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Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief granted from the identical consideration requirement and prospectus-level disclosure requirement in connection with a take over bid where the controlling shareholder has agreed to take a promissory note in lieu of cash under the bid – relief from the prohibition on collateral benefits in connection with an agreement to seek to have the controlling shareholder released from a lease guarantee

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 106, 107(1), 107(2) and 114(2)
Form 62-902F, Item 15(1)

**IN THE MATTER OF THE SECURITIES LEGISLATION OF QUÉBEC,
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR**

AND

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS**

AND

IN THE MATTER OF 4173422 CANADA INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Makers") in each of Québec, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador (collectively, the "Jurisdictions") has received an application from 4173422 Canada Inc. (the "Applicant") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the provisions (a) prohibiting the offeror from making any agreement that would have the effect of creating disparity among the holders (the "Prohibition on Collateral Benefits"), (b) requiring the offeror to offer the same conditions to all holders of securities that are the subject of a take-over bid (the "Identical Consideration Requirement"), (c) requiring the prior funding of the offer (the "Funding Requirement"), and (d) requiring that the Take-Over Bid Circular includes information prescribed by the form of prospectus appropriate for the offeror whose securities are being offered in exchange as partial payment for the securities of the offeree (the "Prospectus-level Disclosure Requirement"), will not apply in connection with the offer by way of partial take over bid for 71% of all of the outstanding multiple and subordinate voting shares

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in the share capital of Mindready Solutions Inc. ("Mindready") contemplated by the Applicant (the "Offer").

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), L'Agence nationale d'encadrement du secteur financier is the principal regulator in this application;

AND WHEREAS unless otherwise defined herein, the terms have the meaning set out in National Instrument 14-101 Definitions or in Québec's Notice 14-101;

AND WHEREAS the Applicant has represented to the Decision Makers that:

1. Mindready was incorporated on September 16, 1999 under the *Canada Business Corporations Act*.
2. Before the spin-off which took place in 2000, the activities of Mindready were integrated to those of Nurun Inc. ("Nurun").
3. Mindready is a reporting issuer in all Canadian provinces and it is not on the list of defaulting issuers.
4. The subordinate voting shares of Mindready are listed on the TSX Exchange under the symbol MNY.
5. As of March 8 2004, there were issued and outstanding in the capital of Mindready 10,999,409 subordinate voting shares and 1,000,000 multiple voting shares (the "Shares").
6. Nurun is the majority shareholder of Mindready wherein it holds 1,000,000 multiple voting shares and 7,000,000 subordinate voting shares. Nortel Networks Limited ("Nortel") holds 1,000,000 subordinate voting shares in Mindready.
7. Mindready completed an initial public offering on December 21, 2000. At the closing of the offering, Nurun entered into a trust agreement with Montreal Trust Company (now Computershare) providing for customary protection of holders of subordinate voting shares in the context of offers made for multiple voting shares (the "Trust Agreement").
8. Nurun and Nortel are parties to a shareholders agreement whereby each party has, inter alia, a right of first refusal in respect of transfers of shares of the other.

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9. Nortel has indicated to the Applicant that it intends to tender its Shares under the Offer.
10. The Applicant was incorporated on June 20, 2003 under the *Canada Business Corporations Act*.
11. The Applicant is not a reporting issuer in any jurisdiction in Canada and its shares are not listed and posted for trading on any stock exchange.
12. The Applicant is dealing at arm's length with Mindready, Nurun and Nortel.
13. As of the date hereof, the Applicant does not hold any shares in the capital of Mindready.
14. The Applicant has already secured \$6,500,000 being the funds sufficient to satisfy the payment in full at the closing of the Offer of the full consideration payable, in cash, to all shareholders other than Nurun as well as the portion then payable in cash to Nurun.
15. The Applicant will enter into a Lock-up Agreement with Nurun provided the confirmations or exemptions requested herein are granted and provided the Board of directors of Nurun has received from Mindready an opinion that the Offer is fair to the Mindready shareholders.
16. The Lock-up Agreement will provide the following:
 - (a) The Applicant will agree, subject to customary conditions, to make the Offer for 71% of the Shares outstanding for a price of \$1.165 per Share and the taking-up of the Shares will be pro-rated if more than 71% of the Shares outstanding are tendered; the Offer will be subject to a minimum tender condition of 66 ²/₃%;
 - (b) Nurun will agree to tender all of its Shares under the Offer;
 - (c) all outstanding multiple voting Shares shall have been converted into subordinate voting Shares no later than at closing of the Offer and tendered under the Offer by Nurun;
 - (d) all Shares tendered by shareholders other than Nurun will be paid cash at the closing of the Offer;

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- (e) the Shares tendered by Nurun will be paid cash up to an amount corresponding to the difference between \$6,500,000 and the aggregate sums paid to all shareholders other than Nurun;
 - (f) the balance of the purchase price to be paid to Nurun for its Shares will be payable on or before the first anniversary of the closing of the Offer and secured by a second ranking hypothec on the Shares deposited by Nurun (the "Hypothec") and said balance will bear interest, calculated daily and payable at the same time as the principal amount, at the overnight rate of the Bank of Canada, in effect from time to time, plus 1.5% (the "Deferred Payment Arrangements");
 - (g) Nurun will grant an option to the Applicant allowing the latter to purchase, at its sole discretion and at any time within the 13 months following the closing of the Offer, all the Shares held by Nurun and not acquired pursuant to the Offer, at an exercise price corresponding to the Offer price less any amount paid to the shareholders of Mindready by way of dividend or other distribution of capital (the "Option");
 - (h) The Applicant will use its reasonable commercial efforts to cause Nurun to be released from its obligations under the lease agreement dated December 1, 2000 among Technoparc St-Laurent, Mindready and Nurun pertaining to the premises presently occupied by Mindready and under the guarantee given to Technoparc St-Laurent in connection therewith (the "Lease Obligation" and the "Release Undertaking").
17. The arrangements with Nurun result from the Applicant's position that it is unwilling to disburse more than \$6,500,000 at the time of the closing of the Offer and that it wants to offer a cash compensation payable immediately to all shareholders other than Nurun.
18. By accepting to receive only a portion of the purchase price at the closing of the Offer, Nurun allows the other shareholders to receive the full consideration for their Shares in cash immediately upon the closing of the Offer.
19. The granting of the Option by Nurun has also been required by the Applicant as a condition for the making of the Offer. This restriction to Nurun's ability to freely dispose of its unsold Shares, if any, cannot be viewed as an increase in the consideration to be paid to it since the exercise price of the Options will be the same as the purchase price pursuant to the Offer.

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20. The Option will only be exercised if the option price is equal to or less than 115% of the then current trading price of the Shares or pursuant to an offer made to all shareholders of Mindready in accordance with applicable take-over bid requirements.
21. The Release Undertaking is a customary undertaking made by a purchaser in similar circumstances as Nurun will cease to be the majority shareholder of Mindready.
22. Nurun was the only shareholder to commit to the Lease Obligation and, therefore, the other shareholders of Mindready cannot be expected to be granted the Release Undertaking.
23. The other shareholders of Nurun will not in any way be affected by the Release Undertaking.
24. Except as set out herein, the Offer will be made in compliance with the applicable provisions of the Legislation and the Trust Agreement.
25. The Lock-up Agreement, the Hypothec, the Option and the Release Undertaking have been negotiated at arm's length and on terms and conditions that are commercially reasonable.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that:

- (a) the entering into of the Lock-up Agreement, the Option, the Hypothec, the Deferred Payment Arrangements and the Release Undertaking with Nurun is being done for reasons other than to increase the value of the consideration to be paid to Nurun and may be done despite the Prohibition on Collateral Benefits;
- (b) the Offer is exempt from the Identical Consideration Requirement and the Funding Requirement;

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- (c) that the information prescribed by the form of prospectus appropriate for the offeror whose securities are being offered in exchange as partial payment for the securities of the offeree be exempt from the Prospectus-level Disclosure Requirement.

DATED this 16th day of April, 2004.

Daniel Laurion

Le Surintendant de l'encadrement des marchés de valeurs