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

**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**

MOTION RECORD

June 15, 2020

WEISZ FELL KOUR LLP
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Lawyers for TribalScale Inc.

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

**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**

SERVICE LIST
(June 15, 2020)

<table>
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Lawyers for TribalScale Inc.

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Toronto, ON M5V 3C7

Sheetal Jaitly
Tel: 416.908.9995
Email: sheetal@tribalscale.com

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Sheldon Title
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Proposal Trustee

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BORDEN LADNER GERVAIS LLP
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Lawyers for the Proposal Trustee

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INDEX

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF JMX CONTRACTING INC. OF THE TOWN OF
UXBRIDGE IN THE PROVINCE OF ONTARIO**

**AND IN THE MATTER OF THREE RELATED INTENDED PROPOSALS
OF JMX NATIONAL INC., BRND PROPERTIES INC., and
JMX LEASING INC.**

INDEX

TAB 1

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

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

Applicant

NOTICE OF MOTION
(Re: Extension of Time to File Proposal and Stay Extension)

TRIBALSCALE INC. (the "**Applicant**") will make a motion to a Judge presiding over

the Commercial List on Wednesday June 17, 2020, at 10: 00 a.m. or as soon after that time as the

motion can be heard by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the

conference details attached as Schedule "**A**" hereto in order to attend the motion and advise if you

intend to join the motion by emailing Christel Paul at cpaul@wfklaw.ca.

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

THE MOTION IS FOR:

1.   An Order, substantially in the form attached at Tab 3 of the Motion Record (the "**Extension**

        Order") that, among other things:

        a)   abridges the time for service of this Motion, validates the manner of service, and

                declares that this Motion is properly returnable before the Court;

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b) extends the time for the Company to file a proposal with the Official Proposal Trustee by 45 days, up to and including July 31, 2020; and

c) approves an administration charge up to a maximum of $125,000 over the assets, property and undertaking of TribalScale in favour of counsel to TribalScale, the proposal trustee and counsel to the proposal trustee (the "**Administration Charge**"); and

2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

1. TribalScale is a software engineering and development company incorporated under the Ontario *Business Corporation Act*, with head offices at 1410 – 8 King Street East, Toronto, Ontario, M5C 1B6;

2. TribalScale specializes in creating bespoke enterprise software solutions for corporate clients located in the United States and Canada;

3. As a technology service company, TribalScale's enterprise value is primarily derived from its going concern business, namely its revenue stream and customer contracts. Given the nature of the Company, its value lies principally in its contracts, intellectual property, goodwill, and accounts receivables;

4.   TribalScale's only material secured creditor is 1924191 Ontario Inc. ("**192**"). As of the date of the NOI Filing, TribalScale owes $2.465 million to 192;

5.   TribalScale has approximately $3.3 million in unsecured liabilities;

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

7.   As a result of loss of revenue and breaches by the company of its secured credit facility, TribalScale has for the past year undertook various steps to restructure its business operations. Namely, TribalScale, with the assistance of its financial advisor, implemented a process to better manage its accounts receivable and accounts payable, reduced its employee headcount, as well as a refocused emphasis on profitable customer contracts;

8.   In recent weeks, TribalScale has been in discussions with its material secured creditor with respect to a restructuring;

9.   On April 19, 2020, in response to a default and termination letter by its landlord TribalScale filed a notice of intention to file a proposal pursuant to s. 50.4(1) of the *Bankruptcy and Insolvency Act,* RSC 1985, c B-3 (the "**BIA**"). MNP Ltd. was named proposal trustee (the "**Proposal Trustee**");

Extension of Time to File a Proposal

10.   The current time to file a proposal under the BIA expires on June 18, 2020, TribalScale requires more time to continue its discussions with 192 and to develop a viable proposal for the benefit of its stakeholders. Accordingly, TribalScale is requesting a 45-day extension of time pursuant to Section 50.4(9) of the BIA, up to July 31, 2020, to make a proposal.

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11.   Without an extension of time, the Company will not be in a position to make a viable proposal to its creditors and the Company will be deemed bankrupt, to the detriment of its creditors and stakeholders;

12.   The test for an extension of time under Section 50.4(9) of the BIA is met:

a)   the Company intends to continue discussions with its material secured creditor and is likely to be able to make a viable proposal to its creditors if the extension requested is granted;

b)   the Company has acted, and is acting, in good faith and with due diligence in engaging with potential clients and creditors; and

c)   No creditor will be materially prejudiced if the extension requested is granted;

Administration Charge

3.   TribalScale is seeking an administration charge to a maximum of $125,000 to secure the professional fees incurred in relation to the NOI proceeding, including those of counsel to TribalScale, the Proposal Trustee and counsel to the Proposal Trustee;

4.   The Administration Charge is reasonably necessary to permit the TribalScale to restructure and is supported by the cash flow projections prepared TribalScale with the assistance of the Proposal Trustee;

5.   It is just and appropriate under the circumstances to grant the proposed Administration Charge;

Further Grounds

13.   The Proposal Trustee supports the relief being sought by the Company;

14.   Sections 50.4(9) and 64.2 of the BIA;

15.   Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure,* RSO 1990, Reg 194, as amended; and

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

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

17.   The Affidavit of Sheetal Jaitly, sworn June 15, 2020, with Exhibits attached thereto; and,

18.   Such further and other evidence as counsel may advise and this Honourable Court may permit.

 June 15, 2020

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Lawyers for the Applicant

TO: **THE SERVICE LIST**

Schedule "A"
Conference Details to join Motion via Zoom

Join Zoom Meeting
https://zoom.us/j/3154597997?pwd=RXJ1OCtqdHUxa2lUREtUYlE5OUpKZz09

Meeting ID: 315 459 7997
Password: 729363

One tap mobile
+13017158592,,3154597997# US
+13126266799,,3154597997# US (Chicago)

Dial by your location
        +1 301 715 8592 US
        +1 312 626 6799 US (Chicago)
        +1 346 248 7799 US (Houston)
        +1 646 558 8656 US (New York)
        +1 669 900 9128 US (San Jose)
        +1 253 215 8782 US
Meeting ID: 315 459 7997
Password: 729363
Find your local number: https://zoom.us/u/akmSHXDDJ

Court File No. 31-2646144
Estate No. 31-2646144

PROPOSAL OF TRIBALSCALE INC. OF THE CITY OF TORONTO IN THE
PROVINCE OF ONTARIO

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

Proceedings commenced at Toronto

NOTICE OF MOTION

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Lawyers for the Applicant

WFK:00017669.1

-

TAB 2

Court File No.   31-2646144
Estate No.   31-2646144

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

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

AFFIDAVIT OF SHEETAL JAITLY
(Sworn June 15, 2020)

I, **SHEETAL JAITLY,** of the City of Toronto, in the province of Ontario, **MAKE OATH**

AND SAY:

1.   I am the Chief Executive Officer of TribalScale Inc. ("**Tribalscale**" or the "**Company**"), the

debtor in these proceedings. I am also the sole director of Tribalscale. In my capacity as CEO, I am

responsible for all day-to-day operations of the Company. Accordingly, I have knowledge of the

matters set out below. Where I have relied on information from others, I state the source of such

information and verily believe it to be true.

2.   This affidavit is filed in support of a motion for an order that, among other things, extends the

time for the Debtor to make a proposal to its creditors under the *Bankruptcy and Insolvency Act,* RSC

1985, c. B-3 (the "**BIA**") and approves an administration charge over the assets, property and

undertakings of the Company up to a maximum amount of $125,000 (the "**Administration Charge**").

I.   OVERVIEW OF THE DEBTOR'S BUSINESS

3.   TribalScale is a software engineering and development company incorporated under the

Ontario *Business Corporation Act*, with head offices at 1410 – 8 King Street East, Toronto, Ontario,

M5C 1B6. TribalScale specializes in creating bespoke enterprise software solutions for corporate clients located in the United States and Canada.

4.   I am one of the founders and shareholders of TribalScale and have acted as the sole director of the Company since its incorporation in 2015.

5.   TribalScale has established a subsidiary corporation in the United States to facilitate its US customer relations. TribalScale US Inc. ("**TribalScale US**") is a wholly owned subsidiary of TribalScale and was incorporated in New York State. TribalScale US has no significant assets. Its primary purpose is to engage with TribalScale's US customers, and it employs approximately two employees to perform that function.

6.   Until the recent onset of the COVID-19 public health crisis, all of TribalScale's substantive business operations were conducted from its leased offices located at Suite 800, 200 Wellington Street, Toronto.

7.   To effect its ongoing restructuring that commenced in 2019, on May 19, 2020, TribalScale filed a Notice of Intent ("**NOI**") to Make a Proposal under the BIA. MNP LLP was appointed proposal trustee (the "**Proposal Trustee**").

II.   ASSETS AND LIABILITIES OF THE DEBTOR

Assets

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

Secured Liability

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

10.   As of the date of the NOI Filing, TribalScale owes $2.465 million to 192.

11.   The debt assigned to 192 originated as loan made by Scotiabank to TribalScale. On June 29, 2018, TribalScale entered into a commitment letter with Scotiabank (the "**Commitment Letter**") pursuant to which Scotiabank granted TribalScale a $6 million operating credit facility and a $500,000.00 business credit line (collectively, the "**Scotia Facility**").

12.   TribalScale and TribalScale US granted general security agreements in favour of Scotiabank to secure the Scotia Facility. TribalScale US also provided a guarantee to TribalScale in respect of all indebtedness to Scotiabank.

13.   In and around July 2019, TribalScale commenced discussions with Scotiabank to restructure its operations and the Scotia Facility. Following the implementation of a sales and investment solicitation process conducted between September 2019 and January 2020, Scotiabank agreed to an assignment of TribalScale's debt and security to 192.

Unsecured Liabilities

14.   TribalScale has approximately $3.3 million in unsecured liabilities. The Company's significant unsecured creditors include Zayo Canada Inc., previously operating under the name Allstream Business Inc., ("**Zayo**"). Zayo was a sublandlord of TribalScale pursuant to a sublease in respect of

TribalScale's Toronto offices. The sublease was terminated by Zayo prior to the filing of the NOI as a result of non-payment of rent by TribalScale during COVID-19.

Priority Amounts

15.   As at the date of this affidavit, TribalScale has made all employee payments and is up to date on remittances of HST and source deductions.

III.   RESTRUCTURING ACTIVITIES TO DATE

16.   Prior to June 2019, TribalScale began experiencing liquidity issues principally as a result of the loss of two major customer contracts. Prior to losing these contracts, TribalScale had significantly expanded and scaled up its operations following its financial success in the first three years of business. Notwithstanding the loss of these customer contracts and its associated revenue, TribalScale did not go through the process of scaling back down its operations, including by reducing its head count. This led to a breach by TribalScale of its debt facilities with Scotiabank and a significant cash crunch on the business.

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

18.   In addition to the above, TribalScale, with the support of Scotiabank, conducted a sale and investment marketing process to seek potential investors and purchasers for the business. Between the summer of 2019 through to the spring of 2020, the company was in discussions with various potential purchasers culminating in a potential deal to sell the going concern business to a significant customer

of TribalScale. Unfortunately, due to the COVID-19 crisis in the spring of 2020, the potential purchaser opted to not close the transaction.

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

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

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

22.   At present, the Company's restructuring efforts are focused on: (i) discussions with its material secured creditor, 192; (ii) the performance of current customer contracts, (ii) the execution of new customer contracts; (iii) the collection of outstanding receivables; and (iv) the "right-sizing" of the business with the assistance of the Proposal Trustee.

Outstanding Receivable Issue

23.   TribalScale's most significant outstanding receivable is owed by a customer- Sirius XM Connected Vehicle Services ("**Sirius**") under a Professional Services Agreement ("**PSA**") executed in April 2019 and further particularized through individual Statements of Work ("**SOWs**"). The PSA is

appended hereto as Exhibit "**A**". The relevant SOW that describes the services and outstanding fees is appended hereto as Exhibit "**B**".

24.   The "Agile Development Process" as agreed to under the PSA and SOW required ongoing collaboration between TribalScale and Sirius. The completion deadline for the software project was estimated within the SOW, though the ultimate deadline for the deliverables was subject to acceptance testing performed solely by Sirius, as stipulated under s. 1.2 of the PSA.

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

26.   TribalScale has rendered invoices numbered 2061, 2076, and 2102 for the Project during the period January through to March (the "**Outstanding Invoices**") in the total amount of $504,182.77 USD.

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

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

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

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

31.   To date, Sirius has not communicated to TribalScale the alleged problems with the software, nor has it described what aspect of the deliverables was unsatisfactory. TribalScale intends on continuing discussions with Sirius with a view to resolution of the dispute, failing which it intends to seek an Order from the Court requiring payment by Sirius. As mentioned above, TribalScale's assets largely comprise of its accounts receivables and the success of any restructuring depends on its ability to collect on invoices rendered for the provision of its services.

IV.   EXTENSION OF TIME TO FILE A PROPOSAL

32.   The current time to file a proposal under the BIA expires on June 18, 2020. Having just entered into a relationship with 192 as its new secured lender, TribalScale requires more time to continue its discussions with 192 and to develop a viable proposal for the benefit of its stakeholders. Accordingly, the Debtor is requesting a 45-day extension of time pursuant to Section 50.4(9) of the BIA, up to July 31, 2020, to make a proposal.

33.   TribalScale has acted and is continuing to act in good faith and with due diligence. Among other things, TribalScale has:

    a. continued its going concern operations while implementing operational restructuring measures to "right size" the business;

    b. resolved its primary secured obligation with Scotiabank and entered into a lender relationship with 192;

    c. taken steps to collect significant receivables to benefit its creditors and stakeholders; and

    d. worked with the Proposal Trustee to develop a viable restructuring proposal.

34.   The primary value in TribalScale is its going concern operations, and the attempt to restructure and maintain those operations will result in greater value to stakeholders than would a bankruptcy and liquidation. Accordingly, creditors and stakeholders stand to benefit from the extension of time to file a proposal and I am not aware of any creditors who will be materially prejudiced by the extension of time.

V.   ADMINISTRATION CHARGE

35.   To facilitate work on the restructuring process and to develop a viable proposal, TribalScale is seeking a charge to secure the professional fees and disbursements of the corporation, the Proposal Trustee and their respective counsel up to the maximum amount of $125,000.

SWORN before me *by video conference* at the City of Toronto in the Province of Ontario this 15th day of June, 2020.

_____
A Commissioner for Taking Affidavits
Name: Christopher M. McGoey
             LSO No. 79679K

DocuSigned by:

Sheetal Jaitly

86106E1509E14DB...

_____
SHEETAL JAITLY

THIS IS **EXHIBIT "A"** REFERRED TO IN THE
AFFIDAVIT OF SHEETAL JAITLY SWORN BEFORE ME
BY VIDEO CONFERENCE
THIS 15th DAY OF JUNE, 2020

A COMMISSIONER FOR TAKING AFFIDAVITS

CHRISTOPHER M. McGOEY
LSO No. 79679K

PROFESSIONAL SERVICES AGREEMENT

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

1.   SCOPE OF WORK.

1.1   <u>Services</u>. In consideration of SXMCV's payments under this Agreement, Contractor shall provide, in accordance with the terms of this Agreement, the services and/or deliverables (collectively, the "<u>Services</u>") described in any statement of work (the "<u>Statement of Work</u>" or "<u>SOW</u>"). When providing Services according to any Statement of Work, Contractor shall devote such amount of Contractor's time as shall be required for Contractor to perform the Services promptly, efficiently and professionally. Notwithstanding any other provision of this Agreement, Contractor understands and agrees that nothing contained herein shall require SXMCV to engage Contractor for a minimum number of hours or be deemed to be a guarantee to Contractor of a minimum number of hours of engagement by SXMCV. Contractor covenants and agrees that Contractor shall not, directly or indirectly, engage or participate in any activities at any time during the term of this Agreement in conflict with the best interests of SXMCV. Contractor will ensure that its employees and agents will, whenever on SXMCV's premises, obey all reasonable instructions and directions issued by SXMCV.

1.2   <u>Acceptance</u>. Acceptance of the Services will occur upon the date on which Contractor demonstrates to SXMCV, by the successful completion of acceptance tests identified by SXMCV, that the Services have been performed in accordance with the applicable Statement of Work and meet any acceptance criteria or specifications set forth therein. If SXMCV conditions its acceptance on the subsequent correction of any non-conformance with the Statement of Work, Contractor will use prompt, diligent efforts to correct any such non-conformance.

1.3   <u>Service Levels</u>. Contractor shall perform the Services in accordance with the applicable Statement of Work and shall meet or exceed the Service Levels set forth therein. If SXMCV or Contractor discovers any non-conformance with the Statement of Work or Service Levels, Contractor will use prompt, diligent efforts to correct any such non-conformance at no charge to SXMCV.

1.4   <u>Change Control</u>.

(a)   SXMCV may request a change to the Services by providing written notice to Contractor. Within ten (10) working days of receiving such request from SXMCV, Contractor shall review such request and report to SXMCV in writing (i) whether such change is technically feasible and if technically feasible; (ii) the reasonable impact on the delivery schedule; and (iii) any necessary revision to the Services, deliverables, Contractor obligations, and Fees, as appropriate ("<u>Change Order</u>").

(b)   Contractor may request a change to the Services by submitting a Change Order to SXMCV.

(c)   If SXMCV does not accept or reject the Change Order in writing within thirty (30) days of receipt, then SXMCV shall be deemed to have rejected the Change Order. SXMCV shall be under no obligation to accept any Change Order and Contractor shall be under no obligation to perform any requested change. If the terms of a Change Order are agreed and

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

2. TERM AND TERMINATION.

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

2.2   Termination.

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

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

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

3. CONTRACTOR'S FEE.

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

4. TAXES.

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

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

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

5.   CONTRACTOR PERSONNEL.

5.1   Contractor shall set forth in each Statement of Work: (i) the names of key personnel performing services under that Statement of Work including the Product Manager and Anchor Engineer, (ii) job role, (iii) the percentage of time each person is dedicated to the applicable project, and (iv) the work location of each such person. Except as may be provided in the applicable SOW, all Contractor personnel shall be based in the United States or Canada.

5.2   All Contractor personnel will be properly educated, trained and fully qualified for the services they are to perform. Contractor will ensure appropriate training is in place to meet training requirements of its personnel. Contractor has obtained and will maintain all certifications and licenses required to perform the Services.

5.3   Upon SXMCV request, at Contractor's expense, Contractor shall perform background checks which are permitted by applicable law on all personnel providing Services to SXMCV under this Agreement, including without limitation a check of the applicant's criminal history for the previous seven (7) years. Contractor shall not place or retain any personnel for the performance of Services hereunder found to have committed theft, fraud, identity theft, an invasion of privacy, or any crime of fraud or deception, howsoever called.

5.4   Contractor shall have full liability for all personnel employed or engaged by Contractor (including any subcontractors) to perform the Services, including liability for personal injury, death and property damage caused by the acts and omissions of such personnel.

5.5   Prior to assignment of Contractor personnel to any Services, Contractor shall provide SXMCV with the names of each Contractor program manager, employee and any permitted subcontractors. If SXMCV in good faith objects in writing to a proposed assignment, the Parties shall attempt to resolve SXMCV's concerns on a mutually agreeable basis. If the Parties are not able to resolve SXMCV's concerns within five (5) business days, Contractor shall: (i) not assign the individual to that position; and (ii) propose to SXMCV the assignment of another individual of suitable ability and qualifications.

5.6   If the performance of any Contractor personnel is unacceptable to SXMCV, SXMCV may notify Contractor, in writing, of such fact (without waiving any other rights or remedies it may have hereunder) and, if so requested by SXMCV, Contractor shall promptly remove said personnel from performing services under that Statement of Work and provide a qualified replacement, at the same or a lower rate.

5.7   Contractor agrees to use reasonable efforts to ensure the continuity of Contractor personnel assigned to perform services under any Statement of Work. Any reassignment by Contractor of those personnel assigned to perform services under any Statement of Work must be with SXMCV's prior written notification no later than one (1) week in advance. If Contractor reassigns any of its personnel assigned to perform services under any Statement of Work, Contractor will promptly provide a replacement acceptable to SXMCV. Contractor shall not remove original personnel until a suitable replacement has been approved by SXMCV and the replacement is fully familiarized with the applicable project and his or her responsibilities.

5.8   Except as SXMCV may agree otherwise in writing, Contractor shall not subcontract its obligations under this Agreement.

5.9   Non-Compete, Non-Solicitation. Each Party agrees that during the Term of the Agreement and for a period of one (1) year after its termination or expiration, it shall not, without the other Party's

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

6.   **REIMBURSABLES.**

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

7.   **INVOICES AND PAYMENT.**

7.1   Contractor shall invoice SXMCV for sums payable under this Agreement as set forth in the Statement of Work. SXMCV shall pay such invoices net forty-five (45) days from the date the invoice is received by SXMCV. Contractor shall submit invoices for Services monthly in arrears in accordance with the instructions set forth in Section 7.2. Contractor shall provide SXMCV with service reports completed and Reimbursables incurred each month. SXMCV shall reimburse Contractor monthly in arrears. Contractor shall not invoice SXMCV for Services until they are complete and have been accepted in writing by SXMCV.

7.2   Contractor will adhere to the following invoicing procedures:

- Contractor shall <u>email</u> all invoices to: SXMradio.image@send2image.com.
- The attachments **must** be in PDF format. Compressed.zip files are not accepted and will not be processed. Embedded documents are not processed. Text in the e-mail body will not be scanned or acknowledged.
- ***The invoice attachment must contain the name of the internal SXMCV Manager (or such other individual as SXMCV shall designate to Contractor in writing) on the front page of the invoice document.***
- Each attachment must contain only one invoice/credit/etc. All supporting documentation must be within the same PDF file (Ex: Invoice/Timesheet)
- Multiple PDF attachments may be attached to a single e-mail message and each PDF attachment is treated as a separate document.

7.3   SXMCV shall promptly review Contractor's invoice and approve for payment such amounts as SXMCV reasonably determines to be properly due under the Agreement.

8.   **INDEPENDENT CONTRACTOR RELATIONSHIP.**

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

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

9.   CONFIDENTIALITY.

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

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

(a)   Application, operating system, data base, communication and other computer software, whether now or hereafter existing, developed for use on any operating system, all modifications, enhancements and versions and all options available with respect thereto, and all future products developed or derived therefrom;

(b)   Employee data, manuals, reports and other materials or information relating to SXMCV's business and activities and the manner in which SXMCV does business;

(c)   Any other materials or information related to the business or activities of SXMCV which are not generally known to others engaged in similar businesses or activities or are proprietary to SXMCV; and

(d)   Any information and materials received by SXMCV from third parties in confidence (or subject to non-disclosure or similar covenants).

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

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

10. INTELLECTUAL PROPERTY OWNERSHIP.

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

10.1 Ownership by SXMCV. Contractor covenants and agrees that all right, title and interest in any Work Product shall be and shall remain the exclusive property of SXMCV. Contractor agrees immediately to disclose to SXMCV all Work Product developed in whole or in part by Contractor for or on behalf of SXMCV, and Contractor hereby assigns to SXMCV any right, title or interest Contractor may have in such Work Product. Contractor agrees to execute any instruments and to do all other things reasonably requested by SXMCV (both during and after Contractor's engagement by SXMCV) in order to vest more fully in SXMCV all ownership rights in those items hereby transferred or required to be transferred by Contractor to SXMCV. This excludes Contractor's current proprietary products.

10.2 Works for Hire. Contractor and SXMCV hereby agree that the Work Product of Contractor resulting from the Services is one or more "works made for hire" within such definition in 17 U.S.C. §101, the copyright of which shall be owned solely, completely and exclusively by SXMCV. If any such Work Product is protectable by copyright and is not considered to be included in the categories of works covered by such definition, ownership of and copyrights to such items shall be deemed to be assigned and transferred completely and exclusively to SXMCV by virtue of the execution of this Agreement.

10.3 Materials. All notes, data, tapes, reference items, sketches, drawings, memoranda, records, files and other materials in any way relating to any of the Work Product or otherwise to SXMCV's business shall belong exclusively to SXMCV and Contractor agrees to turn over to SXMCV all copies of such materials in Contractor's possession or under Contractor's control at the request of SXMCV or, in the absence of such a request, upon the termination of Contractor's engagement with SXMCV.

10.4 Pre-Existing Works. Contractor shall notify SXMCV in writing of the incorporation of any Pre-Existing Work in any Work Product or deliverables. To the extent any pre-existing work of Contractor or the work of any third party (collectively, "Pre-Existing Work") is incorporated in or otherwise required for the proper performance of any Services, Contractor hereby grants to SXMCV a perpetual, worldwide, fully paid-up, nonexclusive license to use, copy, maintain, modify, enhance and create derivative works of such Pre-Existing Work (including source code, programmer interfaces, available documentation, manuals and other materials necessary for the use thereof).

10.5 Open Source Code. Contractor represents that it will not incorporate into any Work Product source code licensed from GNU Public License, the free Software Foundation, or similar public license (collectively, "Open Source Software") without SXMCV's express written approval. To the extent that Open Source Software is utilized by Contractor with SXMCV's approval, Contractor represents, warrants and covenants that Contractor will at all times implement or use any such Open Source Software in compliance with contributor's use requirements and in a manner that will not subject any unrelated software to the requirements of any Open Source Software licenses.

11. WARRANTIES.

11.1　Mutual Warranties. Each Party represents and warrants that: (i) it has the full right, power and authority to enter this Agreement and to perform its obligations hereunder; (ii) this Agreement constitutes its valid and binding obligation; (iii) its execution or performance of this Agreement does not and will not conflict with any other agreement, order or stipulation to which it is a party or by which its property is bound; and (iv) it shall at all times comply with its obligations under this Agreement, and with all applicable laws.

11.2　Contractor Warranties. Contractor represents and warrants to SXMCV that (a) each of its personnel assigned to perform services under any Statement of Work shall have the proper skill, training and experience to perform in a competent and professional manner and that all work will be performed in accordance with the applicable Statement of Work; (b) Contractor shall render all Services with promptness and diligence and in a workmanlike manner in accordance with high professional standards; (c) unless expressly specified in any Statement of Work, SXMCV shall receive free, good and clear title to all Services arising therefrom; (d) neither the Services performed pursuant to this Agreement nor any deliverables produced or supplied by Contractor under this Agreement nor SXMCV's use thereof will infringe any patent or copyright or any proprietary rights of any third party or constitute a misuse or misappropriation of a trade secret; (e) each and every deliverable specified in a Statement of Work shall conform in all material respects to the specifications as set forth in the Statement of Work (or if none, to the manufacturer's specifications and warranties) and shall be free from material defects; (f) Contractor shall, at no additional charge, correct any material defects in any deliverables for a period of sixty (60) days from acceptance by SXMCV based on the acceptance criteria set forth in each Statement of Work and shall provide a reasonable period of support thereafter as set forth in the applicable Statement of Work; (g) at the time of delivery, no Services or deliverable shall contain any computer virus nor any codes or instructions that may be used to modify, delete, damage or disable the deliverable or any of SXMCV's property or facilities and Contractor shall exert its best efforts to ensure that no such virus, code or instruction is subsequently introduced; (h) Contractor will not install or bring any hazardous materials or substances to any SXMCV facility and will promptly report the discovery of any such material to SXMCV; (i) Contractor will diligently perform its assigned duties under this Agreement in a cost effective manner consistent with the required level of quality and performance; and (j) Contractor shall comply with all laws, rule and regulations in all jurisdictions in which Services are provided.

11.3　Exclusive Warranties. THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES REGARDING THE SERVICES DESCRIBED HEREIN, INCLUDING ANY WARRANTY FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12.　NO INFRINGEMENT.

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

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

13.   OTHER INDEMNIFICATIONS.

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

14.   LIMITATION OF LIABILITY.

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

15.   LICENSES AND EXPORT.

15.1   Unless expressly specified in any Statement of Work, as part of the Services, Contractor will be responsible for obtaining and paying for all applicable licenses, authorizations, and permits required of Contractor in connection with the performance of the Services and to otherwise carry out Contractor's obligations under each Statement of Work.

15.2   The Parties acknowledge that Services may be subject to export controls under the laws and regulations of the United States and other countries. Neither Party shall export or re-export any such Services or any direct product thereof in violation of any such laws or regulations.

16.   SECURITY REQUIREMENTS.

16.1   Contractor shall maintain technical, organizational, administrative, and human resource security measures which conform to ISO 27001 and 27002, and SXMCV information security policies. Contractor and Contractor personnel will comply with SXMCV's security policies and procedures that are in effect for SXMCV's facilities. Contractor and Contractor personnel will observe the working hours, working rules, and holiday schedules of SXMCV while working on SXMCV's premises.

16.2   PCI/PII. The Parties anticipate that Contractor will not have access to payment card data ("PCI") or SXMCV data which may be used to identify an individual ("PII"), as well as SXMCV networks carrying PCI and PII or used to access PCI and PII (collectively, "PII Networks"). Unless

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

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

17.   INSURANCE.

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

(a)   Worker's Compensation Insurance, including occupational illness or disease coverage, or other similar social insurance in accordance with the laws of the country, state, or territory exercising jurisdiction over the employee and Employer's Liability Insurance with a minimum limit of $1,000,000 per occurrence.

(b)   Commercial General Liability Insurance, including Products, Completed Operations Liability and Personal Injury, and Contractual Liability coverage for damages to any property with a minimum combined single limit of $2,000,000 per occurrence, $4,000,000 in the aggregate.

(c)   Umbrella Liability Insurance (with following form primary commercial liability and auto liability, or broader) with a minimum limit of $5,000,000 in excess of the insurance under policies indicated in Sections 17.1(a), 17.1(b), and 17.1(d).

(d)   Automobile Liability Insurance covering use of all owned, non-owned, and hired automobiles with a minimum combined single limit of $1,000,000 each accident for bodily injury and property damage liability.

(e)   Errors and Omissions/Professional Liability Insurance covering the liability for financial loss due to error, omission, negligent acts, unauthorized access, unauthorized use, breach of duty, virus transmission and machine malfunction in the performance of services or the failure of technology products to perform as intended. Such policy shall be in an amount of not less than $5,000,000 per claim. Coverage shall include any subcontractors or temporary employees of Contractor.

(f)   Employee Dishonesty and Computer Fraud coverage for loss arising out of or in connection with any fraudulent or dishonest acts committed by the employees or contractors of Contractor, acting alone or in collusion with others, including the property and fund of SXMCV in their care, custody or control, in a minimum amount of $1,000,000. This policy shall be endorsed to name SXMCV as a loss payee.

(a)   All Risk (Special Form) Insurance on equipment, data, media and valuable papers, including extra expense coverage for the property in which SXMCV has an interest for the full value of that property at replacement cost new, with a minimum amount of $2,000,000. This policy shall be endorsed to name SXMCV as a loss payee as its interests may appear.

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

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

18. AUDIT AND COMPLIANCE.

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

18.2 Contractor shall ensure that all contractual obligations between Contractor and SXMCV are supplied to and enforced by all Contractor subcontractors. Contractor shall monitor and assess subcontractor compliance with these provisions.

19. DATA BREACH.

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

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

or as otherwise updated by Sirius XM in writing.

20. MISCELLANEOUS.

20.1 Section Headings. All section headings and captions used in this Agreement are purely for convenience and shall not affect the interpretation of this Agreement.

20.2 Statements of Work. All Statements of Work and other documents expressly referenced herein Agreement shall be deemed to be incorporated in and made a part of this Agreement, except that if there are any inconsistencies between this Agreement and the provisions of any Statement of Work, the provisions of the Agreement shall control. Terms used in a Statement of Work and also used in this Agreement shall have the same meaning in the Statement of Work as in this Agreement.

20.3 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, USA without regard to or application of any conflict of law principles. Each Party hereby submits to the exclusive jurisdiction of courts located in Dallas County, Texas USA. Each Party waives any right to trial by jury with respect to any dispute arising out of this Agreement.

20.4 <u>Modification</u>. Except as otherwise provided, this Agreement shall not be modified except by written agreement signed on behalf of SXMCV and Contractor by their respective authorized officers.

20.5 <u>Exclusive Agreement</u>. This Agreement supersedes all prior understandings, representations, negotiations and correspondence between the Parties, constitutes the entire agreement between them with respect to the matters described, and shall not be modified or affected by any course of dealing, course of performance or usage of trade.

20.6 <u>Assignment or Delegation</u>. Contractor may not assign or delegate this Agreement or any of its rights, duties or obligations thereunder to any other person without prior written consent of SXMCV.

20.7 <u>Language and Communications</u>. All data, documents, descriptions, studies and reports provided by Contractor will be written in English. This Agreement and all documentation and communications required hereunder, will be in the English language.

20.8 <u>Public Release of Information</u>. Neither Party shall make or release any public announcement of any kind, including, without limitation, news releases, articles, brochures, advertisements, prepared speeches, external company reports and other information releases in which the other Party is named concerning the work performed under this Agreement, without the other Party's prior written consent.

20.9 <u>Severability</u>. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired.

20.10 <u>Waiver</u>. The failure of either Party at any time to require performance by the other of any provision of this Agreement shall in no way affect that Party's right to enforce such provision, nor shall the waiver by either Party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision or any other provision.

20.11 <u>Survival</u>. The provisions of this Agreement, which by their nature extend beyond the expiration or earlier termination of the Agreement will survive and remain in effect until all obligations are satisfied.

20.12 <u>Further Assurances</u>. Each Party agrees that it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party during the term of this Agreement.

20.13 <u>Counterparts</u>. This Agreement may be executed in any number of counterparts and each fully executed counterpart shall be deemed an original.

20.14 <u>Notices</u>. All notices, approvals, requests, consents and other communications given pursuant to this Agreement shall be in writing and shall be effective when received if hand-delivered, sent by a national overnight courier service (with means of tracking) or sent by United States certified or registered mail, addressed as follows:

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

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

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

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

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

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

("Contractor")	("SXMCV")
TRIBALSCALE INC.	**SIRIUS XM CONNECTED VEHICLE SERVICES INC.**

By: _____   By: _____

Name: Sheetal Jaitly   Name: John Jasper

Title: CEO   Title: Sr. Vice President

THIS IS **EXHIBIT "B"** REFERRED TO IN THE
AFFIDAVIT OF SHEETAL JAITLY SWORN BEFORE ME
BY VIDEO CONFERENCE
THIS 15th DAY OF JUNE, 2020

A COMMISSIONER FOR TAKING AFFIDAVITS

CHRISTOPHER M. McGOEY
LSO No. 79679K

STATEMENT OF WORK #2

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

1. TERM

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

2. PERSONNEL

Project Managers:

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

Contractor: _____Trevor Buckerfield_____
Telephone number: 416-797-6493
Email: tbuckerfield@tribalscale.com

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

3. SERVICES

3.1. Description of Services.

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

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

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

3.2. Deliverables and Requirements

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

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

1

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

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

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

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

Key Assumptions and Risks:

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

- A single user account per user, without primary account linking or managed roles and permissions within this scope.
- Sirius XM Constellation is not a white-labelled solution, so users will be onboarded as Sirius XM users, into the Sirius XM IDM, and not into an OEM user system.

- **Wallet**
  - The selected third party TG & TSP provider will expose a set of APIs to allow for the generation of cryptograms required to process payments, payment method metadata (e.g. last 4 digits, card art, ...etc.) and for all needed lifecycle management purposes.
  - Frontend interfaces for wallet management will be built as a web application.

- **User Preferences**
  - Data analytics to infer user preferences from their usage patterns will not be covered as part of this scope.
  - Users will add preferences by 'favoriting' locations during the search process.
  - Users will add preferences through a frontend preference management interface.
  - Frontend interfaces for user preference management will be built as a web application.

- **Loyalty Programs**
  - Agreements with the loyalty program(s) to be integrated are in place for the integration.
  - Integration of loyalty programs will happen through verification of a user's mobile number or through logging in to partner accounts.
  - Integration of TWO loyalty programs covered in this scope.
  - Frontend interfaces to manage (link/de-link) loyalty programs will be built as a web application.

- **Service Integrations**
  - Arrive APIs will accept payment tokens and other transaction-required payment attributes from selected TMS/TG/TSP token provider to process payment for parking orders.
  - Arrive APIs will accept transactions for non Arrive/Parkwhiz users.
  - TravelLink/Infotainment APIs will not have integrations with data from the external partners (e.g. P97) yet, so Contractor will aggregate and deduplicate data by excluding partner locations from the TravelLink result set.
  - Sirius XM IDM will provide publicly accessible endpoints that allow the generation of JWT tokens that can be used to authenticate the user with the E-Commerce platform and partner integrations.
  - At this stage, there is no direct integration with VISA; the integration would happen through an intermediary TMS/TG/TSP token provider.

- **Other Assumptions**
  - The application used for the car's Head Unit (e.g. SDL, Android Auto, CarPlay), including the voice interface and navigation, is not part of this scope.

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

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

and certify the same to Sirius XM within five (5) business days.

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

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

3.3.   Development and Validation Process
3.3.1.   Agile Development
The following is a description of the Agile development process methodology to be generally followed by the Parties in respect of this SOW, and is not a description of the Services to be provided under this SOW. The product backlog is a list of all the features, tasks and bugs for the application being produced pursuant to a SOW. It is maintained in a strict, linear priority; no two items are equal, as one is before the other. Sirius XM maintains the contents and their priority. Contractor provides estimates for the effort to complete each item. Contractor's Developers also update the status of an item. Each backlog item goes through a basic workflow: unstarted, started, finished, and delivered (made available for review) and then either accepted or rejected by Sirius XM. If the item is rejected, it can be re-prioritized by Sirius XM. All work on the Application is to be done in a mutually agreeable cadence of either 1 or 2 weeks. The basic iteration workflow has a planning meeting at the start of the sprint, when the product backlog is reviewed. In the planning meeting, the focus is the current iteration of work. Questions and discussions about items take place and the intent is for all to have a similar understanding of the week's work. As Contractor's Developers work during the iteration, they make the Application regularly available for review by Sirius XM. These updates range from daily to a few times a week. The entire process is collaborative and Contractor expects the full involvement and engagement of Sirius XM. Sirius XM is obligated to regularly review work and maintain the product backlog. The process also provides significant visibility into the current status and progress of the Application.
3.3.2.   Scope of Work to be Performed
The Work Product will be designed pursuant to the Agile development process and is limited to delivery of the functionality agreed by the Parties and includes quality assurance and related project management activities. The Services to be provided pursuant to this SOW are only those that have been agreed upon by both Parties in Pivotal Tracker.
3.3.3.   Description of Resources
Sirius XM shall have access to the Contractor resources listed in 4.1 and to Pivotal Tracker for one (1) year from the execution date of this SOW, subject to any applicable terms of use thereof, for the estimated timeline contained herein, and shall direct such Contractor resources to perform Services in accordance with Agile development process.
3.3.4.   Open Source Software
The following Open Source Software may be used in connection with the work product. Contractor must receive written authorization from Sirius XM before including any OSS in the work product.
- Artistic License (all versions)
- Apache License (all versions)
- Boost Software License
- BSD
- Common Development and Distribution License (CDDL)
- Common Public License (CPL) or IBM
- Eclipse Public License (EPL)
- FLTK License PSA
- General Public License (GPL)
- Lesser General Public License (LGPL)
- Massachusetts Institute of Technology (MIT)
- Mozilla (MPL) (all versions)
- Open LDAP License
- OpenSSL
- Public Domain

- Python Software Foundation License
- Rdoc
- MySql2 gem
- SSLeay
- zlib/libpng License

3.4.   Defect Management

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

3.5.   Release Management

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

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

3.6.   Change Management

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

4. FEES

4.1. Summary.

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

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

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

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

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

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

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

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

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

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

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

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

4.2.　　Reimbursables.

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

4.3.　　Invoices.

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

5. SIRIUS XM OBLIGATIONS

Sirius XM shall pay Contractor's invoices according to Section 7 of the Agreement.
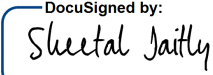
Sirius XM shall provide the following:
- Weekly touch points to review progress
- Knowledgeable Sirius XM team members available to answer questions as needed
- Timely meetings with key stakeholders (including Sirius XM/third party agencies), delivery of necessary content, assets and instructions, and timely feedback to any outstanding questions
- Necessary equipment and documentation, such as pertinent API specifications, etc.
- Access to necessary project systems, as required to meet the obligations of the SOW
- Sirius XM's Project Manager will be responsible for interfacing with the Contractor team and also responsible for accepting completed stories

6. CONFLICT

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

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

("Contractor")
TRIBALSCALE INC.

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

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

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

APPENDIX A

CLOUD ARCHITECTURE TECHNICAL REQUIREMENTS

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

Security

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

Frontend

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

Backend

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

High Availability / Scale

Availability Zones

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

Multiple Regions

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

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

Disaster Recovery

Failover

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

Backups

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

Infrastructure as Code

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

Operating Costs*

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

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

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

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

For voice services:

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

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

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LSO No. 79679K

SiriusXM & TribalScale Project Issues

April 23, 2020

- The SXM team failed to give us, TribalScale, access and documentation for the IDM, which caused major delays in the project's timeline. The team had to work around this limitation and mock-up UI designs and endpoints to accommodate this. Once credentials were given to us for the IDM, the team had to decipher how to integrate with it because we received very poor "documentation" from Neal. Essentially this was a list of curl requests without any explanation or "documentation". The IDM availability issues were highlighted every single week as a **major blocker** in our weekly status emails to the whole project team at SXM.
- The SXM team failed to provide any feedback on the progress of the project in which everyone on the SXM side seemed very disconnected from what was happening or why key decisions were being made by Paul on their side.
- Instead of providing feedback to TribalScale and correcting any issues that SXM had with our codebase, SXM forked our codebase without our knowledge and began developing on top of the existing code for several months. This seems very counterintuitive given the scale of this project and how many engineers TribalScale had to work on the project that could have aided their problems very easily.
- The SXM team had many issues with getting our codebase up and running in their environment in which we offered our assistance. We were told that we would be given PCs that had internal network access to assist them but John never gave them to us with numerous follow-ups.
- The SXM suddenly and unexpectedly halted the project with only one week's notice. The week commenced as per the following:
  - Anatoli had requested a knowledge transfer meeting with Rohit to go over the code and architecture which was held very last minute on the second last day of the project;
  - From that meeting, SXM has asked for more up-to-date architecture diagrams a day before the project ends. Given how much has changed since they were created, the team would need more than one day to complete this (along with their active feature work). The most up-to-date diagram has been shared with SXM that includes any work the team has made. Neal has questioned why this was completed in a 24-hour time frame;
  - We held our weekly demo with SXM with Neal and Rohit on the call where the team seemed to not understand fully about why we made certain design decisions on the project. This seemed very unprofessional, given that these designs have been shown every week during the

development project and both had a walkthrough and approval from Paul during the design phase of the project;

- ○ Neal also had questioned why many of the IDM integrations features were not completed given the length of this project, which we let Neal know that we only received access to the IDM towards the end of the project, which was communicated clearly with every status email.
- ○ Neal questioned why we did not Mock many of the endpoints that the IDM would provide. This would have taken a lot of development time to create these Mock endpoints and wasn't feasible given the uncertainty on how the IDM would function;
- ○ Rohit emailed in the morning asking why "there are no loading bars after each button click/API calls, as a user it is not clear on what is happening after I click a button, please check this issue as well along with proper error handling." This is something that was already discussed with Paul. Irina has already created loading bar designs and has shown these designs to Paul. It was decided that this was something that we would push to after the IDM integrations features;
- ○ There is a huge disconnect between the technical team (Rohit and Neal) and Paul who is on the product side. Rohit and Neal do not seem to understand why we have decided to prioritize certain features and it is very unprofessional to call these out on the last day on the project.
- After having follow up meetings with SXM we discovered what they had done with our codebase that came as a huge surprise to the TribalScale team.
- SiriusXM had removed approximately 90 total BDD/TDD (integration) scenarios and 160 unit tests that were developed since the beginning of the engagement. This poses a huge risk because SiriusXM is trying to develop production-ready software without the hours spent creating TDD and BDD tests to ensure that the production-ready code is stable. The entire codebase was filled with tests to ensure basic stabilization. Essentially, countless hours that were used to create tests have not been utilized to ensure production-ready software. We automated this process so having people do this manually is backtracking. For SiriusXM to stay ahead of this they would need a considerable amount of functional testers.
- In terms of how the refactoring was done, SiriusXM simply split our codebase into separate bitbucket repositories. The microservices were already in place in the previous codebase as well (gas, parking, wallet).

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WEISZ · FELL · KOUR

Caitlin Fell
Partner
T: 416-613-8282
F: 416-613-8290
E: cfell@wfklaw.ca

May 26, 2020

SENT BY ELECTRONIC MAIL

Sirius XM Connected Vehicle Services
8550 Freeport Parkway
Irving, Texas 75063
United States of America

Attention: John Swanagon

Dear Mr. Swanagon,

RE: **TribalScale Inc. Professional Services Agreement**
             Project Constellation (SIR0020) – SOW #2

We are counsel to TribalScale Inc. ("**TribalScale**"). We are writing to you with respect to the Professional Services Agreement ("**PSA**") and related Statements of Work ("**SOWs**") entered into between TribalScale and Sirius XM Connected Vehicle Services ("**Sirius**") dated April 26, 2019.

Pursuant to the PSA and SOW #2, Sirius engaged TribalScale to develop an in-vehicle E-commerce solution (the "**Project**") and TribalScale was to deliver software to Sirius according to the requirements set out in sections 3.2 - 3.3 and the timeline established at section 4.1 of SOW #2 (the "**Deliverables**").

TribalScale has fulfilled each of its obligations with respect to the Project and provided the Deliverables on time, in a good workmanlike manner. We understand that Sirius regularly reviewed and approved iterative updates to the Deliverables in accordance with the Agile Development process stipulated under section 3.3 of SOW #2. Upon the completion, TribalScale rendered invoices pursuant to section 7 of the PSA.

As of the date hereof, Sirius currently owes TribalScale **$504,182.77 USD** for TribalScale's invoices numbered **2061**, **2076**, and **2102** (the "**Outstanding Fees**").

Notwithstanding the Outstanding Fees, we understand that Sirius has provided the software Deliverables for use to Sirius' third-party clients. However, until the Outstanding Fees are paid, the Deliverables and any other work product provided to Sirius under the PSA and SOWs remain the exclusive intellectual property of TribalScale. The unauthorized use of TribalScale's intellectual property, including, but not limited to the use of proprietary source code on the servers of Sirius and/or its customers constitutes a breach of TribalScale's intellectual property rights and

until payment of the Outstanding Fees is made to Tribalscale, Sirius must immediately cease and desist and have its customers cease and desist, using Tribalscale's source code.

You are hereby required to remit payment of $504,182.77 USD to TribalScale by 4:00pm on Friday, May 29th. If you fail to do so, TribalScale reserves all rights available to it by law and equity. In addition, Tribalscale will be reaching out to Sirus' customers to notify them of Sirius' non-payment and for these customers to cease and desist using Tribalscale's intellectual property.

Yours very truly,

WEISZ FELL KOUR LLP

Caitlin Fell
CF/cp

c.   Sharon Kour, *Weisz Fell Kour LLP,* skour@wfklaw.ca
John Jasper, *Sirius XM*, John.Jasper@siriusxm.com
Jim Meyer, *Sirius XM,* Jim.Meyer@siriusxm.com
Alex MacFarlane, *Borden Ladner Gervais LLP,* AMacfarlane@blg.com
Sheldon Title, *MNP Ltd.* Sheldon.Title@mnp.ca,

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A COMMISSIONER FOR TAKING AFFIDAVITS

CHRISTOPHER M. McGOEY
LSO No. 79679K

June 1, 2020

VIA EMAIL to cfell@wfklaw.ca

Caitlin Fell
Weisz Fell Kour
100 King St West, Ste. 5600
Toronto, Ontario M5X 1C9
CANADA

RE: TribalScale Inc.

Dear Ms. Fell:

Sirius XM Connected Vehicle Services Inc. ("SXMCV") received your letter dated May 26, 2020. SXMCV disagrees that it owes any amounts to TribalScale pursuant to the Professional Services Agreement ("PSA") between SXMCV and TribalScale.

TribalScale has NOT fulfilled its obligations with respect to the eCommerce solution and SOW#2. In a letter dated May 13, 2020, SXMCV explained TribalScale's performance deficiencies with respect to the eCommerce solution which is the subject of SOW#2 between SXMCV and TribalScale. Specifically, Section 3.2 of SOW#2 details 23 in scope deliverables, which TribalScale committed to complete within an estimated 26-week project period. Consistent with the Agile development methodology required by SOW#2, six of the deliverables were removed from scope, and two new deliverables were added, resulting in a net of nineteen deliverables due under SOW #2. TribalScale delivered only six full and one partial of those 19 deliverables in conformance to specifications. Two deliverables failed to conform to specification. Ten deliverables were not delivered because TribalScale ran out of time to complete them notwithstanding the reduced set of deliverables. A list of the deliverables under SOW#2 and their final status is attached as an exhibit to this letter.

Notwithstanding this gross under-delivery of the services contemplated by the SOW, SXMCV has paid TribalScale over $1 million in fees for the project. This amount is substantially more than is owed by SXMCV to TribalScale under SOW#2. Only a small portion of the required deliverables were properly performed by TribalScale. Section 2.2(c) of the PSA limits SXMCV's maximum obligations for fees to those "Services properly performed under the applicable Statement of Work." If this dispute cannot be resolved informally, SXMCV will seek to recover from TribalScale the excess amounts it improperly paid under the PSA and SOW#2.

The assertion that TribalScale is the holder of intellectual property rights in and to the deliverables is simply untrue. The PSA clearly and unequivocally vests all intellectual property rights in and to the Work Product (as defined in the PSA) in SXMCV, without any condition, including payment.

TribalScale Inc.   2   June 1, 2020

Section 10.1 of the PSA states "Contractor covenants and agrees that all right, title and interest in any Work Product shall be and shall remain the exclusive property of SXMCV." Section 10.2 further reinforces SXMCV's absolute ownership:

> "Contractor and SXMCV hereby agree that the Work Product of Contractor resulting from the Services is one or more "works made for hire" within such definition in 17 U.S.C. §101, the copyright of which shall be owned solely, completely and exclusively by SXMCV. If any such Work Product is protectable by copyright and is not considered to be included in the categories of works covered by such definition, ownership of and copyrights to such items shall be deemed to be assigned and transferred completely and exclusively to SXMCV by virtue of the execution of this Agreement."

All non-public information about SXMCV's relationship to and interaction with its customers is Confidential Information as that term is defined under the PSA. TribalScale is well aware that the details of the eCommerce solution and SXMCV's engagement in proof of concept activities with its customers is sensitive, non-public information. Any statements by TribalScale, or its officers, directors, employees or agents, to SXMCV's customers in breach of the provisions of the PSA, especially any false statements, will result in SXMCV pursuing all available legal and equitable remedies to enforce its rights against TribalScale and the individuals involved.

As you have been advised by my colleague, SXMCV is represented by counsel, and I remind you to direct any communications with respect to this dispute to me or another SXMCV attorney. Should you wish to discuss this matter further, you may call me at +1-972-753-6204.
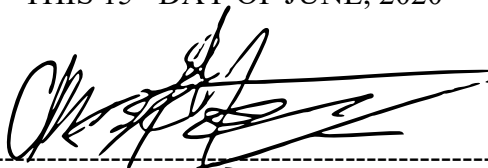
Sincerely,

Renée T. Kingsley
General Counsel
Sirius XM Connected Vehicle Services

Exhibit

Deliverable	Status	Conforms to Spec
Onboarding		
1. User profile rapid registration, including integration with Sirius XM IDM	Delivered	No – not integrated with Contentful
2. Integration of token provider widget to capture and tokenize payment method	Delivered	Yes, with reduced scope
3. Integration with Wallet system to store generated tokens or token mapping	De-scoped by SXMCV	N/A
Profile/Role Management		
4. Ability for users to manage and change their profile data.	Delivered	No – not integrated with Contentful
5. Ability for users to invite other users, associate them with their primary account, and assign them permissions for what services they can use through Constellation in their car.	De-scoped by SXMCV	N/A
Wallet		
6. Token data store, and Merchant-Token mapping	De-scoped by SXMCV	N/A
7. APIs to add, retrieve, update, delete one or more tokens to the wallet	De-scoped by SXMCV	N/A
8. APIs to generate cryptogram per transaction for a specific token to be able to process a payment	De-scoped by SXMCV	N/A
9. Integration with SiriusXM selected Token Management Service (TMS)/Token Gateway (TG)/Token Service Provider (TSP) APIs for token lifecycle management	De-scoped by SXMCV	N/A
10. Integration with P97 wallet and payments, as an intermediate solution.	Delivered	Yes
11. Frontend interfaces for users to manage their wallet	Partially Delivered	Yes – for add and view, but no manage wallet capability
User Preferences		
12. User preference data store	Not Delivered	N/A
13. APIs to add, retrieve, update, delete user preferences	Not Delivered	N/A
14. Frontend interfaces for users to manage their preferences	Not Delivered	N/A
15. Update the search API to flag locations matching the user's preferences in the returned result set	Not Delivered	N/A
16. Update the UI client to display user preferred locations differently, as well as integrate the ability to save a location to user preferences, and to view a list of their preferences	Not Delivered	N/A

Deliverable	Status	Conforms to Spec
Loyalty Programs		
17. Loyalty program data store	Not Delivered	N/A
18. APIs to add, retrieve, update, delete user's loyalty programs	Not Delivered	N/A
19. Frontend interfaces for users to link their loyalty accounts to their Sirius XM Constellation account, and manage their loyalty programs	Not Delivered	N/A
20. Update the E- Commerce Order process to include loyalty account data when placing orders	Not Delivered	N/A
Service Integrations		
21. Continue Arrive integration for Parking to cover placing orders to book parking spots.	Delivered	Yes
22. Integrate TravelLink/Infotainment API into search process, to cover more locations for Gas and Parking.	Delivered	Yes
23. Integrate PayTollo service into Constellation platform for toll gate payments.	Not Delivered	N/A
Proof of Concept (agreed supplemental work)		
+1. Gas	Delivered	Yes
+2. Parking	Delivered	Yes

THIS IS **EXHIBIT "F"** REFERRED TO IN THE
AFFIDAVIT OF SHEETAL JAITLY SWORN BEFORE ME
BY VIDEO CONFERENCE
THIS 15th DAY OF JUNE, 2020

A COMMISSIONER FOR TAKING AFFIDAVITS

CHRISTOPHER M. McGOEY
LSO No. 79679K

WFK

W E I S Z · F E L L · K O U R

Caitlin Fell
Partner
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E: cfell@wfklaw.ca

June 9, 2020

SENT BY ELECTRONIC MAIL

Sirius XM Connected Vehicle Services
8550 Freeport Parkway
Irving, Texas 75063
United States of America

Attention: Renée T. Kingsley

Dear Ms. Kingsley,

RE: **TribalScale Inc. Professional Services Agreement**
                Project Constellation (SIR0020) – SOW #2

We are in receipt of your letter dated June 1, 2020 in which you claimed that Sirius XM Connected Vehicle Services ("**Sirius**") is not required to pay our client, TribalScale Inc. ("**TribalScale**"), the outstanding amounts of $504,182.77 USD pursuant to the Professional Services Agreement ("**PSA**") and related Statements of Work ("**SOWs**"), dated April 26, 2019.

The basis of Sirius' claim is that TribalScale purportedly failed to produce a number of deliverables specified under section 3.2 of SOW #2. This position misrepresents the essential nature of the development process as agreed to in the PSA and SOW.

The deliverable 'product epics' specified under section 3.2 of SOW #2 are development end-goals which require the completion of numerous discreet tasks (the "**Deliverable Tasks**"). Pursuant to the Agile Development process described under section 3.3.1 of SOW #2, the Deliverable Tasks were to be particularized in a fluid "**backlog**" by Sirius, which permitted Sirius to change the Deliverable Tasks and development priorities at any time.

The development process, including the prioritization of items on the Backlog, was a highly collaborative arrangement between TribalScale and Sirius. The parties agreed that TribalScale would complete tasks set out in the backlog according to a "mutually agreeable cadence of either 1 or 2 weeks" (SOW #2, s. 3.3.1). At the beginning and end of each 1-2 week segment (referred to as a "**sprint**"), TribalScale would report to Sirius to discuss the backlog, flag issues, and field questions and concerns. Despite the *estimated* project duration stipulated in the SOW, the ultimate delivery deadline for the Deliverable Tasks was, at all times, subject to acceptance testing by Sirius, as stipulated under s. 1.2 of the PSA.

WFK:00016672.1

Sirius designated a product owner in this development process, and at all times, and every week, the product owner employed by Sirius agreed to the backlog and accepted every story in the weekly sprint as complete.

With respect to the IDM story, Sirius failed to provide TribalScale with access and documentation for Sirius' IDM for an extended period of time, materially impacting TribalScale's ability to work on the project. Once access was provided, there was insufficient explanation about how this system could integrate with existing work product code. As you are no doubt aware, this concern was explicitly flagged by TribalScale in a document titled "SiriusXM & TribalScale Project Issues", dated April 23, 2020. As a result of this and other issues, it is TribalScale's position that Sirius failed to fulfil its obligations in the development relationship, as set out under section 5 of SOW #2.

At all times during the effective period of the PSA, Sirius accepted all stories completed within the sprint, and therefore, TribalScale fulfilled its obligations to the greatest possible extent. Regular status reports were provided to Sirius by TribalScale between September 16, 2019 and February 24, 2020. At no point during this reporting cycle did Sirius raise the concerns it now claims. Even today, Sirius has not communicated to TribalScale what exactly is not working with any of the software provided. In the context of an iterative development process, Sirius' failure to raise any material concerns with the work product on any of the reporting dates was tantamount to acceptance of the delivered product. Sirius cannot now assert that a significant number of the Deliverable Tasks were deficient.

We acknowledge your assertion that the PSA vests the intellectual property rights in the Work Product in Sirius. This is a correct reading of the PSA. However, in the circumstances where Sirius has failed to discharge its main obligation to pay TribalScale, it is not entitled to rely on PSA to enforce these rights against TribalScale. Therefore, until TribalScale is paid, it continues to assert ownership of the as-yet-unvested intellectual property.

We trust that Sirius will reconsider its position in light of these facts, failing which we will bring a motion before the Ontario Superior Court of Justice [Commercial List] in the proposal proceedings of TribalScale brought under the *Bankruptcy & Insolvency Act*.

Yours very truly,

WEISZ FELL KOUR LLP

Caitlin Fell
CF/cp

c.   Sharon Kour, *Weisz Fell Kour LLP,* skour@wfklaw.ca
       John Jasper, *Sirius XM,* John.Jasper@siriusxm.com
       Jim Meyer, *Sirius XM,* Jim.Meyer@siriusxm.com
       Alex MacFarlane, *Borden Ladner Gervais LLP,* AMacfarlane@blg.com
       Sheldon Title, *MNP Ltd.* Sheldon.Title@mnp.ca,

Court File No.   31-2646144
Estate No.   31-2646144

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF TRIBALSCALE INC.

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

Proceedings commenced at Toronto

AFFIDAVIT OF SHEETAL JAITLY

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Lawyers for TribalScale Inc.

-

TAB 3

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

THE HONOURABLE ___.	**)**	WEDNESDAY, THE 17TH
	)	
JUSTICE _____	**)**	DAY OF JUNE, 2020

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

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

ORDER
(Extension of Time to File Proposal and Administrative Charge)

THIS MOTION, made by TribalScale Inc. (the "**Company**") for an Order, *inter alia*, extending the period of time for filing a proposal pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act,* RSC 1985, c B-3, as amended (the "**BIA**"), and for approval of an administration charge over the property assets and undertakings of the Company (the "**Property**") was heard this day by way of teleconference, in accordance with the Chief Justice's Notice to the Profession dated March 15, 2020 and Changes to Commercial List Operations in Light of COVID-19 dated March 16, 2020.

ON READING the Affidavit of Sheetal Jaitly sworn June 15, 2020, and the Fist Report of MNP Ltd. in its capacity as proposal trustee (the "**Proposal Trustee**"), and any other person

as listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Christel Paul sworn June 15, 2020, filed:

SERVICE

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

EXTENSION OF TIME TO FILE A PROPOSAL

2 .   **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for the Company to file a proposal with the Official Proposal Trustee be and is hereby extended to July 31, 2020.

ADMINISTRATION CHARGE

3 .   **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company (the "**Professionals**") shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed the amount of $125,000 as security for the professional fees and disbursements of the Professionals incurred at the standard rates and charges, both before and after May 19, 2020 being date the Company filed the Notice of Intention to Make a Proposal.

4.   **THIS COURT ORDERS** the Administration Charge shall rank in priority as against all other validly perfected security interests, trusts, liens, charges and encumbrances, claims of

secured creditors, statutory or otherwise, granted by the Company or to which the Company is subject as of the date of this Order, in favour of any person or entity.

5. **THIS COURT ORDERS** that the Proposal Trustee, counsel to Proposal Trustee and counsel to the Company shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and counsel for the Company.

GENERAL

6. **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 Company, the Proposal Trustee 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 Company and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that any interested party (including the Company and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

_____

Court File No.   31-2646144
Estate No.   31-2646144

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF TRIBALSCALE INC.

ONTARIO SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
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ORDER

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Lawyers for TribalScale Inc.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF TRIBALSCALE INC.

ONTARIO SUPERIOR COURT OF JUSTICE IN BANKRUPTCY AND INSOLVENCY (COMMERICAL LIST)	
Proceedings commenced at Toronto	
MOTION RECORD	
WEISZ FELL KOUR LLP 100 King Street West, Suite 5600 Toronto, ON M5X 1C9	
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