

Court File No. CV-19-629552-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF DEL EQUIPMENT INC.
(THE "APPLICANT")**

**FIFTH REPORT TO THE COURT SUBMITTED BY
MNP LTD. IN ITS CAPACITY AS COURT APPOINTED MONITOR OF DEL
EQUIPMENT INC.**

SEPTEMBER 10, 2020

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INTRODUCTION

1. On October 22, 2019, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made an initial order (the “**Initial Order**”) granting Del Equipment Inc. (“**DEL**” or the “**Company**”) relief pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). DEL’s CCAA proceedings are referred to herein as the “**CCAA Proceedings**”. A copy of the Initial Order is attached as **Appendix “A”**.
2. The Monitor has filed a pre-filing report and four reports in the CCAA Proceedings, summarized as follows:
 - a. The Pre-Filing Report, dated October 21, 2019, in support of DEL’s application for the Initial Order, the appointment of a Chief Restructuring Officer (“**CRO**”), approval of a \$1 million debtor-in-possession interim financing arrangement (the “**DIP Financing**”) with Diesel Equipment Limited, the Company’s parent company and senior secured lender (“**Diesel**”), and approval of the commencement of a sale and investment solicitation process (“**SISP**”).
 - b. A first report dated November 14, 2019 in connection with approval for additional DIP Financing and an extension of the period for the stay of proceedings for the Company (the “**Stay Period**”) to February 28, 2020.
 - c. A second report, dated February 24, 2020 (the “**Second Report**”) in connection with DEL’s motion for, *inter alia*: (i) a further extension of the Stay Period to May 29, 2020; (ii) approval of the contemplated sale transaction with Drive Products Inc. for certain assets of DEL (the “**DPI Transaction**”); (iii) a key employee retention program; (iv) a litigation protocol establishing the procedure and timetable for resolving certain disputes (the “**Payment Dispute**”) between the Company and Gin-Cor Industries Inc. (“**Gin-Cor**”); and (v) authorization for DEL, in consultation with the Monitor, to continue to explore opportunities with respect to the remaining branches and assets not included within the scope of the DPI Transaction (the “**Residual Assets**”) and, with the approval of the Monitor, to enter into and complete any transaction for the Residual Assets for proceeds equal to or less than \$250,000.

- d. A third report, dated April 22, 2020 (the “**Third Report**”), in connection with DEL’s motion for a further extension of the Stay Period through to September 18, 2020, approval of an interim distribution to Diesel of \$9MM (the “**First Interim Distribution**”) and such further amounts from time to time as may be agreed between DEL and Diesel up to the secured indebtedness owed by DEL to Diesel, with the consent of the Monitor, or pursuant to such further Order of the Court, and approval of the fees and disbursements of the Monitor and counsel to the Monitor. The Monitor’s report also provided support for, and observations in respect of, an application put forth by Diesel for lifting the stay of proceedings in the CCAA Proceedings for the limited purpose of appointing MNP as the receiver (the “**Receiver**”) over limited property of DEL, in order to allow former employees of DEL access to funds that may be available to them pursuant to the Wage Earner Protection Program (the “**WEPP**”).
 - e. A fourth report, dated May 22, 2020 (the “**Fourth Report**”) in connection with DEL’s motion for approving the auction services agreement entered into between DEL and Infinity Asset Solutions Inc. (the “**Auctioneer**”) dated as of May 19, 2020 (the “**Auction Services Agreement**”) and the transaction contemplated thereunder and authorizing DEL to conduct a self-liquidation of the Residual Assets at DEL’s Montreal branch (the “**Montreal Branch**”).
3. The purpose of this report (the “**Fifth Report**”) is to provide the Court with information concerning:
- a. the Company’s and Monitor’s activities since the Fourth Report;
 - b. the actual receipts and disbursements of the Company for the period April 6, 2020 through August 28, 2020, as well as any material variances between the actual receipts and disbursements and the extended cash flow forecast (the “**Second Extended Cash Flow Forecast**”), which was appended to the Third Report;
 - c. DEL’s revised cash flow forecast through November 13, 2020 (the “**Third Extended Cash Flow Forecast**”);

- d. the Monitor’s support for, and observations in respect of, DEL’s request that the Court grant Orders:
 - i. extending the Stay Period to October 30, 2020 to enable DEL to determine how best to finalize the remaining outstanding matters in the CCAA Proceedings; and
 - ii. approving the sale transaction (the “**Unsold Demo Transaction**”) contemplated by the bill of sale (the “**Bill of Sale**”) to be entered into between DEL and Diesel, and vesting in Diesel all of the Company’s right, title and interest in and to the unsold demonstration vehicles (the “**Equipment**”).
4. The Fifth Report and other materials filed with the Court and all orders granted in connection with the CCAA Proceedings have been and will continue to be made available on the Monitor’s website at <https://mnpdebt.ca/en/corporate/engagements/DELEquipment> (the “**Monitor’s Website**”).

DISCLAIMER AND TERMS OF REFERENCE

5. In preparing this Fifth Report, MNP has necessarily relied upon the Lucky Affidavits (defined below), the unaudited financial statements and other information supplied, and representations made by certain management of the Company (“**Management**”), SRA (as defined in the Pre-filing Report), and third-party sources (collectively, the “**Information**”). Although the Monitor has reviewed the Information for reasonableness, MNP has not conducted an audit or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook. Accordingly, MNP expresses no opinion and does not provide any other form of assurance on or relating to the accuracy of the Information that may be contained in this Fifth Report, or otherwise used to prepare this Report.
6. MNP also bases its report on the Company’s cash flow projections and underlying assumptions and notes that its review and commentary thereon were performed in

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

7. Capitalized terms not defined in this Report are used as defined in the affidavits of Douglas Lucky sworn October 20, 2019, November 13, 2019, February 22, 2020, April 20, 2020 May 19, 2020, and September 8, 2020 (collectively the "**Lucky Affidavits**") filed in support of the Company's application for relief under the CCAA and various motions in the CCAA Proceedings.
8. Unless otherwise stated, all monetary amounts contained in this Fifth Report are expressed in Canadian dollars.

ACTIVITIES OF THE MONITOR

9. Since the Fourth Report, the Monitor has undertaken the following activities, *inter alia*:
 - a. updated the Monitor's Website as necessary;

- b. monitored DEL's actual cash flows in comparison to the Second Extended Cash Flow Forecast (as such term is defined in the Third Report) and reviewed the Third Extended Cash Flow Forecast;
- c. reviewed and consented to DEL making a further distribution (the "**Final Secured Claim Distribution**") to Diesel in respect of its remaining secured claim against the Company;
- d. together with Goldman Sloan Nash & Haber LLP ("**GSNH**")¹ further considered DEL's litigation with Gin-Cor, as necessary;
- e. reviewed and consented to the disclaimer of a number of agreements to which DEL was a party in accordance with section 32 of the CCAA;
- f. reviewed and considered the terms governing the termination of DEL's lease agreements with Diesel;
- g. with representatives of GSNH, attended to Court in connection with the CCAA Proceedings;
- h. engaged in telephone calls and email correspondence with certain of DEL's creditors in connection with the CCAA Proceedings; and
- i. supervised the Company's efforts to market and sell the Residual Assets.

ACTIVITIES OF THE COMPANY

- 10. Since the Fourth Report, the Company has undertaken the following activities, *inter alia*:
 - a. supplied the Receiver with further information relating to DEL's former employees that may be subject to the WEPP;
 - b. disclaimed several agreements to which the Company was a party;

¹ The individual with carriage of this matter at GSNH has moved to Norton Rose Fulbright Canada LLP and has continued to act for the Monitor in this matter.

- c. continued the litigation with Gin-Cor, which as detailed in the Lucky Affidavits and below, culminated in the recovery of \$884,853.74 (including accrued interest) from Gin-Cor on September 9, 2020;
- d. made the Final Secured Claim Distribution;
- e. as described below, completed the self-liquidation of the Residual Assets at Montreal Branch and collected auction proceeds from the Auctioneer upon sale of other Residual Assets; and
- f. continued to collect the remaining accounts receivable, and as described in greater detail below and subject to Court approval, negotiated the terms of the Unsold Demo Transaction.

Sale of Residual Assets and Proposed Sale of Equipment

- 11. Pursuant to the Auction Services Agreement, the Auctioneer conducted a series of auctions in June, 2020, culminating in DEL receiving net proceeds of \$1.039MM (the “**Auction Proceeds**”) from the Auctioneer which included an amount of \$314.73M, representing 85% of the net proceeds in excess of the threshold of \$875,000 to be allocated to DEL.
- 12. In addition to the Auction Proceeds, the Company collected \$70.47M from the self-liquidation of the Residual Assets in Montreal.
- 13. The Company has negotiated the terms of, and contemplates entering into an agreement with Diesel to sell the Equipment for an aggregate purchase price of approximately \$108M. The Equipment was excluded from the DPI Transaction. As noted in the Lucky Affidavits, the Equipment consists of three unsold demonstration vehicles completed at DEL’s former Calgary branch and that have been marketed as part of the Sale Process and in DEL’s efforts at selling the Residual Assets. The proposed purchase price of approximately \$108,000 represents the aggregate price at which the Equipment had most recently been marketed.
- 14. The Monitor has considered the factors set out in Section 36(3) of the CCAA with respect to the granting of a Court order authorizing the sale of the Equipment Diesel. The Monitor

respectfully recommends that the Court make the order sought by the Company for the following reasons:

- a. in carrying out the SISP and in marketing the Residual Assets after completing the DPI Transaction, DEL has widely marketed the demonstration vehicles, including the Equipment, that were excluded from the DPI Transaction. Despite these efforts, DEL has been unable to complete a sale of the Equipment, including to a person who is not related to DEL;
- b. in marketing the Equipment, DEL had ascribed a listing price, which DEL dropped over time in order to attract purchasers for all or part of the Equipment and to consider the impact of the COVID-19 pandemic on the marketplace generally. The proposed purchase price being paid by Diesel represents the aggregate of DEL's most recent listing price for the Equipment, notwithstanding the lack of interest from other potential purchasers in the Equipment at this price; and
- c. given the Equipment is a depreciating asset, expediting a sale of the Equipment at the proposed purchase price will likely maximize value to creditors in a timely fashion.

CASH FLOW VARIANCE ANALYSIS

15. The Monitor has undertaken a weekly review of DEL's actual cash flows in comparison to those contained in the Second Extended Cash Flow Forecast. A summary of DEL's actual cash receipts and disbursements as compared to the Extended Cash Flow Forecast for the twenty-one (21) weeks ended August 28, 2020 (the "**Monitored Period**") is summarized below (subject to rounding errors):

Particulars	Cumulative twenty one-week Period Ended August 28, 2020		
	Actual	Budget	Variance
Receipts from customers	4,823	2,966	1,857
Liquidation of remaining inventory and capital assets	1,110	1,126	(16)
Total receipts	5,933	4,092	1,841
Disbursements			
Merchandise Vendors	(421)	(392)	(29)
Non-Merchandise Vendors	(990)	(929)	(60)
Payroll	(528)	(469)	(58)
Tax	(402)	(279)	(123)
Total Disbursements	(2,340)	(2,069)	(271)
Operating Net Cash Flow	3,593	2,022	1,571
Administrative Fees	(606)	(572)	(35)
Net Cash Flow	2,987	1,451	1,536
Beginning Cash	12,191	12,191	-
Net Cash Flow	2,987	1,451	1,536
Distribution to secured creditor	(11,490)	-	(11,490)
Ending Cash	3,688	13,642	(9,954)

16. Overall, before considering the distribution to Diesel, DEL realized a favorable net cash flow variance of approximately \$1.54MM during the Monitored Period. The key components of the variance are as follows:

- a. Receipts from customers: Actual receipts from customers of \$4.82MM were approximately \$1.86MM greater than projected in the Second Extended Cash Flow Forecast. This favourable variance arises from:
 - i. Collections from customers being approximately \$1MM greater than projected during the Monitored Period due to the diligent collection efforts of the Company;
 - ii. DEL collecting an amount of \$432M from Del Hydraulics Inc. (“DHI”) on account of services provided to DHI from October 2019 through June 2020 in relation to the transition activities upon the sale of DEL’s air valve manufacturing assembly segment to DHI in October 2019. This amount

was not originally anticipated, and accordingly, was not projected to be received in the Second Extended Cash Flow Forecast; and

- iii. new sales and corresponding collections amounting to \$730M which were approximately \$430M greater than projected.

- b. Liquidation of remaining inventory and capital assets: As explained above, the Company collected approximately \$1.039MM from the Auctioneer for sale of certain Residual Assets including inventory and certain capital assets having book value of \$3.9MM and \$200M respectively. In addition, self-liquidation of Residual Assets involving inventory having a book value of \$283M at the Montreal branch resulted in cash inflow of approximately \$70.47M.

- c. Merchandise Vendors: The \$29M unfavorable variance is permanent in nature and relates in part to certain freight invoices at Newmarket and Moncton locations which were not reflected in the projections. In addition, certain additional supplies were purchased to fulfil the additional sales orders that were not projected.

- d. Non- Merchandise Vendors: The unfavorable variance of \$60M is partially attributable to the source deductions, which the Company has classified as a Non-Merchandise Vendor disbursement, that was payable on the higher than anticipated payroll costs as noted below. The balance of the negative variance is attributable to an increase in facility costs on account of insurance and other overhead expenses.

- e. Payroll: The \$58M unfavorable variance is permanent in nature and is attributable to the Company retaining the services of certain employees for periods longer than originally projected to assist DEL in its efforts to wind-up its affairs. The Company also paid outstanding vacation pay following each employee termination during the Monitored Period, which payments were not fully considered in the Second Extended Cash Flow Forecast.

- f. Sales Tax: The approximately \$123M unfavourable variance in tax payments is largely attributable to greater than anticipated sales and corresponding HST collections.

- g. Administrative fees: The unfavorable variance is primarily attributable to DEL's higher than anticipated professional fees in part associated with the Payment Dispute.
- h. Distribution to Secured Creditor: Not projected, the Company repaid its secured debt to Diesel, as authorized by the Court, totaling approximately \$11.5MM in two installments of \$9MM and \$2.49MM respectively in April and June 2020 respectively.

THIRD EXTENDED CASH FLOW FORECAST

- 17. As described above, DEL is requesting that the Stay Period be extended up to October 30, 2020. DEL has extended the cash flow projection through to November 13, 2020 (the "**Third Extended Cash Flow Forecast Period**"). A copy of the Third Extended Cash Flow Forecast including the notes and assumptions is attached hereto as **Appendix "B"**.
- 18. A summary of the Third Extended Cash Flow Forecast is provided in the following table (subject to rounding errors):

DEL Equipment Inc.
Projected Statement of Third Extended Cash Flow Forecast
For the period ending Nov 13, 2020
(Unaudited, in \$'000s CAD)

Week Beginning August 31 2020	Total 11 Weeks
Receipts from sale of demo vehicles	113
Receipts from Gin-Cor	885
Total receipts	998
Disbursements	
Merchandise Vendors	-
Non-Merchandise Vendors	148
Payroll	-
Tax	14
Total Disbursements	162
Operating Net Cash Flow	837
Administrative Fees	195
Net Cash Flow	642
Opening cash balance	3,688
Net Cash Flow	642
Closing cash balance	4,330

19. During the Third Extended Cash Flow Forecast Period, the Company projects a net cash flow surplus of \$642M and have a remaining cash balance of \$4.33MM at the end of the Third Extended Cash Flow Forecast Period.

20. The Monitor notes the following with respect to the Third Extended Cash Flow Forecast:

- a. Receipts: Receipts include the sale of the rights, title and interests in the Equipment as mentioned above for approximately \$113M (including 5% GST) which is expected to be received by the end of September 2020. The Company has collected approximately 96% of the accounts receivable due and owing to it as at March 31, 2020 and is of the view that the collection of its outstanding accounts receivable is substantially complete;

- b. Receipts from Gin-Cor: On September 8, 2020, the Ontario Court of Appeal delivered its decision dismissing Gin-Cor's motion for leave to appeal the Court's May 7, 2020 Payment Dispute decision wherein the Court determined, among other things, that Gin-Cor has been unjustly enriched by the receipt and retention of the \$874,107.08 paid by Mack Defense LLC and ordered that Gin-Cor return the funds to DEL. Pursuant to an Order of the Ontario Court of Appeal dated June 24, 2020, Gin-Cor was to pay the funds to DEL within two business days (i.e. by September 10, 2020). An amount of \$884,853.74, which includes interest earned on the funds, was received by DEL on September 9, 2020.
 - c. Non-Merchandise Vendors: Non-Merchandise Vendors includes payment of \$47M for IT related matters, \$10M for WSIB payments in Alberta, \$24M for accounting and finance matters to consultants and contractors and certain other miscellaneous expenses. In addition, DEL owes \$60M to Diesel pertaining to rent for the month of July 2020 amounting to approximately \$45M and the balance for insurance.
 - d. Administrative fees: Disbursements include forecast payments to DEL's CRO, DEL's legal counsel, the Monitor and its legal counsel.
21. Management's Representation Letter and the Monitor's report to the Court regarding the adequacy of the Third Extended Cash Flow Forecast, are attached hereto as **Appendix "C" and "D"**.
22. The Monitor has reviewed the Third Extended Cash Flow Forecast to the standard required of a Court-Appointed Monitor by Subsection 23(1)(b) of the CCAA and in accordance with the Professional Standards. Based on the Professional Standards, the Monitor's review of the Third Extended Cash Flow Forecast consisted of enquiries, analytical procedures and discussions related to information supplied to us by Management. Since hypothetical assumptions need not be supported, the procedures with respect to those assumptions were limited to evaluating whether they were consistent with the purpose of the forecast. The Monitor has also reviewed the support provided by Management for the probable assumptions and the preparation and presentation of the forecast.

23. Based on the Monitor’s review, nothing has come to its attention that causes it to believe that, in all material respects:
- a. The hypothetical assumptions are not consistent with the purpose of the forecast;
 - b. As at the date of the Fifth Report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Company or do not provide a reasonable basis for the forecast, given the hypothetical assumptions; and
 - c. The Third Extended Cash Flow Forecast does not reflect the probable and hypothetical assumptions.
24. Since the Third Extended Cash Flow Forecast is based on assumptions about future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Monitor expresses no assurance as to whether the results shown in the Third Extended Cash Flow Forecast will be achieved. The Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Fifth Report or relied upon by it in preparing this Fifth Report.
25. The Third Extended Cash Flow Forecast has been prepared solely for the purpose described in the notes to the Third Extended Cash Flow Forecast and readers are cautioned that it may not be appropriate for other purposes.

STATUS OF RECEIVERSHIP AND WEPP ADMINISTRATION

26. On April 29, 2020, on the application of Diesel, MNP was appointed as the Receiver, without security, over the DEL bank account specified in the limited receivership Order to a maximum of \$20 (the “**Limited Receivership Property**”) pursuant to Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). The Receiver’s duties were limited to exercising control over the Limited Receivership Property, performing its statutory obligations under the *Wage Earner Protection Program*

Act, and to take any steps reasonably incidental to the exercise of these powers or performance of any statutory obligations.

27. In carrying out its duties as Receiver, the Receiver has:
 - a. taken possession of the Limited Receivership Property;
 - b. pursuant to section 245 and 246 of the BIA and in accordance with the receivership appointment order, filed its Notice and Statement of Receiver with the Office of the Superintendent of Bankruptcy; and
 - c. administered the WEPP for 95 former DEL employees.
28. To date, Service Canada has paid 51 of the 95 employees that were identified by DEL as being eligible for WEPP.

EXTENSION OF THE STAY OF PROCEEDINGS

29. The Stay Period currently expires on September 18, 2020. DEL is requesting an extension of the stay through October 30, 2020, to allow it to complete remaining asset realization and restructuring activities and to determine, and seek Court approval of, the best means of addressing the outstanding matters in this case, including a claims process and distributions to creditors.
30. The Monitor supports the Company's request for an extension of the Stay Period to October 30, 2020 for the following reasons:
 - a. the Monitor is of the view that the Company has acted and is continuing to act in good faith and with due diligence;
 - b. the extension of the stay will provide DEL with the additional time needed to complete certain remaining wind-down activities, including completion of the Unsold Demo Transaction, the preparation and finalization of certain financial statements and corporate tax returns, as well as the best means of addressing a claims process and distributions to creditors; and

- c. the Third Extended Cash Flow Forecast reflects that the Company is projected to have sufficient funding through the proposed stay extension period.
31. Subject to the foregoing, the Monitor believes that no creditor will be materially prejudiced if the extension is granted.


MONITOR’S RECOMMENDATIONS

32. Accordingly, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in paragraph 3 of this Report.

All of which is respectfully submitted this 10th day of September 2020.

**MNP LTD.,
in its capacity as Court-Appointed Monitor of
DEL Equipment Inc.**

Per:



**Sheldon Title, CPA, CA, CIRP, LIT
Senior Vice-President**

Appendix "A"

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) TUESDAY, THE 22ND
JUSTICE HAINEY) DAY OF OCTOBER, 2019

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

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

Applicant



INITIAL ORDER

THIS APPLICATION, made by Del Equipment Inc. (the “**Applicant**”), pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Douglas Lucky sworn October 20, 2019, and the Exhibits thereto (the “**Initial Affidavit**”), and the pre-filing report of MNP Ltd. in its capacity as the proposed Monitor of the Applicant (the “**Monitor**”), and on hearing the submissions of counsel for the Applicant, the Monitor, Diesel Equipment Limited, and those other parties present as indicated on the counsel sheet, and on reading the consent of MNP Ltd. to act as the Monitor,

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system currently in place as described in the Initial Affidavit or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to

the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicant shall be entitled to continue to use the corporate credit cards in place with Bank of Montreal and shall make full repayment of all amounts outstanding thereunder, including with respect to any pre-filing charges.

7. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses and satisfy the following obligations whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, compensation, employee benefits, pension contributions, vacation pay and expenses (including, without limitation, payroll and benefits processing and servicing expenses) payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges;
- (c) all outstanding and future amounts related to honouring customer obligations, whether existing before or after the date of this Order, including with respect to customer warranty obligations and as relates to customer deposits and pre-payments, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (d) amounts owing by the Applicant to insurance premium financiers as necessary to ensure continued coverage for the Applicant under its existing insurance policies, including director and officer insurance; and

- (e) amounts owing for goods or services supplied to the Applicant prior to the date of this Order if, in the opinion of the Applicant and with the consent of the Monitor, such payment is necessary to maintain the operations of the Business.

8. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance and including payments to entities who provide insurance premium financing), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

9. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order of any other Order of this Court.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its Business or operations, and to dispose of redundant or non-material assets not exceeding \$650,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) disclaim such of its arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with Section 32 of the CCAA; and
- (d) pursue all avenues of refinancing or restructuring of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but, for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

13. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.

14. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor five (5) business

days' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

15. THIS COURT ORDERS that until and including November 21, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien upon prior written notice to the Applicant and the Monitor.

NO INTERFERENCE WITH RIGHTS

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant (in

each case whether written or oral), except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all truck chassis, truck equipment and parts suppliers, computer software, communication and other data services, centralized banking services, payroll and benefits services, insurance, transportation, utility, maintenance, security or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim

against the directors or officers that arose before the date hereof and that relates to any obligation of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligation.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. THIS COURT ORDERS that the Applicant shall indemnify its current and future directors and officers (the “**D&Os**”) against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, including, without limitation, in respect of any failure to pay wages and source deductions, vacation pay, or other payments of the nature referred to in subparagraphs 7(a), 9(a), 9(b) or 9(c) of this Order except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of such director’s or officer’s gross negligence or wilful misconduct.

22. THIS COURT ORDERS that the D&Os of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1,200,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 44 and 46 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) the D&Os shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPROVAL OF CHIEF RESTRUCTURING OFFICER ENGAGEMENT

24. THIS COURT ORDERS that:

- (a) the engagement agreement dated as of October 18, 2019 pursuant to which the Applicant has engaged 2255987 Ontario Limited operating as Strategic Results Advisors (“**SRA**”) to provide the services of Douglas Lucky to act as chief

restructuring officer to the Applicant (the “**CRO**”), a copy of which is attached as Exhibit “K” to the Initial Affidavit (the “**CRO Engagement Letter**”), and the appointment of the CRO pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby, including the success fee stipulated therein (the “**Success Fee**”);

- (b) the CRO shall not be or be deemed to be a director of the Applicant;
- (c) the CRO, in its capacity as an officer of the Applicant, shall be entitled to the benefit of the indemnity provided in paragraph 21 hereof and the Directors’ Charge;
- (d) neither SRA nor the CRO shall, as a result of the performance of their respective obligations and Duties under the CRO Engagement Letter in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession (as defined below) of any of the Property within the meaning of any Environmental Legislation (as defined below); provided, however, if SRA or the CRO is nevertheless later found to be in Possession of any Property, then SRA or the CRO, as the case may be, shall be deemed to be a person who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (“**BIA**”) and shall be entitled to the benefits and protections in relation to the Applicant and such Property as provided by section 14.06(2) of the BIA to a “trustee” in relation to an insolvent person and its property;
- (e) SRA and the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct on the part of SRA or the CRO, provided further that in no event shall the liability of the CRO exceed the quantum of fees paid to SRA and the CRO;
- (f) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of SRA and the

CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicant, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave; and

- (g) the obligations of the Applicant to SRA and the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicant.

APPOINTMENT OF MONITOR

25. THIS COURT ORDERS that MNP Ltd. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on the terms agreed to by the Applicant and the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) assist the Applicant with respect to the consideration, development and implementation of any Restructuring initiatives, including with respect to the Sale Process (as defined below);
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable, including the services or employees of its affiliates, respecting the exercise of its powers and performance of its obligations under this Order;
- (j) carry out such duties and responsibilities as set out in this Order, including in respect of the Sale Process; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

27. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

28. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

30. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicant, the financial advisor to the Applicant and the CRO (as defined below) shall be paid their reasonable fees and disbursements, in each case on the terms set forth in their respective

engagement letters and at their standard rates and charges and whether incurred prior to, on or after the date hereof, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicant, the financial advisor for the Applicant and the CRO in accordance with the payment terms agreed between the Applicant and such parties and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicant, the financial advisor to the Applicant and the CRO retainers in the amounts agreed with such parties, to be held by each of them as security for payment of their respective fees and disbursements outstanding from time to time.

32. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicant's counsel, the Applicant's financial advisor and the CRO shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$400,000, as security for their professional fees and disbursements (but excluding the Success Fee) incurred both before and after the granting of this Order at the standard rates and charges of the Monitor, such counsel and advisors and the CRO, subject to the terms set forth in their respective engagement letters, and the CRO shall be entitled to the benefit of and is hereby granted a charge (the "**Success Fee Charge**") on the Property, as security for the Success Fee. The Administration Charge and the Success Fee Charge shall have the priority set out in paragraphs 44 and 46 hereof.

SALE PROCESS

34. THIS COURT ORDERS that the Sale Process (as defined in the Initial Affidavit and appended as Exhibit "L" to the Initial Affidavit) be and is hereby approved.

35. THIS COURT ORDERS that the Applicant and its advisors (including, without limitation, the CRO), and the Monitor and its advisors, are authorized and directed to commence the Sale Process in accordance with its terms. The Applicant, the CRO and the Monitor are hereby authorized and directed to perform their respective obligations in connection with the

Sale Process and to do all things reasonably necessary in relation to such obligations, subject to the terms of the Sale Process.

36. THIS COURT ORDERS that the Applicant, the CRO and the Monitor and their respective affiliates, partners, directors, employees, counsel, advisors, agents, shareholders and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of such party in performing its obligations under the Sale Process, as determined by this Court.

37. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicant, the CRO and the Monitor are hereby authorized and permitted to disclose and transfer to each potential bidder (the “**Bidders**”) and to their representatives (the “**Representatives**”), if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Applicant’s records pertaining to the Applicant’s past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale or other strategic transaction as contemplated by the Sale Process (a “**Sale**”). Each Bidder or Representative to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Sale, and if it does not complete a Sale, shall return all such information to the Applicant, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Applicant or the Monitor. Any Bidder under a Successful Bid (as defined in the Sale Process) (a “**Successful Bidder**”) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in any Successful Bid, shall be entitled to use the personal information provided to it that is related to the Property acquired pursuant to the Sale Process in a manner that is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Applicant or the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Applicant or the Monitor.

DIP FINANCING

38. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Diesel Equipment Limited (the “**DIP Lender**”) in order to finance the Applicant’s working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$1 million (plus accrued and unpaid interest) unless permitted by further Order of this Court.

39. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the DIP Financing Term Sheet between the Applicant and the DIP Lender dated as of October 21, 2019 (the “**DIP Credit Agreement**”), filed.

40. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the DIP Credit Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Credit Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

41. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which charge shall not exceed the aggregate amount owed to the DIP Lender under the DIP Credit Agreement and the other Definitive Documents. The DIP Lender’s Charge shall have the priority set out in paragraphs 44 and 46 hereof.

42. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;

- (b) upon the occurrence of an event of default under the DIP Credit Agreement, the other related Definitive Documents or the DIP Lender's Charge, the DIP Lender, may, subject to the provisions of the DIP Credit Agreement with respect to the giving of notice or otherwise, and in accordance with the DIP Lender's Charge, as applicable, cease making advances to the Applicant, make demand, accelerate payment and give other notices; provided that, the DIP Lender must apply to this Court on five (5) business days' prior written notice (which may include the service of materials in connection with such an application to this Court) to the Applicant and the Monitor, to enforce against or exercise any other rights and remedies with respect to the Applicant or any of the Property (including to set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Credit Agreement, the other related Definitive Documents or the DIP Lender's Charge, to appoint a receiver, receiver and manager or interim receiver, or to seek a bankruptcy order against the Applicant and to appoint a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

43. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the BIA with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

44. THIS COURT ORDERS that the priorities of the Administration Charge, the Directors' Charge, the DIP Lender's Charge and the Success Fee Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$400,000);

Second – Directors’ Charge (to the maximum amount of \$1,200,000);

Third – DIP Lender’s Charge; and

Fourth – Success Fee Charge (to the maximum amount of \$100,000).

45. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the Directors’ Charge, the DIP Lender’s Charge and the Success Fee Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

46. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, except for any secured creditor of the Applicant who did not receive notice of the application for this Order.

47. THIS COURT ORDERS that the Applicant shall be entitled, on a subsequent motion on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges have not obtained priority.

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the applicable Charges, or further Order of this Court.

49. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of

creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Credit Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Credit Agreement or the Definitive Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant’s interest in such real property leases.

SERVICE AND NOTICE

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it

publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

52. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and in, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/Toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.mnpdebt.ca/DELEquipment (the “**Website**”).

53. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceedings (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Website, provided that the Monitor shall have no liability in respect of the accuracy of, or the timeliness or making any changes to, the Service List.

54. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile or other electronic transmission to the Applicant’s creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution shall be deemed to be received; (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

55. THIS COURT ORDERS that the Applicant and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably

required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

56. THIS COURT ORDERS that, except with respect to any motion to be heard on the Comeback Date (as defined below), and subject to further Order of this Court in respect of urgent motions, any interested party wishing to object to the relief sought in a motion brought by the Applicant or Monitor in these proceedings shall, subject to further Order of this Court, provide the Service List with responding motion materials or a written notice (including by e-mail) stating its objection to the motion and the grounds for such objection by no later than 5:00 p.m. (Toronto time) on the date that is four (4) days prior to the date such motion is returnable (the "**Objection Deadline**"). The Monitor shall have the ability to extend the Objection Deadline after consulting with the Applicant.

57. THIS COURT ORDERS that following the expiry of the Objection Deadline, counsel to the Monitor or counsel to the Applicant shall inform the Court including by way of a 9:30 a.m. appointment, of the absence or the status of any objections to the motion and the judge having carriage of the motion may determine whether the motion should proceed at a 9:30 a.m. chambers appointment or otherwise on consent, or whether a hearing will be held in the ordinary course on the date specified in the notice of motion.

GENERAL

58. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order, or for advice and directions concerning the discharge of their respective powers and duties under this Order or the interpretation of application of this Order.

59. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

60. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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

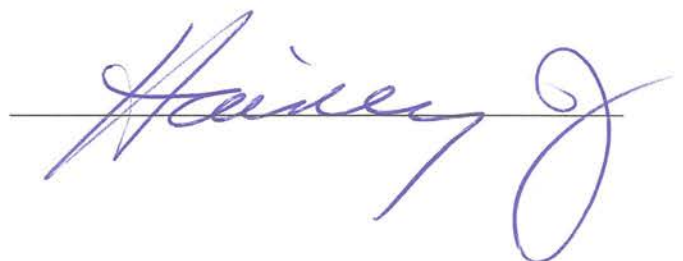
62. THIS COURT ORDERS that any interested party (other than the Applicant and the Monitor) that wishes to amend or vary this Order shall bring a motion before this Court on a date to be fixed by this Court upon the granting of this Order (the "**Comeback Date**"), and any such interested party shall give not less than seven (7) days notice to the Service List and any other party or parties likely to be affected by the relief sought by such party in advance of the Comeback Date; provided, however that the Chargees shall be entitled to rely on this Order as issued and entered and on the Charges with respect to any fees and disbursement incurred until the date this Order may be amended, varied or stayed.

63. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

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

OCT 22 2019

PER / PAR: JP

A handwritten signature in blue ink, appearing to read "Hainey", is written over a horizontal line.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DEL
EQUIPMENT INC.**

Court File No: CJ-14-629552
-0000

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

INITIAL ORDER

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Lawyers for Del Equipment Inc.

Exhibit "B"

DEL Equipment Inc.
Projected Statement of Third Extended Cash Flow Forecast
For the period ending Nov 13, 2020
(Unaudited, in \$'000s CAD)

	Week 46	Week 47	Week 48	Week 49	Week 50	Week 51	Week 52	Week 53	Week 54	Week 55	Week 56	Total	
Week Beginning August 31 2020	Notes	31-Aug-20	7-Sep-20	14-Sep-20	21-Sep-20	28-Sep-20	5-Oct-20	12-Oct-20	19-Oct-20	26-Oct-20	2-Nov-20	9-Nov-20	11 Weeks
Receipts from sale of demo vehicles	2	-	-	-	113	-	-	-	-	-	-	-	113
Receipts from Gin-Cor	3	-	885	-	-	-	-	-	-	-	-	-	885
Total receipts		-	885	-	113	-	-	-	-	-	-	-	998
Disbursements													
Merchandise Vendors		-	-	-	-	-	-	-	-	-	-	-	-
Non-Merchandise Vendors	4	39	65	5	5	6	6	6	6	6	3	3	148
Payroll		-	-	-	-	-	-	-	-	-	-	-	-
Tax	5	-	-	-	4	-	-	-	10	-	-	-	14
Total Disbursements		39	65	5	9	6	6	6	16	3	3	3	162
Operating Net Cash Flow		(39)	820	(5)	104	(6)	(6)	(6)	(16)	(3)	(3)	(3)	837
Administrative Fees	6	20	19	19	19	19	19	19	19	13	13	13	195
Net Cash Flow		(59)	801	(24)	85	(25)	(25)	(25)	(34)	(16)	(16)	(16)	642
Opening cash balance		3,688	3,629	4,431	4,407	4,468	4,444	4,419	4,395	4,361	4,345	4,330	3,688
Net Cash Flow		(59)	801	(24)	85	(25)	(25)	(25)	(34)	(16)	(16)	(16)	642
Closing cash balance		3,629	4,431	4,407	4,383	4,419	4,419	4,395	4,361	4,345	4,330	4,330	4,330

DEL Equipment Inc.
Projected Statement of Third Extended Cash Flow Forecast
For the period ending November 13, 2020
(Unaudited, in \$'000s CAD)

Purpose and General Assumptions

1. The purpose of the projection is to present a cash forecast of DEL Equipment Inc. for the period August 31, 2020 to November 13, 2020 (the "Monitored Period") in respect of their proceedings under the *Companies' Creditors Arrangement Act*. In preparing this cash flow forecast (the "Third Extended Cash Flow Forecast"), DEL has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, actual results achieved during the Third Extended Cash Flow Forecast Period will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized. The Third Extended Cash Flow Forecast is presented in thousands of Canadian dollars.

Most Probable Assumptions

2. Receipts are forecast based on the Company's proposed sale of its right, title and interest in the Equipment installed on Unsold Demonstration Vehicles
3. Receipts from Gin-Cor represents return of funds, together with interest, from Gin-Cor arising from the Court of Appeal decision, dated September 8, 2020 (the "Payment Dispute Decision") DEL is uncertain of the timing and extent of any cost award from the Payment Dispute Decision, and accordingly, has not projected a cost recovery during the period of the Projection.
4. Non-Merchandise vendors include payments for IT, Accounts and for certain other miscellaneous expenses. It also includes payment for outstanding rent and insurance
5. Tax payment includes HST payable on administrative fees. CRA has been setting off any post-CCAA HST refunds against the Company's Pre-CCAA HST liability. The Company is investigating the recovery of the post-CCAA HST refunds. The refunds already withheld by CRA and any subsequent refunds are assumed not to be received during the Monitored Period.
6. Disbursements include forecast payments to DEL's legal counsel, the Monitor and its legal counsel.

Exhibit "C"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF DEL EQUIPMENT INC.
(THE "APPLICANT")
MANAGEMENT'S REPORT ON CASH FLOW STATEMENT
(paragraph 10(2)(b) of the CCAA)**

Del Equipment Inc. have developed the assumptions and prepared the attached Projected Statement of Cash Flow as of the 9th day of September 2020 for the period August 31, 2020 to November 13, 2020 ("**Cash Flow**"). All such assumptions are disclosed in the Notes to Projected Statement of Cash Flow.

The hypothetical assumptions are reasonable and consistent with the purpose of the Cash Flow as described in Note 1 to the Cash Flow, and the probable assumptions are suitably supported and consistent with the plans of the Applicant and provide a reasonable basis for the Cash Flow. Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented and the variations may be material.

The Cash Flow has been prepared solely for the purpose outlined in Note 1 using a set of hypothetical and probable assumptions set out therein. Consequently, readers are cautioned that the Cash Flow may not be appropriate for other purposes.

Dated at Toronto, Ontario this 9th day of September 2020.



Doug Lucky
Chief Restructuring Officer

Exhibit "D"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF DEL EQUIPMENT INC.
(THE "APPLICANT")**

MONITOR'S REPORT ON CASH FLOW STATEMENT
(paragraph 23(1)(b) of the CCAA)

September 9, 2020

The attached Projected Statement of Cash Flow of DEL Equipment Inc. as at the 9th day of September 2020, consisting of a weekly projected cash flow statement for the period August 31, 2020 to November 13, 2020 (“**Cash Flow**”) has been prepared by the management of the Applicant for the purpose described in Note 1, using the probable and hypothetical assumptions set out in the Notes to the Projected Statement of Cash Flow.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied by the management, employees and the representatives of the Applicant. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow. We have also reviewed the support provided by management of the Applicant for the probable assumptions, and the preparation and presentation of the Cash Flow.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow.
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on Assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow will be achieved. We

express no opinion or other forms of assurance with respect to the accuracy of any financial information presented in this report or relied upon in preparing this report.

The Cash Flow has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, this 9th day of September 2020.

MNP LTD.

IN ITS CAPACITY AS MONITOR OF DEL EQUIPMENT INC.

Per:



Sheldon Title, CPA, CA, CIRP, LIT

Senior Vice-President

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DEL EQUIPMENT INC.**

Court File No.: CV-19-629552-00CL

Applicant

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

Proceeding commenced at Toronto

**FIFTH REPORT TO THE COURT
SUBMITTED BY MNP LTD. IN ITS
CAPACITY AS COURT APPOINTED
MONITOR OF DEL EQUIPMENT INC.**

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Toronto, ON M5K 1E7

Jennifer Stam LSO#: 46735J

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Fax: +1 416.216.3930

Lawyers for the Monitor, MNP Ltd.