#### **10.4 Timing of Releases and Injunctions**

All releases and injunctions set forth in this **ARTICLE 10** shall become effective on the Implementation Date.

#### **10.5 Knowledge of Claims**

Each Person to which Section 10.1 hereof applies shall be deemed to have granted the releases set forth in Section 10.1 notwithstanding that it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such party expressly waives any and all rights that it may have under any Applicable Law which would limit the effect of such releases to those Claims or causes of action known or suspected to exist at the time of the granting of the release.

### **ARTICLE 11 - GENERAL**

#### **11.1 Deeming Provisions**

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

#### **11.2 Preferential Transactions**

Sections 95 to 101 of the BIA and any Applicable Law relating to preferences, settlements, fraudulent conveyances or transactions at undervalue shall not apply in any respect to this Plan including to any payments or distributions made in connection with the restructuring and recapitalization of the Applicant.

#### **11.3 Claims Bar**

Nothing in this Plan extends or shall be interpreted as extending, amending, or giving any rights to any Person in respect of Claims that have been barred or extinguished.

#### **11.4 Non-Consummation**

If the Implementation Date does not occur on or before the Outside Date (as the same may be extended in accordance with the terms hereof), or if this Plan is otherwise withdrawn in accordance with its terms: (a) this Plan shall be null and void in all respects, and (b) nothing contained in this Plan, and no acts taken in preparation for consummation of this Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against the Applicant, its respective successors or any other Person; (ii) prejudice in any manner the rights of the Applicant, its respective successors or any other Person in any further proceedings involving the Applicant or its respective successors; or (iii) constitute an admission of any sort by the Applicant, its respective successors or any other Person.

#### **11.5 Modification of Plan**

- (a) The Applicant may propose a variation or modification of, or amendment or supplement to this Plan at or prior to the Creditors' Meeting, in consultation with the Monitor, provided that notice of such variation, modification, amendment or supplement is given to all Affected Secured Creditors entitled to vote and present in person at the Creditors' Meeting prior to the vote being taken. Any variation, amendment, modification or supplement at a Creditors' Meeting shall be posted promptly on the Monitor's Website, served by email to the Service List and filed with the Court as soon as practicable following the applicable Creditors' Meeting and in any event prior to the Court hearing the Sanction Motion.
- (b) After the Creditors' Meeting (and both prior to and subsequent to the obtaining of any Sanction Order), the Applicant may at any time and from time to time, amend, restate, vary, modify or supplement this Plan: (a) pursuant to an Order of the Court, or (b) without further Court Order, where such amendment to this Plan concerns a matter which, in the opinion of the Applicant and the Monitor, is of an administrative nature required to better give effect to the implementation of this Plan or the Sanction Order or to cure any errors, omissions or ambiguities, and in either circumstance is not materially adverse to the financial or economic interests of the Affected Secured Creditors. The Monitor shall forthwith post on the Monitor's Website any such amendment to this Plan, with notice of such posting forthwith provided to the Service List.

#### **11.6 Severability of Plan Provisions**

If, prior to the Implementation Date, any term or provision of this Plan is held by the Court to be invalid, void or unenforceable, at the request of the Applicant with the consent of 192, the Court shall have the power to either:

- (a) sever such term or provision from the balance of this Plan and provide the Applicant with the option to proceed with the implementation of the balance of this Plan as of and with effect from the Implementation Date, or

- (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, and provided that this Plan is implemented, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

#### **11.7 Preservation of Rights of Action**

Except as otherwise provided in this Plan or in the Sanction Order, or in any contract, instrument, release, indenture or other agreement entered into in connection with this Plan, following the Implementation Date, the Applicant and/or Newco will retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights or causes of action, suits and proceedings, whether in law or in equity, whether known or unknown, that the Applicant and/or Newco may hold against any Person or entity without further approval of the Court.

#### **11.8 Responsibilities of Monitor**

The Monitor is acting and will continue to act in all respects in its capacity as Monitor in the CCAA Proceedings with respect to the Applicant (and/or Newco, as applicable) and not in its personal or corporate capacity, and shall have no liability in connection with the implementation of this Plan, including without limitation with respect to making distributions pursuant to and in accordance with this Plan, or the timing or sequence of this Plan's transaction steps, in each case save and except for gross negligence and wilful misconduct. The Monitor will incur no personal liability whatsoever whether on its own part or in respect of any failure on the part of the Applicant to observe, perform or comply with any of its obligations under this Plan. The Monitor shall not be responsible or liable whatsoever for any obligations of the Applicant (and/or Newco, as applicable). The Monitor shall at all times have the powers and protections granted to it by this Plan, the CCAA, the Initial Order, and any other Order made in the CCAA Proceedings.

#### **11.9 Different Capacities**

Persons who are affected by this Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by a Person in writing or unless its Claims overlap or are otherwise duplicative.

## 11.10 Notices

Any notice or other communication to be delivered hereunder must be in writing and refer to this Plan and may, as hereinafter provided, be made or given by personal delivery, ordinary mail, email or by facsimile addressed to each of the respective parties as follows:

(a) If to the Applicant:

**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

(b) If to the Monitor:

**MNP Ltd.**  
300 – 111 Richmond Street West  
Toronto, ON M5H 2G4

Attention: Mr. Sheldon Title  
Senior Vice-President  
  
Email: Sheldon.Title@mnp.ca  
Fax: 416.323.5240

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



**Borden Ladner Gervais LLP**  
East Tower Bay Adelaide Centre  
22 Adelaide St. W. Suite 3400  
Toronto, ON M5H 4E3

Attention: Alex MacFarlane

Email: AMacFarlane@blg.com  
Fax: 416.367.6749

or to such other address as any party may from time to time notify the others in accordance with this Section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or emailing, provided that such day in either event is a Business Day and the communication is so delivered, faxed or emailed before 5:00 p.m. EST on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

#### **11.11 Paramountcy**

- (a) From and after the Implementation Date, any conflict between (i) this Plan and (ii) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, note, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between any Person and the Applicant (and/or Newco) as at the Implementation Date, will be deemed to be governed by the terms, conditions and provisions of this Plan and the Sanction Order, which shall take precedence and priority.
- (b) From and after the granting of the Sanction Order, any conflict between (i) this Plan and (ii) the Sanction Order, will be deemed to be governed by the terms, conditions and provisions of the Sanction Order, which shall take precedence and priority.

#### **11.12 Further Assurances**

Notwithstanding that the transactions and events set out herein will occur and be deemed to occur in the order set out in this Plan without any further act or formality, each of the Persons named or referred to in, or subject to, this Plan will make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them to carry out the full intent and meaning of this Plan and to give effect to the transactions contemplated herein.



**DATED** this 4<sup>th</sup> day of January, 2021

TribalScale Inc.

Per: /s/ Sheetal Jaitly  
Name: Sheetal Jaitly  
Title: Chief Executive Officer

## SCHEDULE "A"

### Definitions

"192" has the meaning given to that term in the recitals;

"Administration Charge" has the meaning given to that term in the Initial Order;

"Affected Secured Claim" means the Claims of: (i) 192 in the amount equal to C\$2,100,000 and (ii) BDC in the amount equal to C\$115,300.

"Affected Secured Creditor" means the holder of an Affected Secured Claim in respect, and to the extent of, such Affected Secured Claim;

"Amended Articles" have the meaning ascribed to that term in Section 5.1;

"Applicable Law" means, with respect to any Person, property, transaction, event or other matter, any Law relating or applicable to such Person, property, transaction, event or other matter, including, where appropriate, any interpretation of the Law (or any part thereof) by any Person, court or tribunal having jurisdiction over it, or charged with its administration or interpretation;

"Applicant" has the meaning given to that term in the recitals;

"BDC" means the Business Development Bank of Canada;

"BDC Payment" has the meaning given to that term in Section 4.2;

"BIA" means the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended;

"Business Day" means any day, other than a Saturday, or a Sunday or a statutory or civic holiday, on which banks are generally open for business in Toronto, Ontario;

"Cash" means cash, certificates of deposit, bank deposits, and other cash equivalents;

"CCAA" has the meaning set out in the recitals;

"CCAA Proceedings" means the proceedings commenced by the Applicant under the CCAA as contemplated by the Initial Order;

"Charges" has the meaning ascribed to that term in the Initial Order;

"Claim" any right of any Person with indebtedness, liability or obligation of any kind against the Applicant which indebtedness, liability or obligation is in existence at the Filing Date, whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by surety or otherwise and whether or not such a right is executory in nature including, without limitation, the right or ability of any Person to advance a Claim for contribution or indemnity or otherwise with respect to any matter, action, cause, chose in action, whether existing at present or

commenced in the future based in whole or in part on facts which exist prior to or at the Filing Date.

“**Converting Secured Creditor Class**” has the meaning given to that term in Section 3.1(a);

“**Court**” has the meaning given to that term in the recitals;

“**Creditor**” means any Person having a Claim and includes, without limitation, the transferee or assignee of a Claim or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;

“**Creditors’ Meeting**” means the meeting of the Affected Secured Creditors called for the purpose of considering and voting upon this Plan;

“**Crown**” means Her Majesty in right of Canada or a province of Canada;

“**Crown Priority Claim**” means any Claim of the Crown, for all amounts that were outstanding at the Filing Date and are of a kind that could be subject to a demand under:

- (a) subsection 224(1.2) of the ITA;
- (b) any provision of the Canada Pension Plan or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee’s premium, or employer’s premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of the *Employment Insurance Act* and of any related interest, penalties or other amounts;
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
  - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a Tax similar in nature to the income tax imposed on individuals under the ITA; or
  - (ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a “province providing a comprehensive pension plan” as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a “provincial pension plan” as defined in that subsection;

“**Director**” means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or de facto director of the Applicant;

“**Employee Priority Claims**” means, with respect to Creditors who are or were employees of the Applicant the following claims:

- (a) Claims of the Applicant's employees and former employees equal to the amounts that such employees and former employees would have been qualified to receive under paragraph 136(1)(d) of the BIA if the Applicant had become bankrupt on the Filing Date; and
- (b) Claims of the Applicants' employees and former employees for wages, salaries, commissions or compensation for services rendered by them after the Filing Date and on or before the date of the Sanction Order, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the Applicant's business during the same period.

**"Equity Claim"** has the meaning set forth in section 2(1) of the CCAA;

**"Existing Equity Holder"** means a Person with an equity interest in the Applicant as at the Filing Date;

**"Existing Shares"** mean shares, of any kind, in the equity of the Applicant issued and outstanding as at the Filing Date;

**"Existing Share Options"** mean share options, of any kind, exercisable into equity securities of the Applicant outstanding as at the Filing Date;

**"Filing Date"** means May 19, 2020, the date the Applicant's proposal proceedings commenced under Part III of the BIA;

**"General Security Agreement"** means the General Security Agreement issued by the Applicant in favour of 192 as continuing security for the payment and performance of all obligations to be performed by the Applicant under the New Secured Senior Note;

**"General Unsecured Claim"** means any Claim other than a Claim of the Converting Secured Creditor Class of the Paid-Out Secured Creditor Class;

**"General Unsecured Creditor"** means the holder of a General Unsecured Claim in respect of and to the extent of such General Unsecured Claim;

**"Governmental Entity"** means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or Taxing Authority or power;

**"Implementation Date"** means the Business Day on which this Plan becomes effective, which shall be the day indicated on the certificate which the Monitor shall file with the Court as contemplated herein;

**“Implementation Date Transactions”** means, collectively, the transactions contemplated under Section 7.1 herein;

**“Initial Order”** means the Order of the Honourable Madam Justice Gilmore of the Ontario Superior Court of Justice (Commercial List), dated July 31, 2020, which declared TribalScale a company to which the CCAA applies;

**“ITA”** means the *Income Tax Act*, RSC 1985, c.1 (5th Supp), as amended, and any regulations thereunder;

**“Jaitly Trust”** means a trust governed by a Deed of Settlement dated as of May 20, 2020;

**“Law”** means any law, statute, order, decree, consent decree, judgment, rule regulation, ordinance or other pronouncement having the effect of law whether in Canada or any other country, or any domestic or foreign state, county, province, city or other political subdivision or of any Governmental Entity;

**“Meeting Order”** has the meaning given to that term in the recitals;

**“Monitor”** means MNP Ltd., in its capacity as court-appointed Monitor of the Applicant;

**“Monitor’s Certificate”** has the meaning ascribed to that term in Section 7.4 hereof;

**“Monitor’s Website”** means <<https://mnpdebt.ca/en/corporate/engagements/TribalScale-inc>>;

**“New Senior Secured Note”** means a promissory note issued by the Applicant to 192 in the principal amount of \$1,400,000 with interest accruing annually beginning on a date that is one year from the Implementation Date at a rate of 1% per annum, which promissory note shall be effective from and after the Implementation Date and secured by the General Security Agreement;

**“Newco”** means 2800741 Ontario Inc., a wholly-owned subsidiary of the Applicant established under the Provincial laws of Ontario;

**“NOI Proceedings”** means the proceedings commenced by TribalScale by the filing of a Notice of Intention to Make a Proposal under BIA;

**“Non-Voting Common Shares”** means the non-voting common shares in the capital of the Applicant authorized pursuant to the Amended Articles;

**“Officer”** means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of the Applicant;

**“Order”** means any order of the Court in these CCAA Proceedings or the proposal proceedings under the BIA referenced in the Initial Order;

**“Outside Date”** means February 1, 2021 (or such other date as the Applicant, the Monitor and 192 may agree);

**“Paid-Out Secured Creditor Class”** has the meaning provided to it in Section 3.1(b);

**“Person(s)”** is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Governmental Entity or any agency, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status;

**“Plan”** means this Plan of Compromise and Arrangement, including any amendments, restatements, modifications or supplements hereto made from time to time in accordance with the terms hereof or made at the direction of the Court in the Sanction Order or otherwise;

**“Preferred Shares”** means the Class A preferred shares in the capital of the Applicant authorized pursuant to the Amended Articles;

**“Priority Claim”** means a Crown Priority Claim or an Employee Priority Claim;

**“Proven Claim”** as used in relation to any Claim means such Claim as finally accepted or determined by the Monitor and each Affected Secured Claim shall constitute a Proven Claim;

**“Released Claims”** has the meaning given to that term in to Section 10.1 hereof;

**“Released Parties”** has the meaning given to that term in Section 10.1 hereof;

**“Required Majority”** means a majority in number of Affected Secured Creditors within a class representing at least two thirds in value of the Voting Claims of such Creditors who actually vote (in person or by proxy) at the Creditors’ Meeting;

**“RSA”** has the meaning given to that term in the recitals;

**“Sanction Motion”** means the Applicant’s motion for an order sanctioning this Plan and granting the Reverse Vesting Order;

**“Sanction Order”** means an order acceptable in form and substance to the Applicant, the Monitor, and the Converting Creditor sanctioning the Plan and the transactions contemplated therein;

**“Scotiabank”** means The Bank of Nova Scotia;

**“Share Purchase Agreement”** has the meaning given to that term in Section 5.2(b);

**“Shareholders Agreement”** has the meaning ascribed to that term in Section 4.1(c), which agreement shall be in form and substance satisfactory to 192;

**“Service List”** means the service list maintained by the Monitor in respect of these CCAA Proceedings;

**“SiriusXM”** means Sirius XM Connected Vehicle Services Inc. and its affiliates.



**“SiriusXM Claim”** means all claims available to Tribalscale against SiriusXM, including, but not limited to, all claims available to Tribalscale under the professional services agreement between TribalScale and SiriusXM effective April 26, 2019 as further particularized through individual statements of work including, but not limited to, the statements of work effective July 1, 2019 and November 23, 2019.

**“Tax”** or **“Taxes”** means any and all taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever, including all interest, penalties, fines, additions to tax or other additional amounts in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, Quebec and other government pension plan premiums or contributions;

**“Taxing Authority”** means any of Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, any municipality of Canada, the Canada Revenue Agency, the Canada Border Services Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof and any Canadian or foreign government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation making entity exercising taxing authority or power;

**“TribalScale”** has the meaning given in the recitals;

**“Unaffected Claim”** means:

- (a) any Claims secured by any of the Charges;
- (b) any Claims that cannot be compromised pursuant to subsection 19(2) of the CCAA;
- (c) any Priority Claims;
- (d) any Claims vested out pursuant to the Reverse Vesting Order; and
- (e) the Unaffected Trade Obligations

**“Unaffected Creditor”** means a Person who has an Unaffected Claim, but only in respect of and to the extent of such Unaffected Claim;

**“Unaffected Trade Obligations”** refer to all trade obligations owed by the Applicant to its suppliers, incurred at any time, which the Applicant will continue to pay notwithstanding anything in this Plan;

**“Reverse Vesting Order”** means an Order of the Court adding Newco as a CCAA applicant and permitting the transferring and vesting out absolutely, without formal legal conveyance, all

claims of General Unsecured Creditors to Newco, as contemplated under this Plan and in the Reverse Vesting Order;

**“Voting Claim”** means the amount of an Affected Secured Claim of an Affected Secured Creditor against the Applicant as finally accepted and determined for the purposes of voting at the Creditors’ Meeting, in accordance with this Plan and the CCAA; and

**“Voting Common Shares”** means the voting common shares in the capital of the Applicant authorized pursuant to the Amended Articles.

**SCHEDULE "B"**  
*Form of Sanction Order*

**SCHEDULE "B"**

*Monitor's Certificate*

**Schedule B – Form of Monitor’s Certificate**

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

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

IN THE MATTER OF THE *COMPANIES’ CREDITORS  
ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED

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

**RECITALS**

1. Pursuant to the Initial Order of the Honourable Madam Justice Gilmore of the Ontario Superior Court of Justice (Commercial List), dated July 31, 2020, the Applicant’s proposal proceeding under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, was converted into a proceeding under Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, and MNP Inc., was appointed as the monitor (“**Monitor**”) of the Applicant.
2. On \_\_\_\_\_, 2020, the Honourable Justice \_\_\_\_\_ approved the amended plan of compromise and arrangement, as amended, dated January 4, 2021 (the “**Plan**”), which requires that, upon delivery to the Monitor of written notice from the Applicant and the Supporting Creditor of the fulfilment or waiver of the conditions precedent to implementation of the Plan, the Monitor shall deliver to the Applicant a certificate signed by the Monitor stating (i) that all of the conditions precedent set out in Article 6 of the Plan have been satisfied or waived; and (ii) that the Implementation Date has occurred.
3. Capitalized terms not defined herein shall have the meaning given to them in the Plan.

**THE MONITOR CERTIFIES** the following:

4. The Monitor has received written confirmation from the Applicant and from the Supported Creditor, in form and substance satisfactory to the Monitor, that all conditions precedent to implementation of the Plan have been satisfied or waived.
5. The Implementation Date occurred on \_\_\_\_\_, 2021.
6. This Monitor's certificate was delivered by the Monitor at \_\_\_\_\_ on \_\_\_\_\_, 2021.

**MNP INC., IN ITS CAPACITY AS MONITOR  
OF THE APPLICANT, AND NOT IN ITS  
PERSONAL CAPACITY.**

Per: \_\_\_\_\_  
Name: ●  
Title: ●

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

**ORDER**  
**(Re: Plan Sanction)**

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**Lawyers for TribalScale Inc.**

# Appendix “C”



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

THE HONOURABLE MADAM

)

THURSDAY, THE 28<sup>TH</sup>

JUSTICE DIETRICH

)

DAY OF JANUARY, 2021



**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. AND 2800741 ONTARIO INC.**

**Applicants**

**ORDER  
(Re Stay Extension, LFA  
Approval, Discharge, and Fee Approval)**

**THIS MOTION**, made by TribalScale Inc. ("**TribalScale**") and 2800741 Ontario Inc. ("**Newco**", and together with TribalScale, the "**Applicants**") 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 July 24, 2020, the Affidavit of Sheetal Jaitly affirmed January 26, 2021 (the "**Jaitly Affidavit**"), the fourth report of MNP Ltd., in its capacity as the Applicants' CCAA monitor (the "**Monitor**"), dated January 27, 2021 (the "**Fourth Report**") and the Monitor's fee affidavit, and on hearing the submissions of

counsel for the Applicants and for 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 Shaun Parsons dated January 26, 2021, 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 (the “**Stay Period**”) is extended until and including June 30, 2021.

### **LITIGATION FUNDING AGREEMENT**

3. **THIS COURT ORDERS** that the litigation funding agreement (“**LFA**”) described in and appended to the Jaitly Affidavit is approved. The Applicants are hereby authorized, empowered, and directed to enter into the LFA, with such minor amendments as the parties thereto may deem necessary; and the Applicants are authorized, empowered, and directed to take all steps and actions in respect of, and to comply with its obligations under, the LFA.

#### **DISCHARGE OF TRIBALSCALE**

4. **THIS COURT ORDERS** that, from and after the date of this Order, TribalScale will cease to be an Applicant in this CCAA Proceeding, is not subject to the Stay Period and is otherwise no longer a party to this CCAA Proceeding.

#### **TITLE OF PROCEEDINGS**

5. **THIS COURT ORDERS** that TribalScale will be removed from the title of these proceedings, and any document filed thereafter in this CCAA Proceeding will be filed using the revised title of proceedings.

#### **APPROVAL OF THE MONITOR'S, ACTIVITIES, AND FEES**

6. **THIS COURT ORDERS** that the third report of the Monitor dated January 9, 2021 and the Fourth Report, and the activities of the Monitor referred to therein are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, will be entitled to rely upon or utilize in any way such approval.

7. **THIS COURT ORDERS** that the fees and disbursement of the Monitor and its counsel, as set out in the fee affidavits attached to the Fourth Report, are hereby approved.

#### **SEALING**


8. **THIS COURT ORDERS** that the confidential Motion Record is sealed and shall not form part of the public record until further order of the Court to be sought following the conclusion of the litigation between the Applicants and Sirius XM Connected Vehicle Services Inc.

## **GENERAL**

9. **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.

10. **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.

11. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JAN 29 2021

PER / PAR:



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. AND 2800741 ONTARIO INC.

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

*Proceedings commenced at Toronto*

ORDER

(Re Stay Extension, LFA Approval, Discharge, and Fee Approval)

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**Lawyers for TribalScale Inc.**

## **Appendix “D”**

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

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

FIRST REPORT TO THE COURT  
SUBMITTED BY MNP LTD.,  
IN ITS CAPACITY AS TRUSTEE UNDER THE  
NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
TRIBALSCALE INC.

JUNE 16, 2020

**I. INTRODUCTION**

1. On May 19, 2020 (the “**Filing Date**”), Tribalscale Inc. (“**Tribalscale**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). MNP Ltd. was named proposal trustee in the NOI proceeding (the “**Proposal Trustee**”). A copy of the certificate of filing of the NOI is attached hereto and marked as **Exhibit “A”**.
2. Notice of the NOI as prescribed by the BIA was sent on May 25, 2020 to all of Tribalscale’s known creditors. A copy of such notice is attached hereto and marked **Exhibit “B”**.
3. Information regarding the NOI proceedings has been posted to the Proposal Trustee’s case website at [www.mnpdebt.ca/tribalscale](http://www.mnpdebt.ca/tribalscale).



4. The primary purpose of these proceedings is to create a stabilized environment to continue operating as a going concern business while the Company works with the Proposal Trustee to restructure its affairs and devise a plan to mitigate the impact on their business due to the COVID-19 pandemic.

## **II. RESTRICTIONS**

5. In preparing this First report and making the comments herein, the Proposal Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the affidavit of Sheetal Jaitly, dated June 15, 2020 (the “**Laity Affidavit**”), Tribalscale’s books and records, discussions with Tribalscale’s management (“**Management**”) and information from other third-party sources (collectively, the “**Information**”). Except as specifically noted in this First Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.
6. The Proposal Trustee also bases its report on the Company’s cash flow projections and underlying assumptions and notes that its review and commentary thereon were performed in accordance with the requirements set out in the Canadian Association of Insolvency and Restructuring Professionals’ Standards of Professional Practice No. 9 (Cash Flow Statement). Certain of the information referred to in this First Report consists of financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been performed. Future oriented financial information referred to in this First Report was prepared based on estimates and assumptions provided by Management. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material. On March 17, 2020, the Province of Ontario declared a state of emergency due to the COVID-19 pandemic. The effect of this declaration along with other federal, provincial and municipal actions regarding the COVID-19 pandemic on the Company’s business and the

economy in general has yet to be determined. In developing the Cash Flow Projections (defined below), Management has reflected its current view of the potential impact of the COVID-19 pandemic on its cash flow. However, the ongoing uncertainty and instability caused by the COVID-19 pandemic and various government regulatory actions in response thereto, may cause actual results to differ from the projected amounts and these variations may be material.

7. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

### **III. PURPOSE OF THIS REPORT**

8. The purpose of this Report is to:
  - a. Provide information to the Court with respect to the administration of Tribalscale's proposal proceedings, including:
    - i. background information regarding the Company's operations and the circumstances leading to the filing of the NOI;
    - ii. report on the Cash Flow Projections (defined below) and actual cash flows for the period May 25, 2020 to June 7, 2020; and
  - b. Provide the Court with the Proposal Trustee's support for, and observations in respect of the Company's request that the Court grant an Order, *inter alia*:
    - i. approving a first ranking charge on the properties, assets and undertakings (collectively the "**Property**") of the Company in an amount not to exceed \$125M in favour of Weisz Fell Kour LLP ("**WFK**"), the Company's legal counsel, the Proposal Trustee, and Borden Ladner Gervais LLP ("**BLG**"), the Proposal Trustee's independent legal counsel (collectively, the "**Administrative Professionals**") to secure payment of their reasonable fees and disbursements;
    - ii. authorizing the Proposal Trustee and BLG to immediately apply any payments made by the Company towards their fees and disbursements

and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court; and

- iii. approving an extension of the time for the Company to file a proposal to July 31, 2020 (the “**Extended Period**”).

#### **IV. BACKGROUND INFORMATION**

9. Tribalscale is an Ontario corporation that until May 19, 2020 was carrying on business out of leased premises located at 200 Wellington Street West, Toronto, Ontario (the “**Leased Premises**”).
10. TribalScale is a technology innovation firm providing services to companies located in Canada, United States and United Arab Emirates on digital product strategy, design and development for web, mobile and emerging tech. The Company partners with large enterprises and teaches them the practices and approaches needed to release digital products to market that satisfy their consumers.
11. The Company commenced its business in 2015 and had early success, recording strong growth in 2017 and 2018. However, it attributes its financial difficulties primarily to slowdown in receipt of new contracts in 2019, delay in collections from certain existing customers due to disputes, coupled with high operating and payroll expenses. COVID-19 has further resulted in reducing the spending power of its existing and prospective customers, which has directly impacted the business and financial performance of the Company.
12. Prior to filing the NOI, the Company had made certain operational changes as part of a restructuring to address its liquidity challenges, as detailed in the Laity Affidavit.

13. A summary of the Company’s historical financial results for 2017, 2018 and 2019 (Year ended September) is set out below:<sup>1</sup>

Currency: CAD'000	Year ended September		
	2017	2018	2019
Revenue	13,045	25,066	16,496
Operating expenses	10,910	25,313	19,040
<b>EBITDA</b>	<b>2,135</b>	<b>(247)</b>	<b>(2,544)</b>
Other income	348	830	2,313
Other expenses	124	360	2,465
<b>EBT</b>	<b>2,359</b>	<b>223</b>	<b>(2,696)</b>
Income taxes (recovery)	(109)	126	22
<b>Net income</b>	<b>2,467</b>	<b>97</b>	<b>(2,718)</b>

## V. ASSETS

14. Given the nature of the business, Tribalscale’s assets are comprised of cash, customer contracts, accounts receivable, capital assets, goodwill and intangible assets.

15. As at May 22, 2020, Tribalscale had accounts receivable with a net book value of approximately \$1.680MM and capital assets with a net book value of approximately \$1MM, of which approximately \$300M was in respect of leasehold premises at the Leased Premises<sup>2</sup>.

## VI. CREDITORS

### Secured Creditors

16. A search of the Ontario *Personal Property Security Act* (the “**PPSA**”) registry, as of May 18, 2020, indicates that 1924191 Ontario Inc. (“**192 ONT**”), Business Development Bank of Canada (“**BDC**”), Roynat Capital Inc. (“**Roynat**”) and FundThrough have each registered a secured interest against the Company.

17. The Company advised the Proposal Trustee that prior to filing the NOI it fully satisfied its obligations to FundThrough and Roynat. Based on the NOI, Tribalscale’s indebtedness to

<sup>1</sup> Based on unaudited draft financial statements.

<sup>2</sup> Tribalscale’s landlord terminated the lease in respect of the Leased Premises on May 19, 2020.

192 ONT and BDC is \$2.465MM and \$116.48M, respectively (collectively the “**Secured Creditor Indebtedness**”)

### **Other Creditors**

18. The NOI lists creditors with claims of \$5.805MM as at May 19, 2020 including the Secured Creditor Indebtedness.

## **VII. CASH FLOW PROJECTIONS**

19. To date, Tribalscale has provided the Proposal Trustee with its full co-operation and unrestricted access to its books and records.

20. In accordance with the provisions of the BIA, the Company filed with the Official Receiver a projected cash flow statement dated May 29, 2020, which was reviewed and signed by the Proposal Trustee and Tribalscale (the “**Cash Flow Projections**”). The Cash Flow Projections covered the period starting on May 25, 2020 and ending on September 4, 2020 (the “**Projection Period**”) A copy of the Cash Flow Projection, and related reports, are attached hereto as **Exhibit “C”**.

21. The Proposal Trustee has implemented procedures for monitoring the Company’s receipts and disbursements and has kept in close contact with Management to ensure that operations are continuing in the normal course of business and in accordance with the Cash Flow Projections.

22. The principal assumptions of the Cash Flow Projections are that:

- a. The forecasted collection time on post-NOI sales is approximately 90 days and is dependent on successful completion of milestones as per the Master Consulting Agreement and Statement of Work;
- b. Existing accounts receivable will be collected within 90 days of the Filing Date. It is assumed that any insurance claims for losses on the recovery of an existing accounts receivable made under the Company’s Export Receivables Policy (the “**Receivables Policy**”) will be collected subsequent to the period of the projection;

- c. Operating expenses are assumed to be paid on a current basis;
- d. No provision has been made for payment of obligations incurred prior to May 19, 2020, the filing date of the NOI, except for the following amounts:
 

i. Reimbursement of employee expenses	\$59,133
ii. Ongoing legal advisory services	\$ 8,441
iii. Independent consultant	\$23,264
iv. The Receivables Policy	\$ 4,876
v. US Tax payments	\$ 8,186
vi. Critical service provider	\$11,622
- e. On May 19, 2020, the Company received notice of termination with respect to the Leased Premises, and accordingly, the Cash Flow Projections provide for reasonable relocation expenses;
- f. Monthly interest and repayment to BDC is to be continued in accordance with the terms of the executed agreement with BDC;
- g. The payroll costs (i.e. wages, benefits, government remittances, etc.) are based on the 'actual' payroll costs prior to the NOI, adjusted to reflect the reductions arising out of planned terminations and downward revision in salaries/working hours of certain employees;
- h. Administrative fees include charges for Company's counsel, the Proposal Trustee's fees and expenses, including the fees and disbursements of the Proposal Trustee's independent legal counsel;
- i. Other disbursements are based on Management's best estimates;
- j. No provision for income taxes has been made; and
- k. The Company had received benefits of Canada Emergency Wage Subsidy ("CEWS") in May 2020 for the period March 15 to April 11, 2020. The Company has assumed that it remains eligible to receive CEWS benefits for the period of the Cash Flow Projections.

23. A summary of the Company’s actual receipts and disbursements as compared to those presented in the Cash Flow Projections for the two weeks ended June 7, 2020 are as follows (“**Monitored Period**”):

<b>Tribalscale Inc.</b>			
<b>Actual Receipts and Disbursements</b>			
<b>For two week period ending June 7, 2020</b>			
<b>(Unaudited, in \$ CAD)</b>			
	<b>Cumulative Two-Week Period Ended June 7, 2020</b>		
	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>
<b>Receipts from customers</b>	<b>622</b>	<b>165,240</b>	<b>(164,618)</b>
<b>Canada Emergency Wage subsidy</b>	<b>104,695</b>	<b>104,695</b>	<b>-</b>
<b>Disbursements</b>			
Payment to suppliers	(75,580)	(115,522)	39,942
Payments for operating expenses	(24,608)	(40,805)	16,197
Payroll (inc. contractors)	(114,338)	(136,187)	21,850
Interest and loan repayment	(4,690)	(4,737)	47
Tax	-	(28,234)	28,234
<b>Total Disbursements</b>	<b>(219,215)</b>	<b>(325,486)</b>	<b>106,270</b>
<b>Operating Net Cash Flow</b>	<b>(113,899)</b>	<b>(55,551)</b>	<b>(58,348)</b>
Administrative Fees	-	(65,000)	65,000
<b>Net Cash Flow</b>	<b>(113,899)</b>	<b>(120,551)</b>	<b>6,652</b>
<b>Beginning Cash</b>	920,208	920,208	(0)
Net Cash Flow	(113,899)	(120,551)	6,652
Interim Financing/(repayment)	-	-	-
<b>Ending Cash</b>	<b>806,309</b>	<b>799,657</b>	<b>6,652</b>

24. Overall, Tribalscale realized a positive net cash flow variance of approximately \$6.6M during the Monitored Period. The key components of the variance are as follows:

- a. Receipts from customers: Unfavorable variance of approximately \$164.6M relates to a timing difference associated with a delay in receipt of collections from one customer. Subsequent to the Monitored Period, this customer notified Tribalscale that it has electronically transferred payment of the \$164.6M to Tribalscale.

- b. Payment to suppliers: The favorable variance of \$39.9M is timing in nature and represents delay in payment of certain pre-NOI expenses including certain reimbursable employee expenses, the Receivable Policy premiums and taxes payable to governments in the United States.
  - c. Payment of operating expenses: The favorable variance of \$16M is primarily timing in nature.
  - d. Payroll expenses: Approximately \$19M of the favorable variance of \$21.8M is timing in nature, as the Company: (i) is waiting for an invoice of \$10.7M from a contractor; and (ii) had salary of a US employee amounting to \$8.5M, which was anticipated to be paid by the Company, paid by Tribalscale US (which the Company advises it will reimburse the US subsidiary). The remaining variance is a permanent difference due to reduction in group benefit expense.
  - e. Tax Payments: The variance is timing in nature.
  - f. Administrative fees: The favorable variance is a timing difference and is expected to reverse.
25. Based on the Cash Flow Projections and the actual results to date, it appears as if Tribalscale has sufficient funds available to carry on its operations through the Extended Period.
26. As noted below, the Company seeks an extension of time within which to file a Proposal. The Cash Flow Projections cover the Extended Period, and accordingly, have not been extended or revised at this time.

## **VIII. ACTIVITIES OF THE PROPOSAL TRUSTEE**

27. Since the Filing Date, the Proposal Trustee has undertaken the following activities, *inter alia*:
- a. updated the Proposal Trustee's case website as necessary;



- b. prepared drafts of written and oral communications to assist the Company in its correspondence with suppliers and employees;
- c. attended virtually at a meeting of the Company's employees;
- d. aided the Company in preparing a letter to be sent to certain vendors informing each of the termination of their services;
- e. prepared and sent notices under Section 65.11 of BIA to have the Company disclaim or resiliate agreements;
- f. communicated with the concerned suppliers through Proposal Trustee's email at [Tribalscale@mnp.ca](mailto:Tribalscale@mnp.ca);
- g. monitored Tribalscale's actual cash flows in comparison with the Cash Flow Projections;
- h. prepared this First Report and
- i. engaged in discussion with the Company and WFK regarding the NOI filing and the Company's efforts to restructure its operations.

## **IX. ADMINISTRATIVE PROFESSIONALS CHARGE AND AUTHORIZATION TO DRAW FEES**

28. In order to protect the fees and expenses of the Administrative Professionals, the Company is seeking a charge (the "**Administrative Professionals Charge**") on the Property to secure payment of the reasonable fees and expenses of the Administrative Professionals in an amount of \$125,000.
29. The Company is requesting that the Administrative Professionals Charge rank in priority to the claims of all secured and unsecured creditors over the Property.
30. The Proposal Trustee recommends the Administrative Professional Charge be approved for the following reasons:

- a. each of the professionals whose fees are to be secured by the Administrative Professionals Charge has played and will continue to play a critical role in the Company's restructuring process; and
  - b. The Company intends to satisfy the fees and disbursements of the Administrative Professionals from cash flow during the NOI proceedings. The Administrative Professionals Charge is sought to protect the Administrative Professionals if the restructuring is not successful.
31. The Cash Flow Projections provide for the payment of professional fees related to administration of the proposal proceedings, including the fees and disbursements of the Administrative Professionals.
32. Section 25(1.3) of the BIA provides that the Proposal Trustee cannot withdraw any money from the estate trust account without the permission in writing of the inspectors or pursuant to a court order, except for the payment of dividends and charges incidental to the administration of the estate. Similarly, BLG's legal fees must be approved by the Court.
33. The NOI proceedings are ongoing. The Proposal Trustee and BLG are desirous of receiving interim draws towards payment of their fees and expenses, and at their request, the Company seeks the Court's authorization that the Proposal Trustee and BLG be permitted to immediately apply any payments made by the Company towards their fees and disbursements and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **X. REQUEST FOR AN EXTENSION OF TIME FOR FILING A PROPOSAL**

34. In order to allow Tribalscale sufficient time to stabilize its operations and complete the restructuring process, Tribalscale seeks an extension of the time for filing of a proposal to July 31, 2020.
35. In view of the foregoing, the Proposal Trustee supports Tribalscale's request for an extension and has also considered that:
- a. Tribalscale is acting in good faith and with due diligence;

- b. the additional time will allow the Company to more fully restructure its affairs, including greater discussions with 192 ONT, to be in a position to formulate a viable proposal; and
- c. the extension should not adversely affect or materially prejudice creditors as Tribalscale is projected to have sufficient funds to pay for services and supplies during the Extended Period.

## **XI. CONCLUSION AND RECOMMENDATION**

36. Based on the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief detailed in paragraph 8.

All of which is respectfully submitted on this 16<sup>th</sup> day of June 2020.

**MNP LTD.,**  
in its capacity as Proposal Trustee under  
the Notice of Intention to Make a Proposal of  
Tribalscale Inc.  
Per:



Sheldon Title  
Licensed Insolvency Trustee

**Estate No.: 31-2646144**  
**Court No.: 31-2646144**

**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**

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

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**FIRST REPORT TO THE COURT SUBMITTED BY MNP  
LTD., IN ITS CAPACITY AS PROPOSAL TRUSTEE UNDER  
THE  
NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
TRIBALSCALE INC.**

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**MNP LTD.**  
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## Appendix “E”

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

**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**

**SECOND REPORT TO THE COURT**  
**SUBMITTED BY MNP LTD.,**  
**IN ITS CAPACITY AS TRUSTEE UNDER THE**  
**NOTICE OF INTENTION TO MAKE A PROPOSAL OF**  
**TRIBALSCALE INC.**

**JULY 27, 2020**

**I. INTRODUCTION**

1. On May 19, 2020, Tribalscale Inc. (“**Tribalscale**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). MNP Ltd. (“**MNP**”) was named proposal trustee in the NOI proceeding (the “**Proposal Trustee**”). A copy of the certificate of filing of the NOI is attached hereto and marked as **Exhibit “A”**.
2. On June 15, 2020, Tribalscale filed a Notice of Motion and a Motion Record returnable June 17, 2020, seeking, among other things, a court order extending the time within which Tribalscale had to file a proposal. The Proposal Trustee served its first report, dated June 16, 2020 (the “**First Report**”) in support of Tribalscale’s motion. A copy of the First Report, without exhibits, is attached hereto and marked as **Exhibit “B”**.
3. On June 17, 2020, the Court approved (the “**June 17<sup>th</sup> Court Order**”) the following:

- a. an extension of the time for the Company to make a proposal to July 31, 2020;
  - b. a first ranking charge (the “**Administrative Charge**”) on the properties, assets and undertakings of the Company (collectively the “**Property**”) in an amount not to exceed \$125M in favour of the Proposal Trustee, Borden Ladner Gervais LLP, the Proposal Trustee’s independent legal counsel, and the Company’s legal counsel, (collectively, the “**Administrative Professionals**”) to secure payment of their reasonable fees and disbursements.
4. Information regarding the NOI proceedings has been posted to the Proposal Trustee’s case website at [www.mnpdebt.ca/tribalscale](http://www.mnpdebt.ca/tribalscale).
  5. The primary purpose of these proceedings is to create a stabilized environment to continue operating as a going concern business while the Company works with the Proposal Trustee to restructure its affairs and devise a plan to mitigate the impact on their business due to the COVID-19 pandemic.

## II. RESTRICTIONS

6. In preparing this Second report and making the comments herein, the Proposal Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the affidavits of Sheetal Jaitly, dated June 15, 2020 and July 25, 2020 (the “**Jaitly Affidavits**”), Tribalscale’s books and records, discussions with Tribalscale’s management (“**Management**”) and information from other third-party sources (collectively, the “**Information**”). Except as specifically noted in this Second Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.
7. The Proposal Trustee also bases its report on the Company’s cash flow projections and underlying assumptions and notes that its review and commentary thereon were performed in accordance with the requirements set out in the Canadian Association of Insolvency and Restructuring Professionals’ Standards of Professional Practice No. 9 (Cash Flow

Statement). Certain of the information referred to in this Second Report consists of financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been performed. Future oriented financial information referred to in this Second Report was prepared based on estimates and assumptions provided by Management. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material. On March 17, 2020, the Province of Ontario declared a state of emergency due to the COVID-19 pandemic. The effect of this declaration along with other federal, provincial and municipal actions regarding the COVID-19 pandemic on the Company's business and the economy in general has yet to be determined. In developing the Cash Flow Projections (defined below), Management has reflected its current view of the potential impact of the COVID-19 pandemic on its cash flow. However, the ongoing uncertainty and instability caused by the COVID-19 pandemic and various government regulatory actions in response thereto, may cause actual results to differ from the projected amounts and these variations may be material.

8. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

### III. PURPOSE OF THIS REPORT

9. The purpose of this Report is to:
  - a. Update the Court with respect to:
    - i. the activities of the Company and the Proposal Trustee since the First Report;
    - ii. report on the Company's actual cash flows for the period June 8, 2020 to July 19, 2020; and
    - iii. updated and extended cash flow projections (the "**Revised Cash Flow Projections**") for the period from July 20, 2020 to October 31, 2020 (the



- “**Extended Projection Period**”) being filed herein, and the Proposal Trustee’s observations regarding same;
- iv. the Company’s intention to seek a continuation of the stay of proceedings by applying for an initial order under the CCAA (the “**Initial Order**”); and
- b. provide the Court with the Proposal Trustee’s recommendation for an order, *inter alia*,
- i. approving the continuation of the stay of proceedings under the CCAA;
  - ii. approving the proposed Initial Order, including the proposed Court-ordered charges and the appointment of MNP as Monitor; and
  - iii. approving the activities of the Proposal Trustee as set out in this Report.

#### **IV. BACKGROUND INFORMATION**

10. Tribalscale is an Ontario corporation that, until May 19, 2020, was carrying on business out of leased premises located at 200 Wellington Street West, Toronto, Ontario.
11. Tribalscale is a technology innovation firm providing services to companies located in Canada and United States on digital product strategy, design and development for web, mobile and emerging tech. The Company partners with large enterprises and teaches them the practices and approaches needed to release digital products to market that satisfy their consumers.
12. The Company commenced its business in 2015 and had early success, recording strong growth in 2017 and 2018. However, it attributes its financial difficulties primarily to slowdown in receipt of new contracts in 2019, delay in collections from certain existing customers due to disputes, coupled with high operating and payroll expenses. COVID-19 has further resulted in reducing the spending power of its existing and prospective customers, which has directly impacted the business and financial performance of the Company.
13. Prior to filing the NOI, the Company had made certain operational changes as part of a restructuring to address its liquidity challenges, as detailed in the Jaitly Affidavits.

#### IV. ACTIVITIES OF THE PROPOSAL TRUSTEE

14. Since the First Report, the Proposal Trustee has undertaken the following activities, *inter alia*:

- a. updated the Proposal Trustee's case website as necessary;
- b. prepared drafts of written and oral communications to assist the Company in its correspondence with suppliers and employees;
- c. prepared and sent notices under Section 65.11 of BIA to have the Company disclaim or resiliate certain agreements as part of its ongoing restructuring;
- d. carried out further review and investigation into the Company's assets, particularly its speculative equity position in external companies;
- e. communicated with the concerned suppliers through the Proposal Trustee's email at [Tribalscale@mnp.ca](mailto:Tribalscale@mnp.ca);
- f. monitored Tribalscale's actual cash flows in comparison with the Cash Flow Projections (as such term is later defined);
- g. prepared this Second Report; and
- h. engaged in discussion with the Company and its counsel regarding the Company's efforts to restructure its operations.

#### V. CASH FLOW PROJECTIONS

15. To date, Tribalscale has provided the Proposal Trustee with its full co-operation and unrestricted access to its books and records.

16. In accordance with the provisions of the BIA, the Company filed with the Official Receiver a projected cash flow statement dated May 29, 2020, which was reviewed and signed by the Proposal Trustee and Tribalscale (the "**Cash Flow Projections**"). The Cash Flow Projections covered the period starting on May 25, 2020 and ending on September 4, 2020.

17. The Proposal Trustee has implemented procedures for monitoring the Company's receipts and disbursements and has kept in close contact with Management to ensure that operations are continuing in the normal course of business and in accordance with the Cash Flow Projections.
18. A summary of the Company's actual receipts and disbursements as compared to those presented in the Cash Flow Projections for the period June 8, 2020 through July 19, 2020 ("Monitored Period") are as follows (subject to rounding errors):

<b>Tribalscale Inc.</b>			
<b>Actual Receipts and Disbursements</b>			
<b>For six week period June 8 till July 19, 2020</b>			
<b>(Unaudited, in \$ CAD)</b>			
	<i>Cumulative Six-Week Period Ended July 19, 2020</i>		
	<u>Actual</u>	<u>Budget</u>	<u>Variance</u>
<b>Receipts from customers</b>	<b>499,937</b>	<b>332,727</b>	<b>167,209</b>
<b>Canada Emergency Wage subsidy</b>	<b>198,979</b>	<b>100,179</b>	<b>98,800</b>
<b>Disbursements</b>			
Payment to suppliers	(33,966)	-	(33,966)
Payments for operating expenses	(158,008)	(107,600)	(50,408)
Payroll (inc. contractors)	(312,021)	(340,528)	28,507
Interest and loan repayment	-	(4,737)	4,737
Tax	(54,853)	(37,592)	(17,261)
<b>Total Disbursements</b>	<b>(558,850)</b>	<b>(490,457)</b>	<b>(68,393)</b>
<b>Operating Net Cash Flow</b>	<b>140,066</b>	<b>(57,551)</b>	<b>197,616</b>
Administrative Fees	(50,351)	(65,000)	14,649
<b>Net Cash Flow</b>	<b>89,715</b>	<b>(122,551)</b>	<b>212,266</b>
<b>Beginning Cash</b>	806,309	799,657	6,652
Net Cash Flow	89,715	(122,551)	212,266
Interim Financing/(repayment)	-	-	-
<b>Ending Cash</b>	<b>896,024</b>	<b>677,106</b>	<b>218,917</b>

19. Overall, Tribalscale realized a positive net cash flow variance of approximately \$212.27M during the Monitored Period. The key components of the variance are as follows:

- a. Receipts from customers: The favorable variance of approximately \$167.2M is largely a reversal of previously reported unfavorable timing difference relating to collections from one customer.
- b. Canada Emergency Wage Subsidy (“CEWS”): The favorable variance of \$98.9M is timing in nature and represents receipt of CEWS for the month of May and June 2020 against projected receipt only for the month of May 2020. The Cash Flow Projections were prepared at a time when the CEWS was available through to June 6, 2020. The CEWS program has since been extended twice, which provided Tribalscale remains eligible to benefit from CEWS, will, in time, result in greater than anticipated recoveries from this program.
- c. Payment to suppliers: The unfavorable variance of \$33.97M is largely a reversal of previously reported favorable timing difference of \$39.9M relating to delay in payment of certain pre-NOI expenses including certain reimbursable employee expenses and taxes payable to governments in the United States. The remaining favorable timing difference of approximately of \$6M reported in the previous period is expected to reverse by September 2020.
- d. Payment of operating expenses: The unfavorable variance of \$50.4M is permanent in nature and is primarily attributable to an increase in professional expenses by approximately \$66M for preparation of 2019 scientific research and experimental development expenditures claim of approximately \$758M. It is offset by lower than projected expenditures on office relocation, as some of Tribalscale’s redundant furniture was offered to the relocation service provider in exchange for reduced relocation charges.
- e. Payroll expenses: The favorable variance of \$28.5M is permanent in nature and is primarily attributable to the (i) receipt of government grant of \$28M by Tribalscale US through which salary of the US employee of approximately \$21.5M has been

paid and the Company was not required to transfer such funds to their US entity; (ii) reduction in salary payment by \$5M as an employee resigned and left in the third week of June and (ii) decline in CPP and EI contributions by approximately \$1.4M as several employees reached their maximum eligible amount of CPP and EI contribution.

- f. Interest and loan repayment: The favourable variance of \$4M is timing in nature.
  - g. Tax Payments: The unfavorable variance is primarily a reversal of a previously reported favorable timing difference.
  - h. Administrative fees: The favorable variance is a timing difference and is expected to reverse upon receipt of invoices from the Administrative Professionals.
20. In support of the Company's motion returnable July 31, 2020, the Company, with the assistance of the Proposal Trustee, prepared the Revised Cash Flow Projections, a copy of which, together with the reports of management and the Proposal Trustee on said reports, are attached hereto as **Exhibit "C" and "D"**, respectively. The Revised Cash Flow Projections have been prepared using the probable and hypothetical assumptions set out in the notes attached to the Revised Cash Flow.
21. The Proposal Trustee's review of the Revised Cash Flow Projections consisted of enquiries, analytical procedures and discussions related to information supplied to us. Since hypothetical assumptions need not be supported, the procedures with respect to those assumptions were limited to evaluating whether they were consistent with the purpose of the forecast. The Proposal Trustee has also reviewed the support for the probable assumptions and the preparation and presentation of the forecast.
22. Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:
- a. the hypothetical assumptions are not consistent with the purpose of the forecast;
  - b. as at the date of the Second Report, the probable assumptions used in developing the Revised Cash Flow Projections are not suitably supported and consistent with

the plans of the Company or do not provide a reasonable basis for the forecast, given the hypothetical assumptions; and

- c. the Revised Cash Flow Projections does not reflect the probable and hypothetical assumptions.

23. A summary of the Revised Cash Flow Projections in provided in the following table (subject to rounding errors):

**Tribalscale Inc.**  
**Projected cash flows**  
**For the period July 20 to Oct 31, 2020**

<b>Currency: CAD</b>	<b><u>Amount</u></b>
Receipts from customers	<b>1,088,628</b>
US tax refund	<b>2,082</b>
Canada Emergency Wage subsidy	<b>267,521</b>
<b>Disbursements</b>	
Payment to suppliers	(11,354)
Payments for operating expenses	(183,047)
Payroll (inc. contractors)	(729,066)
Interest and loan repayment	(23,685)
Tax	(45,608)
<b>Total Disbursements</b>	<b>(992,760)</b>
<b>Operating Net Cash Flow</b>	<b>365,471</b>
Administrative Fees	(226,413)
<b>Net Cash Flow</b>	<b>139,058</b>
<b>Beginning Cash</b>	896,024
Net Cash Flow	139,058
<b>Ending Cash</b>	<b>1,035,082</b>

24. During the Extended Projection Period, the Company projects a net cash surplus of \$139.09M and a remaining cash balance of \$1.035MM at the end of the Extended Projection Period.

25. Based on the Revised Cash Flow Projections and the actual results to date, it appears as if Tribalscale has sufficient funds available to carry on its operations through the Extended Projection Period.

## **VI. REQUEST FOR AN CONVERSION TO CCAA PROCEEDINGS**

26. Tribalscale is insolvent and for the reasons set out in the Jaitly Affidavits, seeks to continue the restructuring efforts initiated through these NOI proceedings under the CCAA, pursuant to Section 11.6 of the statute.

27. The Proposal Trustee considers the conversion to CCAA proceedings and the relief sought in the Initial Order to be reasonable in the circumstances for the following reasons:

- a. Tribalscale is acting in good faith and with due diligence;
- b. the continuation of the stay of proceedings under the CCAA will provide the Company with the time and protection it requires to undertake a restructuring of its business for the benefit of its stakeholders; and
- c. the conversion to CCAA proceedings and the extension of the stay of proceedings does not adversely affect or materially prejudice creditors as Tribalscale is projected to have sufficient funds to pay for services and supplies during the Extended Period.

28. The relief requested by the Company includes, *inter alia*:

- a. the granting of a continued stay of proceedings against the Company under the CCAA;
- b. the appointment of MNP as Monitor; and
- c. the granting of certain charges over the Property, including to secure the indemnity in favour of the directors and officers and the professional fees and disbursements of the Administrative Professionals under the CCAA Proceedings.

29. MNP has reviewed the Initial Order and provides comments and observations on certain provisions below.

### Proposed Court Ordered Charges Over Tribalscale's Assets

#### *Administrative Charge*

30. As noted above, in order to protect the fees and expenses of the Administrative Professionals, as part of the June 17<sup>th</sup> Court Order, the Court ordered the Administrative Charge as security for their professional fees and disbursements incurred at the standard rates and charges of the Administrative Professionals. The proposed Initial Order contemplates the continuation of the Administrative Charge in the CCAA proceedings, without change to the quantum or rank.

31. The Administrative Charge is reasonable and appropriate in the circumstances having regard to, among other things:

- a. Each of the professionals whose fees have been and will continue to be secured by the Administration Charge have played and will continue to play a critical role in Tribalscale's restructuring;
- b. Tribalscale intends to satisfy the fees and disbursements of the Administrative Professionals from cash flow during the CCAA Proceedings. The Administrative Charge is sought to protect the Administrative Professionals in the event that the restructuring is not successful or a sale as a going concern is not completed; and
- c. The complexity of these CCAA proceedings.

#### *Directors' Charge*

32. The Cash Flow Statement contemplates that post-CCAA obligations, including all statutorily required remittances will be paid in the ordinary course of business.

33. The directors and officers have requested protection from statutory claims and liabilities that may arise during the restructuring. Accordingly, Tribalscale is proposing that the



Company shall indemnify Tribalscale’s directors and officers against all obligations and liabilities that they may incur as directors and officers of the Company after the commencement of the CCAA proceedings, except to the extent that the obligation or liability was incurred as a result of such director’s or officer’s gross negligence or willful misconduct. As security for this indemnity, it is proposed that Tribalscale’s directors and officers be entitled to the benefit of a charge over the Property not to exceed an aggregate amount of \$125M (the “**Directors’ Charge**”).

34. The proposed Directors’ Charge is to rank behind the Administrative Charge. Based on the information provided to the Proposal Trustee by the Company, the Directors’ Charge has been calculated with reference to exposure to potential unpaid wages, vacation pay, employee benefits and certain tax liabilities accruing during the CCAA Proceedings. The proposed Initial Order provides that the availability of the Directors’ Charge is only to the extent the existing insurance coverage does not apply or is insufficient to cover a liability.

35. The Proposal Trustee is of the view that the Directors’ Charge is reasonable and appropriate in the circumstances.

*Priority of Charges Created by the proposed Initial Order*

36. The priorities of the Administrative Charge, and the Directors’ Charge (the “**Charges**”) are proposed to be as follows:

- a. First – Administration Charge (to the maximum amount of \$125M);
- b. Second – Directors’ Charge (to the maximum amount of \$125M);

37. In summary, MNP in its capacity as proposed Monitor has reviewed the calculations that support the Administrative Charge and the Directors’ Charge and believes that the amounts are reasonable in the circumstances. The Charges will have priority over all other debts and obligations of the Company other than those parties who have not been notified of the Company’s application.

Appointment of MNP as Monitor

38. The proposed Initial Order contemplates the appointment of MNP as Monitor under Tribalscale's CCAA. MNP has acted as Proposal Trustee under the NOI and in this capacity has acquired knowledge of Tribalscale's business and financial affairs and has been assisting the Company with its restructuring. Accordingly, the appointment of MNP as Monitor under the CCAA is both cost effective and efficient.

## **VII. CONCLUSION AND RECOMMENDATION**

39. Based on the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief detailed in paragraph 9.

All of which is respectfully submitted on this 27<sup>h</sup> day of July 2020.

**MNP LTD.,**  
in its capacity as Proposal Trustee under  
the Notice of Intention to Make a Proposal of  
Tribalscale Inc.  
Per:



Sheldon Title  
Licensed Insolvency Trustee

**Estate No.: 31-2646144**  
**Court No.: 31-2646144**

**IN THE MATTER OF THE NOTICE OF INTENTION TIO MAKE A PROPOSAL  
OF TRIBALSCALE INC., OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

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

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**SECOND REPORT TO THE COURT SUBMITTED BY MNP  
LTD., IN ITS CAPACITY AS PRPOSAL TRUSTEE UNDER  
THE  
NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
TRIBALSCALE INC.**

---

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# Appendix “F”

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

**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.**

**THIRD REPORT TO THE COURT**  
**SUBMITTED BY MNP LTD.,**  
**IN ITS CAPACITY AS COURT APPOINTED MONITOR**  
**OF**  
**TRIBALSCALE INC.**

**JANUARY 9, 2021**

**I. INTRODUCTION**

1. On May 19, 2020 (the “**NOI Filing Date**”), Tribalscale Inc. (“**Tribalscale**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). MNP Ltd. (“**MNP**”) was named proposal trustee in the NOI proceeding. Tribalscale’s NOI proceedings are referred to herein as the “**NOI Proceedings**”.
2. On July 31, 2020, the Court issued an order that, *inter alia*, ordered:
  - a. a stay of proceedings in favour of Tribalscale until October 31, 2020 (the “**Stay Period**”);

- b. declaring that the NOI Proceedings be continued under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. C-36, as amended (“**CCAA**”);
  - c. the appointment of MNP as the Monitor (the “**Monitor**”) in the CCAA proceedings (the “**CCAA Proceedings**”); and
  - d. charges on the properties, assets and undertakings of the Company (collectively the “**Property**”), in the following order of priority:
    - i. Administration Charge - to the maximum amount of \$125,000; and
    - ii. Directors' Charge - to the maximum amount of \$125,000.
3. The Monitor has filed two reports in respect of the CCAA Proceedings, as summarized below:
- a. On October 28, 2020, the Monitor filed its first report (the “**First Report**”) in support of the Company’s motion to approve, *inter alia*: (i) extending the Stay Period until January 31, 2021; and (ii) the Restructuring Support Agreement between Tribalscale and its senior secured creditor, 1924191 Ontario Inc. (“**192**”) (the “**RSA**”). On October 30, 2020, the Court approved the RSA and granted the requested extension of the Stay Period.
  - b. On November 24, 2020, the Monitor filed its second report (the “**Second Report**”) in support of the Company’s motion to seek a Court order, *inter alia*, (i) authorizing the filing of Tribalscale’s Plan of Compromise and Arrangement; (ii) authorizing the Company, with the assistance of the Monitor, to call, hold and conduct a meeting of creditors (the “**Meeting**”) to consider and vote on the Tribalscale’s Plan of Compromise and Arrangement dated November 22, 2020 (as amended on January 4, 2021) (the “**Plan**”); and (iii) approving the procedures to be followed at the Meeting, including the voting procedures. On November 25, 2020, the Court granted an order (the “**Meeting Order**”), a copy of which is enclosed as **Appendix “A”**. The First Report and Second Report (without appendices) are attached as **Appendix “B”** and “**C**”, respectively.

4. Subsequent to the Meeting Order and as detailed below, prior to the Meeting being held, Tribalscale made certain modifications to the Plan, a copy of which is attached as Exhibit “E” to the January Affidavit (as such term is defined below).
5. Information regarding the NOI Proceedings and the CCAA Proceedings has been posted to the Monitor’s case website (the “**Case Website**”) at <https://mnpdebt.ca/en/corporate/corporate-engagements/tribalscale-inc>.
6. As noted in the Jaitly Affidavits (as such term is defined below), the primary objectives of the CCAA Proceedings are to create a stabilized environment for Tribalscale to continue operating as a going concern business while the Company works with the Monitor and other advisors to (i) resolve a dispute with a customer, Sirius XM Connected Vehicle Services (“**Sirius XM**”); and (ii) to implement the RSA by way of a plan of arrangement under the CCAA (the RSA was enclosed as Exhibit “A” of the November Affidavit (as such term is defined below)).

## **II. RESTRICTIONS**

7. In preparing this Third Report and making the comments herein, the Monitor has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the affidavits of Sheetal Jaitly, Tribalscale’s CEO, dated June 15, 2020 and July 25, 2020 filed in the NOI Proceedings and the affidavits of Sheetal Jaitly, dated October 27, 2020, November 22, 2020 (the “**November Affidavit**”) and January 6, 2021 (the “**January Affidavit**”) in connection with the CCAA Proceedings (collectively, the “**Jaitly Affidavits**”), Tribalscale’s books and records, discussions with Tribalscale’s management (“**Management**”) and information from other third-party sources (collectively, the “**Information**”). Except as specifically noted in this Report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.
8. The Monitor also bases its report on the Company’s cash flow projections and underlying assumptions and notes that its review and commentary thereon were performed in

accordance with the requirements set out in the Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice No. 9 (Cash Flow Statement). Certain of the information referred to in this Third Report consists of financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been performed. Future oriented financial information referred to in this Third Report was prepared based on estimates and assumptions provided by Management. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material. On March 17, 2020, the Province of Ontario declared a state of emergency due to the COVID-19 pandemic. The effect of this declaration along with other federal, provincial and municipal actions regarding the COVID-19 pandemic on the Company's business and the economy in general has yet to be determined. In developing the cash flow projections, Management has reflected its current view of the potential impact of the COVID-19 pandemic on its cash flow. However, the ongoing uncertainty and instability caused by the COVID-19 pandemic and various government regulatory actions in response thereto, may cause actual results to differ from the projected amounts and these variations may be material.

9. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars.
10. Capitalized terms not defined in this Report have the meaning ascribed to them in the Plan.

### **III. PURPOSE OF THIS REPORT**

11. The purpose of this Report (the "**Third Report**") is to:
  - a. Update the Court with respect to:
    - i. the activities of the Company and the Monitor since the Second Report;
    - ii. the Company's actual cash flows for the period from October 12, 2020 to January 3, 2021, as well as any material variances between these actual



- receipts and disbursements and the revised cash flow forecast (the “**Second Revised Cash Flow Forecast**”), which was appended to the First Report and attached hereto as **Appendix “D”**;
- iii. an overview of the modifications to the Plan;
  - iv. the results of the Meeting convened virtually on January 5, 2021 pursuant to the Meeting Order;
- b. provide the Monitor’s support for, and observations in respect of Tribalscale’s request that the Court grant an order, *inter alia*:
- i. sanctioning the Plan;
  - ii. approving the Releases (as such term is defined below) contained in the Plan;
  - iii. adding a newly incorporated subsidiary company of Tribalscale, 2800741 Ontario Inc. (“**Newco**”), as an Applicant in the CCAA Proceedings; and
  - iv. approving the vesting in Newco of: (i) all of Tribalscale’s unsecured liabilities, and (ii) Tribalscale’s claims against Sirius XM, which include (among other things) any actions, claims, rights or lawsuits of any nature owing to Tribalscale by SiriusXM under a professional services agreement dated April 26, 2019 as further particularized through individual statements of work including the statement of work effective November 23, 2019 (the “**SiriusXM Receivable**”).

#### **IV. BACKGROUND INFORMATION**

12. Tribalscale is an Ontario corporation that until May 19, 2020 was carrying on business out of leased premises located at 200 Wellington Street West, Toronto, Ontario.
13. Tribalscale is a technology innovation firm providing services to companies located in Canada and United States on digital product strategy, design and development for web, mobile and emerging tech. The Company partners with large enterprises and teaches them the practices and approaches needed to release digital products to market that satisfy their consumers.

## V. ACTIVITIES OF THE COMPANY

14. Since the Second Report, the Company has *inter alia*:

- a. with the assistance of its legal counsel and the Monitor and Borden Ladner Gervais LLP (“**BLG**”) the Monitor’s legal counsel, formulated the Plan, including amendments thereto; and
- b. carried on its business in the ordinary course, including providing a reporting of actual receipts, disbursements and variances to the Monitor.

## VI. ACTIVITIES OF THE MONITOR

15. The Monitor has undertaken the following activities since the Second Report, *inter alia*:

- a. updated the Case Website, as necessary;
- b. communicated via email and telephone with the stakeholders to address their inquiries;
- c. chaired the Meeting, which was held virtually on January 5, 2021 pursuant to the Meeting Order. Pursuant to the Meeting Order, the Monitor directed a vote on the resolution to approve the Plan. The results of the vote are discussed in further detail below;
- d. monitored Tribalscale’s actual cash flows in comparison with the Second Revised Cash Flow Forecast;
- e. discussed with representatives of Canada Revenue Agency (“**CRA**”) its claim for unpaid source deductions, which culminated in CRA submitting a claim for unpaid source deductions in the amount of \$13,719.85 inclusive of penalty and interest, which is lower than the approximately \$18,130.00 that was reflected as owing to CRA on account of unpaid source deductions in the First Report. The Plan provides that Crown Claims outstanding at the Filing Date shall be paid in full within six months after the Sanction Order, as required by subsection 6(3) of the CCAA.

- f. prepared this Report; and
- g. engaged in discussions with the Company and its counsel regarding the Company's efforts to restructure its operations.

## **VII. CASH FLOW PROJECTIONS**

- 16. To date, Tribalscale has provided the Monitor with its full co-operation and unrestricted access to its books and records.
- 17. The Monitor has implemented procedures for monitoring the Company's receipts and disbursements and has kept in close contact with Management to ensure that operations are continuing in the normal course of business and in accordance with the Second Revised Cash Flow Projections.
- 18. A summary of the Company's actual receipts and disbursements as compared to those presented in the Second Revised Cash Flow Projections for the twelve-week period October 12, 2020 through January 3, 2021 ("**Monitored Period**") are as follows (subject to rounding errors):

<b>Currency: CAD</b>	<b>Cumulative Twelve-Week Period Ended Jan 3, 2021</b>		
	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>
Receipts from customers	591,655	618,789	(27,134)
Canada Emergency Wage subsidy	254,752	245,216	9,536
Sale of Equipment and Fixture	21,825	15,490	6,335
Miscellaneous income	27,181	-	27,181
<b>Total receipts</b>	<b>895,412</b>	<b>879,495</b>	<b>15,918</b>
<b>Disbursements</b>			
Payment to suppliers	(4,876)	(4,876)	-
Payments for operating expenses	(143,999)	(150,179)	6,180
Payroll (inc. contractors)	(1,028,168)	(614,968)	(413,200)
Interest and loan repayment	-	(33,159)	33,159
Tax	(78,368)	(73,731)	(4,637)
<b>Total Disbursements</b>	<b>(1,255,411)</b>	<b>(876,913)</b>	<b>(378,498)</b>
<b>Operating Net Cash Flow</b>	<b>(359,999)</b>	<b>2,581</b>	<b>(362,580)</b>
Administrative Fees	(118,471)	(150,000)	31,529
<b>Net Cash Flow</b>	<b>(478,469)</b>	<b>(147,419)</b>	<b>(331,051)</b>
<b>Beginning Cash</b>	2,132,722	2,132,722	-
Net Cash Flow	(478,469)	(147,419)	(331,051)
<b>Ending Cash</b>	<b>1,654,253</b>	<b>1,985,304</b>	<b>(331,051)</b>

19. Overall, Tribalscale realized an unfavorable net cash flow variance of approximately \$331.05M during the Monitored Period. The key components of the variance are as follows:

- a. Receipts from customers: The unfavorable variance of approximately \$27.13M is primarily a timing difference relating to collections from two customers totaling approximately \$244M, which was collected after the Monitored Period. This timing difference is offset by a permanent favourable variance on account of collections of approximately \$216M from two customers, which collections resulted from statements of work that were entered into by Tribalscale after the Second Revised Cash Flow Projections were developed.

- b. Sale of Equipment and Fixture: As previously reported in the Second Report, the Company realized approximately \$21.8M (net book value of approximately \$159.2M), which was higher than what had been expected. The favorable variance is permanent in nature.
- c. Miscellaneous income: relates to i) reimbursement of subscription expenses of \$5.9M received on a quarterly basis from an entity in Dubai which utilizes certain IT services of Tribalscale; ii) interest of \$8.5M on an income tax refund received in August 2020 related to SRED and iii) refundable income tax credits of \$12.7M received from CRA on account of Tribalscale's providing internship opportunities to students. These amounts had not been projected and as such this favorable variance is permanent in nature.
- d. Payroll: The unfavorable variance of \$413.2M is permanent in nature and primarily relates to payment of approximately \$320M paid to three (3) individuals in respect of deferred salaries payable, including approximately \$290M paid to Sheetal Jaitly. The remaining variance relates to a bonus of \$22,500 paid in aggregate to three (3) employees, including \$7,500 to Sheetal Jaitly, a vacation payout to two (2) employees and unprojected wages paid with respect to four (4) employees that were hired after the Second Revised Cash Flow Projections were developed.
- e. Interest and loan repayment: The favorable variance of \$33.1M is timing in nature as Business Development Bank of Canada ("**BDC**") stopped automatic withdrawals of principal and interest payments upon the filing of the NOI by the Company in May 2020. Under the terms of the Plan, BDC is to be paid in full. On January 8, 2021, BDC advised that as at January 15, 2021 the loan payout will be \$117,085.52.
- f. Administrative fees: The favorable variance appears to be permanent in nature and is primarily attributable to lower than anticipated expenses during the Monitored Period. The Administrative Professionals having been regularly billing Tribalscale and Tribalscale has paid invoices promptly upon receipt.

## VIII BACKGROUND ON THE PLAN

20. As noted in the Jaitly Affidavits, one of Tribalscale's key objectives in the CCAA Proceedings is to resolve its secured indebtedness with 192. Tribalscale was involved in ongoing negotiations with 192, culminating in the parties entering into the RSA.

21. The purpose of the Plan, like the RSA, is to effect a restructuring of Tribalscale's secured indebtedness with the expectation that persons having an economic interest in the Company, when considered as a whole, will derive a greater benefit from the implementation of the Plan than would result from Tribalscale's bankruptcy. In the Monitor's view, the amendments to the Plan, as discussed in detail below, do not materially change the transaction contemplated by the RSA or significantly impact the treatment of Tribalscale's creditors under the Plan.

## THE CREDITORS MEETING

22. In accordance with the Plan and the Meeting Order, the Monitor:

- a. on December 8, 2020, (i) sent by e-mail copies of the Notice of Creditors' Meeting and Sanction Hearing, the Meeting Order, the Plan, and the Proxy (together, the "**Voting Package**") to each Affected Secured Creditor; and (ii) posted an electronic copy of the Voting Package on the Case Website;
- b. on December 9, 2020, the Monitor referred each of the Affected Secured Creditors to the Second Report, which provided the Monitor's report regarding the Plan.

### **Adjournments**

23. The Meeting of the Affected Secured Creditors was originally scheduled to be held on December 10, 2020 at 4 PM and to take place by videoconference. The Meeting was adjourned on two (2) occasions; first to December 17, 2020 and then to January 5, 2021. On each occasion, in accordance with the Meeting Order, the Monitor's legal counsel served Notice of Adjournment (the "**Adjournment Notice**") on the service list and the Monitor posted the Adjournment Notice to the Case Website. The adjournments allowed Tribalscale time to, among other things, make certain modifications to the Plan.

## **Modifications of the Plan**

24. The modifications to the Plan are detailed in the January Affidavit and are not duplicated herein, with the main amendments seeking “to (i) ensure all corporate approvals necessary to effect the Plan are in place (ii) implement the issuance of preferred shares to 192 for tax purposes; (iii) conform the Plan to the terms of the RSA and other pre-existing documents; and (iv) facilitate Tribalscale’s exit from CCAA protection as soon as possible.” The Monitor’s comments on the modifications are reflected in the Reverse Vesting Order section below and relate specifically to:

- c. Newco being added as an applicant in the CCAA Proceedings;
- d. the assignment of the Sirius XM Receivable from Tribalscale to Newco pursuant to the term of the RVO; and
- e. Section 95-101 of the BIA and any applicable law relating to preferences, settlements, fraudulent conveyances or transactions at undervalue shall not apply in any respect to the Plan.

## **Results of the Meeting**

25. The meeting was convened on January 5, 2020 at 4 PM (Toronto time). with Sheldon Title, Senior Vice President of MNP presiding as the chair and the secretary of the Meeting. A copy of the minutes of the Meeting are attached as **Appendix “E”**.

26. The Affected Secured Creditors voted unanimously in favour of the Plan; 192 voted its entire Proven Claim in favour of the Plan and BDC was deemed to have voted its entire Proven Claim in favour of the Plan.

## **IX. SANCTION ORDER**

27. The Monitor recommends that the Court sanction the Plan for the following reasons:

- a. the Affected Secured Creditors voted in favour of the Plan;
- b. the Plan contemplates the continued operation of Tribalscale’s business;

- c. 192's contemplated conversion of a portion of 192's secured debt to equity will enable Tribalscale to continue its operations by reason of reducing its debt service payments;
- d. the classification of the Affected Secured Creditors into two classes is fair and reasonable having regard to the factors detailed in section 22 of the CCAA, including the:
  - i. nature and rank of any security in respect of their claims;
  - ii. the remedies available to the creditors in the absence of the Plan;
  - iii. the lack of commonality of interest given the contemplated treatment of each of the Affected Secured Creditors under the Plan; and
  - iv. 192's secured debt will be compromised under the Plan, whereas BDC's secured debt will be repaid in full.
- e. the Plan is consistent with the RSA, which as noted above, was previously approved by the Court;
- f. BLG has provided the Monitor with an opinion confirming that, subject to certain standard assumptions and qualifications, that the Bank of Nova Scotia loan and security in respect of Tribalscale, as assigned to 192 is valid and enforceable as against the Company;
- g. the Monitor has reviewed the releases contemplated by the Plan and is of the view that they are fair, reasonable and appropriate in the circumstances as the Released Parties: (i) materially contributed to Tribalscale's restructuring; (ii) the releases are rationally connected to the purpose of the Plan; (iii) the Affected Secured Creditor voting on the Plan had knowledge of the releases contemplated by the Plan and, as of the date of this report, have not objected to the releases;
- h. the releases do not include a release of claims prohibited from release by operation of subsection 5.1(2) of the CCAA; and



- i. the Plan 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, including employees, trade creditors and suppliers.

**X. REVERSE VESTING ORDER**

28. The transaction contemplated by the RSA originally contemplated, *inter alia*:

- a. Tribalscale will incorporate Newco, which is a subsidiary corporation of Tribalscale, and will look to obtain approval from the Court for a reverse vesting order (“RVO”), vesting out of absolutely all the Unsecured Liabilities from Tribalscale to Newco; and
- b. Tribalscale issuing to the unsecured creditors of Newco a promissory note in the amount of the Sirius XM Receivable, less the fees and costs incurred to collect or enforce the Sirius XM Receivable, which promissory note shall be payable on a pro rata basis to unsecured creditors of Newco upon receipt of the Sirius XM Receivable or upon determination or settlement of the claim of the Company against Sirius XM in respect to the Sirius XM Receivable.

29. As noted previously and in the January Affidavit, Tribalscale has modified the Plan to remove the “Newco Note” concept, which provided for the payment of the SiriusXM Receivable by Tribalscale to the General Unsecured Creditors, because Newco will now be directly pursuing the SiriusXM Receivable in the CCAA Proceedings. As noted in the January Affidavit, Tribalscale will fund Newco on an as-needed basis to pursue recovery of the Sirius XM Receivable, however, formal funding arrangements are not in place.

30. Provided the Court approves: (i) the vesting out of all of the Unsecured Liabilities from Tribalscale to Newco; and (ii) the vesting of the Sirius XM Receivable in Newco, Newco’s balance sheet will reflect its only asset as being the Sirius XM Receivable, which has a value of approximately \$671M, and unsecured liabilities of approximately \$3.3 million.

31. As noted in the First Report, based on the estimated realizable value of the Property, but not taking in account Tribalscale's investments<sup>1</sup>, and given the extent of Tribalscale's obligation to the Secured Creditors, the costs of realization and potential priority payables, it appears likely that there would be minimal if any, net proceeds of realization available to the Unsecured Creditors in the event of Tribalscale's bankruptcy. Further, the January Affidavit provides a description of the sale and investment solicitation process undertaken by Tribalscale in 2019/2020 and its inability to identify or conclude a transaction that would generate sufficient recovery for its secured creditors. Accordingly, the terms of the Plan, including the RVO contemplated under the Sanction Order, appear fair and reasonable given that the Unsecured Creditors do not appear to have an economic interest in Tribalscale's business.

### **Section 95-101**

32. The Plan now stipulates that sections 95 to 101 of the BIA and any applicable law relating to preferences, settlements, fraudulent conveyances or transactions at undervalue shall not apply in any respect to the Plan. To assess the reasonableness of the inclusion of this provision, the Monitor completed a limited review of Tribalscale's books and records for the purpose of identifying potential preferences and transfers at undervalue, which review included a review of banking activity and payroll activity for the twelve-month period prior to the NOI Filing Date ("**Period of Review**").

33. Subject to payments identified in paragraph 19(d), which payments are outside the Period of Review, the Monitor did not identify any material banking transactions in the Period of Review that are worthy of further consideration.

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<sup>1</sup> The Company holds equity positions in five (5) private companies. Tribalscale has provided the Monitor with financial statements and certain other information related to these investments. The balance sheets provided for these companies indicate limited asset value asides from the intangible assets/intellectual property. Given that these are private companies with no market in which to sell the investments, the Monitor notes that it does not possess sufficient information on which to carry out a valuation of these intangibles and intellectual property and/or Tribalscale's interest in these companies. The Monitor is also of the view that such a valuation is beyond the scope of its mandate. Accordingly, in comparing the RSA with a liquidation in bankruptcy, the Monitor has not considered the value these investments may produce, if any, in the event of a liquidation

34. In carrying out its review, the Monitor identified a May 6, 2019 payment in the amount of \$237,000 made to David Wright, a Tribalscale co-founder and former shareholder. Tribalscale advised the Monitor that David Wright, through his counsel, delivered a draft statement of claim against Tribalscale and Sheetal Jaitly seeking to claim amounts arising from David Wright's employment and the termination of his employment with Tribalscale in June 2018. The parties reached an out of court settlement that resulted in Tribalscale making the payment of \$237,000 in exchange for a full and final release related to his employment and the termination of such employment. Tribalscale made the settlement in order to secure the release and avoid significant legal fees. The Monitor is unable to comment on how the consideration paid to David Wright compares to the consideration received by Tribalscale.

## **XI. CONCLUSION AND RECOMMENDATION**

35. Based on the foregoing, the Monitor respectfully recommends that the Court make an order granting the relief detailed in paragraph 11.

All of which is respectfully submitted on this 9th day of January 2021.

**MNP LTD.,**  
in its capacity as Court Appointed Monitor of  
Tribalscale Inc.  
and not in its personal or corporate capacity

Per:



Sheldon Title  
Licensed Insolvency Trustee

**IN THE MATTER OF THE CCAA PROCEEDINGS OF TRIBALSCALE INC.,  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

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

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**THIRD REPORT TO THE COURT SUBMITTED BY MNP  
LTD., IN ITS CAPACITY  
AS COURT APPOINTED MONITOR OF  
TRIBALSCALE INC.**

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**MNP LTD.**  
300-111 Richmond Street West  
Toronto, ON M5H 2G4

**Sheldon Title**  
Tel: (416) 263-6945  
Fax: (416) 323-5242  
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# Appendix "G"

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

**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.  
AND 2800741 ONTARIO INC.**

**FOURTH REPORT TO THE COURT  
SUBMITTED BY MNP LTD.,  
IN ITS CAPACITY AS COURT APPOINTED MONITOR  
IN THE CCAA PROCEEDINGS**

**JANUARY 27, 2021**

**I. INTRODUCTION**

1. On May 19, 2020 (the “**NOI Filing Date**”), Tribalscale Inc. (“**Tribalscale**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). MNP Ltd. (“**MNP**”) was named proposal trustee in the NOI proceeding. Tribalscale’s NOI proceedings are referred to herein as the “**NOI Proceedings**”.
2. On July 31, 2020, the Court issued an order that, *inter alia*, ordered:
  - a. a stay of proceedings in favour of Tribalscale until October 31, 2020 (the “**Stay Period**”);

- b. declaring that the NOI Proceedings be continued under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. C-36, as amended (the “**CCAA**”);
  - c. the appointment of MNP as the Monitor (the “**Monitor**”) in the CCAA proceedings (the “**CCAA Proceedings**”); and
  - d. charges on the properties, assets and undertakings of the Company (collectively the “**Property**”), in the following order of priority:
    - i. Administration Charge - to the maximum amount of \$125,000; and
    - ii. Directors' Charge - to the maximum amount of \$125,000.
3. The Monitor has filed three (3) reports in respect of the CCAA Proceedings, as summarized below:
- a. On October 28, 2020, the Monitor filed its first report (the “**First Report**”) in support of the Company's motion to approve, *inter alia*: (i) extending the Stay Period until January 31, 2021; and (ii) the Restructuring Support Agreement between Tribalscale and its senior secured creditor, 1924191 Ontario Inc. (“**192**”) (the “**RSA**”). On October 30, 2020, the Court approved the RSA and granted the requested extension of the Stay Period.
  - b. On November 24, 2020, the Monitor filed its second report (the “**Second Report**”) in support of the Company's motion to seek a Court order, *inter alia*, (i) authorizing the filing of Tribalscale's Plan of Compromise and Arrangement; (ii) authorizing the Company, with the assistance of the Monitor, to call, hold and conduct a meeting of creditors (the “**Meeting**”) to consider and vote on the Tribalscale's Plan of Compromise and Arrangement dated November 22, 2020 (as amended on January 4, 2021) (the “**Plan**”); and (iii) approving the procedures to be followed at the Meeting, including the voting procedures. On November 25, 2020, the Court granted an order, a copy of which is enclosed as **Appendix “A”**.
  - c. On January 9, 2021, the Monitor issued its third report (the “**Third Report**”) in support of the Tribalscale's motion to seek a Court order, *inter alia*, (i) sanctioning

the Plan; (ii) approving the Releases (as such term is defined in the Plan) contained in the Plan; (iii) adding a newly incorporated subsidiary company of Tribalscale, 2800741 Ontario Inc. (“**Newco**”, and collectively with Tribalscale, the “**Companies**”), as an Applicant in the CCAA Proceedings; and approving the vesting in Newco of: (i) all of Tribalscale’s unsecured liabilities (the “**Unsecured Liabilities**”), and (ii) Tribalscale’s claims against Sirius XM Connected Vehicle Services (“**SiriusXM**”), which include (among other things) any actions, claims, rights or lawsuits of any nature owing to Tribalscale by SiriusXM under a professional services agreement dated April 26, 2019 as further particularized through individual statements of work including the statement of work effective November 23, 2019 (the “**SiriusXM Receivable**”). On January 11, 2021, the Court granted an Order (the “**Sanction Order**”), a copy of which is enclosed as **Appendix “B”**. The First Report, Second Report and Third Report (each without appendices) are attached as **Appendix “C”**, **Appendix “D”** and “**E**”, respectively.

4. Information regarding the NOI Proceedings and the CCAA Proceedings has been posted to the Monitor’s case website (the “**Case Website**”) at <https://mnpdebt.ca/en/corporate/corporate-engagements/tribalscale-inc>.
5. As noted in the Jaitly Affidavits (as such term is defined below), the primary objectives of the CCAA Proceedings (the “**CCAA Objectives**”) were to create a stabilized environment for Tribalscale to continue operating as a going concern business while Tribalscale worked with the Monitor and other advisors to (i) resolve a dispute with SiriusXM; and (ii) to implement the RSA by way of a plan of arrangement under the CCAA (the RSA was enclosed as Exhibit “A” of the November Affidavit (as such term is defined below)).

## **II. RESTRICTIONS**

6. In preparing this Fourth Report and making the comments herein, the Monitor has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the affidavits of Sheetal Jaitly, Tribalscale’s CEO, dated June 15, 2020 and July 25, 2020 filed in the NOI Proceedings and the affidavits of Sheetal Jaitly, dated October 27, 2020, November 22, 2020 (the “**November Affidavit**”), January 6, 2021 and



January 26, 2021 (the “**January 26<sup>th</sup> Affidavit**”) in connection with the CCAA Proceedings (collectively, the “**Jaitly Affidavits**”), Tribalscale’s books and records, discussions with the Companies’ management (“**Management**”) and information from other third-party sources (collectively, the “**Information**”). Except as specifically noted in this Report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.

7. The Monitor also bases its report on the Companies’ cash flow projections and underlying assumptions and notes that its review and commentary thereon were performed in accordance with the requirements set out in the Canadian Association of Insolvency and Restructuring Professionals’ Standards of Professional Practice No. 9 (Cash Flow Statement). Certain of the information referred to in this Fourth Report consists of financial forecasts and/or projections. An examination or review of financial forecasts and projections and procedures, in accordance with standards set by the Chartered Professional Accountants of Canada, has not been performed. Future oriented financial information referred to in this Fourth Report was prepared based on estimates and assumptions provided by Management. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and such variations could be material. On March 17, 2020, the Province of Ontario declared a state of emergency due to the COVID-19 pandemic. The effect of this declaration along with other federal, provincial and municipal actions regarding the COVID-19 pandemic on the Companies’ business and the economy in general has yet to be determined. In developing the cash flow projections, Management has reflected its current view of the potential impact of the COVID-19 pandemic on its cash flow. However, the ongoing uncertainty and instability caused by the COVID-19 pandemic and various government regulatory actions in response thereto, may cause actual results to differ from the projected amounts and these variations may be material.

8. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars.
9. Capitalized terms not defined in this Report have the meaning ascribed to them in the Plan.

### III. PURPOSE OF THIS REPORT

10. The purpose of this Report (the “**Fourth Report**”) is to:
  - a. update the Court with respect to:
    - i. the activities of the Companies and the Monitor since the Third Report;
    - ii. variances in Tribalscale’s actual cash flows and the revised cash flow forecast (the “**Second Revised Cash Flow Forecast**”) since the Third Report; and
    - iii. Newco’s cash flow projections (the “**Newco’s Cash Flow Projections**”) for the period from January 25, 2021 to July 4, 2021 (being filed herein) and the Monitor’s observations regarding same;
  - b. provide the Monitor’s support for, and observations in respect of Newco’s and Tribalscale’s request that the Court grant an order, *inter alia*:
    - i. approving the Third Report and Fourth Report and the activities of the Monitor as described in the Reports and herein;
    - ii. approving the fees and disbursements of the Monitor and its counsel;
    - iii. discharging Tribalscale from the CCAA Proceedings upon the Implementation Date (as defined in the Plan);
    - iv. approving a litigation funding agreement between Tribalscale and Newco, dated January 26, 2021 (the “**Litigation Funding Agreement**”);
    - v. extending the Stay Period until June 30, 2021 (the “**Requested Stay Extension**”);

- vi. Sealing the unredacted Litigation Funding Agreement attached to the January 26<sup>th</sup> Affidavit; and
- vii. providing certain other related and ancillary relief.

#### **IV. BACKGROUND INFORMATION**

- 11. Tribalscale is an Ontario corporation that until May 19, 2020 was carrying on business out of leased premises located at 200 Wellington Street West, Toronto, Ontario.
- 12. Tribalscale is a technology innovation firm providing services to companies located in Canada and United States on digital product strategy, design and development for web, mobile and emerging tech. The Company partners with large enterprises and works with them to release digital products to market that satisfy their consumers.

#### **V. ACTIVITIES OF TRIBALSCALE**

- 13. Since the Third Report, Tribalscale has, *inter alia*:
  - a. with the assistance of its counsel and in consultation with the Monitor and its counsel, developed and entered into the Litigation Funding Agreement with Newco;
  - b. in accordance with the terms of the Plan:
    - i. remitted to Canada Revenue Agency (“**CRA**”) payment in the amount of \$13,719.85, representing CRA’s claim for unpaid source deductions, inclusive of penalty and interest;
    - ii. satisfied payment of unpaid vacation pay owing to employees through to December 31, 2020; and,
  - c. carried on its business in the ordinary course, including providing a reporting of actual receipts, disbursements and variances to the Monitor.

## **VI. ACTIVITIES OF THE MONITOR**

14. The Monitor has undertaken the following activities since the Third Report, *inter alia*:
- a. updated the Case Website, as necessary;
  - b. held discussions with certain of Tribalscale's stakeholders, including The Bank of Nova Scotia;
  - c. monitored Tribalscale's actual cash flows in comparison with the Second Revised Cash Flow Forecast;
  - d. engaged in discussions with Tribalscale and its counsel regarding the Tribalscale's ongoing efforts to restructure its operations;
  - e. assisted Newco in the preparation of cash flow projections, as discussed in greater detail later in this Report;
  - f. engaged in discussions with the Companies and their counsel with regard to the negotiation of the terms of the Litigation Funding Agreement and the collection of the SiriusXM Receivable; and,
  - g. prepared this Report.

## **VII. CASH FLOW PROJECTIONS**

15. To date, Tribalscale has provided the Monitor with its full co-operation and unrestricted access to its books and records.
16. The Monitor has implemented procedures for monitoring Tribalscale's receipts and disbursements and has kept in close contact with Management to ensure that operations are continuing in the normal course of business and in accordance with the Second Revised Cash Flow Projections.
17. A summary of the Tribalscale's actual receipts and disbursements as compared to those presented in the Second Revised Cash Flow Projections for the two-week period January

4, 2021 through January 17, 2021 (“**Monitored Period**”) are as follows (subject to rounding errors):

<b>Currency: CAD</b>	<i>Cumulative Two-Week Period Ended Jan 17, 2021</i>		
	<u>Actual</u>	<u>Budget</u>	<u>Variance</u>
Receipts from customers	430,688	149,800	280,888
<b>Total receipts</b>	<b>430,688</b>	<b>149,800</b>	<b>280,888</b>
<b>Disbursements</b>			
Payments for operating expenses	(81,592)	(34,502)	(47,090)
Payroll (inc. contractors)	(244,388)	(143,525)	(100,863)
<b>Total Disbursements</b>	<b>(325,980)</b>	<b>(178,027)</b>	<b>(147,953)</b>
<b>Operating Net Cash Flow</b>	<b>104,708</b>	<b>(28,227)</b>	<b>132,935</b>
Administrative Fees	(78,749)	(70,000)	(8,749)
<b>Net Cash Flow</b>	<b>25,959</b>	<b>(98,227)</b>	<b>124,186</b>
<b>Beginning Cash</b>	1,637,626	1,985,304	(347,678)
Net Cash Flow	25,959	(98,227)	124,186
<b>Ending Cash</b>	<b>1,663,585</b>	<b>1,887,077</b>	<b>(223,492)</b>

18. Overall, Tribalscale realized a favorable net cash flow variance of approximately \$124.19M during the Monitored Period. The key components of the variance are as follows:

- a. Receipts from customers: The favorable variance of approximately \$280.88M is represented by (i) the reversal of the unfavourable timing difference \$244M reported in the Third Report, which had an unfavourable impact in that reporting period; and (ii) a timing difference on account of early collections from customers of approximately \$35.2M.
- b. Operating expenses: The unfavorable variance of \$47M relates to: (i) an insurance payment of approximately \$29M which was not included in the projections; and (ii) sooner than anticipated payments of approximately \$18M to certain other suppliers.

- c. Payroll: The unfavorable variance of \$100.86M includes permanent differences on account of vacation pay of \$54.7M, which was paid to employees in accordance with the terms of the Plan, and third-party agency payments of \$21.7M to meet certain staffing needs, all of which had not be reflected in the projections.. Further, Tribalscale transferred an amount of \$20M to its US subsidiary to pay an employee’s salary for the next two months and to make certain tax payments, which transfer occurred earlier than had been anticipated by the projections.
19. Although partially offset by the positive variance in the Monitored Period, the overall negative variance in the ending cash position, primarily relates to payroll payments made that had not been projected, as noted in the Third Report.

## VIII IMPLEMENTATION OF THE PLAN

20. The conditions precedent to the Plan (the “**Implementation Conditions**”) are set out in article 6.1 of the Plan.
21. Upon satisfaction of the Implementation Conditions, Tribalscale will proceed to implement the Plan. In consultation with the Monitor, Tribalscale will designate the Implementation Date and will implement the Plan on the day indicated on the certificate which the Monitor files with the Court certifying the waiver or satisfaction of the Implementation Conditions.
22. The Monitor is advised that Tribalscale anticipates it will satisfy or waive the Implementation Conditions on or before January 28, 2021. Provided the Plan is implemented, Tribalscale requests that the Court order that Tribalscale be discharged from the CCAA Proceedings. The Monitor will, upon receiving written notice from 192 and Tribalscale that the Implementation Conditions have been satisfied or waived, file with the Court, a certificate which states that Implementation Conditions have been satisfied or waived and that the Implementation Date (as defined under the Plan) has Implementation Conditions have been satisfied or waived occurred .
23. The Monitor recommends that the Court order Tribalscale’s discharge from the CCAA Proceedings once the Monitor receives confirmation from Tribalscale and 192 that the Implementation Date (as defined under the Plan) has passed and the Implementation

Conditions have been satisfied or waived, on the basis that Tribalscale has satisfied the CCAA Objectives: Tribalscale has restructured its business as contemplated by the RSA and the Plan and has entered into the Litigation Funding Agreement to enable Newco to pursue collection of SiriusXM Receivable.

#### **IX. NEWCO AND THE SIRIUSXM RECEIVABLE**

24. In accordance with the RSA and the Plan, Tribalscale incorporated Newco, a subsidiary corporation of Tribalscale. As part of the Sanction Order the Court granted a reverse vesting order:

- a. vesting out absolutely all the Unsecured Liabilities from Tribalscale to Newco; and
- b. vesting the SiriusXM Receivable in Newco.

25. On January 13, 2021, counsel to Tribalscale, Weisz Fell Kour LLP, directed correspondence to SiriusXM wherein it advised SiriusXM that:

- (i) the Sanction Order had been granted by the Court;
- (ii) the SiriusXM Receivable had been vested in Newco by order of the Court; and
- (iii) if SiriusXM did not pay the SiriusXM Receivable by January 15, 2021, Newco would bring a motion to the Court to compel payment in accordance with paragraph 19 of the Initial Order.

26. To date, SiriusXM has not remitted payment of the SiriusXM Receivable to Tribalscale or Newco. The Monitor notes that SiriusXM disputes Tribalscale's claim and alleges there were deficiencies with respect to Tribalscale's performance in completing the contract with SiriusXM.

27. As noted in the Third Report, Tribalscale intends to fund Newco on an as needed basis to pursue recovery of the SiriusXM Receivable, however, at that time, a formal funding arrangement had not been executed. Subsequently, Tribalscale and Newco, in consultation

with the Monitor finalized the terms of the Litigation Funding Agreement. The Litigation Funding Agreement provides, *inter alia*:

- a. that Tribalscale will provide funding to Newco to enable Newco to pay litigation costs incurred in pursuing collection of the SiriusXM Receivable;
  - b. a scheme of distribution for any proceeds recovered from the collection of the SiriusXM Receivable pursuant to which the Unsecured Creditors will receive the net proceeds remaining after: (i) reimbursing Tribalscale for the advances it makes to Newco under the Litigation Funding Agreement; and (ii) Newco pays any amounts owing to professionals pursuant to the Administration Charge;
  - c. that any proceeds recovered from the litigation will be directed to the Monitor to be held, in trust, pending a distribution, which distribution is subject to the foregoing scheme of distribution and approval by the Court;
  - d. that Newco, under the direction of a creditors committee, to be established, and with the oversight of the Monitor, shall remain in control of the SiriusXM litigation; and
  - e. that the Monitor may, in its discretion, seek the Court's direction in respect of any aspect of the SiriusXM litigation, or in connection with the distribution of the litigation proceeds.
28. The Monitor recommends the Court approve the Litigation Funding Agreement as it provides: (i) provides a mechanism for Newco to receive funding that it may require in order to pursue collection of the SiriusXM Receivable; (ii) the Unsecured Creditors of Newco with the opportunity to benefit from the collection of the Sirius XM Receivable; and, (iii) the Unsecured Creditors Committee, the Monitor and the Court with ability to offer guidance, direction and oversight over Newco's litigation with SiriusXM.

### **Sealing Order**

29. The January 26<sup>th</sup> Affidavit includes a redacted version of the Litigation Funding Agreement which contains commercially sensitive information which may be determinantal to



Newco's efforts to recover the SiriusXM Receivable. Given the foregoing, the Monitor recommends that the Court order the sealing of the unredacted Litigation Funding Agreement.

### **Cash Flow Projections**

30. In support of the Companies' motion returnable January 28, 2021 and in anticipation of Tribalscale's discharge from the CCAA Proceedings, Newco, with the assistance of the Monitor, prepared the Newco Cash Flow Projections, a copy of which, together with the reports of Management and the Monitor on Cash Flow Projections, are attached hereto as **Appendix "F" and "G"**, respectively. The Newco's Cash Flow Projections cover the period from January 25, 2021 to July 4, 2021 and have been prepared using the probable and hypothetical assumptions set out in the notes attached to the Newco's Cash Flow Projections.
31. The Monitor's review of the Newco's Cash Flow Projections consisted of enquiries, analytical procedures and discussions related to information supplied to us by Newco. Since hypothetical assumptions need not be supported, the procedures with respect to those assumptions were limited to evaluating whether they were consistent with the purpose of the forecast. The Monitor has also reviewed the support for the probable assumptions and the preparation and presentation of the forecast. The assumptions include that Newco's only expenses will be the professional fees related to the SiriusXM litigation and any such expenses will be funded by Tribalscale pursuant to the Litigation Funding Agreement. However, in developing Newco's Cash Flow Projections and given the uncertainty over the timing of the SiriusXM litigation, Newco's Cash Flow Projections do not estimate the quantum of professional fees that will likely be incurred in connection with the SiriusXM litigation.
32. Based on our review, nothing has come to the attention of the Monitor that causes the Monitor to believe that, in all material respects:
  - a. the hypothetical assumptions are not consistent with the purpose of the forecast;

- b. as at the date of the Report, the probable assumptions used in developing the Newco's Cash Flow Projections are not suitably supported and consistent with Newco's plans, or do not provide a reasonable basis for the forecast, given the hypothetical assumptions; and
- c. the Newco's Cash Flow Projections do not reflect the probable and hypothetical assumptions.

## **X. EXTENSION OF THE STAY PERIOD**

- 33. As noted above and pursuant to the Order of the Court, dated October 30, 2020, the Court extended the extending the Stay Period until January 31, 2021;
- 34. With the contemplated implementation of the Plan, Tribalscale seeks to be discharged from the CCAA Proceedings. Newco will continue to operate under the CCAA Proceedings and seeks to extend the stay period through June 30, 2021.
- 35. Newco has asked the Court to approve the Requested Stay Extension. The basis for this request is to allow Newco to pursue adjudication of the SiriusXM Receivable within the CCAA proceeding without having to expend further resources to seek a further extension of the Stay Period from the Court.
- 36. With funds available under the Litigation Funding Agreement, Newco is anticipated to have access to sufficient funding during the Requested Stay Extension to continue its efforts to collect the SiriusXM Receivable. The Monitor is of the view that no creditor will be materially prejudiced by the Requested Stay Extension.
- 37. The Monitor is of the view that Newco has acted and is continuing to act in good faith and with due diligence and supports the Requested Stay Extension.

## **XI. REQUEST FOR FEE APPROVAL**

38. The Monitor and its counsel, Borden Ladner Gervais LLP (“**BLG**”), as the Monitor’s legal counsel, have maintained detailed records of their professional time and costs.
39. Pursuant to paragraphs 33 and 34 of the Initial Order, any expenditure or liability properly made or incurred by the Monitor, including the fees of the Monitor and the fees and disbursements of its legal counsel, are authorized to be paid by Tribalscale on a periodic basis subject to the approval of this Court.
40. The Monitor and its counsel have been paid their fees and disbursements at their standard rates and charges by Tribalscale from time to time as part of the CCAA Proceedings.
41. The Monitor is now seeking approval of its fees and disbursements, and those of BLG, for the periods outlined below.
42. The Monitor’s fees during the period from August 10, 2020 to January 8, 2021 (the “**Monitor’s Fee Period**”) amount to \$65,901.90, with no disbursements during the period, excluding HST (collectively, the “**Monitor’s Fees and Disbursements**”). MNP estimates that it will incur no more than \$25,000 in additional fees, excluding disbursements and applicable taxes (“**MNP’s estimate to completion**”), for services to be provided to the Monitor through to the date of the Monitor’s discharge in respect of Tribalscale. MNP requests that the Court approve the Monitor’s Fees and Disbursements, together with MNP’s estimate to completion. The time spent by the Monitor’s personnel during the Monitor’s Fee Period is more particularly described in the Affidavit of Sheldon Title of the Monitor (the “**Title Affidavit**”), sworn in support hereof and attached hereto as **Appendix “H”**.

43. The total fees for services provided by BLG during the period from August 19, 2020 to December 31, 2020 (the “**BLG Fee Period**”), amount to \$23,573.50, together with expenses and disbursements in the amount of \$264.52, both excluding HST (collectively the “**BLG Fees and Disbursements**”). BLG estimates that it will incur no more than \$12,000 in additional fees, excluding disbursements and applicable taxes (“**BLG’s estimate to completion**”), for services to be provided to the Monitor through to the date of the Monitor’s discharge in respect of Tribalscale. BLG requests that the Court approve BLG’s Fees and Disbursements, together with BLG’s estimate to completion. The time spent by BLG personnel during the BLG Fee Period is more particularly described in the Affidavit of Christine Mason (the “**Mason Affidavit**”), sworn in support hereof and attached hereto as **Appendix “I”**. Exhibit “B” to the Mason Affidavit is a summary of the personnel, hours, and hourly rates charged by BLG in respect of the CCAA Proceedings for the BLG Fee Period.

44. The Monitor respectfully submits that the Monitor’s Fees and Disbursements, and the BLG Fees and Disbursements are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Initial Order. Accordingly, the Monitor seeks the approval of the Monitor’s Fees and Disbursements and the BLG Fees and Disbursements at their respective standard rates, which are comparable to the rates charged for the provision of similar services by other accounting and law firms in the jurisdictions in which the Monitor and its counsel operate.

## **XII. CONCLUSION AND RECOMMENDATION**

45. Based on the foregoing, the Monitor respectfully recommends that the Court make an order granting the relief detailed in paragraph 10.

All of which is respectfully submitted on this 27<sup>th</sup> day of January 2021.

**MNP LTD.,**  
in its capacity as Court Appointed Monitor of  
Tribalscale Inc.  
and not in its personal or corporate capacity

Per:



Sheldon Title  
Licensed Insolvency Trustee

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

**IN THE MATTER OF THE CCAA PROCEEDINGS OF TRIBALSCALE INC. AND 2800741 ONTARIO INC.,  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

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

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**FOURTH REPORT TO THE COURT SUBMITTED BY MNP  
LTD., IN ITS CAPACITY  
AS COURT APPOINTED MONITOR OF  
TRIBALSCALE INC. AND 2800741 ONTARIO INC.**

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**MNP LTD.**  
300-111 Richmond Street West  
Toronto, ON M5H 2G4

**Sheldon Title**  
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Fax: (416) 323-5242  
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## **Appendix “H”**

**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  
2800741 ONTARIO INC.  
(THE "APPLICANT")**

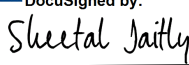
**MANAGEMENT'S REPORT ON CASH FLOW STATEMENT  
(paragraph 10(2)(b) of the CCAA)**

2800741 Ontario Inc. have developed the assumptions and prepared the attached Cash Flow Projections as of the 23<sup>rd</sup> day of June 2021 for the period June 21, 2021 to June 30, 2022 ("**Cash Flow**"). All such assumptions are disclosed in the Assumptions to the Cash Flow.

The probable assumptions are suitably supported and consistent with the plans of the Applicant and provide a reasonable basis for the Cash Flow. There are no hypothetical assumptions. Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented and the variations may be material.

The Cash Flow has been prepared solely for the purpose outlined in Assumptions to the Cash Flow using a set of probable assumptions set out therein. Consequently, readers are cautioned that the Cash Flow may not be appropriate for other purposes.

Dated at Toronto, Ontario this 23 day of June 2021.

DocuSigned by:  
  
86106E1509E14DB...  
Sheetal Jaitly

CEO



2800741 Ontario Inc. ("Newco" or the "Company")  
Cash Flow Projections  
For the period ended June 30, 2022

<b>Currency: CAD</b>	<b>Month 1</b>	<b>Month 2</b>	<b>Month 3</b>	<b>Month 4</b>	<b>Month 5</b>	<b>Month 6</b>	<b>Month 7</b>	<b>Month 8</b>	<b>Month 9</b>	<b>Month 10</b>	<b>Month 11</b>	<b>Month 12</b>	<b>Month 13</b>	<b>Total</b>
<b>Week beginning</b>	<b>30-Jun-21</b>	<b>31-Jul-21</b>	<b>31-Aug-21</b>	<b>30-Sep-21</b>	<b>31-Oct-21</b>	<b>30-Nov-21</b>	<b>31-Dec-21</b>	<b>31-Jan-22</b>	<b>28-Feb-22</b>	<b>31-Mar-22</b>	<b>30-Apr-22</b>	<b>31-May-22</b>	<b>30-Jun-22</b>	
<b>Opening cash balance</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Receipts</b>														
Collection from SiriusXM Receivable	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total receipts</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Disbursements</b>														
Payment to unsecured creditors	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Professional expenses	-	-	-	-	-	-	-	-	-	-	-	-	-	-
HST payments	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total disbursements</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Net Cash flow</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Closing cash balance</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	-

The Cash Flow Projections of the Company includes the following probable assumptions:

1) SiriusXM Receivable represents Newco's only asset.

2) Newco does not have any operating expenses. Its only expense will be the professional fees related to recovery of the SiriusXM Receivable. All such expenses will be funded by TribalScale under the Litigation Funding Agreement. The amount and timing of such expense is currently not known.

**IN THE MATTER OF THE CCAA PROCEEDINGS OF 2800741 ONTARIO INC.,  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

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

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**FIFTH REPORT TO THE COURT SUBMITTED BY MNP  
LTD., IN ITS CAPACITY  
AS COURT APPOINTED MONITOR OF  
2800741 ONTARIO INC.**

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**MNP LTD.**  
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