



**Court File No. BK-24-03064916-0031**

**TDB Restructuring Limited**  
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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF NATIONAL TRAFFIC SAFETY MANAGEMENT INC.**

**IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**SECOND REPORT THE PROPOSAL TRUSTEE**

**May 2, 2024**

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## 1.0 INTRODUCTION

1. This report is being submitted by TDB Restructuring Limited in its capacity as proposal trustee (the “**Proposal Trustee**”) of National Traffic Safety Management Inc. (“**NTSM**” or the “**Company**”) in connection with Notice of Intention to Make a Proposal (the “**NOI**”) filed by NTSM on April 5, 2024, pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”).
2. The NOI was filed by the Company to create a stabilized environment for NTSM to continue to operate in the ordinary course, while allowing the Company the opportunity to restructure its financial affairs.
3. The Certificate of Filing, together with Court documents related to the NOI proceeding, has been posted on the Proposal Trustee’s website, which can be found at:

<https://tdbadvisory.ca/insolvency-case/NTSM/>

### 1.1 Purpose of the Second Report to Court

4. The purpose of this report to Court (the “**Second Report**”) is to provide the Court with information in connection with the motion by the Company for the following relief as set out in its Notice of Motion, including:
  - a) an amended debtor-in-possession financing facility in the amount of \$350,000 and a corresponding amended debtor-in-possession charge (the “**Amended DIP Charge**”) to provide working capital for the Company to address its ongoing obligations;
  - b) an administration charge in the amount of \$100,000 (the “**Administration Charge**”) to secure payment of the fees and disbursements of the Proposal Trustee, its counsel and the Company’s counsel (collectively, the “**Professionals**”);
  - c) a directors and officers charge in the amount of \$350,000 (the “**Director’s Charge**”) to secure the indemnification of the Company’s directors and officers against obligations and liabilities that they may incur after the commencement

of these proceedings. The Director's Charge is to be split into two tranches, which is discussed in more detail below; and

- d) a 45-day extension of deadline for the Company to file a proposal, from May 5, 2024, to June 19, 2024 (the "**Stay Extension**").

## **1.2 Terms of Reference**

- 5. In preparing this Second Report and making the comments herein, the Proposal Trustee has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in the Second Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Proposal Trustee has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Proposal Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance in respect of the Information.
- 6. Unless otherwise stated, all dollar amounts contained in the Second Report are expressed in Canadian dollars.

## **2.0 BACKGROUND**

- 7. The details of NTSM's background the events leading up to the filing of the NOI can be found in the First Affidavit of Michael Spencley sworn April 11, 2024 and in the Proposal Trustee's First Report to Court dated April 11, 2024.
- 8. Additional details of NTSM's background and information following the filing of the NOI can be found in the second affidavit of Michael Spencley sworn on May 1, 2024 (the "**Second Spencley Affidavit**"), which is included in the Company's motion materials.

### 3.0 DIP LOAN AND FINANCING

9. On April 16, 2024, Justice Cavanagh approved a bridge interim financing loan pursuant to a term sheet dated April 10, 2024 (the “**Interim DIP Term Sheet**”) between the Company and a non-arms length party, J9 Investments Inc. (“**J9**” or the “**Interim DIP Lender**”) in order to finance the Company’s working capital requirements and general corporate purposes.
10. As set out in the Second Spencley Affidavit, the Company has continued negotiations with a third-party lender for replacement financing; however, the third-party lender has not yet completed its due diligence process. In the interim, the Company requires additional financing to pay its post-filing obligations.
11. The Company and the Interim DIP Lender have agreed to increase the principal amount of the interim financing provided by the Interim DIP Lender from \$150,000 to \$350,000 (the “**Amended DIP Loan**”), subject to the Court approving a corresponding increase in the charge securing the DIP facility.
12. The Interim DIP Lender has provided a term sheet to the Company which sets out the terms upon which it is prepared to advance further funds (the “**Amended Interim DIP Term Sheet**”). A copy of the Amended Interim DIP Term Sheet is attached as **Appendix “A”** to this report.
13. The material terms of the Amended Interim DIP Term Sheet include:

Key Terms	Description
Borrower	National Traffic Safety Management Inc.
Lender	J9 Investments Inc.
Facility	A super-priority, debtor-in-possession non-revolving demand credit facility up to a maximum principal amount of three hundred and fifty thousand dollars \$350,000 (the “Facility”).
Interest Rate	Interest on the principal amount of the Facility outstanding from time to time shall be calculated at a rate of fifteen percent (15%) per annum, which interest shall be calculated on the daily outstanding balance owing under the Facility, not in advance, and shall accrue and be paid on the Maturity Date.

Facility Fee	A Facility fee equal to 5% of the total amount available under the Facility, less the amount of the Facility Fee paid in respect of the initial term sheet, which shall be fully earned Court approval of this Term Sheet, and secured by the Interim Financing Charge, shall be due and payable on the Maturity Date.
Repayment	The Borrower shall repay all principal, interest, fees and other amounts owing under the Facility on the earlier of (the "Maturity Date"): (i) demand; (ii) the date the Facility is refinanced; (iii) the day on which the stay of proceedings has been terminated; (iv) the date on which the Borrower becomes bankrupt. The Borrower is entitled to repay all or any part of the Facility at any time without notice or penalty.

16. The Proposal Trustee believes that the terms offered by J9 are reasonable in the circumstances, and notes that the terms of the Amended DIP Term Sheet are substantially similar to the terms of the Interim DIP Term Sheet that was approved by this Court on April 16, 2024, except for the maximum amount of the Facility and the Facility Fee.
17. The Company is seeking the Amended DIP Charge to secure the Amended DIP Loan, which is required pursuant to the terms of the Amended Interim DIP Term Sheet. The Amended DIP Charge is intended to rank in priority to all encumbrances, except for the Administration Charge and \$100,000 of the Director's Charge, which are discussed below.
18. The Proposal Trustee is of the view that the Company's request for approval of the Amended DIP Loan and the Amended DIP Charge are reasonable in the circumstances and are required to provide the Company with the necessary financing to maintain ongoing operations while it formulates a restructuring plan and proposal to its creditors. If this financing is not approved, the Company will not have sufficient liquidity to continue operations and will be required to cease operations, resulting in lost jobs for the Company's employees and losses for the Company's creditors and stakeholders.

## **4.0 COURT ORDERED CHARGES**

### **4.1 Administration Charge**

19. The Administration Charge that the Company is seeking is to secure the fees and disbursements of the Professionals, including any unpaid pre-filing fees and disbursements relating to the commencement of these proceedings.
20. The Proposal Trustee has considered the Company's request, and supports the request on the basis that:
  - a) these charges are typical in restructuring proceedings pursuant to the BIA and the Companies' Creditors Arrangement Act, as the charges facilitate an orderly restructuring process;
  - b) the Administration Charge is required to protect the Professionals who have been retained in these proceedings for their fees and disbursements, given NTSM's current financial challenges and insolvency; and
  - c) The Professionals require the protection afforded by the Administration Charge in order to continue in their respective roles throughout the NOI proceedings.

### **4.2 Director's Charge**

21. The Company is seeking an order granting a charge over its property and assets in favour of its directors and officers to secure obligation they may incur as directors and officers of the Company during the NOI Proceedings, except for any liability incurred as a result of gross negligence or willful misconduct. The first tranche of the Director's Charge in the amount of \$100,000, will rank in priority to all other claims and encumbrances, with the exception of the Administration Charge. The second tranche of the Director's Charge in the amount of \$250,000 will rank subordinate to the Administration Charge, the first tranche of the Director's Charge and the Amended DIP Charge but in priority to all other claims and encumbrances.
22. The Company intends to pay all obligations incurred throughout the NOI period. The Director's Charge is being requested to provide assurance to the directors and officers

that they will not incur any personal liability if the Company is unable to pay these post-filing obligations during the NOI proceedings.

23. The Proposal Trustee understands that the Company has an insurance policy that includes directors and officers insurance coverage. The existing policy may not be sufficient to cover the Debtors' director and officer obligations in the NOI proceedings.
24. The Proposal Trustee believes the Director's Charge to be reasonable in the circumstances, as the continued involvement of the directors and officers is critical to these restructuring proceedings and likely of benefit to the creditors and other stakeholders. The continued involvement of the directors will serve to reduce the Professionals' costs and maximize recoveries, for the benefit of all stakeholders.
25. The Company is requesting that the Court approve the Administration Charge and the Director's Charge, and the Proposal Trustee is supportive of same.

#### **4.3 Ranking of Court Ordered Charges**

26. For further clarity, the priority of the various charges for which the Company is seeking Court approval is as follows:
  - a) Administration Charge - \$100,000
  - b) Director's Charge (first tranche) - \$100,000
  - c) Amended DIP Charge - \$350,000
  - d) Director's Charge (second tranche) - \$250,000

#### **5.0 EXTENSION OF THE STAY OF PROCEEDINGS**

27. The Company is seeking the Court's approval for the Stay Extension.
28. The Company believes that in order to formulate a plan for the restructuring process and maximize recoveries for all stakeholders, it will require additional time. Furthermore, the Company notes that due to the seasonality of its business, the Company will have much more insight into its ability to offer a viable proposal to its



creditors once the contracts for the summer season have been secured, which will likely occur in the Stay Extension period.


29. The Proposal Trustee has considered the Company's request for the Stay Extension and is supportive of this request for the following reasons:
- a) The Company is acting in good faith and with due diligence;
  - b) The Stay Extension will provide the Company with an appropriate period in which to conduct the restructuring to the benefit of its creditors; and
  - c) The Stay Extension does not appear to materially prejudice any of the Company's creditors.

## **6.0 RECEIVER'S REQUEST OF THE COURT**

30. Based on the foregoing, the Receiver respectfully requests that the Court grant the relief sought by the Company described in paragraph 4 above.

All of which is respectfully submitted to this Court as of this 2<sup>nd</sup> day of May 2024.

**TDB RESTRUCTURING LIMITED**, solely in its capacity  
as Proposal Trustee *re* National Traffic Safety Management  
Inc. and not in its personal or corporate capacity

Per:   
Jeffrey Berger, CPA, CA, CIRP, LIT  
Managing Director

# Appendix "A"

April 30, 2024

National Traffic Safety Management Inc.  
150 Bridgeland Avenue, Suite 206  
Toronto, ON M6A 1Z5

Attention: Michael Spencley

**Re: Term Sheet – J9 Investments Inc. (the “Lender”) Interim Debtor in Possession Facility in favour of National Traffic Safety Management Inc. (the “Borrower”)**

On April 5, 2024, the Borrower filed a notice of intention to make a proposal pursuant to the Bankruptcy and Insolvency Act (Canada) (the “BIA”) naming TDB Restructuring Limited as proposal trustee (the “**Proposal Trustee**”).

In connection with the BIA proceedings (the “**Proposal Proceeding**”) the Borrower required interim financing and on April 16, 2024, the Ontario Superior Court of Justice granted an order approving a debtor in possession term sheet dated April 10, 2024, between the Borrower and the Lender (“**Original Term Sheet**”), wherein the Lender agreed to make a debtor-in-possession loan available to the Borrower in the principal amount of \$150,000 (the “**Original Interim Financing Order**”).

The Borrower and the Lender wish to make amendments and restate the terms of the Original Term Sheet in their entirety in accordance with the terms and conditions set forth herein, including but not limited to, increasing the principal amount to \$350,000 and will be seeking an amended interim financing order (the “**Amended Interim Financing Order**”). Unless otherwise indicated, all amounts are expressed in Canadian currency. All capitalized terms not otherwise defined in the body of this Term Sheet shall have the meanings ascribed thereto in **Schedule “A”**.

**Borrower:** National Traffic Safety Management Inc.

**Lender:** J9 Investments Inc.

**Facility:** A super priority, debtor-in-possession non-revolving demand credit facility up to the maximum principal amount of three hundred fifty thousand dollars \$350,000 (the “**Facility**”), subject to the terms and conditions contained herein.

**Purpose:** The purpose of the Facility is to fund (i) working capital needs in accordance with the cash flow projections approved by the Proposal Trustee and the Lender from time to time (the “**Cash Flow Projections**”); (ii) the Lender’s Fees and Expenses (as defined below), (iii) professional fees and expenses incurred by the Borrower and the Proposal Trustee in connection with the Proposal Proceedings, and (iv) such other costs and expenses of the Borrower as may be agreed to by the Lender, in writing.

**Repayment:** The Borrower shall repay all principal, interest, fees and other amounts owing under the Facility on the earlier of (the "**Maturity Date**"): (i) demand; (ii) the date the Facility is refinanced; (iii) the day on which the stay of proceedings has been terminated; (iv) the date on which the Borrower becomes bankrupt. The Borrower is entitled to repay all or any part of the Facility at any time without notice or penalty.

**Facility Advances:** Each Advance shall be wire transferred to the current operating account of the Borrower (the "**Borrower's Account**"). The Borrower's Account shall be subject to the Interim Financing Charge.

**Interest Rate:** Interest on the principal amount of the Facility outstanding from time to time shall be calculated at a rate of fifteen percent (15%) per annum, which interest shall be calculated on the daily outstanding balance owing under the Facility, not in advance, and shall accrue and be paid on the Maturity Date.

**Facility Fee:** A Facility fee equal to 5% of \$350,000, less the amount of the Facility Fee paid in respect of the Original Term Sheet, which shall be fully earned upon Court approval of this Term Sheet, and secured by the Interim Financing Charge, shall be due and payable on the Maturity Date.

**Security:** All debts, liabilities, and obligations of the Borrower under the Facility shall be secured by the Interim Financing Charge charging all present and future, real and personal, tangible and intangible, properties, assets and undertakings of the Borrower.

The Interim Financing Charge shall rank in priority to any and all security interests, mortgages, trusts, deemed trusts (statutory or otherwise), liens, charges and encumbrances in favour of any person, including the second tranche of a charge for the Borrower's directors and officers to secure obligations that they may incur in those capacities during the Proposal Proceeding in an amount not exceeding two hundred fifty thousand dollars (\$250,000), provided, however, that the Interim Financing Charge shall rank behind in priority to the charges granted in favour of: (i) professionals to secure the fees and disbursements of the Borrower's counsel, counsel for the Proposal Trustee and the Proposal Trustee in an amount not exceeding one hundred thousand dollars (\$100,000) (the "**Administration Charge**"); and (ii) the first tranche of a charge for the Borrower's directors and officers to secure obligations that they may incur in those capacities during the Proposal Proceeding in an amount not exceeding one hundred thousand dollars (\$100,000) (the "**D&O Charge**").





**Conditions  
Precedent to the  
Facility:**

The availability of the Facility is subject to and conditional upon the following:

1. the granting by the Court of the Amended Interim Financing Order in a form satisfactory to the Lender, acting reasonably, including:
  - (a) approving this Term Sheet and the Facility contemplated herein;
  - (b) granting the Lender a charge in and to all present and future, real and personal, tangible and intangible, properties, assets and undertakings of the Borrower (the "**Interim Financing Charge**"), which Interim Financing Charge shall rank in priority to any and all security interests, mortgages, trusts, deemed trusts (statutory or otherwise), liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise, in favour of any Person, except as provided herein;
  - (c) declaring that the granting of the Amended Interim Financing Charge, and the payment of all amounts by the Borrower to the Lender, including any and all fees and interest, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any Applicable Law; and
  - (d) declaring the Amended Interim Financing Order, including the Interim Financing Charge granted thereunder, binding upon a trustee in bankruptcy of the Borrower, the Proposal Trustee, a receiver, interim-receiver, receiver-manager or any other officer of the Court appointed in respect of the Borrower;
2. receipt of a duly executed copy of this Term Sheet by the Execution Deadline.

**Timing of Initial  
Advance:**

Subject to the satisfaction of the Conditions Precedent to the Facility, the Facility shall be made to the Borrower within two (2) Business Days following Court approval of the Amended Interim Financing Order, or such later date as may be agreed to by the Lender and the Borrower.

**Covenants:**

The Borrower covenants and agrees with the Lender, so long as any amounts are outstanding by the Borrower to the Lender hereunder, to:

1. pay all sums of money when due hereunder;



2. not request, obtain or consent to a variation of the Amended Interim Financing Order if, in the opinion of the Lender, such variation may be prejudicial to the Lender, without the prior written consent of the Lender; such consent not to be unreasonably withheld or delayed;
3. use the proceeds of the Facility solely for the purposes provided for herein;
4. keep and maintain books of account and other accounting records in accordance with generally accepted accounting principles;
5. upon reasonable notice, permit the Lender or its representatives, at any time and from time to time with such frequency as the Lender, in its sole discretion, may require, to visit and inspect the Borrower's premises, properties and assets and to examine and obtain copies of the Borrower's records or other information and discuss the Borrower's affairs with the auditors, counsel and other professional advisors of the Borrower all at the reasonable expense of the Borrower;
6. to pay or make provision for payment of all Priority Claims due and payable from and after the commencement of the Proposal Proceedings, as and when such Priority Claims are due; and
7. carry on the business of the Borrower in the normal course, consistent with past practice and orders of the Court made in the Proposal Proceedings.

If the terms and conditions of this Term Sheet are acceptable to you, please sign in the space indicated below and return the signed copy of this Term Sheet to us. Acceptance may also be effected by scanned transmission and in counterpart.

We thank you for allowing us the opportunity to provide you with this Term Sheet.

Yours truly,

**J9 INVESTMENTS INC.**

Per: 

Name: Janine Grossman

Title:

*I have authority to bind the corporation.*

**ACCEPTANCE**

The undersigned hereby accepts this Term Sheet this \_\_\_\_\_<sup>th</sup> day of April.

**NATIONAL TRAFFIC SAFETY MANAGEMENT INC.**

Per: Michael Spencley  
Name: MICHAEL SPENCLEY  
Title: PRESIDENT & C.E.O.

*I have authority to bind the corporation.*

## SCHEDULE "A"

In addition to terms defined elsewhere in this Term Sheet, the following terms shall have the following meanings:

- (a) **"Applicable Laws"** means, with respect to any person, property, transaction or event, all present or future statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction, in each case, having the force of law in any applicable jurisdiction.
- (b) **"Business Day"** means a day on which chartered banks are open for over-the-counter business in Toronto and excludes Saturday, Sunday and any other day which is a statutory holiday in Toronto.
- (c) **"Priority Claims"** means the aggregate of any amounts accrued or payable by any Borrower which under any law may rank prior to or *pari passu* with the Interim Financing Charge or otherwise in priority to any claim by the Lender for payment or repayment of any amounts owing under this Term Sheet, including: (i) wages, salaries, commissions or other remuneration; (ii) vacation pay; (iii) pension plan contributions; (iv) amounts required to be withheld from payments to employees or other persons for federal and provincial income taxes, employee Canadian Pension Plan contributions and employee Employment Insurance premiums, additional amounts payable on account of employer Canada Pension Plan contributions and employer Employment Insurance premiums; (v) harmonized sales tax; (vi) provincial sales or other consumption taxes; (vii) Workers' Compensation Board and Workplace Safety and Insurance Board premiums or similar premiums; (viii) real property taxes; (ix) rent and other amounts payable in respect of the use of real property; (x) amounts payable for repair, storage, transportation or construction or other services which may give rise to a possessory or registerable lien; and (xi) claims which suppliers could assert pursuant to Section 81.1 or Section 81.2 of the BIA; and (xii) WEPPA Claims.
- (d) **"WEPPA Claims"** means any claims made against the Borrower pursuant to the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s.1, as the same may be amended, restated or replaced from time to time.

Words importing the singular include the plural thereof and vice versa and words importing gender include the masculine, feminine and neuter genders.





**SCHEDULE "B"**

1. N/A.

A handwritten signature in blue ink, consisting of a stylized, cursive 'S' shape with a vertical line on the left side.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF NATIONAL TRAFFIC SAFETY  
MANAGEMENT INC.,  
IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

Court File No. BK-24-03064916-0031

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

Proceedings commenced at TORONTO

**SECOND REPORT OF THE  
PROPOSAL TRUSTEE**

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**Lawyers for National Traffic Safety  
Management Inc.**