

**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 **INSCAPE CORPORATION, INSCAPE
(NEW YORK) INC., AND INSCAPE INC.** (the "Applicants")

**MOTION RECORD OF THE APPLICANTS
(Returnable November 28, 2023)**

November 17, 2023

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TO: THE SERVICE LIST

**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
(the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF INSCAPE CORPORATION, INSCAPE
(NEW YORK) INC., AND INSCAPE INC. (the "**Applicants**")

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(as of November 17, 2023)

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Estate/Court File No. CV-23-00692784-00CL

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
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INDEX

TAB	DOCUMENT
1.	Notice of Motion, returnable November 28, 2023
2.	Affidavit of Eric Ehgoetz sworn November 17, 2023
Exhibits to the Affidavit of Eric Ehgoetz sworn November 17, 2023	
Exhibit A	Affidavit of Eric Ehgoetz sworn January 11, 2023 (without exhibits)
Exhibit B	Amended and Restated Initial Order of Justice Conway dated January 20, 2023
Exhibit C	Affidavit of Eric Ehgoetz sworn May 5, 2023 (without exhibits)
Exhibit D	Stay Agreement for Eric Ehgoetz and Jon Szczur
3.	Draft Order (CCAA Termination)

TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

B E T W E E N :

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
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.
(collectively, the “**Applicants**”)

Applicants

NOTICE OF MOTION
(Returnable November 28, 2023)

Inscape Corporation (“**Inscape**”), Inscape (New York) Inc. (“**Inscape New York**”) and Inscape Inc. (“**Inscape Delaware**”, and collectively with Inscape and Inscape New York, the “**Inscape Group**” or the “**Applicants**”) will bring a motion before the Court on Tuesday, November 28, 2023, at 10:00 a.m., or as soon after that time as the motion can be heard, via Zoom videoconference,

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

- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

at the following location

Zoom Link to be uploaded on Caselines.

THE MOTION IS FOR:

1. An Order, among other things,
 - (a) if necessary, abridging the time for and validating service of this notice of motion and the motion record and dispensing with service on any person other than those served;
 - (b) extending the stay of proceedings in favour of the Applicants up to and including the earlier of (i) December 15, 2023, and (ii) the filing of the Discharge Certificate (as defined below);
 - (c) approving the fourth report (the “**Fourth Report**”) of Alvarez & Marsal Canada Inc. dated April 15, 2023 (“**A&M**”, in such capacity, the “**Monitor**”), the fifth report of the Monitor dated June 6, 2023 (the “**Fifth Report**”), the sixth report of the Monitor dated July 11, 2023 (the “**Sixth Report**”), the seventh report of the Monitor dated October 24, 2023 (the “**Seventh Report**”) and the eighth report of the Monitor, to be filed (the “**Eighth Report**”), and the activities and conduct of the Monitor described therein;
 - (d) approving the fees and disbursements of the Monitor, its Canadian counsel, Aird & Berlis LLP (“**A&B**”), and its U.S. counsel, Faegre Drinker Biddle & Reath LLP (“**Faegre**”), including their respective fee accruals, as set out in the Eighth Report and the fee affidavits attached thereto;
 - (e) terminating these CCAA proceedings and releasing the Court-ordered charges granted, in each case effective as of the filing of a discharge certificate confirming

that the Monitor has completed all of the steps necessary to complete the administration of the CCAA proceedings (the “**Discharge Certificate**”);

- (f) discharging and releasing Alvarez & Marsal Canada Inc., in its capacity as Monitor in the CCAA proceeding, effective as of the filing of the Discharge Certificate, and granting certain releases in favour of the Monitor and its counsel;
- (g) granting releases (“**Releases**”) in favour of the director and officers of the Applicants (being Eric Ehgoetz and Jon Sczcur), its advisors, the Monitor and the Monitor’s counsel (the “**Released Parties**”); and
- (h) such further and other relief as counsel may advise and as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

2. The Inscape Group was in the business of manufacturing and selling office furniture equipment on contract to customers across North America and Europe.

3. The Inscape Group’s business operated at a net loss and experienced declining financial performance in each of the five years preceding this insolvency filing. The financial distress was exacerbated by the Covid-19 pandemic. Among other challenges, the Applicants experienced a dramatic decline in the size and sales mix of incoming orders, and much lower than expected order volumes. Shortages of production materials, supply chain issues, and increases in the costs of raw materials all combined to destroy profit margins.

4. As a result of its insolvency, the Inscope Group determined that the best path forward to maximize value for its stakeholders was through a court-supervised process under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended ("CCAA"), including a liquidation of its assets and an orderly wind down of the business.

Initial Order

5. On January 12, 2023 ("**Filing Date**"), the Applicants applied for relief pursuant to the CCAA and this Court granted the Initial Order. Pursuant to the Initial Order, among other things, the Court (all capitalized terms not defined herein are as defined in the Initial Order):

- (a) granted an initial stay of proceedings in favour of the Applicants and their directors and officers;
- (b) appointed A&M as the Monitor of the Applicants;
- (c) granted the following charges against the Property, in the following priority rankings:
 - (i) first, an administration charge in the amount of \$250,000 in favour of counsel for the Applicants, the Monitor and its counsel (the "**Administration Charge**"); and
 - (ii) second, a directors' and officers' charge in the amount of \$750,000 (the "**Directors' Charge**");
- (d) authorized the Applicants to incur no further expenses in relation to the Securities Filings; and

- (e) authorized the Applicants to maintain and continue to utilize their cash management system.

Comeback Hearing

6. On January 20, 2023, Justice Conway granted the Amended and Restated Initial Order, which, among other things:

- (a) extended the stay of proceedings up to and including March 9, 2023;
- (b) approved a Key Employee Retention Plan (the “**KERP**”) and authorized the Applicants to make payments in accordance with the terms of the KERP;
- (c) granted a charge over the Property of the Applicants in favour of the KERP beneficiaries in the aggregate amount of \$350,000;
- (d) declared that, pursuant to section 5(5) of the *Wage Earner Protection Program Act*, Inscape is a “former employer” in accordance with the criteria established by section 3.2 of the Wage Earner Protection Program Regulations;
- (e) authorized Inscape, or, in the alternative, Eric Ehgoetz, to act as the foreign representative in respect of these CCAA proceedings, for the purpose of having these CCAA proceedings recognized in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. § 101-1532; and
- (f) increased the amount of the Administration Charge to \$800,000.

March 8, 2023 Hearing – Stay Extension

7. On March 8, 2023, Justice Conway granted an order that, among other things, extended the stay of proceedings in favour of the Applicants to April 21, 2023. The stay of proceedings was subsequently extended a number of times and currently expires on November 28, 2023 (“**Current Stay Period**”).

March 24, 2023 – Sale Approval and Prevolv Motion Scheduling

8. On March 24, 2023, Justice Conway granted the following orders:

(a) an order among other things:

(i) approving an asset purchase agreement dated as of March 10, 2023 and made between the Applicants, as sellers, and Gordon Brothers Canada ULC, as purchaser, and the transactions contemplated therein; and

(a) an order, among other things:

(ii) scheduling a hearing on May 2, 2023 and approving a motion timetable for the summary determination of the set-off claims that Inscape dealer Prevolv Inc. (“**Prevolv**” or the “**Dealer**”) raised to refuse payment of a \$2,147,490 USD receivable on account of furniture products manufactured by Inscape and sold on by the Dealer to certain major end customers in the United States;

(iii) authorizing and directing the Monitor to make certain distributions to HUK 116 Limited up to the amount of its secured indebtedness;

- (iv) approving each of the First Report of the Monitor dated January 18, 2023, the Second Report of the Monitor dated March 2, 2023, and the Third Report of the Monitor dated March 23, 2023, and the conduct and activities of the Monitor described in each report; and
- (v) approving the fees and disbursements of the Monitor and its legal counsel, Aird & Berlis LLP, as set out in each of the fee affidavits appended to the Third Report.

June 9, 2023 – Prevolv Settlement Approval

9. On June 9, 2023, the Court granted an Order (“**Settlement Approval Order**”) approving a settlement agreement between Prevolv and Inscope dated as of May 30, 2023 (the “**Prevolv Settlement**”).

Update on CCAA Proceedings and Wind-Down

Liquidation Efforts

10. The Applicants’ asset sale and collection efforts are substantially complete.

11. In furtherance of the sale and liquidation process and the terms of the Amended and Restated Initial Order, the Applicants entered into and completed agreements for the purchase and sale of machinery, equipment and inventory. The majority of the Applicants’ intellectual property assets were also sold and are in the process of being transitioned to a third party purchaser.

Tax Refunds and Tax Matters

12. Deloitte Canada (“**Deloitte**”), the Applicants’ auditor, successfully pursued a claimed HST refund which was being withheld by Canada Revenue Agency (“**CRA**”) pending the determination of a notice of objection relating to corporate taxes due for the Applicants 2016 and 2017 fiscal years.. The notice of objection was recently resolved and the Applicants received a total of \$832,673 from CRA in August, 2023.

13. The Applicants will continue to prepare and file all necessary tax filings as are required to be filed in conjunction with the wind-down of operation and the termination of these CCAA proceedings.

Leases

14. In consultation with the Monitor the Applicants have negotiated agreements that provide for the termination of certain of their real property leases. The Applicants have entered into agreements with landlords for showrooms in New York and Washington, D.C, as well as in respect of a manufacturing facility in Holland Landing, Ontario.

15. With respect to certain leased premises at 800 W. Fulton Market Street, Chicago, County of Cook, Illinois (“**Chicago Showroom**”), Inscape and Prevolv entered into an exclusive sublease listing agreement with CBRE on April 13, 2023. CBRE continues to market the Chicago Showroom for sublease with a view to finding one or more replacement tenants.

Accounts Receivable

16. The Applicants’ efforts to collect outstanding accounts receivable are substantially complete. Since the Initial Order, approximately \$4.4 million has been collected. Additional

accounts receivables totalling approximately \$100,000 will be collected over the next several weeks.

Transition of Intellectual Property Assets

17. In furtherance of its wind-down and liquidation, Inscape entered into an asset purchase agreement (“**IP Purchase Agreement**”) on May 17, 2023 in respect of the majority of its intellectual property assets relating to its furniture and storage products for both the “Office Specialty” brand and the “Inscape” brand.

18. In accordance with the terms of the IP Purchase Agreement, as amended, Inscape has been working to transition the IP assets to the purchaser, including through the engagement of a team of engineers tasked to ensure access to relevant software. This process is anticipated to be completed by mid-December, 2023.

Update on Prevolv Settlement

19. To date, Prevolv has made the payments required by the terms of the Prevolv Settlement. Certain contingent payments will become payable under the Prevolv Settlement if a sublease is secured in respect of the Chicago Showroom. Subleasing efforts are underway.

Empire Office Trust Claim Settlement

20. The Applicants have reached a settlement of the claims of Empire Office Inc. (“**Empire Office**”) a furniture vendor of the Applicants. Among other things, Empire Office asserted a priority trust claim over certain accounts receivable collected by Inscape in connection with a New-York based project.

21. The Applicants' settlement with Empire Office was entered into in consultation with, and with the support and approval of the Monitor.

Relief Sought

Extension of Stay and Termination of CCAA Proceedings

22. The Applicants have acted, and continue to act in good faith and with due diligence throughout these CCAA proceedings.

23. The stay of proceedings is currently set to expire on November 28, 2023. The requested extension of the stay up to and including the earlier of (i) December 15, 2023, and (ii) the filing of the Discharge Certificate will afford time for the Applicants and the Monitor to complete their ongoing wind-down efforts, including all steps necessary with respect to final accounts receivable collection, amounts due from Prevolv, the IP Purchase Agreement and necessary tax filings.

24. The Monitor supports the proposed extension to the stay of proceedings. As set out in the updated Cash Flow Forecast, appended to the Monitor's Seventh Report, to be filed, the Applicants will have sufficient liquidity to carry out the ongoing wind-down of operations, until the termination of these CCAA proceedings.

Releases

25. The Applicants request this Court's approval of the Releases for certain third parties, including the Monitor and its counsel, along with the Applicants and its current director, officers, and advisors.

26. The Released Parties have made significant contributions to the Applicants' restructuring, and have played an integral role to achieve the best possible outcome for the Applicants' stakeholders.

27. The CCAA proceedings were complicated by a variety of unique challenges that had to be proactively addressed in order to create a stabilized environment conducive to maximizing outcomes for stakeholders. Such complicating factors included:

- (a) the fact that the Inscope Group was heavily reliant on a network of key dealers, and dealer relations had to be carefully managed during the wind-down to mitigate risks of dealers acting adversely and eroding realizations for Inscope's creditors;
- (b) the requirement to cost-efficiently maintain continued manufacturing operations for the purposes of completing product inventory necessary to fulfil customer orders, thereby maximizing the value of work in process and the collectability of accounts receivable;
- (c) the presence of significant manufacturing, warehousing and sales operations and assets in Canada and the United States, giving rise to the need to contemporaneously commence "cross-border insolvency proceedings" to better protect the Company's property and undertaking;
- (d) the business had a substantial number of employees in Canada and the United States, both unionized and non-unionized, many of which were deemed "critical". Critical employees had to be persuaded to stay on with the Company, particularly during the difficult and early stages of the wind-down when the Company had

announced its pending closure but needed to complete important bespoke manufacturing for key customers.

- (e) the business maintained a total of four pension plans for its employees in Canada and the United States. Some of these were Defined Benefit Plans or had Defined Benefit predecessors, or other elements that complicated the termination of such plans; and
- (f) The Inscape Group utilized a relatively complex centralized cash management system administered out of the Canadian head office and involving collections, disbursements, currency hedging and intercompany transfers designed to support employees, suppliers, customers and ongoing operations on both sides of the border.

28. Certain of the director and officers (Eric Ehgoetz, Jon Sczcur, and Dennis Dyke) were asked to commit to staying on to the conclusion of the CCAA on the basis that the our institutional knowledge of the company and our industry experience would be critically important to securing a successful outcome for creditors and stakeholders more broadly.

29. Having agreed to stay on the job, the director and officers provided important direction leading up to and throughout the filing and administration of the CCAA proceedings. In doing so, they worked closely with company advisors in Canada and the United States and were intimately involved in a series of efforts measurably benefiting the Company and its creditors. More specifically, the director and officers:

- (a) directed the highly contested, case-managed collections dispute with Prevolv in pursuit of a \$2,147,490 USD receivable (the “**Inscape Receivable**”);
- (b) directed the negotiation and settlement of the Empire trust claim. Without the support of the director and officers in reaching the Empire Settlement, the dispute, which involved complex issues of NY Lien Law, would have had to have been litigated at additional cost to the estate;
- (c) leveraged their personal and professional relationship with customer accounts to secure the timely collection of upwards of \$4 million in aggregate accounts receivable, amounting to a realization success rate of over 90%;
- (d) coordinated and oversaw the continuation of critical post-filing manufacturing, also in furtherance of the maximum realization of accounts receivable;
- (e) oversaw and directed the payment of vacation pay owing to Inscape employees (in Canada and in the United States) totalling approximately \$495,000 among approximately 190 employees;
- (f) as soon as realizations were sufficient, sought the authority and direction from the Court to make a distribution to HUK 116 Limited up to the amount of its secured indebtedness to minimize the cost of capital for the benefit of the estate. This distribution was approved by the director and officers at some risk to themselves because the company’s assets were then primed by the Directors’ Charge which ranked in priority to the HUK 116 Limited claims;

- (g) negotiating and reaching arrangements with the Applicants' landlords in respect of the Inscape Group's real property leases in Canada and in the United States, including reaching an agreement with the landlord under the head office and manufacturing facility in East Gwillimbury, Ontario (the "**Holland Landing Facility**") that unlocked approximately \$1.4 million net in additional value to the estate;
- (h) completed the required tax filings during the course of the CCAA proceedings, including completing the filings necessary to ensure the receipt of a significant HST refund from CRA of \$832,673, for the benefit of the estate; and
- (i) oversaw and directed the successful transition and wind-down of the Company's Canadian pension plans.

30. The director and officers also played an integral role in identifying, negotiating and facilitating transactions that resulted in the sale of substantially all of Inscape's assets.

31. In recognition of the importance of securing the continued services of the directors and officers during these proceedings, the Company entered into certain stay agreements with them (the "**Stay Agreements**") in January 2023. The Stay Agreements commit to a level of compensation and incentives, which incentives included an undertaking to apply for a court-ordered release in conjunction with a future CCAA discharge motion.

32. The director and officers have deferred portions of their compensation to accommodate the cash flow needs of the Inscape Group throughout these proceedings. While certain payments have

been received, at the anticipated termination of these CCAA proceedings, it is expected that they will be owed, collectively \$80,000 on account of salary, and \$69,000 on account of vacation pay.

33. The Monitor supports the Releases.

34. The purpose of the Releases is to achieve finality for the Released Parties and the conclusion of the CCAA proceeding in the most efficient manner possible in the circumstances.

35. The terms of the Releases being proposed follow the limitations imposed by the CCAA, and would not extend to any claims against directors and officers based on allegations of misrepresentations made by directors to creditors, or of wrongful and oppressive conduct by directors.

Termination of CCAA Proceedings and Priority Charges

36. The Applicants request the discharge of all court-ordered priority charges effective as of the filing of the Discharge Certificate, including (all terms capitalized but not defined below are as defined in the Amended and Restated Initial Order):

- (a) the Administration Charge;
- (b) the Directors' Charge; and
- (c) the KERP Charge.

Approval of Monitor's Fees, Conduct and Discharge

37. The administration of the CCAA proceedings is largely complete and only a few tasks remain to complete the Monitor's duties, as further detailed in the Eighth Report of the Monitor,

to be filed. Upon completion of the remaining activities, the CCAA will be at an end and can be terminated.

38. The Applicants request the approval of the Fourth Report, Fifth Report, Sixth Report, Seventh Report and Eighth Report of the Monitor, and the activities and conduct of the Monitor described therein. The Applicants also request the approval of the fees of the Monitor, and those of its legal counsel, A&B and Faegre, as described in the Eighth Report and the fee affidavits appended thereto.

39. The Applicants also seek the discharge of the Monitor upon filing of the Discharge Certificate.

General

40. The provisions of the CCAA, including section 11 and the statutory, inherent and equitable jurisdiction of this Court.

41. Rules 1.04, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

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

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Affidavit of Eric Ehgoetz sworn November 17, 2023;
- (b) the Eighth Report of the Monitor, to be filed; and

(c) such further and other evidence as counsel may advise and this Court may permit.

November 17, 2023

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TO: THE SERVICE LIST

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.

Court File No.: CV-23-00692784-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST
Proceeding commenced at TORONTO

NOTICE OF MOTION
(Returnable November 28, 2023)

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TAB 2

Court File No. CV-23-00692784-00CL

**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 **INSCAPE CORPORATION, INSCAPE
(NEW YORK) INC., AND INSCAPE INC.** (the "Applicants")

**AFFIDAVIT OF ERIC EHGOETZ
(Sworn November 17, 2023)**

TABLE OF CONTENTS

BACKGROUND	4
Filing for CCAA Protection.....	4
Initial Application	5
Asset Sales and Collection Efforts.....	9
<i>Equipment and Inventory</i>	9
<i>Tax Refunds and Tax Matters</i>	9
<i>Leases</i>	10
<i>Accounts Receivable</i>	11
Transition of Intellectual Property Assets.....	11
Update on Prevolv Settlement	11
Settlement of Empire Office Trust Claim.....	13
RELIEF SOUGHT	14
Extension of the Stay and Termination of CCAA Proceeding	14
Releases.....	14
Termination of CCAA Proceedings and Priority Charges.....	24
Approval of Monitor's Fees, Conduct and Discharge	24
FORM OF ORDERS AND CONCLUSION	25

**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 **INSCAPE CORPORATION, INSCAPE**
(NEW YORK) INC., AND INSCAPE INC. (the “**Applicants**”)

Applicants

**AFFIDAVIT OF ERIC EHGOETZ
(Sworn November 17, 2023)**

I, Eric Ehgoetz, of the City of Mississauga, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the Chief Executive Officer (“**CEO**”) of Inscape Corporation (“**Inscape**”). I am also the CEO of Inscape (New York) Inc. (“**Inscape New York**”) and Inscape Inc. (“**Inscape Delaware**”, and, collectively with Inscape and Inscape New York, the “**Inscape Group**” or the “**Applicants**”).

2. I have acted as the CEO of the Inscape Group since March 2020. Prior to my role as CEO, and from June 2016 to March 2020, I was a member of the Inscape Group’s Board of Directors and Chair of its Audit Committee. Among other professional qualifications, I hold a Chartered Financial Analyst (CFA) charter holder designation, as well as an ICD.D.

3. As a result of my roles with the Inscape Group, I have knowledge of the matters to which I hereinafter depose. Where I depose based on knowledge and information obtained from others, I have stated the source of that information and belief and believe such information to be true.

4. All references to dollar amounts herein are Canadian dollars unless otherwise indicated.

5. I swear this affidavit in support of a motion by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), seeking an Order, substantially in the form of the draft order attached as **Tab "3"** to the Motion Record, among other things:

- (a) if necessary, abridging the time for and validating service of this notice of motion and the motion record and dispensing with service on any person other than those served;
- (b) extending the stay of proceedings in favour of the Applicants up to and including the earlier of (i) December 15, 2023, and (ii) the filing of the Discharge Certificate (as defined below);
- (c) approving the fourth report (the "**Fourth Report**") of Alvarez & Marsal Canada Inc. dated April 15, 2023 ("**A&M**", in such capacity, the "**Monitor**"), the fifth report of the Monitor dated June 6, 2023 (the "**Fifth Report**"), the sixth report of the Monitor dated July 11, 2023 (the "**Sixth Report**"), the seventh report of the Monitor dated October 24, 2023 (the "**Seventh Report**") and the eighth report of the Monitor, to be filed (the "**Eighth Report**"), and the activities and conduct of the Monitor described therein;
- (d) approving the fees and disbursements of the Monitor, its Canadian counsel, Aird & Berlis LLP ("**A&B**"), and its U.S. counsel, Faegre Drinker Biddle & Reath LLP

(“**Faegre**”), including their respective fee accruals, as set out in the Eighth Report and the fee affidavits attached thereto;

- (e) terminating these CCAA proceedings and releasing the Court-ordered charges granted, in each case effective as of the filing of a discharge certificate confirming that the Monitor has completed all of the steps necessary to complete the administration of the CCAA proceedings (the “**Discharge Certificate**”);
- (f) discharging and releasing Alvarez & Marsal Canada Inc., in its capacity as Monitor in the CCAA proceeding, effective as of the filing of the Discharge Certificate, and granting certain releases in favour of the Monitor and its counsel;
- (g) granting releases subject to the limitations under section 5.1(2) of the CCAA (“**Releases**”) in favour of the director and officers of the Applicants, its advisors, the Monitor and the Monitor’s counsel (the “**Released Parties**”); and
- (h) such further and other relief as counsel may advise and as this Honourable Court may deem just.

BACKGROUND

Filing for CCAA Protection

6. My first affidavit in these CCAA proceedings was sworn on January 11, 2023 (“**First Ehgoetz Affidavit**”). All terms capitalized but not defined in this Affidavit are as defined in the First Ehgoetz Affidavit. A copy of the First Ehgoetz Affidavit, without exhibits, is attached hereto as **Exhibit “A”**.

7. The Inscape Group was in the business of manufacturing and selling office furniture equipment on contract to customers across North America and Europe.

8. The Inscape Group's business operated at a net loss and experienced declining financial performance in each of the five years preceding this insolvency filing. The financial distress was exacerbated by the Covid-19 pandemic. Among other challenges, the Applicants experienced a dramatic decline in the size and sales mix of incoming orders, and much lower than expected order volumes. Shortages of production materials, supply chain issues, and increases in the costs of raw materials all combined to destroy profit margins.

9. As a result of its insolvency, the Inscape Group determined that the best path forward to maximize value for its stakeholders was through a court-supervised CCAA process, including an orderly wind-up of the business and a controlled liquidation of assets.

Initial Application

10. On January 12, 2023 ("**Filing Date**"), the Applicants applied for relief pursuant to the CCAA and this Court granted the Initial Order. Pursuant to the Initial Order, among other things, the Court (all capitalized terms not defined herein are as defined in the Initial Order):

- (a) granted an initial stay of proceedings in favour of the Applicants and their directors and officers (the "**Stay Period**");
- (b) appointed A&M as the Monitor of the Applicants;
- (c) granted the following charges against the Property, in the following priority rankings:

- (i) first, an administration charge in the amount of \$250,000 in favour of counsel for the Applicants, the Monitor and its counsel (the “**Administration Charge**”); and
- (ii) second, a directors’ and officers’ charge in the amount of \$750,000;
- (d) authorized the Applicants to incur no further expenses in relation to the Securities Filings; and
- (e) authorized the Applicants to maintain and continue to utilize their cash management system.

Comeback Hearing

11. On January 20, 2023, the Honourable Madam Justice Conway granted the amended and restated Initial Order (the “**Amended and Restated Initial Order**”), which, among other things:

- (a) extended the Stay Period to and including March 9, 2023;
- (b) approved a Key Employee Retention Plan (the “**KERP**”) and authorized the Applicants to make payments in accordance with the terms of the KERP;
- (c) granted a charge over the Property of the Applicants in favour of the KERP beneficiaries in the aggregate amount of \$350,000;
- (d) declared that, pursuant to section 5(5) of the *Wage Earner Protection Program Act*, Inscope is a “former employer” in accordance with the criteria established by section 3.2 of the Wage Earner Protection Program Regulations;

- (e) authorized Inscape, or, in the alternative, Eric Ehgoetz, to act as the foreign representative in respect of these CCAA proceedings, for the purpose of having these CCAA proceedings recognized in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. § 101-1532; and
- (f) increased the amount of the Administration Charge to \$800,000.

12. A copy of the Amended and Restated Initial Order is attached as **Exhibit “B”**.

March 8, 2023 – Stay Extension

13. On March 8, 2023, Justice Conway granted an order that, among other things, extended the Stay Period to April 21, 2023. The Stay Period was subsequently extended a number of times and is set to expire on November 28, 2023.

March 24, 2023 – Sale Approval and Prevolv Scheduling Order

14. On March 24, 2023, Justice Conway granted the following orders:

- (a) an order, among other things, approving an asset purchase agreement dated as of March 10, 2023 between the Applicants, as sellers, and Gordon Brothers Canada ULC, as purchaser, and the transactions contemplated therein; and
- (b) an order, among other things,
 - (i) scheduling a hearing on May 2, 2023 and approving a motion timetable for the summary determination of the set-off claims that Inscape dealer, Prevolv Inc. (“**Prevolv**” or the “**Dealer**”), raised to refuse payment of a \$2,147,490 USD receivable on account of furniture products manufactured

by Inscape and sold on by the Dealer to certain major end customers in the United States;

- (ii) authorizing and directing the Monitor to make certain distributions to HUK 116 Limited up to the amount of its secured indebtedness;
- (iii) approving each of the First Report of the Monitor dated January 18, 2023, the Second Report of the Monitor dated March 2, 2023, and the Third Report of the Monitor dated March 23, 2023, and the conduct and activities of the Monitor described in each report; and
- (i) approving the fees and disbursements of the Monitor and its legal counsel, A&B, as set out in each of the fee affidavits appended to the Third Report.

June 9, 2023 – Prevolv Settlement Approval

15. On June 9, 2023, the Court granted an Order approving a settlement agreement made between Prevolv and Inscape (the “**Prevolv Settlement**”).

UPDATE ON CCAA PROCEEDINGS SINCE JULY 2023

16. In accordance with the restructuring provisions at paragraph 12 of the Amended and Restated Initial Order, the Applicants were authorized to, among other things, permanently or

temporarily cease, downsize or shut down any of their business or operations, terminate the employment of employees, and pursue all avenues for selling the Applicants' business or property.

17. The Applicants have, where appropriate, liaised with creditors, regulatory authorities and other stakeholders, all with a view to keeping them apprised of developments in the CCAA proceedings.

18. The following is a summary of material developments since July, 2023.

Asset Sales and Collection Efforts

19. The Applicants' asset sales and collection efforts are substantially complete. The wind-down has focused on the realization of four categories of assets: equipment and inventory, tax refunds, leases, and accounts receivable.

Equipment and Inventory

20. In furtherance of the sale and liquidation process and the terms of the terms of the Amended and Restated Initial Order, the Applicants entered into and completed several agreements for the sale of machinery, equipment and inventory. The majority of the Applicants' intellectual property assets were also sold, and are in the process of being transitioned to a third-party purchaser.

Tax Refunds and Tax Matters

21. Deloitte Canada ("**Deloitte**"), the Applicants' auditor, successfully pursued a claimed HST refund that was being withheld by Canada Revenue Agency ("**CRA**") pending the determination of a notice of objection relating to corporate taxes due for the Applicants' 2016 and 2017 fiscal

years. The notice of objection was recently resolved, and the Applicants received a total of \$832,673 from CRA in August 2023.

22. The Applicants will continue to prepare and file all necessary tax filings as may required to be filed in conjunction with the cessation of business and the proposed termination of these CCAA proceedings.

Leases

23. In consultation with the Monitor, the Applicants have negotiated agreements that provide for the consensual termination of certain of their real property leases.

24. With respect to the Applicants' leased premises at 414 West 14th Street, New York, New York, Inscape entered into an agreement with the landlord, Ponte Gadea New York LLC, on April 10, 2023, which provided for, among other things, a termination of a furniture showroom lease ("**New York Showroom Termination**"). The New York Showroom Termination was entered into with the approval of the Monitor.

25. With respect to the leased premises at 1090 Vermont Avenue, N.W., Suite 1101, Washington DC, Inscape Delaware entered into an agreement with the landlord, 1090 Vermont Avenue, N.W. Associates Limited Partnership, on April 19, 2023, which provided for, among other things, a termination of a furniture showroom lease ("**Washington Showroom Termination**"). The Washington Showroom Termination was entered into with the approval of the Monitor.

26. With respect to the leased premises located at 800 W. Fulton Market Street, Chicago, County of Cook, Illinois ("**Chicago Showroom**"), Inscape and Prevolv, as co-tenants, entered into

an exclusive sublease listing agreement with CBRE on April 13, 2023. CBRE continues to market the Chicago Showroom for sublease with a view to finding one or more suitable replacement tenants.

Accounts Receivable

27. The Applicants' efforts to collect outstanding accounts receivable are substantially complete. Since the Initial Order, approximately \$4.4 million has been collected. Additional accounts receivables totalling approximately \$100,000 will be collected prior to the termination of these CCAA proceedings.

Transition of Intellectual Property Assets

28. In furtherance of its wind-down and liquidation, Inscape entered into an asset purchase agreement ("**IP Purchase Agreement**") on May 17, 2023 in respect of the majority of its intellectual property assets relating to furniture and storage products for the "Office Specialty" brand and the "Inscape" brand.

29. In accordance with the terms of the IP Purchase Agreement, as amended, Inscape has been working to transition the IP assets to the purchaser, including through the engagement of a team of engineers tasked to ensure access to relevant IP and software. This process is anticipated to be completed by mid-December, 2023.

Update on Prevolv Settlement

30. The Prevolv Settlement includes the following key terms:

- (a) Payments: Prevolv shall pay to Inscape the sum of US\$437,500, as follows:

- (i) US\$300,000 payable immediately upon the execution of the Settlement Agreement; and
 - (ii) US\$137,500 payable by way of six equal monthly installments, starting on July 1, 2023.
- (b) Chicago Lease: If the Chicago Showroom is sub-leased on or before December 1, 2023, Prevolv shall pay to Inscape US\$312,000 by way of six equal monthly installments, starting on January 1, 2023 (“**Contingent Payments**”), subject to such reductions as set out in paragraph 3 of the Settlement Agreement.
- (c) Unsecured Claim (Construction Costs): Prevolv shall file an unsecured claim for US\$1,626,521.53 in respect of its claim for financed and unfinanced construction costs, which claim shall not be disputed by Inscape and shall be allowed by the Monitor in full.
- (d) Unsecured Claim (Chicago Lease Costs): Prevolv shall file an unsecured claim in the amount of US\$2,820,218.88 in respect of its claim for Inscape’s portion of the costs of the Chicago Lease, which claim shall not be disputed by Inscape and shall be allowed by the Monitor in full, *provided that* there is no Sublease in effect on the date when the Monitor commences any Court-supervised claims process in the CCAA proceedings.

31. Prevolv has made the required payments to Inscape in accordance with the terms of the Prevolv Settlement, including the monthly installments for July, August, September, October, and November, 2023.

Settlement of Empire Office Trust Claim

32. On June 16, 2023, the Monitor received correspondence from Empire Office Inc. (“**Empire**”), one of the Applicants’ furniture vendors, asserting a US\$464,277 priority trust claim over certain accounts receivable collected by Inscape in connection with a New-York based project.

33. Empire’s claim was premised on lien and trust rights accorded by SS 70-71 of Chapter 33 of the Consolidated Laws of New York (“**NY Lien Law**”). The crux of the issue raised by the claim was whether or not the supply and installation of workstations constitutes an “improvement” giving rise to a trust claim. Section 2(4) of the NY Lien Law defines “improvement” as including the “demolition, erection, alteration or repair of any structure upon, connected with, or beneath the surface of, any real property and any work done upon such property or materials furnished for its **permanent improvement**” [emphasis added].

34. The Applicants and the Monitor, working with the assistance of U.S. construction law counsel, reviewed the factual circumstances of Empire’s claim, and the relevant case law and authorities, in an effort to assess whether or not Empire had a valid trust claim.

35. On October 13, 2023, the parties entered into a settlement agreement (the “**Empire Settlement**”), which provided, among other terms, that Inscape make a one-time payment of US\$185,014 to Empire, in full and final satisfaction of any of the parties’ claims, and a mutual full and final release thereof. This payment was made on October 18, 2023.

36. The Empire Settlement was entered into in consultation with, and with the approval and support of, the Monitor. It resolves a potentially difficult matter involving New York laws. The

Applicants believe that the Empire Settlement is reasonable and appropriate in the circumstances, as it balances the interests of seeking a value-maximizing resolution for the Applicants' estate and winding-up the Company's affairs as efficiently and economically as possible.

RELIEF SOUGHT

Extension of the Stay and Termination of CCAA Proceeding

37. The Applicants have acted, and continue to act, in good faith and with due diligence throughout these CCAA proceedings.

38. The Stay Period is currently set to expire on November 28, 2023. The requested extension of the Stay Period up to and including the earlier of (i) December 15, 2023, and (ii) the filing of the Discharge Certificate will afford time for the Applicants and the Monitor to complete their ongoing wind-down efforts, including all steps necessary with respect to final accounts receivable collection, amounts due from Prevolv, the IP Purchase Agreement and necessary tax filings.

39. The Monitor supports the proposed extension to the Stay Period. As set out in the updated cash flow forecast at Appendix "B" to the Seventh Report, the Applicants will have sufficient liquidity to carry out the ongoing wind-down of operations, until the termination of these CCAA proceedings.

Releases

40. The Applicants are seeking releases in favour of the Released Parties. The proposed releases are subject to the limitations under section 5.1(2) of the CCAA.

41. The Released Parties include myself and Inscape Chief Financial Officer (“**CFO**”), Jon Szczur (“**Szczur**”).

42. Szczur has acted as the CFO of the Inscape Group since January, 2020. Initially, he was engaged in a contract position replacing the former CFO who resigned in Dec 2019 and since July 2020 as the Inscape Group’s full-time CFO. In his role as CFO, Szczur supervised employees in Inscape’s finance and IT departments, including supervision of accounts payable, contract pricing, financial accounting and reporting, accounts receivable collections and other ancillary functions.

43. I joined the Inscape Group as the CEO in March, 2020. I began this role at the request of the Board and immediately prior to the onset of the COVID-19 pandemic, which, as detailed in the First Ehgoetz Affidavit, led to significant turmoil and financial distress in the office furniture industry.

44. Prior to this insolvency filing, the Inscape Group had been in the business of designing, manufacturing and selling office furniture for approximately 130 years. Employing 218 people, the business operated in Canada and the United States, with design and manufacturing facilities in Holland Landing, Ontario and Jamestown, New York, and showrooms in Chicago, Washington D.C. and New York City.

45. The First Ehgoetz Affidavit provides a comprehensive overview of the Inscape Group’s corporate structure and operations, and financial circumstances and cash flow as at the Filing Date. The affidavit explains how secular business trends, declining financial performance and an inability to access capital conspired to create insurmountable business challenges that necessitated these proceedings. It is in this context that the Inscape Group and its advisors reluctantly reached

the conclusion that it was necessary to pursue a coordinated cross-border liquidation and orderly wind-up of the affairs of the business.

46. The CCAA proceedings were complicated by a variety of unique challenges that had to be proactively addressed in order to create a stabilized environment conducive to maximizing outcomes for stakeholders. Szczur was instrumental in helping me identify and address these matters to the benefit of the Company and its creditors. Such complicating factors included:

- (a) the fact that the Inscape Group was heavily reliant on a network of key dealers, and dealer relations had to be carefully managed during the wind-down to mitigate risks of dealers acting adversely and eroding realizations for Inscape's creditors;
- (b) the requirement to cost-efficiently maintain (and in some cases re-start) manufacturing operations for the purposes of completing product inventory necessary to fulfil customer orders, thereby maximizing the value of work in process and the collectability of accounts receivable. Substantial additional background on how this very material issue was addressed is set out in my affidavit sworn May 5, 2023, particularly the section beginning at paragraph 63 and titled "Post-filing Commitment to Completion of Prevolv Orders". A copy of this affidavit (without exhibits) is attached as Exhibit "C".
- (c) the presence of significant manufacturing, warehousing and sales operations and assets in Canada and the United States, giving rise to the need to contemporaneously commence "cross-border insolvency proceedings" to better protect the Company's property and undertaking;

- (d) the business had a substantial number of employees in Canada and the United States, both unionized and non-unionized, many of which were deemed “critical”. Critical employees had to be persuaded to stay on with the Company, particularly during the difficult and early stages of the wind-down when the Company had announced its pending closure but needed to complete important bespoke manufacturing for key customers.
- (e) the business maintained a total of four pension plans for its employees in Canada and the United States. Some of these were Defined Benefit Plans or had Defined Benefit predecessors, or other elements that complicated the termination of such plans; and
- (f) the Inscope Group utilized a relatively complex centralized cash management system administered out of the Canadian head office and involving collections, disbursements, currency hedging and intercompany transfers designed to support employees, suppliers, customers and ongoing operations on both sides of the border.

47. In the particular circumstance of this case, certain of the director and officers (myself, Jon Sczur, and Dennis Dyke) were asked to commit to staying on to the conclusion of the CCAA on the basis that the our institutional knowledge of the company and our industry experience would be critically important to securing a successful outcome for creditors and stakeholders more broadly.

48. Having agreed to stay on the job, the director and officers provided important direction leading up to and throughout the filing and administration of the CCAA proceedings. In doing so,

we worked closely with company advisors in Canada and the United States and were intimately involved in a series of efforts measurably benefiting the Company and its creditors. More specifically, the director and officers:

- (a) directed the highly contested, case-managed collections dispute with Prevolv in pursuit of a \$2,147,490 USD receivable (the “**Inscape Receivable**”). This dispute concluded with a judgment in the amount of the Inscape Receivable, as well as a cost order against Prevolv in the amount of \$165,692. The awards were subsequently settled, as memorialized in a court-approved settlement agreement dated May 30, 2023;
- (b) directed the negotiation and settlement of the Empire trust claim. Without the support of the director and officers in reaching the Empire Settlement, the dispute, which involved complex issues of NY Lien Law, would have had to have been litigated at additional cost to the estate;
- (c) leveraged their personal and professional relationship with customer accounts to secure the timely collection of upwards of \$4 million in aggregate accounts receivable, amounting to a realization success rate of over 90%;
- (d) coordinated and oversaw the continuation of critical post-filing manufacturing, also in furtherance of the maximum realization of accounts receivable,
- (e) oversaw and directed the payment of vacation pay owing to Inscape employees (in Canada and in the United States) totalling approximately \$495,000 among approximately 190 employees;

- (f) as soon as realizations were sufficient, sought the authority and direction from the Court to make a distribution to HUK 116 Limited up to the amount of its secured indebtedness to minimize the cost of capital for the benefit of the estate. This distribution was approved by the director and officers at some risk to themselves because the company's assets were then primed by the Directors' Charge which ranked in priority to the HUK 116 Limited claims;
- (g) negotiating and reaching arrangements with the Applicants' landlords in respect of the Inscap Group's real property leases in Canada and in the United States, including reaching an agreement with the landlord under the head office and manufacturing facility in East Gwillimbury, Ontario (the "**Holland Landing Facility**") that unlocked approximately \$1.4 million net in additional value to the estate. This involved a "lease monetization" transaction where the Applicants successfully secured a new tenant to assume their entire lease with the landlord at the Holland Landing Facility and that produced an improved rental payment stream for the landlord with the new tenant. As a result, the landlord agreed under an Inducement Assignment Agreement to release to the Applicants their existing rent security deposit and make an additional payment to the Applicants totalling \$3.25 million, which after plant decommissioning costs and other remediation work at the Holland Landing Facility produced a net benefit to the estate of approximately \$1.4 million;
- (h) completed the required tax filings during the course of the CCAA proceedings, including completing the filings necessary to ensure the receipt of a significant HST refund from CRA of \$832,673, for the benefit of the estate; and

- (i) oversaw and directed the successful transition and wind-down of the Company's Canadian pension plans. As at the Filing Date, Inscape acted as administrator of two registered pension plans providing a range of defined contribution and benefit coverage to 323 employees or "members" in Canada ("**Canadian Pension Plans**"). On March 10, 2023, at our request, Financial Services Regulatory Authority of Ontario ("**FSRA**") appointed Mercer (Canada) Limited ("**Mercer**") to act as replacement administrator of the Canadian Pension Plans. Subsequently, at Mercer's request, Inscape resolved to terminate and wind-up the Canadian Pension Plans. Throughout this entire process from the Filing Date to the completion of the wind-up, the director and officers cooperated with FSRA and the replacement administrator to ensure the transfer of member records, and to facilitate the provision of information to affected employees;
- (j) oversaw and directed the Agreement for Appointment of Trustee and Termination of Pension Plan entered into with the Pension Benefit Guaranty Corporation ("**PBGC**") on July 12, 2023, to terminate the Inscape (New York) Inc. Retirement Income Plan ("**US Pension Plan**") and for the PBGC to become trustee of the Plan. In addition, we terminated the Inscape 401(k) Plan ("**US 401(k) Plan**") on June 19, 2023, and have worked with the US 401(k) Plan's recordkeeper, Standard Retirement Services, to begin implementing the termination.

49. The director and officers also played an integral role in identifying, negotiating and facilitating transactions that resulted in the sale of substantially all of Inscape's assets. Such transactions included:

- (a) the sale of manufacturing equipment pursuant to an agreement between Inscape and Heian Canada Inc. dated March 9, 2023;
- (b) the sale of an Amada combination laser turret and twin tower system and ancillary assets pursuant to an agreement between Inscape and Workingman Capital Corp. dated February 24, 2023;
- (c) the sale of substantially all of the machinery and equipment, manufacturing supplies and raw materials pursuant to an agreement dated as of March 10, 2023 between Gordon Brothers Canada ULC and the Inscape Group, which was approved by the court on March 24, 2023;
- (d) the sale of certain intellectual property and inventory pursuant to an agreement between Teich Sales Group Inc. d/b/a/Acme Sales Group, Inc. and Inscape dated as of May 9, 2023;
- (e) the sale of Inscape's intellectual property assets pursuant to an agreement between Inscape and Bay Product Development, LLC dated May 17, 2023;
- (f) The sale of various finished goods inventory and other WIP to various purchasers between January 2023 and June 2023.

50. In recognition of the importance of securing the continued services of the directors and officers during these proceedings, the Company entered into certain stay agreements with them (the “**Stay Agreements**”) in January 2023. The Stay Agreements commit to a level of compensation and incentives, which incentives included an undertaking to apply for a court-ordered release in conjunction with a future CCAA discharge motion. In negotiating and entering

into the Stay Agreements, and in committing to the successful administration of the liquidating CCAA, the directors and officers took comfort in and relied upon the contemplated releases. Attached hereto as **Exhibit “D”** is a copy of each of the Stay Agreements for myself and Szczur.

51. Additionally, it should be noted that from time to time Szczur and I deferred portions of our compensation to accommodate the cash flow needs of the Inscape Group throughout these proceedings. While certain payments have been received, at the anticipated termination of these CCAA proceedings, it is expected that we will be owed, collectively \$80,000 on account of salary, and \$69,000 on account of vacation pay.

Jamestown Promissory Note

52. As previously mentioned, the Inscape Group operated its manufacturing business out of the Holland Landing Facility, as well as a leased 30,000 square foot manufacturing and warehouse facility in Jamestown, New York (“**Jamestown Facility**”). The Jamestown Facility was leased pursuant to an agreement dated December 29, 2020 (the “**Jamestown Lease**”) between Inscape New York and Lynn Development, Inc. (“**Jamestown Landlord**”).

53. Pursuant to the terms of a promissory note dated January 19, 2021 (the “**Jamestown Promissory Note**”), Inscape advanced a loan in the amount of USD \$250,000 to the Jamestown Landlord on account of tenant improvements to be made at the Jamestown Facility, payable over seven years at an interest rate of 7% (with monthly payments in the amount of USD \$3,773.17 (inclusive of interest) commencing on March 10, 2021 and ending March 10, 2028).

54. The last payment was made by the Jamestown Landlord on May 1st, 2023 leaving a total outstanding balance of approximately USD \$182,521.10.

55. Inscape vacated the Jamestown Facility on or about May, 2023. The Jamestown Landlord subsequently secured a replacement tenant for the warehouse portion of the facility (25,000 of the total 30,000 square foot facility).

56. To secure the Jamestown Landlord's obligations under the Jamestown Promissory Note, the Jamestown Landlord executed the following agreements:

- (a) a security agreement dated January 19, 2021 executed by the Jamestown Landlord in favour of Inscape Delaware;
- (b) a personal guarantee executed by Gary R. Lynn, the principal of the Jamestown Landlord, in favour of Inscape Delaware.

57. To date, the Applicants have made substantial and continuing efforts to collect upon the outstanding amounts owing under the Jamestown Promissory Note, including through direct dialogue between the parties, negotiations between counsel, and by threatened legal proceedings and issuance of formal demand for payment.

58. Despite these efforts, the outstanding amount under the Jamestown Promissory Note remains unpaid. In this regard, I have spoken with Jamestown Landlord and understand that he is currently withholding all future payments on the note on the basis of an assertion of set-off relating to the still unlet 5,000 foot portion of the leased facility.

59. The James Promissory Note remains a contingent asset of the estate. I understand that the Monitor presently does not see any economic upside in continuing to devote resources to pursuing the James Promissory Note obligation.

60. As Inscape intends to make an assignment into bankruptcy following the termination of these CCAA Proceedings, all remaining assets will be vested to the trustee in bankruptcy. I understand that creditors of Inscape, including myself, may have an opportunity to acquire or take an assignment of the James Promissory Note claim.

Termination of CCAA Proceedings and Priority Charges

61. The Applicants request the discharge of all court-ordered priority charges effective as of the filing of the Discharge Certificate, including (all terms capitalized but not defined below are as defined in the Amended and Restated Initial Order):

- (a) the Administration Charge;
- (b) the Directors' Charge; and
- (c) the KERP Charge.

Approval of Monitor's Fees, Conduct and Discharge

62. The Applicants request the approval of the Fourth Report, Fifth Report, Sixth Report, Seventh Report and Eighth Report of the Monitor, and the activities and conduct of the Monitor described therein. The Applicants also request the approval of the fees of the Monitor and those of its legal counsel, A&B and Faegre, as described in the Eighth Report and the fee affidavits appended thereto.

63. The Applicants also seek the discharge of the Monitor upon filing of the Discharge Certificate.

64. The administration of the CCAA proceedings is largely complete and only a few tasks remain to complete the Monitor's duties, as further detailed in the Eighth Report. Upon completion of the remaining activities, the CCAA will be at an end and can be terminated.

FORM OF ORDERS AND CONCLUSION

65. I swear this affidavit in support of the Applicant's motion for an Order substantially in the form attached at **Tab "3"** to this Motion Record and for no other or improper purpose.

SWORN BEFORE ME via video-conference with
the deponent in the City of Mississauga, in the
Province of Ontario, and the Commissioner in the
City of Mississauga in the Province of Ontario this
17th day of November, 2023

DocuSigned by:
Eric Ehgoetz
EDF7B1AED28246B...
ERIC EHGOETZ

DocuSigned by:
Monica Faheim
A Commissioner for taking Affidavits
MONICA FAHEIM

This is Exhibit "A" referred to in the Affidavit of Eric Ehgoetz sworn by Eric Ehgoetz of the City of Mississauga, in the Province of Ontario, before me at the City of Mississauga, in the Province of Ontario, on November 17, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Monica Faheim

A927328446B742A...

Commissioner for Taking Affidavits (or as may be)

MONICA FAHEIM

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Estate/Court File No. CV-23-00692784-00CL

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 **INSCAPE CORPORATION, INSCAPE
(NEW YORK) INC., AND INSCAPE INC.** (the "Applicants")

**AFFIDAVIT OF ERIC EHGOETZ
(Sworn January 11, 2023)**

TABLE OF CONTENTS

INTRODUCTION	3
Relief Sought	3
Purpose of CCAA	4
INSCAPE'S CORPORATE STRUCTURE AND OPERATIONS.....	4
Background to Business Operations	4
Corporate Structure	5
Employees and Payroll	6
Inscap Pension Plans	8
Leased Premises: Place of Business and Manufacturing Facilities	9
Cash Management System.....	13
Directors' and Officers Insurance Policies	17
FINANCIAL CIRCUMSTANCES AND CASH FLOW FORECAST	18
Financial Performance	18
Assets and Liabilities	18
Senior Secured Debt	19
PPSA Registrations	20
Crown Obligations and Priority Claimants.....	20
Unsecured Debt: Trade Creditors and Suppliers.....	20
EVENTS LEADING UP TO CCAA FILING.....	21
Inscap's Declining Financial Performance	21
Attempts to Improve Financial Situation.....	23
Hilco Engagement and Acquisition	24
CCAA PROCEEDINGS AND RELIEF SOUGHT	25
Need for CCAA Protection	25

Stay of Proceedings.....	26
Appointment of Monitor	26
ANTICIPATED RELIEF TO BE SOUGHT AT COMEBACK HEARING	28
CONCLUSION.....	29

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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ARRANGEMENT OF **INSCAPE CORPORATION, INSCAPE**
(NEW YORK) INC., AND INSCAPE INC. (the “**Applicants**”)

Applicants

AFFIDAVIT OF ERIC EHGOETZ
(Sworn January 11, 2023)

I, Eric Ehgoetz, of the City of Mississauga, MAKE OATH AND SAY:

1. I am the Chief Executive Officer (“**CEO**”) of Inscape Corporation (“**Inscape**”). I am also the CEO of Inscape (New York) Inc. (“**Inscape New York**”) and Inscape Inc. (“**Inscape Delaware**”, together with Inscape and Inscape New York, the “**Inscape Group**” or the “**Applicants**”).
2. I have acted as the CEO of the Inscape Group since March 2020. Prior to my role as CEO and from June 2016 to March 2020, I was a member of the Inscape Group’ Board of Directors and Chair of its Audit Committee. My professional qualifications include a Chartered Financial Analyst (CFA) charter holder designation, as well as an ICD.D. As a result of my roles with the Inscape Group, I have knowledge of the matters to which I hereinafter depose. Where I depose based on knowledge and belief obtained from others, I have stated the source of that information and belief and believe such information to be true.
3. All references to dollar amounts herein are Canadian dollars unless otherwise indicated.

INTRODUCTION

Relief Sought

4. This affidavit is sworn in support of an application for an order (“**Initial Order**”) substantially in the form of the draft order attached as **Tab “3”** to the within Application Record under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”), among other things:

- (a) abridging the time for and validating services of this notice of application and the application record and dispensing with service on any person other than those served;
- (b) declaring that the Applicants are companies to which the CCAA applies;
- (c) granting a stay of proceedings in favour of the Inscope Group and its directors and officers for an initial period eight (8) days up to and including January 20, 2023;
- (d) appointing Alvarez & Marsal Canada Inc. as the court-appointed monitor of the Inscope Group (in such capacity, the “**Proposed Monitor**”);
- (e) granting an administration charge in the amount of \$250,000 in favour of counsel for the Applicants, the Monitor and its counsel (the “**Administration Charge**”);
- (f) granting a director’s and officers’ charge (the “**D&O Charge**” together with the Administration Charge, the “**Priority Charges**”);
- (g) authorizing the Inscope Group to incur no further expenses in relation to the Securities Filings (as defined below) and declare that none of the directors, officers, employees, and other representatives of the Applicants, or the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by the Applicants to make Securities Filings;
- (h) authorizing the Inscope Group to continue utilizing its cash management system (the “**Cash Management System**”); and

- (i) scheduling a comeback hearing (“**Comeback Hearing**”) for January 20, 2023.

Purpose of CCAA

5. The Inscape Group is in the business of manufacturing and selling office furniture equipment on contract. Over the last decade, the Inscape Group’s business has experienced declining financial performance and the Inscape Group no longer has access to sufficient working capital. The Inscape Group’s challenges continue to persist despite good faith efforts on the part of the Inscape Group and its advisors to revitalize the business. These challenges were intensified by the impact of the pandemic and its detrimental effects to the entire contract office furniture industry that the Inscape Group operates in.

6. As a result, the Inscape Group is insolvent, unable to meet its obligations as they become due and is in need of protection from its creditors. Without access to capital, the significant losses incurred by the Inscape Group can no longer be sustained and it is unable to complete any recovery of same. Further, the value of the Inscape Group continues to erode. The Inscape Group, in consultation with its advisors, has determined that the best path forward to maximize value for its stakeholders is through a court-supervised process under the CCAA.

7. At this time, the Inscape Group believes that it is in the best interest of its creditors to liquidate its assets and effect an orderly wind-up of the affairs of the business. The Applicants require the breathing room and stability offered by the CCAA in order to strategize and execute a path forward that will maximize the proceeds available for distribution to creditors on a more timely and cost-effective basis than alternative processes that may further harm the value of the Inscape Group and the value of its assets.

INSCAPE’S CORPORATE STRUCTURE AND OPERATIONS

Background to Business Operations

8. The Inscape Group is in the business of designing, manufacturing and selling office furniture and architectural walls and has been in operation for approximately 130 years. In particular, the Inscape Group’s business began in 1888 as a New York-based full-service provider of office furniture under the name Office Specialty. In the early 1900s, Office Specialty

moved to Canada and eventually relocated to Holland Landing, a community in the town of East Gwillimbury, 45 minutes north of Toronto.

9. Office Specialty Inc. became public on the TSX in 1997 and ultimately changed its name to Inscape Corporation. The business operates under two primary brand names, being Inscape and Office Specialty. The Inscape Group operates within the contract office furniture market such that it only produces products for customers based on firm purchase orders.

10. The Inscape Group's products are manufactured and produced out of two manufacturing facilities and are used to fulfill orders in Canada and in the United States.

11. Among other things, the Inscape Group designs, manufactures and distributes cubicles, movable walls, filing cabinets, bookcases and other ergonomic furniture for customers across North America and Europe. The Inscape Group has two divisions: (i) the "furniture" division, which provides storage, benching, and seating solutions; and (ii) the "wall" division, which provides architectural and movable partition walls for office spaces. The Inscape Group markets its products to both the commercial and consumer markets.

12. As further particularized below, the Inscape Group operates its design and manufacturing business out of two (2) leased facilities: (i) a facility in Holland Landing, East Gwillimbury, Ontario; and (ii) a facility in Jamestown, New York. The Inscape Group also maintains leased premises for showrooms in Chicago, Washington, and New York City.

13. Over the last decade, the Inscape Group's business has experienced declining financial performance. The Inscape Group's challenges continue to persist despite good faith efforts on the part of the Inscape Group and its advisors to revitalize the business through various cost-cutting measures and other strategic initiatives. These challenges were intensified by the impact of the pandemic and its detrimental effects to the entire contract office furniture industry.

Corporate Structure

14. On May 1, 2007, Inscape amalgamated with previous Canadian subsidiaries (which ceased to exist after the amalgamation) to form one corporation under Ontario's *Business Corporations Act*. Inscape is a publicly traded entity regulated by the Ontario Securities

Commission. Its shares are traded on the Toronto Stock Exchange under the trading symbol “INQ”. A corporate profile for Inscape is attached hereto as **Exhibit “A”**.

15. The Inscape Group’s corporate structure comprises of three legal entities:

- (a) Inscape (*ie*, the public Canadian parent company), with a registered head office located at 67 Toll Road, Holland Landing, Ontario, Canada;
- (b) Inscape Delaware, a holding company incorporated under the laws of the state of Delaware with a registered head office located at 15 Tiffany Avenue, Jamestown, New York, USA; and
- (c) Inscape New York, an operating company incorporated under the laws of the state of New York with a registered head office of 15 Tiffany Avenue, Jamestown, New York, USA. Copies of the corporate profile report for Inscape Delaware and Inscape New York are attached as **Exhibits “B”** and **“C”**, respectively.

16. Inscape is the parent (and 100% owner) of Inscape Delaware. Inscape Delaware is the 100% owner of Inscape New York. An organization chart demonstrating the corporate structure of the Inscape Group is attached hereto as **Exhibit “D”**.

17. Each of the Applicants has the same Board of Directors. I am the CEO and Jon Szczur is the Chief Financial Officer of each of the Applicants.

Employees and Payroll

18. As at January 9, 2023, the Inscape Group had a total of 218 employees in Canada and the United States, broken down as follows:

- (a) Inscape employs 184 individuals, of which 83 are hourly employees and 101 are salaried employees. In respect of Inscape’s payroll: (i) the hourly employees are paid on a bi-weekly basis in arrears, with the last payroll issued on December 30, 2022 for the pay period ending on December 24, 2022; and, (ii) the salaried employees are paid on a bi-weekly basis up to date, with the last payroll issued on December 30, 2022 for the pay period ending on December 30, 2022;

- (b) Inscape New York employs 23 individuals, of which 14 are hourly employees and 9 are salaried employees. In respect of Inscape New York's payroll: (i) the hourly employees are paid on a weekly basis in arrears, with the last payroll issued on January 6, 2023 for the pay period ending on January 1, 2023; and, (ii) the salaried employees are paid on a bi-weekly basis up to date, with the last payroll issued on December 30, 2022 for the pay period ending on December 30, 2022 and
- (c) Inscape Delaware employs 11 individuals, all of which are salaried sales staff. In respect of Inscape Delaware's payroll, the salaried employees are paid on a bi-weekly basis up to date, with the last payroll issued on December 30, 2022 for the pay period ending on December 30, 2022.

19. The Inscape Group offers certain benefits to unionized and non-unionized employees including life insurance, healthcare coverage, and dental health care coverage. The Inscape Group is current on payroll and source deductions.

Collective Agreements

20. Approximately 92 of the Inscape Group's employees are unionized, as follows:

- (a) Unionized workers employed by Inscape (approximately 83) are members of the United Steelworkers 1-500 union ("USW"). Inscape and USW are party to a collective agreement dated October 1, 2016 ("**USW Collective Agreement**"), which was recently renewed effective October 1, 2021 for a three-year (3) term ending September 30, 2024. A copy of the USW Collective Agreement is attached as **Exhibit "E"**; and
- (b) Unionized workers employed by Inscape New York (approximately 9) are members of Local Union No. 112 of the Sheet Metal Workers' International Association ("**SMW**"). Inscape New York and SMW are party to a collective agreement dated June 1, 2017 ("**SMW Collective Agreement**"), which was renewed effective June 1, 2021 for a five-year term. A copy of the SMW Collective Agreement is attached as **Exhibit "F"**.

21. As of the date of this Affidavit, the Inscape Group has a total of approximately \$5,308.00 owing in respect of union dues.

Inscape Pension Plans

22. The Inscape Group maintains a total of four (4) pension plans for its employees in Canada and the United States, the full details of which are thoroughly set out in **Exhibit “G”** attached, and the key details of which are summarized as follows:

- (a) In Canada, Inscape currently administers the following two (2) plans (collectively, the **“Canadian Plans”**):
 - (i) a defined contribution pension plan for unionized hourly employees, which prior to April 2, 2022 had both a contributory defined benefit provision and a contributory defined contribution provision (the **“DC Converted Union Plan”**), and which presently has a frozen defined benefit component with no benefit accrual and a defined contribution component for current service;
 - (ii) a defined contribution pension plan for non-unionized salaried and hourly employees (the **“DC Non-Union Plan”**);
- (b) In the United States, Inscape New York currently administers the following two (2) plans (the **“US Plans”**):
 - (i) a defined benefit pension plan for certain employees with service frozen as of June 30, 1991 (for non-unionized employees) or August 15, 2013 (for unionized employees) (the **“US Frozen DB Plan”**); and
 - (ii) a 401(k) plan, which is a contributory defined contribution benefit plan for salaried and hourly employees (the **“US 401(k) Plan”**).
- (c) The current status of the Canadian Plans and the US Plans (as fully particularized in Exhibit “G”) is as follows:

- (i) in respect of the DC Converted Union Plan, there are currently no special payments or other contributions required in respect of the defined benefit component, and contributions in respect of the defined contribution component are current;
- (ii) in respect of the DC Non-Union Plan, contributions to that plan are current;
- (iii) in respect of the US Frozen DB Plan, there are currently no contributions required; and
- (iv) in respect of the US 401(k) Plan, contributions to that plan are current.

Leased Premises: Place of Business and Manufacturing Facilities

23. As noted above, the Inscape Group operates its business out of manufacturing and warehouse facilities (where the office equipment and walls are designed and manufactured) as well as through showrooms (where the completed pieces of office furniture and walls are showcased for viewing in support of contract orders). In this regard, the Inscape Group leases five (5) premises in total.

Manufacturing and Warehouse Facilities and Leases:

24. The Inscape Group operates its manufacturing business out of the following two (2) locations:

- (a) a manufacturing and warehouse facility in Canada located in an approximately 313,000 square foot building at the leased premises municipally known as 67 Toll Road, East Gwillimbury, Ontario (“**Holland Landing Facility**”); and
- (b) a manufacturing and warehouse facility in the United States located in an approximately 30,000 square foot building at the leased premises municipally known as 15 Tiffany Avenue, Falconer, Jamestown, New York (“**Jamestown Facility**”).

25. The products manufactured at the Holland Facility in Ontario are used to fulfill customer orders in both the United States and Canada and upon completion, are shipped to the appropriate customer location in order to complete the orders.

26. Similarly, the products manufactured at the Jamestown Facility in New York are used to fulfill orders in both the United States and Canada, and upon completion, are shipped to the appropriate customer location in order to complete the orders.

27. The Holland Landing Facility is currently leased pursuant to an agreement dated January 24, 2022 (“**Holland Landing Lease**”) between Inscape and Cedar City Paradise Toll Rd Inc. (“**Holland Landing Landlord**”). Pursuant to the Holland Landing Lease, a copy of which is attached hereto as **Exhibit “H”**, among other things:

- (a) The lease term commenced on January 24, 2022 and expires on January 23, 2032, for a total lease term of 10 years;
- (b) The monthly basic rent was \$173,090.11 for 2022, which increases by 2.5% each subsequent year; and
- (c) The Holland Landing Landlord is in possession of a \$2.5 million rent deposit paid by Inscape, as security for Inscape’s performance of the covenants and conditions in the Holland Landing Lease.

28. The monthly basic rent due and owing to the Holland Landing Landlord has not yet been paid. The Applicants intend to use the funding to be made available to them under the terms of the Forbearance Agreement (as defined and further described below) to make payments on account of rental amounts owing, as deemed appropriate by the Applicants in consultation with the Monitor.

29. The Jamestown Facility is currently leased pursuant to an agreement dated December 29, 2020 (“**Jamestown Lease**”) between Inscape New York and Lynn Development, Inc. (“**Jamestown Landlord**”). Pursuant to the Jamestown Lease, a copy of which is attached hereto as **Exhibit “I”**, among other things.

- (a) The lease term commenced on February 1, 2021 and expires on January 31, 2026, for a total lease term of 5 years;
- (b) Inscape New York provided the Jamestown Landlord a one (1) month security deposit in the amount of USD \$11,673.84 as security for its obligations under the Jamestown Lease; and
- (c) The monthly basic rent was USD \$11,907.31 for 2022, and increases by 2% each subsequent year.

30. On February 1, 2021 and pursuant to a Promissory Note dated January 19, 2021, Inscape advanced a loan in the amount of USD \$250,000 to the Jamestown Landlord on account of tenant improvements to be made at the Jamestown Facility leased premise, payable over seven (7) years at an interest rate of 7% (with monthly payments in the amount of USD \$3,773.17 (inclusive of interest) commencing on March 10, 2021 and ending March 10, 2028). The last payment was made by the Jamestown Landlord on January 1, 2023, leaving a total outstanding balance of approximately USD \$195,829 as at today's date. The monthly basic rent due and owing for December 2022 and January 2023 have not yet been paid. The Applicants intend to use the funding to be made available to them under the terms of the Forbearance Agreement (as defined and further described below) to make payments on account of rental amounts owing, as deemed appropriate by the Applicants in consultation with the Monitor.

Showroom Leases

31. The Inscape Group operates showrooms out of three (3) locations: Chicago, New York City, and Washington:

- (a) A Chicago showroom located in a 11,945 square foot floor of a building at the leased premises municipally known as the 8th floor of the 800 W. Fulton Market Street, in Chicago Illinois (the "**Chicago Showroom**");
- (b) A New York showroom located in a 6,525 square foot floor of a building at the leased premises known as the 6th floor of the building located at 414 West 14th Street, New York, New York ("**New York Showroom**"); and

- (c) A Washington Showroom located in a 3,750 square foot floor of a building at the leased premises municipally known as the 11th floor of the building located at 1090 Vermont Avenue, N.W., Washington D.C. (“**Washington Showroom**”).

32. The Chicago Showroom is leased pursuant to an agreement dated June 17, 2021, as amended by a First Amendment to Lease executed in or around October 2022 (collectively, “**Chicago Showroom Lease**”) between Inscape Delaware and Prevolv Inc. (“**Prevolv**”) (together as tenants) and Thor 816 W Fulton Owner LLC (“**Chicago Landlord**”). Inscape Delaware co-lease the Chicago Showroom with Prevolv, a commercial furniture dealership company that also operates their business out of this location. Pursuant to an arrangement between Inscape Delaware and Prevolv, each co-tenant is responsible for their respective portion of the rent under the Chicago Showroom Lease. No rental amounts are owing by Inscape Delaware under the Chicago Showroom Lease until on or about April of 2023.

33. Pursuant to the Chicago Showroom Lease, a copy of which is attached hereto as **Exhibit “J”**, among other things:

- (a) The lease term commenced on December 1, 2021 and expires on November 30, 2032, for a total lease term of 11 years;
- (b) The monthly basic rent was USD \$36,730 for 2022, and increases by 2.5% each subsequent year. The basic rent for 2023 will be USD \$37,648.25; and
- (c) The Chicago Showroom Landlord is in possession of a USD \$250,000 rent deposit, as security for Inscape Delaware’s performance of the covenants and conditions in the Chicago Showroom Lease.

34. The New York Showroom is leased pursuant to an agreement dated October 10, 2020 (“**NYC Showroom Lease**”) between Inscape and Ponte Gadea New York, LLC (“**NYC Showroom Landlord**”). Pursuant to the NYC Showroom Lease, a copy of which is attached hereto as **Exhibit “K”**, among other things:

- (a) The lease term commenced on November 1, 2020 and expires on November 30, 2032, for a total lease term of 11 years;

- (b) The monthly basic rent is USD \$54,375;
- (c) The NYC Showroom Landlord is in possession of a USD \$271,875 rent deposit, as security for Inscape's performance of the covenants and conditions in the NYC Showroom Lease.

35. The Washington Showroom is leased pursuant to an agreement dated April 5, 2018 ("**Washington Showroom Lease**") between Inscape Delaware and 100 Vermont Avenue N.W. Associates Limited Partnership ("**Washington Landlord**"). Pursuant to the Washington Showroom Lease, a copy of which is attached hereto as **Exhibit "L"**, among other things:

- (a) The lease term commenced on June 1, 2018 for a period of seventy-two (72) months, and is therefore set to expire on May 31, 2024;
- (b) The monthly basic rent was USD \$17,246 for 2022, and increases by 2.5% each subsequent year; and
- (c) The Washington Landlord is in possession of a security deposit in the amount of USD \$15,625.

36. Currently, the Inscape Group continues to occupy all five (5) of the leased premises. The showrooms are currently open to the public. Rental amounts for November 2022 and December 2022 in respect of the Washington Showroom Lease and the New York Showroom Lease have not been paid.

Cash Management System

37. In the ordinary course of business, the Inscape Group uses a centralized banking and cash management system ("**Cash Management System**") to, among other things, collect funds and pay expenses associated with its operations. The Inscape Group's funds are managed by the Inscape Group's treasury team based in Canada. The Cash Management System is administered by the Inscape Group's finance department at Inscape's head office in Holland Landing, Ontario (the "**Canada Head Office**").

38. The Cash Management System has several functions, comprised of: (a) collection of accounts receivable from third parties (b) disbursements to fund payroll and benefits, capital expenditures, maintenance costs, payments to inventory vendors and other service providers; and (c) intercompany cash transfers amongst Inscape, Inscape Delaware and Inscape New York (the “**Intercompany Transfers**”).

39. Generally, Inscape Group’s customers are invoiced as follows:

- (a) Canadian customers of the furniture segment are invoiced by Inscape;
- (b) US customers of the furniture segment are invoiced by Inscape Delaware; and
- (c) All customers of the walls segment are invoiced by Inscape (New York).

40. Intercompany Transfers are payments made between Inscape, Inscape Delaware and Inscape New York for: (a) inventory sales from Inscape to Inscape Delaware; (b) the provision of net shared services by Inscape, comprising essential corporate functions from the Canada Head Office; and (c) any additional funding required to support ongoing operations of the entities, made by way of intercompany loans.

41. Inscape Group utilizes eight (8) bank accounts, of which, three (3) are held at Royal Bank of Canada (“**RBC**”) in Canada, four (4) are held at KeyBank in the US and one (1) is held at Platinum Bank in the U.S. (collectively, the “**Bank Accounts**”). An overview of the Bank Accounts is as follows:

- (a) KeyBank Deposit Account Control Agreement account owned by Inscape (New York), denominated in USD (“**DACA Account**”). The DACA Account is used to collect receipts from the majority of US customers, regardless if they are invoiced by Inscape or Inscape New York. The Inscape Group’s access to the DACA Account is restricted to deposits only and Hilco controls disbursements from this account;
- (b) KeyBank operating account owned by Inscape New York, denominated in USD (“**KeyBank Operating Account**”). The KeyBank Operating Account is mainly funded by advances under the Hilco Credit Facility (defined below) via a transfer

from the DACA Account initiated by Hilco (defined below). Certain US customers, such as government entities and general contractors, continue to deposit receipts into the KeyBank Operating Account. The Inscape Group manually transfers any customer receipts to the DACA Account. The KeyBank Operating Account is used to fund Inscape New York vendor payments and US payroll disbursements. The Inscape Group utilizes Ceridian, a third-party payroll services provider, to administer its payroll;

- (c) RBC operating account owned by Inscape Delaware, denominated in USD (“**RBC USD Account**”). The RBC USD Account is funded through Intercompany Transfers from the KeyBank Operating Account. It is used to pay disbursements to most US vendors, excluding a small number of vendors paid out of the KeyBank Operating Account;
- (d) RBC FX spot trade account owned by Inscape, denominated in USD (“**RBC FX Account**”). The RBC FX Account is used as an intermediary account to receive USD funds from the RBC USD Account and buy CAD funds for transfers out to the RBC CAD Account (defined below). The Inscape Group has a third-party hedging agreement in place, which hedges its USD to CAD foreign exchange rate;
- (e) RBC CAD operating account owned by Inscape, denominated in CAD (“**RBC CAD Account**”). The RBC CAD Account is funded through payments from Canadian customers and Intercompany Transfers from the RBC USD Account. All Canadian vendors are also paid out of the RBC CAD Account, as well as payroll for Canadian employees;
- (f) Two KeyBank employee benefits funding accounts owned by Inscape New York, denominated in USD (“**US Employee Benefits Accounts**”). The US Employee Benefits Accounts are funded by intercompany transfers from the KeyBank Operating Account and used to make payments towards US employee group health benefits and the FLEX health plan; and

- (g) Platinum USD account owned by Inscape Delaware, denominated in USD (“**Platinum Account**”). The Platinum Account is a restricted cash account holding a security deposit related to the Chicago showroom lease.

42. On a weekly basis, the Inscape Group’s finance department reviews near term cash requirements, cash receipts, residual account balances and availability under the Hilco Credit Facility (as defined below). Based on this review, forecast cash required to fund disbursements is requested from Hilco UK (as defined below). Approved funds are advanced by Hilco UK (as defined below) or transferred from the DACA Account into the KeyBank Operating Account.

43. Certain employees of the Inscape Group are issued an AMEX corporate credit card for business purposes. On a monthly basis, the Inscape Group initiates a payment towards the credit card balance from the RBC CAD Account for Canadian credit cards and from the KeyBank Operating Account for US credit cards.

44. The Applicants intend to continue using the existing Cash Management System during the CCAA Proceedings and are seeking the approval of the Court to do so.

45. Given the scale and nature of the Inscape Group’s operations and the volume of transactions that are processed daily within the Cash Management System, I am advised by the Proposed Monitor that it is of the view that the continued use of the existing Cash Management System is required and appropriate during these CCAA Proceedings.

46. As part of its monitoring procedures, if appointed, the Proposed Monitor will:

- (a) review receipts and disbursements processed through the Bank Accounts;
- (b) review weekly receipts and disbursements summaries, compare the summaries to the corresponding 13-week cash flow forecasts and review variances with management; and
- (c) review disbursements, as reasonably appropriate, for compliance with provisions of the Proposed Initial Order.

Directors' and Officers Insurance Policies

47. Prior to Inscape's recent change in ownership (described below), Inscape carried the following insurance for its directors and officers in a total amount of \$15 million which was set to expire on April 29, 2023:

- (a) A directors' and officers' liability insurance policy with Travelers Insurance Company of Canada Company (the "**D&O Policy**") with a policy limit of \$5 million;
- (b) An excess directors' and officers' liability insurance policy with Berkley Insurance Company (the "**Berkley Excess Policy**") with a policy limit of \$5 million; and
- (c) An excess directors' and officers' liability insurance policy with Chubb Insurance Company of Canada (the "**Chubb Excess Policy**" together with the D&O Policy and Berkley Excess Policy, the "**D&O Policies**") with a policy limit of \$5 million.

48. I am advised by the Inscape Group's insurance broker that the D&O Policies ceased to be in effect post the change in ownership. Accordingly, and as part of the transaction that resulted in Inscape's recent change in ownership (as described below), Inscape arranged to carry a run-off directors' and officers' liability insurance policy in a total amount of \$10 million and for a period of six (6) years expiring December 23, 2028 ("**Run-Off D&O Policies**"), as follows:

- (a) with Travelers Insurance Company of Canada Company with a policy limit of \$5 million; and
- (b) an excess directors' and officers' liability insurance policy with Berkley Insurance Company with a policy limit of \$5 million.

49. Notwithstanding the existence of the Run-Off D&O Policies, the Inscape Group's ordinary course operations may give rise to potential director or officer liability. To address legitimate concerns expressed with respect to their potential exposure if they continue to act, the directors and officers have requested reasonable protection against personal liability that might

arise during the post-filing period. The Directors' Charge, in the proposed amount discussed in the proposed Monitor's pre-filing report, to be filed, is intended to address potential claims that may be brought against the director and officers.

50. The quantum of the Directors' Charge was developed with the assistance and support of the Proposed Monitor. The Inscape Group is of the view that the quantum of the Directors' Charge is reasonably necessary at this time to address circumstances that could lead to potential directors' and officers' liability prior to the Comeback Hearing.

FINANCIAL CIRCUMSTANCES AND CASH FLOW FORECAST

Financial Performance

51. The Inscape Group's fiscal year end is April 30. Attached hereto as **Exhibit "M"** are the Inscape Group's Consolidated Audited Year End Financial Statements from April 30, 2022 (the "**2022 Financial Statements**"). The 2022 Financial Statements indicate that as of April 30, 2022, the Inscape Group had total assets of approximately \$55,630,000, total liabilities of approximately \$41,454,000.

Assets and Liabilities

52. The most recent and up-to-date financial position of the Inscape Group (on a consolidated basis) is as of November 30, 2022, which include:

- (a) cash in the amount of \$1,672,000, receivables in the amount of \$10,041,000; and inventory in the amount of \$5,445,000, among other things; and
- (b) liabilities of approximately \$16,376,000, including accounts payable in the amount of \$11,080,000, among other things;

53. The most significant asset of the Inscape Group comprises of accounts receivable owed to Inscape New York and/or Inscape Delaware. Inscape also owns a large laser machine, which is used for the manufacturing of steel parts used for storage and systems products in its furniture plant at the Holland Landing Facility.

Senior Secured Debt

54. In the context of its restructuring efforts with Hilco Capital Limited (“**Hilco**”), as further detailed below, Hilco Capital Limited, through its subsidiary, HUK 116 Limited (“**Hilco UK**”), agreed to provide Inscape with an interim loan to help fund ordinary course financial obligations.

55. Hilco UK (as lender), Inscape (as borrower), and Inscape New York and Inscape Delaware (as guarantors) are party to a credit agreement dated October 28, 2022 (“**Hilco Loan Agreement**”). Pursuant to the Hilco Loan Agreement, Hilco UK made available a revolving demand facility in the principal amount of \$5 million (“**Hilco Loan Facility**”), to be used for, among other purposes, the Inscape Group’s working capital requirements. A copy of the Hilco Loan Agreement is attached as **Exhibit “N”**.

56. As security for Inscape’s obligations under the Hilco Loan Agreement:

- (a) Inscape executed a general security agreement in favour of Hilco UK (“**Hilco GSA**”) over all personal property of Inscape; and
- (b) Inscape New York and Inscape Delaware executed a guarantee (“**Hilco Guarantee**”) and accompanying general security agreement (“**Hilco Guarantors GSA**”). Copies of the Hilco GSA, Hilco Guarantee, and Hilco Guarantors GSA, are attached as **Exhibits “O”, “P”, and “Q”**, respectively.

57. As at January 10, 2023, the total indebtedness outstanding under the Hilco Loan is \$1,323,698, inclusive of interest, management fees and expenses.

58. Following the financial results reported by the Inscape Group that were not satisfactory to Hilco UK, Inscape is in default of certain of its obligations under the Loan Agreement and accordingly, Hilco UK advised the Inscape Group that it will not continue funding the Inscape Group. Inscape has requested that Hilco UK forbear from exercising its rights and remedies under the Loan Agreement and the security to allow the Inscape to utilize the CCAA Proceedings to maximize value for its creditors and stakeholders; and (ii) allow Inscape to access the Hilco Loan Facility in order to fund the CCAA Proceedings, as further described below.

PPSA Registrations

59. A number of parties have registered interests against the Inscape Group under the *Personal Property Security Act* (“**PPSA**”):

- (a) Hilco UK has a registration against Inscape with respect to all present and after-acquired personal property of Inscape for all collateral classifications except consumer goods; and
- (b) Dell Financial Services Canada Limited (“**Dell**”) has a number of registrations against Inscape with respect to computer equipment and peripherals. Attached hereto as **Exhibit “R”** is a true copy of the certified Personal Property Registry search results for Inscape in Ontario.

Crown Obligations and Priority Claimants

60. In 2017, Canada Revenue Agency (“**CRA**”) issued to Inscape a notice of reassessment alleging approximately \$2.6 million in tax liability. The Inscape Group engaged a financial advisor to assist with an independent review of the notice of reassessment and on or about October 13, 2022, Inscape filed a notice of objection (“**Objection**”).

61. The Inscape Group is current on its HST remittances up to and including October 2022. Going forward, HST remittances are reflected in the projected cash flows. As of the date of this affidavit, approximately \$1,257,000 in respect of HST refunds has been withheld by CRA pending determination of the Objection.

Unsecured Debt: Trade Creditors and Suppliers

62. The Inscape Group has unpaid trade and other unsecured debt accrued in the normal course of business. As of January 9, 2023, accounts payable balances totalled approximately CAD \$6,307,198.00.

63. Certain critical suppliers of the Inscape Group have recently imposed more stringent payment terms as a result of the Inscape Group’s inability to promptly meet payment schedules. Other suppliers have refused to fulfil orders due to non-payment. The Inscape Group is currently

delinquent in its payments to about 91% of its suppliers, with a number of accounts placed on credit hold and/or being escalated to collections.

Cash Flow Forecast

64. The Inscape Group, with the assistance of the Proposed Monitor, has prepared a projected 13-week cash flow forecast (the “**Cash Flow Forecast**”) for the period ending April 7, 2023 that is premised on, among other things, the assumption that the Applicants will be granted CCAA protection. I believe that the Cash Flow Forecast is a reasonable forecast of the Applicants’ cash flow over the next quarter, which includes the Further Advances agreed upon and defined below. A copy of the Cash Flow Forecast is appended to the pre-filing report of the Monitor, to be filed.

Forbearance Agreement

65. On January 10, 2023, Inscape (as Borrower), Inscape Delaware and Inscape New York (as Guarantors) and Hilco UK (as Lender), entered into a Forbearance Agreement (the “**Forbearance Agreement**”), a copy of which is attached hereto as **Exhibit “S”**, whereby Hilco UK has agreed to (i) forbear from exercising its rights and remedies under the Hilco Loan Agreement and related security and (ii) allow Inscape to access the Hilco Loan Facility (the “**Further Advances**”), subject to the terms and conditions agreed upon therein. Pursuant to the Forbearance Agreement, among other things, Hilco UK has agreed to make Further Advances in accordance with the Cash Flow Forecast, as noted above and as attached thereto as Schedule “A”.

EVENTS LEADING UP TO CCAA FILING

Inscape’s Declining Financial Performance

66. The Inscape Group has operated at a net loss for the past five (5) years. The following simple chart demonstrates the Inscape Group’s declining financial performance:

Audit Year	30-Apr-18	30-Apr-19	30-Apr-20	30-Apr-21	30-Apr-22	YTD Nov 2022

Sales Revenue	\$93,936,000	\$90,583,000	\$75,818,000	\$38,203,000	\$ 38,741,000	\$21,399,000
Net Loss	\$(2,992,000)	\$(8,746,000)	\$(5,406,000)	\$(891,000)	\$(839,000)	\$(15,337,000)
EBITDA	\$(2,454,000)	\$(4,708,000)	\$(1,609,000)	\$3,908,000	\$521,000	\$(11,943,000)

67. Several factors have contributed to the Inscap Group's continued financial decline. The Inscap Group has faced a number of challenges as a result of extended impact of the Covid-19 pandemic, which directly affected the entire contract office furniture industry that Inscap operates in, and which industry was heavily impacted given the work from home mandates in Canada and the U.S. This includes a dramatic decline in the size and sales mix of incoming orders and much lower than expected order volumes. Many of these challenges are reflected in the slower than expected return-to-office by corporate employees throughout North America, varying degrees of hybrid/work from home policies, many companies instituting full-time work from home/virtual policies, with many companies also transitioning to an entirely virtual office environment.

68. The Inscap Group has also suffered from a number of supply chain issues, including a shortage of production materials (e.g. height adjustable bases and medium density fibreboard). These issues have perpetuated delays to the completion of existing customer projects and over all order fulfillment.

69. Other general operating costs have increased dramatically over the last few years. Among other things, the Inscap Group has suffered from increases to the cost of steel, aluminum, petroleum-based products and freight, all of which has had a negative impact on margins.

70. In light of the declining demand, the Inscap Group is becoming increasingly unable to sustain the high ongoing costs of running its business.

Attempts to Improve Financial Situation

71. As a result of these challenges, between March 2020 and December 2022, management implemented a number of initiatives to help improve the Inscape Group's operations, financial performance, and liquidity.

72. In early 2021, the board of directors (the "**Board**") of Inscape established a special committee to complete the sale and leaseback of the Holland Landing Facility and monetize its redundant real estate assets. It also arranged a \$16 million bridge debt facility, which facility closed on April 29, 2021, to enable to the Inscape Group to operate pending sale of the real estate. This transaction was completed in January of 2022, and it allowed the Inscape Group to repay its previous debt facility in full and replenish cash resources and working capital. In April of 2022, the Inscape Group also sold an additional parcel of surplus property, and completed its real estate monetization efforts.

73. In February of 2022, Inscape entered into a letter agreement with Stump & Co ("**Stump**"), a financial M&A advisory firm based in North Carolina specializing in the furniture industry, to formally seek potential strategic or financial buyers for the business. These efforts proved unsuccessful, and the Inscape Group continued to struggle to meet its financial projections. By the end of the quarter ended July 31, 2022, the Inscape Group had incurred a net loss of \$6.2 million.

74. Throughout the second half of 2022, the Inscape Group continued to implement measures including right-sizing its workforce and increasing automation, rationalizing excess space, refinancing its debt, and expanding the availability of work from home furniture through online platforms.

75. Most recently, in December, 2022, the Inscape Group made approximately 30 employee terminations and further reduced spending on product research and development.

76. Unfortunately, despite these measures, the Inscape Group continues to face a liquidity crisis as it no longer has access to capital to complete its turnaround efforts, even as markets begin to recover, sales volumes begin to restore and employees return to work.

Hilco Engagement and Acquisition

77. Inscape engaged Hilco Capital Limited (“**Hilco**”) in the summer of 2022 as part of its efforts to explore restructuring opportunities. Hilco specializes in restructuring and refinancing distressed companies across the globe.

78. Among other service offerings, Hilco provides distressed companies with turnaround solutions to help maximize the value of a business, including by acquiring under-performing businesses and assets.

79. Throughout the month of August, representatives of Hilco met with management of Inscape and conducted substantial due diligence on the Inscape Group’s business and assets. Among other things, Hilco determined that the Inscape Group’s equity value was extremely low, and significant financial investment was required for the Inscape Group to restructure. The Inscape Group worked directly with Hilco for several months to identify restructuring solutions for the business.

80. The decision was ultimately made by Hilco to submit an offer (“**HUK Offer**”) to acquire all of the issued and outstanding subordinate voting shares of Inscape (the “**SVS Shares**”) through a friendly take-over bid pursuant to National Instrument 62-104 – *Take-Over Bids and Issuer Bids* (“**NI 62-104**”) through its affiliate, HUK 121 Limited (“**HUK**”).

81. On October 28, 2022, HUK and Inscape entered into a support agreement, pursuant to which HUK agreed to make the HUK Offer and Inscape agreed to, among other things, support the HUK Offer and not solicit any competing proposals. In addition, certain shareholders of Inscape owning 11,660,282 SVS Shares, or approximately 81.1% of the issued and outstanding SVS Shares (the “**Locked-Up Shareholders**”) entered into lock-up agreements with HUK, pursuant to which such Locked-Up Shareholders agreed to deposit or cause to be deposited their SVS Shares to the HUK Offer.

82. The HUK Offer was launched on November 17, 2022 through the mailing of the take-over bid circular (the “**Take-Over Bid Circular**”), which contained the HUK Offer (with an expiry time of 5:00 p.m. (Toronto time) on December 23, 2022), detailed summaries of the HUK Offer and the conditions thereto, instructions on how to accept the HUK Offer, together with a

number of ancillary documents, to shareholders of Inscape. A copy of the Take-Over Bid Circular is attached as **Exhibit “T”**.

83. On November 25, 2022, the previous directors of Inscape issued a circular (the “**Directors’ Circular**”) as required under NI 62-104, supporting the HUK Offer, and recommending that Inscape shareholders deposit their SVS Shares and accept the HUK Offer. Attached as **Exhibit “U”** is a copy of the Directors’ Circular.

84. On December 23, 2022, Inscape and HUK jointly announced that the conditions to the HUK Offer had been satisfied or waived by 5:00 p.m. (Toronto time) and that the SVS Shares that had been deposited to the HUK Offer had been taken up by HUK.

85. In accordance with NI 62-104, the HUK Offer was extended until 5:00 pm on January 3, 2023 (“**Mandatory Extension Period**”). On January 3, 2023, HUK confirmed that the HUK Offer had expired and no additional SVS Shares had been tendered to the HUK Offer during the Mandatory Extension Period. As a result, HUK currently owns 12,661,625 SVS Shares, representing approximately 88.05% of the outstanding SVS Shares.

CCAA PROCEEDINGS AND RELIEF SOUGHT

Need for CCAA Protection

86. Given the Inscape Group’s continued declining financial performance and the overall negative impacts on the contract office furniture market, the Inscape Group, in consultation with its advisors and the Proposed Monitor, believes it is in the best interests of all of its stakeholders to pursue a strategy that focuses on liquidating the Inscape Group’s assets and ultimately effecting an orderly wind up of the affairs of the business. The Inscape Group continuing to operate at a net loss is unsustainable and the value of the Inscape Group and its assets continues to erode. The Inscape Group believes that pursuing this strategy will maximize value for its stakeholders, and will enable it to protect the interests of its creditors by enabling an orderly distribution at a later date.

Stay of Proceedings

87. The Inscape Group seeks a stay of proceedings to provide the breathing room necessary for it to effectively develop a strategy and path forward, with a view to maximizing value for all of its stakeholders.

88. In addition to a stay of proceedings against the Inscape Group and its assets, the Applicants are also seeking a stay of proceedings in favour of the Inscape Group's directors and officers to ensure that they are able to focus their efforts on the Inscape Group's path forward.

Appointment of Monitor

89. The Applicants seek the appointment of Alvarez and Marsal Canada Inc. ("**A&M**") as Monitor of the Applicants in these CCAA proceedings. A&M has assisted in the preparation of the Cash Flow Statements and has provided guidance and assistance in the commencement of these CCAA proceedings. As a result, A&M has developed critical knowledge about the Applicants, their business operations, financial challenges, strategic initiatives and restructuring efforts to date.

90. A&M has consented to act as the Monitor, subject to Court approval. Attached as **Exhibit "V"** is a copy of the proposed Monitor's consent.

Administration Charge

91. The Applicants seek a super-priority Administration Charge over the Applicants' Property (as defined in the Initial Order) in favour of the Monitor, counsel to the Monitor, Canadian and U.S. counsel to the Applicants, and counsel to the Board, if any, (collectively, the "**Professionals Group**"), to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order.

92. The proposed Administration Charge being sought at the initial CCAA Application is for a maximum amount of \$250,000 in order to secure the payment of fees and expenses incurred in connection with moving for the within relief sought and for the initial ten (10) day protection period leading up to the first Comeback Hearing. The Administration Charge is proposed to rank as a first-priority charge on the Property.

93. It is contemplated that the Professionals Group will have extensive involvement during the CCAA proceedings. The Professionals Group have contributed and will continue to contribute to the Applicants' restructuring efforts, and will ensure that there is no unnecessary duplication of roles among them.

94. In preparation of the Cash Flow Forecast, the Applicants, in consultation with the Proposed Monitor, considered the professional fees forecasted to be incurred on a bi-weekly basis during the cash flow period. The Applicants have forecast to incur significant professional fees in connection with the CCAA proceedings to the end of the week of the Comeback Hearing including, without limitation, preparing for the Comeback Hearing, communicating with employees and stakeholders following the initial filing, and complying with statutory notices, mailings and communications.

95. Accordingly, I believe the quantum of the Administration Charge sought is reasonably necessary at this time to secure the professional fees of the Professionals Group.

Directors and Officers' Charge

96. The Applicants are seeking a Directors' Charge on the Property in the amount proposed in the proposed Monitor's pre-filing report, to be filed. To ensure the ongoing stability of the Inscape Group during the CCAA proceeding, it requires the continued participation of its officers and directors. The officers and directors have skills, knowledge and expertise, as well as established relationships with various stakeholders that will contribute to a successful path forward.

97. The Inscape Group's directors have an insurance policy which I understand provides them with coverage for certain claims and liabilities that may arise. However the policy contains exclusions and exceptions to such coverage as provided. The Inscape Group's ordinary course operations give rise to potential director or officer liability, including payroll and sales tax. To address legitimate concerns with respect to their potential exposure, the directors and officers have requested reasonable protection against personal liability that might arise during the post-filing period.

98. The quantum of the Directors' Charge was developed with the assistance and support of the proposed Monitor. The Inscope Group is of the view that the quantum of the Directors' Charge is reasonable, and that the charge is necessary at this time to address circumstances that could lead to potential directors' liability prior to the Comeback Hearing.

Authorization to Incur no Further Costs in Connection with Securities Filings

99. The Applicants seek authorization to dispense with certain securities filing requirements. In particular, the Applicants seek authorization for Inscope to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") that may be required by any federal, provincial, or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including without limitation, the *Securities Act (Ontario)*, RSO 1990 c S. 5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the Toronto Stock Exchange.

100. In my view, incurring the time and costs associated with preparing the Securities Filings will detract from the Applicants successfully developing a plan that will result in an orderly distribution to its creditors. Further, there is no prejudice to stakeholders given that detailed financial information and other information regarding the Applicants will continue to be made publically available through the materials filed in these CCAA proceedings.

ANTICIPATED RELIEF TO BE SOUGHT AT COMEBACK HEARING

101. If the Initial Order is granted, the Applicants propose to return to Court for a Comeback Hearing on January 20, 2023 and are seeking to schedule same at the hearing of this application.

102. At the Comeback Hearing, the Applicants intend to seek the Court's approval of an amended and restated Initial Order.

103. For the benefit of this Court and the Applicants' stakeholders, this section highlights critical relief that the Applicants intend to seek at the Comeback Hearing. The Applicants may

seek additional relief if the Applicants, in consultation with the Proposed Monitor, determine such relief is necessary during the course of the Initial Stay Period:

- (a) **Extension of Stay of Proceedings:** the Applicants intend to seek an extension of the stay of proceedings for a sufficient length of time to allow the Applicants and the Monitor to pursue and effect an orderly wind-up of the Inscape Group's business;
- (b) **Adjust the Amount of Charges:** if appropriate, the Applicants intend to seek adjustments to the quantum of the Administration Charge and the Director's Charge to better align with the protections required during the CCAA proceedings and the financing needs for the duration of the proceedings.
- (c) **Key Employee Retention Plan ("KERP"):** The Applicants intend to develop a KERP, with input from the Proposed Monitor, to facilitate and encourage the continued participation of certain key management employees in the business that are necessary to ensure stability and enhance the effectiveness of a liquidation process. The Applicants intend to seek Court approval of same.

104. At this time, it is anticipated that foreign recognition proceedings in the U.S. will likely be necessary in order to efficiently pursue and undertake the proposed liquidation and wind-up of the Inscape Group's business and affairs. At the Comeback Hearing, or such other date thereafter as the Applicants, in consultation with the Monitor, may deem appropriate, the Applicants intend to seek Court authority for myself (Eric Ehgoetz) to act as the foreign representative of the Inscape Group and to apply for foreign recognition of the within proceedings in the U.S. pursuant to Chapter 15 of Title 11 of the U.S. Code.

CONCLUSION

105. The Applicants, with the assistance of their legal and financial advisors, have determined that the proposed CCAA proceedings represent the best available strategy to maximize value for the Inscape Group's stakeholders.

106. I believe that the Applicants ought to be granted protection under the CCAA. I am confident that granting the draft Initial Order is in the best interests of the Applicants as well as their stakeholders.

107. As set out above, I believe that CCAA protection will enable the Applicants to strategize and execute a path forward that will maximize proceeds available for distribution to creditors on a more timely and cost-effective basis than the available alternatives, and will provide for an orderly claims process and distribution process.

108. I swear this affidavit in support of the Applicant's application for protection pursuant to the CCAA, including the Initial Order attached at **Tab "3"** to this Application Record and for no other or improper purpose.

SWORN BEFORE ME via video-conference with
the deponent in the City of Mississauga, in the
Province of Ontario, and the Commissioner in the
City of Mississauga in the Province of Ontario this
11th day of January, 2023

DocuSigned by:
Eric Ehgoetz
EDF781AED28246B...

ERIC EHGOETZ

DocuSigned by:
Monica Faheim
A027328440B742A...

A Commissioner for taking Affidavits
MONICA FAHEIM

This is Exhibit “B” referred to in the Affidavit of Eric Ehgoetz sworn by Eric Ehgoetz of the City of Mississauga , in the Province of Ontario, before me at the City of Mississauga, in the Province of Ontario, on November 17, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Monica Faheim

Commissioner for Taking Affidavits (or as may be)

MONICA FAHEIM



Court File No. CV-23-00692784-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM)	FRIDAY, THE 20 TH
)	
JUSTICE CONWAY)	DAY OF JANUARY, 2023

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 INSCAPE CORPORATION, INSCAPE
 (NEW YORK) INC., AND INSCAPE INC.
 (collectively, the "**Applicants**")

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by Zoom videoconference,

ON READING the affidavit of Eric Ehgoetz sworn January 11, 2023, and the exhibits thereto (the "**Initial Ehgoetz Affidavit**"), the affidavit of Eric Ehgoetz sworn January 17, 2023 and the exhibits thereto (the "**Second Ehgoetz Affidavit**"), the Pre-Filing Report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicants (the "**Proposed Monitor**"), filed, and the First Report of A&M dated January 18, 2023 (the "**First Report**"), in its capacity as court-appointed Monitor of the Applicants (in such capacity, the "**Monitor**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and such other parties listed on the Counsel Slip, and no one appearing for any other party although duly served as appears from the affidavit of service of Maureen McLaren, sworn January 12, 2023 and the affidavit of service of Maureen McLaren, sworn January 18, 2023, and on reading the consent of A&M 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 each of the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS AND DECLARES** that the Applicants 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 Applicants shall remain in possession and control of their 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 Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants are 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 them, with liberty to retain such further Assistants as they deem 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 Applicants shall be entitled to continue to utilize the banking and centralized cash management system currently in place as more particularly described in the Initial Ehgoetz 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 Applicants 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 Applicants, 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 any 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 Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and 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; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that the Applicants may make payments in respect of amounts incurred prior to the date of this Order, provided that the Applicants shall obtain the consent of the Monitor to make such payment(s) or leave of this Court.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, 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), maintenance and security services; and

- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

9. **THIS COURT ORDERS** that the Applicants 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, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, 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 Applicants.

10. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay 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) or as otherwise may be negotiated between the Applicants and the 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.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are 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 Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, provided that, if the Monitor determines that approval of this Court is appropriate in the circumstances, the Applicants shall seek and obtain such approval of the Court before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business.

13. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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 Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such

secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they 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 of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, 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 Applicants 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 APPLICANTS OR THE PROPERTY

15. **THIS COURT ORDERS** that until and including March 9, 2023 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 Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants 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 Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any

business which the Applicants are 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.

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, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants 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 Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, 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 Applicants, and that the Applicants shall be entitled to the continued use of their 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 Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants 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 lease 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 Applicants. 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 Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants 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 obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. **THIS COURT ORDERS** that the directors and officers of the Applicants 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 \$750,000 as security for the indemnity provided in paragraph 21 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 35 and 37 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 Applicants’ directors and officers 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.

APPOINTMENT OF MONITOR

24. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their respective shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants 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.

25. **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 Applicants' 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 Applicants in their preparation of their cash flow statements;
- (d) monitor all payments, obligations and any transfers as between the Applicants, consistent with the Cash Management System;
- (e) 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 Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

26. **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.

27. **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.

28. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants 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 Applicants 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 Applicants may agree.

29. **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.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of this Order by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis.

31. **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.

ADMINISTRATION CHARGE

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the Applicants' counsel 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 \$800,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 35 and 37 hereof.

KEY EMPLOYEE RETENTION PLAN

33. **THIS COURT ORDERS** that the Applicants' key employee retention plan (the "**KERP**") described in Second Ehgoetz Affidavit and the First Report be and is hereby approved and the Applicants are authorized and directed to make the payments contemplated thereunder should the employees become entitled thereto in accordance with the terms and conditions of the KERP.

34. **THIS COURT ORDERS** that the beneficiaries of the KERP shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property in the amount of \$350,000. The KERP Charge shall have the priority set out in paragraphs 35 and 37 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

35. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the KERP Charge and the Administration Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$800,000);

Second – Directors' Charge (to the maximum amount of \$750,000); and

Third – KERP Charge (to the maximum amount of \$350,000).

36. **THIS COURT ORDERS** that the filing, registration or perfection of 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.

37. **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.

38. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or the Administration Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

39. **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**") 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 Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which they are 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 creation of the Charges;
- (c) the payments made by the Applicants pursuant to this Order 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.

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

WAGE EARNER PROTECTION PROGRAM ACT

41. **THIS COURT ORDERS AND DECLARES** that pursuant to section 5(5) of the *Wage Earner Protection Program Act (Canada)*, SC 2005, c 47, s1 (“**WEPPA**”), Inscope Corporation and its former employees meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and are individuals to whom the WEPPA applied as of the date this Order.

RELIEF FROM REPORTING OBLIGATIONS

42. **THIS COURT ORDERS** that the decision by the Applicants to incur no further expenses for the duration of the Stay Period in relation to any filings (including financial statements), disclosures, core or non-core documents and press releases (collectively, the “**Securities Filings**”) that may be required by any federal, provincial or other law respecting

securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act (Ontario)*, RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the Toronto Stock Exchange (collectively, the “**Securities Provisions**”), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicants failing to make any Securities Filings required by the Securities Provisions during the Stay Period.

43. **THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of the Applicants nor the Monitor shall have any personal liability for any failure by the Applicants to make any Securities Filings required by the Securities Provisions during the Stay Period, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of such failure by the Applicants.

SERVICE AND NOTICE

44. **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 (5) 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 any of the Applicants of more than \$1000 (excluding individual employees, former employees with retirement savings plan entitlements, and retirees and beneficiaries who have entitlements under any retirement savings plan), 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, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available unless otherwise ordered by this Court.

45. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, 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/commercial/>) 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 '<http://www.alvarezandmarsal.com/InscapeCorporation>' (the “**Website**”).

46. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective 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 Applicants' 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).

FOREIGN PROCEEDINGS

47. **THIS COURT ORDERS** that either one of Inscap Corporation, or in the alternative to Inscap Corporation, Eric Ehgoetz, is hereby authorized and empowered to act as the foreign representative (the “**Foreign Representative**”) in respect of the within proceedings for the purposes of having these proceedings recognized in a jurisdiction outside of Canada.

48. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition of these proceedings, as necessary, in any jurisdiction outside of Canada, including the United States pursuant to Chapter 15 of Title 11 of the United States Code 11 U.S.C. §§ 101 -1532.

GENERAL

49. **THIS COURT ORDERS** that, 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 Applicants or the Monitor in these CCAA proceedings shall, subject to further Order of this Court, provide the service list in these proceedings (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 two (2) 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 Applicants.

50. **THIS COURT ORDERS** that following the expiry of the Objection Deadline, counsel to the Monitor or counsel to the Applicants 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 (a) whether a hearing in respect of the motion is necessary, (b) if a hearing is necessary, the date and time of the hearing, (c) whether such hearing will be in person, by telephone or videoconference, or by written submissions only, and (d) the parties from whom submissions are required. In the absence of any such determination, a hearing will be held in the ordinary course on the date specified in the notice of motion.

51. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days’ notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided, however, that the Chargees shall be entitled to rely on this Order as issued and entered and on the Charges and priorities set forth in paragraphs 35 and 37 hereof with respect to any fees, expenses, liabilities and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

52. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

53. **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 Applicants, the Business or the Property.

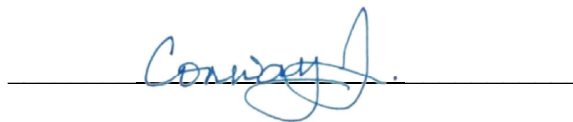
54. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the

Applicants 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 Foreign Representative in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

55. **THIS COURT ORDERS** that the Foreign Representative 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 Foreign Representative 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.

56. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

57. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.



IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.
Applicants

Court File No.: CV-23-00692784-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

AMENDED AND RESTATED
INITIAL ORDER
(RETURNABLE JANUARY 20,
2023)

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Lawyers for the Applicant

This is Exhibit “C” referred to in the Affidavit of Eric Ehgoetz sworn by Eric Ehgoetz of the City of Mississauga , in the Province of Ontario, before me at the City of Mississauga, in the Province of Ontario, on November 17, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Monica Faheim

A927328446B742A...

Commissioner for Taking Affidavits (or as may be)

MONICA FAHEIM

Court File No. CV-23-00692784-00CL

**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 INSCAPE CORPORATION, INSCAPE
(NEW YORK) INC., AND INSCAPE INC. (the "Applicants")**

**AFFIDAVIT OF ERIC EHGOETZ
(Sworn May 5, 2023)**

TABLE OF CONTENTS

INSCAPE AND PREVOLV BUSINESS RELATIONSHIP3

 Background on Inscape3

 Background on Authorized Dealer Business Model4

 Dealer Agreements, Support & Resources6

 Order Fulfillment Process and Documentation9

 Quality Levels of Inscape Product and Order Fulfillment15

CCAA PROCEEDING AND CONTINUED MANUFACTURING16

 Filing for CCAA16

 Post-filing Commitment to Completion of Prevolv Orders17

 Post-Filing Communications with Prevolv in furtherance of Order Fulfilment21

 Post- Filing Investment in Completion of Prevolv Jobs26

 Prevolv First Asserts Set-off After Orders Completed31

SPECIFIC RESPONSES TO PREVOLV’S CATEGORIES OF SET-OFF32

 A. Cancelled Contracts32

 B. Terminated Contracts33

 C. Chargebacks and Improper Invoicing33

 D. Sales Rebates34

 E. Chicago Showroom Buildout Costs34

 F. Chicago Showroom Lease39

PREVOLV MOTION ABANDONED, ORDERS UNPAID40

**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 **INSCAPE CORPORATION, INSCAPE
(NEW YORK) INC., AND INSCAPE INC.** (the “**Applicants**”)

Applicants

**AFFIDAVIT OF ERIC EHGOETZ
(Sworn May 5, 2023)**

I, Eric Ehgoetz, of the City of Mississauga, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the Chief Executive Officer (“**CEO**”) of Inscape Corporation (“**Inscape**”). I am also the CEO of Inscape (New York) Inc. (“**Inscape New York**”) and Inscape Inc. (“**Inscape Delaware**”, and, collectively with Inscape and Inscape New York, the “**Inscape Group**” or the “**Applicants**”).

2. I have acted as the CEO of the Inscape Group since March 2020. Prior to my role as CEO, and from June 2016 to March 2020, I was a member of the Inscape Group’s Board of Directors and Chair of its Audit Committee. Among other professional qualifications I hold a Chartered Financial Analyst (CFA) charter holder designation which I obtained in 1996, as well as an ICD.D. which I obtained in 2011 after completing a Directors’ Education Program with the Institute of Corporate Directors.

3. Attached as **Exhibit “A”** hereto is a copy of my curriculum vitae (CV), which includes a more detailed summary of my professional experience and qualifications.

4. I have knowledge of the matters to which I hereinafter depose, which knowledge is either personal to me, obtained from a review of the documents referred to, or, where indicated, I am advised by others in which case I verily believe such information to be true.

5. This affidavit is sworn in support of a motion returnable July 11, 2023 seeking certain relief in relation to a USD \$2,147,490 receivable (“**Inscape Receivable**”) that has been adjudged to be due and owing by Prevolv, Inc. (“**Prevolv**” or the “**Dealer**”) to Inscape.

6. An earlier version of this affidavit was filed on April 17, 2023 in opposition to a motion brought by Prevolv on April 10, 2023 (“**Prevolv Motion**”). The Prevolv Motion asserted \$8,253,088 in set-off claims, which, if allowed, would have entirely extinguished the Inscape Receivable. The Prevolv Motion was abandoned by Prevolv on April 20, 2023.

INSCAPE AND PREVOLV BUSINESS RELATIONSHIP

Background on Inscape

7. Prior to the commencement of these CCAA proceedings and ensuing wind-down of operations, the Inscape Group was in the business of designing, manufacturing and selling office furniture and architectural walls. The business began in 1888 as a New York-based full-service provider of office furniture under the name Office Specialty. In the early 1900s, Office Specialty moved to Canada and eventually relocated to Holland Landing, a community in the town of East Gwillimbury, 45 minutes north of Toronto.

8. Office Specialty Inc. became public on the TSX in 1997 and coincidentally changed its name to Inscape Corporation. The business operated under two primary brand names, being Inscape and Office Specialty.

9. Among other products, the Inscape Group designed, manufactured and distributed cubicles, desking and desk systems, movable walls, filing cabinets, bookcases and ergonomic furniture for customers across North America. The Inscape Group had two divisions: (i) the “furniture” division, which provided storage, desk, and seating solutions; and (ii) the “wall” division, which provided architectural and movable partition walls for office spaces.

Background on Authorized Dealer Business Model

10. Inscape’s business model relied exclusively on authorized dealer and representative relationships to sell product at a retail level. At the time of the Inscape Group’s CCAA filing, it had 90 authorized dealers.

11. An authorized dealer, places the purchase order, sells the product to an end customer, and completes whatever installation or configuration that the end customer may require. The dealer only places the purchase order with Inscape when they have a firm order from their own customer.

12. Authorized dealers enjoy a substantial discount off Inscape’s list price (ranging between 50 to 78%) and profit on the sale to the end customer.

13. Inscape is primarily reliant on relationships with its dealers and representative relationships because it is the dealer (not Inscape) who contracts directly with end customers in respect of their office furniture and wall needs. The purchase orders are custom orders designed for a specific end customer project.

Background on Prevolv Relationship

14. Prevolv is a commercial furniture dealer specializing in workstation design, office reconfiguration and furniture installation. For approximately 24 years, beginning in 1999, Prevolv was one of Inscape's authorized dealers.

15. Having been in place for 24 years, the dealer relationship between Inscape and Prevolv was particularly longstanding and was maintained based on principles of mutual trust, good faith and fair dealing. This relationship, together with the relevant dealer agreement and clearly prescribed trade terms (described below), allowed the parties to quickly resolve the types of minor order fulfilment issues that would from time to time arise.

16. In the result, Prevolv had an excellent track record of full payment of invoices on agreed trade terms. Unilateral or unauthorized deductions from invoices were not taken. The trade terms and the business practice was that, where appropriate, rebates and credit notes were confirmed in writing if approved by Inscape and offered by Inscape to be applied against Prevolv invoices. Rebates were offered in accordance with the terms of the applicable dealer agreement. Credit notes were offered in certain circumstances, in which case they could be applied in partial satisfaction of Inscape invoices.

17. As an acknowledgment of the strength of the relationship, the payment terms extended to Prevolv were more accommodating than payment terms made available to some other dealers. In particular, Prevolv's accounts receivable were due 60 days (as opposed to the customary 30 days) from the date of receipt by the Dealer of a completed order.

18. In the three years preceding the filing, Prevolv placed hundreds of purchase orders with Inscape, representing annual revenue for Inscape ranging from \$4.7 million to \$6.1 million. Sales by Inscape to Prevolv historically represented approximately 10% to 15% of Inscape's overall sales volume.

Dealer Agreements, Support & Resources

19. Inscape dealers who exceed a certain threshold of annual dollar volume sales are invited to enter into a "Platinum Dealer Agreement", which agreement specifies a variety of favourable marketing and growth incentives. Of Inscape's approximately 90 dealer relationships about 13 dealers, including Prevolv, were considered "Platinum Dealers".

20. Prevolv and Inscape are party to two Platinum Dealer Agreements: the first dated October 14, 2016 in respect of sales conducted out of Inscape's Minneapolis location, and the second dated November 11, 2018 in respect of sales conducted out of Inscape's Chicago location ("**Dealer Agreements**").

21. Copies of the Dealer Agreements between Prevolv and Inscape are attached as **Exhibit "B"** and **Exhibit "C"**, respectively. The Dealer Agreements prescribe the key terms and conditions upon which the Dealer may purchase Inscape product, and detail the substantial discounts and incentives available to the Dealer.

22. The Dealer Agreements also address "**Terms and Conditions of Sale**". By signing and entering into the Dealer Agreements and becoming a Dealer, Prevolv acknowledged and accepted that business would be conducted in accordance with specified terms and conditions of sale:

Terms and Conditions of Sale

Dealer accepts Inscape's terms and conditions of sale as published in various product price lists and as outlined in its standard credit application form.

23. For at least the last seven years, Inscape has maintained a company website ("**Website**") at the domain name www.myinscape.com. The Website hosts the complete range of Dealer support functions and Inscape product resources. Attached as **Exhibit "D"** is a screen capture of the home page of the Website.

24. The Website publishes links to "Design Support", "Dealer Support", and "Warranty Support". The "Dealer Support" section provides, among others, the following hyperlinks: (i) Care and Maintenance; and (ii) Conditions of Sale.

25. Attached as **Exhibit "E"** is a screen capture of the relevant page on the Website, which is accessible by clicking "Support" on the home page.

26. Clicking on the "Conditions of Sale" in the Dealer Support Section, prompts a download of a document titled "Terms and Conditions of Sale" dated as of September 2022 ("**Terms and Conditions**"). This document is also accessible by hovering over the "Resources" section at the top of the Website home page and clicking the hyperlink titled "Conditions of Sale". Attached as **Exhibit "F"** is a copy of the Terms and Conditions document available on the Website.

27. In addition to the Terms and Conditions document dated September, 2022, the Website maintains a copy of an earlier version of the Terms and Conditions dated as of May, 2019. For completeness, attached as **Exhibit "G"** is the earlier version of the Terms and Conditions dated May, 2019.

28. Both versions of the Terms and Conditions prohibit set-off as follows:

PAYMENT

Inscape invoices all orders in the currency indicated on the Order Acknowledgment. Payment must be made in this same currency and may be made by cheque or wire transfer in accordance with the instructions set out in the invoice¹. Subject to credit approval, **Buyer must pay all invoiced amounts due to Inscape within 30 days from the invoice date.** In some cases a deposit will be required before the order will be scheduled for production. Delinquent accounts are subject to a 1.5% per month charge or the largest amount permitted by law. Inscape reserves the right to delay or cancel any shipment where an account is delinquent. **Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Inscape** (emphasis added).

29. As a contract office furniture manufacturer, the Dealer's commitment to pay for orders in full and without unilateral deduction or claim for set-off is always required and makes good business sense. This is because, similar to a bespoke suit, Inscape product is customized and "made to measure". Product supplied by Inscape often included specialty ordered non-standard project components purchased from third parties and/or manufactured by Inscape exclusively for a particular order. In addition, each order is fulfilled by Inscape based on the colour, material and dimension choices requested in the purchase order and, as such, each order was unique. Further, as with other players in the contract furniture manufacture industry, Inscape did not maintain finished goods inventory. For all of these reasons, Inscape product was not scheduled for manufacture unless and until an accepted purchase order was in hand evidenced by way of an acknowledgement from Inscape on payment terms that assured Inscape of payment in full for its specialized production.

30. The Terms and Conditions of sale were highlighted and cross-referenced at multiple stages of the order fulfilment process, beginning with the dealer accessible "**Product Price Book**". The

¹ This Payment provision was extracted from the May, 2019 version of the Terms and Conditions.

Product Price Book, which numbers 430 pages, is a detailed presentation and price listing of furniture systems available for sale. A dealer such as Prevolv consults the Product Price Book to prepare a purchase order.

31. Product Price Books are published on Inscape's Website and were updated frequently. The Product Price Books are available for instant download and accessible in various conspicuous locations on the Website, including by clicking (or hovering over) the "Resources" section of the Website, and then clicking the hyperlink for "Price Books". Attached as **Exhibit "H"** is a copy of one of the first ten pages of the most recent Product Price Book dated January 2023.

32. The Product Price Book sets out the applicable price list for Inscape products as of January, 2023. As indicated in bold at the top of the first page of the Product Price Book, the product line is made available based on "Conditions of Sale" (i.e. the Terms and Conditions) published on (and linked to) the Dealer Support page of the Website. As indicated, the Terms and Conditions contain the provision excerpted above, which prohibits set-off.

Order Fulfillment Process and Documentation

33. Below is a step-by-step summary of the order fulfillment process, from the initial order placement through to the final completion and shipment of the product. The process described is followed consistently for orders received by Inscape, including orders placed by Prevolv. As explained, Inscape's Terms and Conditions are brought to the attention of Inscape's dealers several times throughout the order fulfillment process.

Step 1: Submission of Purchase Order

34. After a dealer has determined what specific furniture and wall systems will meet an end customer's requirements, a dealer initiates an order with Inscape through the preparation and submission of a purchase order ("**PO**"). Orders must be in writing or sent electronically by the dealer.

35. The PO is the initiating document which enumerates the particular items requested for manufacture. It is prepared with reference to the applicable Product Price Book which presents the range of products available to purchase at a given time. The dealer-determined items and quantities required for an end-customer's project are set out in either a single PO, or sometimes in multiple POs.

36. Attached as **Exhibit "I"** is a set of all of the POs submitted by the Dealer relating to the Inscape Receivable ("**Prevolv POs**"). Each Prevolve PO indicates the product description and quantity ordered, the price of each product ordered (which corresponds with the applicable Product Price Book available on Inscape's Website), the date of the order, the requested shipping date, and the delivery address. Each PO provides an e-mail address to which order acknowledgments are to be sent, and another e-mail address to which the invoice(s) are to be sent.

Step 2: Review by Inscape of Purchase Order

37. A PO that is submitted to Inscape is received by Inscape's Sales Relationship Team ("**SRT**"), which include, among others, the staff responsible for order entry. The SRT is responsible for reviewing each PO in detail to evaluate if the PO reflects the applicable Product Price Book and to ensure alignment with Inscape's fulfillment capabilities.

38. Based on their review, the SRT is responsible for clarifying any issues with the PO and advising the dealer of any necessary changes, substitutions and/or modifications. Once the PO is finalized, the contents of the PO are entered into the Inscape order processing system.

39. The PO defines the content of each order. Once a PO is reviewed (and acknowledged, as described below), only the specific items set out in the final PO are eligible to be scheduled for manufacturing.

Step 3: Order is Acknowledged

40. Entry of a PO into the Inscape system prompts the issuance of a written order acknowledgement (“**Order Acknowledgment**”), which is automatically sent by Inscape’s system to the applicable dealer’s e-mail address. As shown on the Prevolv POs, dealers will indicate a preferred e-mail address for the Order Acknowledgment on their PO.

41. Scheduled Shipping dates on the Order Acknowledgement are estimates and are not guaranteed. This is set out in the Terms and Conditions.

42. A copy of a sample Order Acknowledgment, with the accompanying attachment, is attached as **Exhibit “J”**.

Step 4: Scheduling Production and Manufacturing

43. Accordingly, orders are only scheduled for production following the issuance of an Order Acknowledgement. Necessary materials and parts inputs are requisitioned to and processed at Inscape’s factory under the supervision of Inscape’s VP of Manufacturing & Supply Chain, Dennis Dyke.

44. As Inscape products are made to order the procurement and production process begins well in advance of shipment. Product lead times lasting weeks or months are the norm in our industry. In Inscape's case product lead times ranged from 5 to 8 weeks for Systems, Storage, Seating and Accessories, and 6 to 8 weeks for Architectural Walls. These lead times are minimums. Lead times are calculated from the date of Order Acknowledgement, may fluctuate rapidly, and are subject to change without notice. Longer lead times are required for larger orders. Attached as **Exhibit "K"** is a copy of the "Product Lead Times" sheet uploaded on our Website, information that is accessible to dealers.

Step 5: Shipment, Issuance of Invoice, and Completion of Order

45. Upon completion of manufacturing activities for a particular order, the order is prepared for shipment and processed by Inscape's Logistics & Shipping team.

46. Concurrent with shipment of an order, an invoice is issued by Inscape and transmitted by e-mail to the applicable dealer. Attached as **Exhibit "L"** are copies of all invoices relating to the Inscape Receivable ("**Prevolv Invoices**"). Each of the Prevolv Invoices (as is the case for all invoices issued by Inscape) reference the Terms and Conditions of sale.

47. The Prevolv Invoices are accompanied by a "General Information & Conditions of Sales" document, a copy of which is attached as **Exhibit "M"**. The General Information & Condition of Sales references the Terms and Conditions of Sale:

Order Acknowledgment, together with the Terms & Conditions as detailed in our price list in effect at time of order entry, is intended as a complete, exclusive and final statement of the terms and conditions of agreement between Inscape and the purchaser with respect to the purchase and sale of the goods on order.

[...]

The above is not intended to be a complete detail as to the Terms of Sale. **Please refer to the Inscape website for the complete Terms and Conditions.**

48. The release of a completed order to a dealer starts the payment clock running. Invoices are to be paid in accordance with a dealer's payment terms. Invoices issued to Prevolv are to be paid within 60 days of receipt of a completed order. The extended payment term (from normal 30 days) is a courtesy to Prevolv that has been in place for many years.

49. Inscape's order fulfillment process is structured and operates in a mechanical and predictable way. Product is manufactured to order in accordance with carefully reviewed and acknowledged purchase orders. In the result, there are very few "mistakes" in the order fulfillment process. This point applies to Prevolv, as much as any of our dealers.

50. Incomplete, damaged or missing orders are generally quite rare, representing a fraction (less than 1%) of orders shipped. When such rare issues occur, they are addressed as described below. To the extent a Prevolv order was ever incomplete, damaged, or missing the relevant process below was followed.

- (a) **Incomplete Orders:** If a shipment arrives at its destination and is determined to be missing product specified by an applicable PO, the dealer is expected to promptly advise an Inscape customer service representative. Depending on the urgency, this contact may be initiated by phone or by e-mail. If initiated by phone, particulars of the issue are typically set out in written documentation (e.g. e-mail) submitted by the dealer as a follow up to a call. Inscape's SRT group investigates the issue and in the course of doing so, generates a field quality report (FQR) documenting the particulars of the issue and assigning responsibility to the specific department required to rectify the issue. The dealer is kept advised in writing of Inscape's progress in the investigation and resolution process. At the conclusion of this

process, the dealer-identified complaint is either accepted or rejected by Inscape. In all cases, the entire process is documented. The dealer receives written notification of the ultimate resolution. This process is strictly adhered to due to the nature of Inscape's audit practices, which require a complete audit trail of any and all credit notes issued by Inscape.

- (b) **Damaged Products:** If a shipment arrives at destination and is determined to be damaged in some way, the dealer is expected to, and invariably will, promptly inform Inscape's SRT of the specific issue. The dealer will provide some form of backup for its complaint, such as photographs. The matter is documented, investigated, assigned and resolved in the same manner as an incomplete order.
- (c) **Incorrect Invoicing:** If a dealer receives an Invoice and identifies an error (including, for instance, an error in the quantity of product or an error in the applicable price), it is incumbent on the dealer to bring the error to the timely attention of Inscape's SRT. This is expected to be done in writing. Inscape proceeds to review and resolve whatever issues are raised. The process is similarly documented for audit purposes and as a good business practice.

51. Inscape's practice is to issue written Credit Notes to dealers to document whatever monetary concessions the dealer may be entitled to based on noticed and verified deficiencies in order fulfilment. Credit notes are issued in accordance with internally prescribed written approval requirements. Examples of situations which may be resolved through a credit note include mistakes as to the appropriate quantity of a product, mistakes as to the pricing of product(s) and/or applicable discounts, and/or other specific and quantifiable administrative errors. As a public

company audited by Deloitte, Inscape documents the basis for and amounts of any and all credits accorded to Prevolv and other dealers.

52. Business activity requiring approval must be approved by at least two authorized individuals where the two individuals do not report to each other. Higher value credit notes are reviewed and approved by Inscape's senior executive officers.

53. Attached as **Exhibit "N"** is an example of a credit note that we issued to Prevolv. This particular credit note is dated November 21, 2022. It was issued in fulfilment of a promised dealer incentive (for FY2022 sales) that was accorded to Prevolv.

54. In Prevolv's case, product and order fulfilment issues were resolved in accordance with the processes and procedures described above. Prior to the commencement of these CCAA proceedings, Prevolv never unilaterally took credits or deductions against invoices by way of "set-off", or at all.

Quality Levels of Inscape Product and Order Fulfillment

55. Product quality and/or order fulfillment issues were always very much the exception for Inscape. As a public company, Inscape maintains data on supply chain and product quality issues. As CEO, I received monthly statistics in the form of field quality reports, which identified in detail any quality or warranty issues, late or cancelled shipments, or any other issues in the fulfillment process. Attached as **Exhibit "O"** is a copy of a Field Quality Report Summary presentation dated December 8, 2022.

56. Inscape's warranty claim target was 0.58% of sales. Inscape generally met or exceeded this target. Warranty claims rarely exceeded 0.6% of Inscape's sales. This includes warranty claims submitted by Prevolv.

57. As discussed below, Inscape was required to lay off a number of hourly and salaried employees shortly following the Initial Filing Date. However, in order to ensure the production of high quality product, and the effective management of order fulfilment issues, Inscape:

- (a) retained all key manufacturing and procurement employees (including a Director of Logistics & Customer Service, a Qualified SRT Manager, the VP of Manufacturing & Supply Chain, the Director of Procurement, and a Production Manager); and
- (b) continued to adhere to all standard investigation and resolution protocols in respect of all dealer issues related to incomplete and/or damaged products and invoice issues.

CCAA PROCEEDING AND CONTINUED MANUFACTURING

Filing for CCAA

58. Inscape Group has been a TSX listed public company since 1997. Our quarterly and year-end financial results were widely disseminated and available on SEDAR, consistent with the Ontario Securities Commission regulatory requirements.

59. As described in our court filings, Inscape Group experienced declining financial performance over several years, beginning prior to the Covid-19 global pandemic. These

challenges were compounded by the pandemic and its lasting and devastating impact on the entire contract office furniture manufacturing industry.

60. Inscape Group obtained CCAA protection pursuant to the order of the Honourable Madam Justice Conway dated January 12, 2023 (“**Initial Filing Date**”). A copy of the Notice of Application issued January 12, 2023 is attached as **Exhibit “P”**. A copy of my affidavit sworn January 11, 2023 (without exhibits) is attached as **Exhibit “Q”**. A copy of the Monitor’s Pre-filing Report dated January 11, 2023 is attached as **Exhibit “R”**. A copy of the Initial Order of Justice Conway dated January 12, 2023 is attached as **Exhibit “S”**. A copy of the Endorsement of Justice Conway dated January 12, 2023 is attached as **Exhibit “T”**.

61. As disclosed in the Applicants’ court materials, Inscape was insolvent and had been operating at a loss for several years before the CCAA Filing Date. The company’s court materials are replete with references to our conclusion that it was necessary to wind down operations and liquidate assets. As noted in Justice Conway’s Initial Order endorsement, the CCAA application was to be a “liquidating CCAA, not a restructuring”.

62. Inscape’s CCAA filing and associated lay-offs received early media attention with several stories describing the impact of the filing and the permanent lay-offs. Attached as **Exhibit “U”** is a copy of press reports, including one from CTV news and another from a popular industry reporter, Monday Morning Quarterback.

Post-filing Commitment to Completion of Prevolv Orders

63. Initially, in mid-January, Inscape moved to a “hard shut down” and terminated almost all salaried employees and laid off almost all hourly workers. A small number of employees were retained to assist in the wind-down.

64. In the following two weeks, the complete shut-down decision was revisited.

65. Inscape Group and the Monitor recognized that an orderly wind down might involve the continuation of certain limited manufacturing operations as a means of maximizing creditor recoveries. To this end, myself, and Inscape's Chief Financial Officer, Jon Szczur, and Dennis Dyke, Inscape's VP of Manufacturing & Supply Chain worked diligently with the Monitor to undertake a cost-benefit analysis with respect to Inscape's outstanding jobs as at the filing date. The goal of the analysis was to identify work-in-progress jobs that made economic sense to complete as a means of profitably creating or securing collection of accounts receivable. This analysis included a consideration of the additional investment required to complete individual jobs (including labour costs, sourcing of additional raw materials, and other expenses including but not limited to rent, utilities and other necessary overhead).

66. Attached as **Exhibit "V"** is a copy of a spreadsheet which was prepared by the Monitor and Inscape ("**Post-Filing Manufacturing Spreadsheet**"). The orders set out in the spreadsheet were Acknowledged orders and orders that constituted work in process at the time.²

67. The Post-Filing Manufacturing Spreadsheet reflects the analysis undertaken to ensure post-filing dollars expended during the CCAA would secure payment of greater value realizations in the form of accounts receivable. This analysis was completed for both the "walls" and "furniture" segments of the business.

² This excludes certain punch and other limited orders related to the Post-Filing Manufacturing Process Spreadsheet completed as part of resumption process.

68. At the conclusion of the analysis Inscape agreed to invest in the completion of 36 orders, 26 of which were for Prevolv (together, the “**Prevolv Orders**”). The decision to invest in and complete the Prevolv Orders was made in consultation with the Monitor and Inscape’s secured creditor, HUK 116 Limited, and with the full support and at the urging of Prevolv. Prevolv’s support for its order fulfillment is further discussed below.

69. In the course of determining which orders it made financial sense to finish, Prevolv identified which in-progress orders it wanted Inscape to complete. Advice as to particular orders that Prevolv wanted completed was provided to Inscape’s Director of Logistics & Customer Service, Rebecca Montinaro. Inscape accepted this direction and all of the Prevolv identified orders were included in the Prevolv Orders. Attached as **Exhibit “W”** is a copy of an e-mail exchange dated January 26, 2023 and January 27, 2023, and a separate e-mail exchange dated February 3, 2023, each confirming Prevolv input into the agreed upon orders to be completed.

70. The list of Prevolv Orders was finalized on or about January 27, 2023.

71. The Prevolv Orders were in various stages of completion as at the CCAA filing date. This was the case because of the relatively long lead time for production of our customized furniture product.

72. All of the jobs that Prevolv identified as ones that it wished to be completed were included in the Prevolv Orders list. This included orders of all sizes, both large and small. As a long standing dealer with an excellent payment record we wanted to accommodate Prevolv as far as possible. We accepted Prevolv’s direction on which of its orders were to be completed. From Inscape’s perspective, the objective of doing so was to secure additional value and insolvency realizations for all of our creditors.

73. Manufacturing and procurement activity in respect of the Prevolv Orders resumed on January 30, 2023.

74. In order to complete the Prevolv Orders, on February 13, 2023 Inscape called back approximately 18 hourly workers to Holland Landing. These workers were previously laid off on January 13, 2023.

75. The Monitor reported to the court and to creditors on our decision to proceed with selected order fulfilment:

Final Manufacturing & Accounts Receivable

3.4 Following the commencement of the CCAA Proceedings, the Applicants continued to employ an initial group of employees at their two manufacturing plants, including 26 employees at the Holland Landing Facility and three employees at the Jamestown Facility (each as defined and described in the Pre-Filing Report).

3.5 These employees were retained to continue certain limited operations of the Applicants' business, including the final manufacturing, fabrication and delivery of certain customer orders, each of which were determined by the Applicants to be: (i) close to completion and able to be finalized and delivered in a timely and efficient manner; and (ii) the cost to complete was less than the benefit to the estate, by way of improved collectability on existing outstanding accounts receivable (for example, by completing certain final "punch list" items) or by completing and delivering customer orders not yet recorded in accounts receivable.

76. Post-filing manufacturing was completed on February 24, 2023 and the corresponding final shipments were all released to our shippers by February 27, 2023.

77. Immediately thereafter, manufacturing activities ceased and Inscape's hourly staff who were employed to complete the post-filing manufacturing were terminated.

78. At 9:20 a.m. on March 6, 2023, Prevolv's counsel wrote to the Monitor and the Monitor's counsel and my counsel and others and declared "it appears that the time has come now to begin reviewing the set-off issues". This e-mail outlined, for the first time, Prevolv's position that it was

entitled to assert multiple categories of set-off in very significant dollar amounts such as would operate (if permitted) to entirely extinguish the Inscape Receivable. A copy of the March 6, 2023 email and preceding March 3 email inquiry from the Monitor, is attached as **Exhibit “X”**.

Post-Filing Communications with Prevolv in furtherance of Order Fulfilment

79. On January 12, 2023, just after the CCAA filing, I reached out to John Ewine (“**Ewine**”), the president of Prevolv, by text message, attaching a link to the News Wire release announcing Inscape’s CCAA filing. In this initial text message, and the other text messages that followed, I told Ewine know that the impact of the filing was “awful”, but Inscape would do the best that it could to solve supply issues for Prevolv. Attached as **Exhibit “Y”** is a copy of my January 12, 2023 text message conversation with Ewine, together with the referenced News Wire release.

80. I am advised by Inscape counsel that Prevolv was added to the CCAA Service List prior to Inscape Group’s January 20, 2023 comeback hearing (“**Comeback Hearing**”). Attached as **Exhibit “Z”** is a copy of the Service List included in the Motion Record of the applicants filed in connection with the Comeback Hearing.

81. I am advised by Inscape counsel that Prevolv remained on the Service List, was served with all court materials, and attended and participated in court hearings throughout the CCAA.

82. Prevolv retained Canadian counsel on or before January 25, 2023, on which date Canadian counsel to Prevolv sent an e-mail to Inscape’s Canadian counsel. Attached as **Exhibit “AA”** is a copy of the e-mail from Prevolv’s counsel to Inscape’s counsel dated January 25, 2023.

83. The work that went into completion of the final Prevolv Orders (including the restart of operations and additional investment in production) was pursued with Prevolv’s support and

encouragement, and in the context of all of the challenges and pressures of a court supervised liquidation and wind-down. To do so successfully, as we did, required a high level of communication between our respective organizations, both at a senior management level, as well as at an SRT and manufacturing level. In the weeks following the Initial Filing Date, Inscape and Prevolv were in near daily contact. Our order fulfilment and logistics staff worked hand in hand with their Prevolv counterparts to successfully build out and deliver whatever Prevolv wanted as quickly and as efficiently as possible. This was the common goal.

84. In the five weeks following the Initial Filing Date, I attended four virtual meetings with Ewine and others by Microsoft Teams. The meetings were attended by executives at Inscape and Prevolv, and were scheduled so that we could fully align on and ensure each other's support on issues of importance to both companies, including, particularly, the completion of and payment for the Prevolv Orders.

January 16, 2023 Microsoft Teams Meeting

85. On January 16, 2023, I attended a Microsoft Teams Meeting with Ewine and his colleague, Tim Paradis. The purpose of this call was to discuss, further to the initial January 12, 2023 text messages referenced above, Inscape's insolvency filing and the implications of it on Prevolv's outstanding orders.

86. At the time of the January 16, 2023 call, and in the two weeks that followed, Inscape, in consultation with the Monitor, Prevolv, and others, was undertaking a cost-benefit analysis to determine which specific orders made financial sense to complete for the benefit of the estate. During the call, I told Ewine that we were doing this and that a decision would be made shortly with respect to a potential restart of operations to complete certain outstanding orders. Ewine

expressed his strong support for this approach and encouraged us to include his outstanding orders and proceed as quickly as possible.

87. More specifically, Ewine said that if the outstanding orders were not completed for Prevolv, he would not be able to complete orders for his end customers, who in turn would decline to pay Prevolv. Ewine said that if Prevolv's end customers were not happy, Prevolv would not be able to pay Inscape. I took Ewine's point to be that Inscape and Prevolv had a shared financial interest in building out the Prevolv Orders. Accepting this, I assured Ewine that I would let him know as soon as we figured out, in conjunction with the Monitor and others, which orders, if any, might make financial sense to complete. I let him know that in order to complete orders we would first need to get Monitor support for the additional manufacturing and associated investment.

88. Attached as **Exhibit "BB"** is a copy of a text message discussion between myself and Ewine on January 25, 2023 (5 days prior to the resumption of manufacturing and procurement activities), where, among other things, I provide an update on Inscape's efforts and intention to complete certain "punch items" and remind Ewine that Inscape's team is available to provide updates on particular items as needed. Ewine's response was supportive. He reminded me of our 25-year business relationship.

89. The list of Prevolv Orders was finalized on or about January 27, 2023.

90. Manufacturing and procurement activities resumed on January 30, 2023.

February 6, 2023 Microsoft Teams Meeting

91. By February 6, 2023, manufacturing and procurement activities for the Prevolv POs had been underway for about a week. On that date, I attended a Microsoft Teams Meeting with Ewine

and Inscape CFO, Jon Szczur. This meeting was organized by Ewine, who sent a meeting invitation enclosing a list of three items for discussion: (1) *“Discuss current status of manufacturers interested in acquiring Inscape’s systems and storage business”*, (2) *“Discuss current status of manufacturers interested acquiring Inscape’s wall business”*, and (3) *“Review punch list fulfillment and resolution process.”*

92. During this meeting, I raised a concern with Ewine that Inscape had not received a payment which was expected on January 31, 2023 for Prevolv POs relating to a project for General Mills, an end customer of Prevolv. The invoices for the General Mills project, copies of which are included as Exhibit “L” above, totalled USD \$396,000 (**“General Mills Receivable”**). The General Mills Receivable was provided for in the Monitor’s cash flow, and the Monitor had asked us to follow up on collection.

93. In response, Ewine said that Prevolv had not received its final product shipment for General Mills until January 16, 2023 (making 60-day payment of the Invoices due on March 16, 2023), and that he required receipt of all of his outstanding orders before he would issue any payments to Inscape, including in respect of the General Mills Receivable. Ewine said several times on the call that Prevolv would pay Inscape receivables in full, but only after receipt of everything he had ordered, and then on his normal 60 day terms. I specifically recall him saying that he “has always paid [his] bills for 24 years” and that he would remit payment per his payment terms once he had what was needed.

February 10, 2023 Microsoft Teams Meeting

94. On February 10, 2023, I attended another Microsoft Teams with Ewine. In addition to myself and Ewine, Inscape CFO, Jon Szczur and Inscape VP of Manufacturing & Supply Chain,

Dennis Dyke were on the call. This call was scheduled at Ewine's request and in an effort to allay his concerns as to the status of completion of the outstanding Prevolv Orders.

95. The more detailed purpose of this call was to review progress on outstanding "punch items" and to update on the overall progress of the remaining Prevolv Orders. It was for this reason that Mr. Dyke participated on the call as he oversaw the post-filing manufacturing activities and supervised the staff involved in the order fulfillment process.

96. In response to Ewine's request for information on outstanding orders, Mr. Dyke provided a comprehensive update on manufacturing progress and our ongoing efforts to manage supply chain issues. In this regard, and as will be further described below, certain suppliers stopped supplying Inscape notwithstanding the terms of the Initial Order. In these cases we made alternative arrangements, often at additional cost, to source materials required for completion of items, including the Prevolv Orders. Ewine was satisfied with Mr. Dyke's update, and expressed support for our efforts for what we were trying to do.

97. On the February 10, 2023 call, in an attempt to advance payment of the Prevolv' receivable and improve our CCAA cash flow, I asked Ewine whether Prevolv would be agreeable to a discount of 10% in exchange for accelerated payment of the General Mills Receivable (then due in accordance with Prevolv's terms on March 15, 2023). Ewine declined the offer, saying words to the effect of "I don't need a discount, I need my product". In doing so, Ewine again assured us, that Prevolv would pay Inscape's receivables in full in the normal course.

February 23, 2023 Microsoft Teams Meeting

98. I attended a final Microsoft Teams meeting with Ewine on February 23, 2023. In addition to myself and Ewine, both Inscape CFO Jon Szczur and CBRE representative Geoff Euston were present. Mr. Szczur arranged this meeting which was scheduled for the purpose of discussing the lease (under which Inscape and Prevolv are co-tenants) in respect of a showroom in Chicago (“**Chicago Showroom**”) as well as certain then outstanding payments owing by Prevolv. I had been advised that Ewine was looking to list the Chicago Showroom and that he engaged CBRE for that purpose. In that regard, a draft listing agreement was prepared and circulated in advance of the call. In the first part of this call, Mr. Euston of CBRE discussed issues related to listing the Chicago Showroom, including the current market and the broker’s expectations. Following to that discussion, Mr. Euston exited the meeting and myself, Ewine, and Mr. Szczur discussed payment of the Inscape Receivable.

99. At the time of this February 23, 2023 call, Inscape was expecting payment of the General Mills Receivable within approximately one week, based on Inscape’s original view that the order was fully complete by December 30th, not January 16th as represented by Prevolv. In that regard, I asked for confirmation on payment of amounts owing to us. Ewine told us that he would pay in full when all of the Prevolv Orders were complete.

Post- Filing Investment in Completion of Prevolv Jobs

100. As indicated, Inscape made extraordinary efforts in the extremely challenging circumstance of an insolvency wind-down to execute the Prevolv Orders to Prevolv’s complete satisfaction.

101. To this end, Inscape went “above and beyond” and made substantial additional and out of the ordinary course investments to get the job done. All of this was done with confidence that Ewine would keep his word, and his company would remit payment in full when the time came.

102. Inscape’s aggregate post-filing financial investment in the Prevolv Orders, totals approximately CAD \$492,000 (exclusive of an estimated \$500,000 general cost for overhead as set out in sub paragraph (d) below). The investment falls into these four general categories:

- (a) Payments on account of potential construction liens (approximately CAD \$150,000);
- (b) Retention of Hourly and Salaried Staff (approximately CAD \$324,000)
- (c) Sourcing additional input materials (approximately CAD \$18,000); and,
- (d) Incurrence of additional expenses for utilities, rent, insurance and other overhead expenses connecting to resumption of manufacturing (over CAD \$500,000, a significant portion of which can be allocated to Prevolv).

Payment to Avoid/Resolve Construction Liens

103. The “walls” segment of Inscape’s business involves construction operations which are subject to construction lien legislation in certain jurisdictions. Non-payment, or delays in payment by Inscape, runs the risk that unpaid suppliers may seek to register construction liens against end-customer projects.

104. After the Initial Filing Date, Ewine advised Inscape on several occasions of a potential for construction liens in respect of “walls” jobs that were then in progress. He requested that Inscape

pay the applicable supplier (and potential lien registrant) the full amount claimed by them in order to avoid a lien registration.

105. As one example, attached as **Exhibit “CC”** is a copy of e-mail correspondence dated January 23, 2023 (together with the attachment) from Ewine to Inscape CFO, Jon Szczur, enclosing a Notice of Intent to Lien dated January 17, 2023, issued by one of Inscape’s suppliers. In this e-mail, Ewine asks Mr. Szczur to let him know what can be done to “get [the notice of intention to lien] cleared up”.

106. Below is a table providing particulars of potential liens and amounts paid in furtherance of completion of the Prevolv Orders. These payments were made at Prevolv’s request and on the basis of Ewine’s advice to me that making the payments would ensure that work was completed and paid for to everyone’s benefit.

Supplier	End Customer	Date paid	Amount (\$USD)
Old Castle	CLA Orlando CLA King of Prussia CLA ULM Morris Plains, NJ	February 14, 2023	\$64,582.21
Old Castle	CLA Madison	February 17, 2023	\$15,885.73
William Penn	CLA King of Prussia	February 24, 2023	\$36,059.68
Total	USD \$116,527.62		

Retention of Employees

107. In order to complete the Prevolv Orders and other orders, 21 hourly employees were asked and agreed to return to work starting on January 30, 2023 and February 13, 2023 in the United States and Canada, respectively. These employees all knew that they would shortly have no jobs,

but they returned to work for a limited time for an insolvent company during what was no doubt a difficult personal time for them.

108. Labour costs (both hourly and salaried) associated with completion of the Prevolv Orders amount to approximately CAD \$324,000. As with the potential liens, this post-filing expense was incurred in order to complete orders, secure full collection of the Inscape Receivable, and generate returns for creditors generally.

Sourcing Additional Materials

109. A further challenge and extraordinary expense incurred in the course of completing the Prevolv Orders relates to the fact that certain of Inscape's third party vendors had no interest in working with an entity in CCAA protection. Such parties declined to supply notwithstanding the terms of the Initial Order. Not having alternative suppliers readily available, Inscape had no choice but to implore these vendors to change their position and supply, including by providing them with special accommodations such as advance payment by wire or COD. Inscape reached out to the Monitor, and asked for and obtained the Monitor's assistance, in the process of seeking the sought-after cooperation from such suppliers.

110. The task of completing the Prevolv Order was made even more difficult and time consuming, and labour and capital intensive, by Prevolv's continuing addition of new "punch items" (or outstanding job requirements). Many of these "punch items" were outside of the scope of the previously Acknowledged POs.

111. In this regard, on more than one occasion, Prevolv requested a range of additional products which we were told were necessary to fulfil end customers needs, and thereby ensure payment for

us. Prevolv requested last minute changes to orders which were not contemplated in the applicable PO. By way of example, attached as **Exhibit “DD”** is a copy of e-mail correspondence dated February 8, 2023 from Inscape’s Director of Logistics & Customer Service, Rebecca Montinaro, to Ewine. In her correspondence, Ms. Montinaro told Ewine that his earlier request for different external painting of a product was not aligned with the original PO (as submitted and Acknowledged).

112. As reflected in Ms. Montinaro’s email, Inscape was assiduous in completing Prevolv Orders, and out of scope add-ons to Prevolv Orders. We did so in spite of the challenges of operating while in a CCAA wind down. Our employees made every possible effort, and Inscape made additional investments, to secure the required product to successfully fulfil Prevolv’s “last minute” orders.

113. Inscape made yet additional accommodations to Prevolv to ensure that the Prevolv Orders were all completed in full seamlessly and without interruption. One such example involved a third-party supplier to Inscape, called Environamics Inc. (“**Environamics**”). Inscape outsourced the manufacture of specific walls product to Environamics. Prior to the CCAA, Prevolv would pay Inscape in normal course, trusting that we would in turn pay Environamics’ invoices. After the CCAA filing, Ewing was not satisfied with this arrangement. He approached Inscape requesting a new arrangement that put Prevolv in charge of payments to Environamics, presumably to better ensure Environamics supply and eliminate any lien risk. Although Inscape did not consider this new agreement to be necessary, we agreed to it anyway believing it made no difference to Inscape and would further accommodate our long time dealer.

114. Attached as **Exhibit “EE”** is a copy of the agreement dated as of March 2, 2023 and entered into by Inscape, Prevolv and Environamics (“**Environamics Agreement**”). The Environamics Agreement is structured such that Prevolv is to pay Inscape its profit margin on applicable orders. Prevolv is also to pay Environamics. Prevolv has so far not honoured its obligation to pay us.

Prevolv First Asserts Set-off After Orders Completed

115. As described at paragraph 77 above, Prevolv did not put forward the position that it now asserts regarding set-off until the morning of March 6, 2023, days after Prevolv’s orders were released for shipment and left Inscape’s docks.

116. Inscape had worked closely with Prevolv throughout the CCAA. Jon Szczur, myself, and our teams had ongoing contact and discussions with Ewine and his team concerning a broad range of issues, including specifically payment. The issue of set-off was never raised (nor did I expect it to be, given our Terms and Conditions).

117. I was accordingly astonished to learn of Prevolv’s position. I had been repeatedly assured and led to believe that payment was to be made in full in due course, and indeed was imminent.

118. Looking back, and in all of the circumstances described in this affidavit, I believe that we were taken advantage of, or “set up”, and that Prevolv never intended to pay what it owed, contrary to its repeated promises of payment.

119. Prevolv’s conduct is baldly tactical. It is obvious and reasonable that if Prevolv had been honest and direct regarding its intention to refuse payment, Inscape would not have resumed work on the Prevolv Orders.

SPECIFIC RESPONSES TO PREVOLV'S CATEGORIES OF SET-OFF

120. Prevolv asserts set-off claims totalling \$8,253,088.50 ("**Prevolv Set-off Claims**"). It seeks to apply these claims to off-set and extinguish the \$2,114,345.22 USD owing on account of the Inscape Receivable.

121. I have reviewed Ewine's affidavit sworn April 10, 2023 ("**Ewine Affidavit**"), including the exhibits put forward as particulars of claimed losses. The next section of this affidavit will address each category of damages, in turn.

A. Cancelled Contracts

122. Inscape has prepared a spreadsheet, which is attached as **Exhibit "FF"**, providing detailed in-line responses to each of the four categories of alleged losses for which Prevolv claims set-off ("**Spreadsheet Response**").

123. Prevolv first seeks to set-off USD \$204,777.77 on the basis that it will have to forego gross profit on 19 orders that Prevolv says it placed with Inscape but that Inscape has advised that it will not be completing.

124. As detailed in the "Inscape Comments" section of the Spreadsheet Response, the orders at issue, were all either: (a) shipped and invoiced; (b) placed by Prevolv but never Acknowledged by Inscape and/or selected by Prevolv to be added to the Prevolv Orders list; or (c) in a few cases, orders were placed by Prevolv and Acknowledged by Inscape but were never subsequently put forward by Prevolv as orders that it wanted to be included on the Prevolv Orders list.

B. Terminated Contracts

125. Prevolv seeks a further \$1,107,941.50 in set-off on the basis that two Prevolv customers (General Mills and Cook County) may cancel “upcoming orders” and turn to other suppliers, resulting in reduced future profit future for Prevolv.

126. Inscape’s evidence on this category of set-off is also set out in the Spreadsheet Response. The claimed future losses are highly speculative at best. Based on my review of recent Prevolv financial statements, it would appear that a very high percentage of Prevolv’s annual revenues (approximately 80%) are derived from non-Inscape office furniture lines. Further, there are comparable substitute third-party products available to replace Inscape offerings, such that Prevolv’s customers’ future furniture needs, whatever they may be, can be fully met elsewhere. In this regard, I note that Prevolv’s website promotes 57 manufacturing partners aside from Inscape. Attached as **Exhibit “GG”** is a copy of the Manufacturer Partners list available on Prevolv’s website.

C. Chargebacks and Improper Invoicing

127. Prevolv seeks a further USD \$242,851.75 in set-off on the basis that it has allegedly “suffered delays and deficiencies in Inscape’s products”, as well as “improper invoicing”.

128. As indicated in Inscape’s Spreadsheet Response, the amounts claimed here are completely unsupported. Even the most basic corroborating materials, which any dealer would know to provide at first instance (*i.e.* date of expense/issue, associated order number, evidence of expense, evidence of submission of issue to Inscape to assess), have not been provided or even referenced.

129. Further, and as explained in paragraphs 49 to 51, above, issues having to do with these types of occasional and miscellaneous order fulfilment matters have always been addressed in

accordance with long-followed procedures. If supporting evidence is provided that demonstrates an issue in this category, Inscape applies its standard procedures.

D. Sales Rebates

130. Prevolv claims set-off in respect of “rebates earned” which it quantifies at USD \$86,161.54.

131. The first component of this rebate claim, being a Prevolv entitlement to what is correctly calculated as USD \$36,652.92 on account of prior year sales, was not in issue (beyond set-off) prior to this motion. Ewine acknowledges this at paragraph 26 of the Ewine Affidavit.

132. The second component of the rebate claim is for USD \$49,508.62 and apparently relates to Inscape products sold to the City of Minneapolis by Prevolv pursuant to a “National Cooperative Purchasing Alliance agreement”. Ewine asserts at paragraph 29 of the Ewine Affidavit that Inscape has “refused or failed to recognize and provide this rebate to Prevolv”. Inscape has not refused to pay (or credit) this amount. To the best of my knowledge, a credit claim was not submitted for it. In order to be considered, claims for rebates of this nature must be made in accordance with the relevant dealer agreement.

E. Chicago Showroom Buildout Costs

133. Paragraphs 28 to 70 of the Ewine Affidavit claims USD \$2,861,356.34 in set-off for costs that Prevolv says it incurred in designing and building out tenant improvements for the Chicago Showroom (“**Build-out Costs**”). Ewine references a January 2021 letter of intent, and refers to unsuccessful efforts to reach a “Teaming Agreement”, before asserting a right to recoup build-out costs “which [Prevolv] assumed in reliance on rebates generated from the profitable Chicago Showroom joint venture with Inscape”.

134. With reference to the LOI, and as the document says at the top, the purpose of it was “*to commit to develop a mutually agreed upon operating agreement that clearly outlines the structure, working relationship, mutual commitments, and joint responsibilities between Prevolv (dealer) and Inscape (manufacturer) pertaining to the proposed co-occupancy and unique go-to-market strategy in Chicago” (emphasis added).*

135. The proposed co-occupancy purpose of the LOI was accomplished in the sense that in June 2021 Inscape and Prevolv, as co-tenants, entered into a lease (“**Lease**”) with Thor 816 Fulton Owner LLC, as landlord, for furniture showroom premises in the Fulton Market Building in Chicago (“**Premises**”).

136. At the time the Lease was executed, Inscape did not have an existing showroom in Chicago and had not had one since exiting the prior Chicago showroom on lease expiry in Feb 2021. Further, the entry into of the Lease was predicated on Inscape taking no other financial risks related to the showroom other than contingent payments to Prevolv based on future sales in the Chicago region.

137. The balance of what the LOI envisioned was very much aspirational and was largely not accomplished. For this reason, the LOI stands as an outline of a joint venture type arrangement that we agreed to further due diligence and work to develop into an agreement.

138. As indicated in paragraph 2 of the LOI, the subsequent agreement, had it been reached, would have operated to replace the then existing Prevolv Platinum Dealer Agreement. This did not happen. Prevolv always operated under the Platinum Dealer Agreement.

139. Attached as **Exhibit “HH”** is a chart (“**LOI Chart**”) that I have prepared so as to indicate the completion status as at the date of the CCAA filing of the various initiatives contemplated by the LOI. As is apparent from a review of the LOI Chart, important terms such as arriving at a “mutually agreed upon hurdle rate of return” were never agreed upon and remained far from resolution. The vast majority of the hoped for joint staffing plans, planning and development team initiatives, and business development initiatives were also not agreed upon, undertaken or completed.

140. The fact that Inscape and Prevolve elected to proceed with the Lease and the showroom relocation in the absence of an agreement on anything else, was an accommodation to Prevolve at Ewine’s insistence. This is confirmed by an email that Ewine sent me in mid-October 2020 that reads in part as follows:

I am respectfully requesting your “authorization to proceed” with our showroom relocation plans in Chicago.

When we presented our Business and Real Estate Plans to you on August 31st (7 weeks ago), we all agreed that we could take two parallel paths – one for the relocation of the showroom and the other for a joint venture between Prevolve and Inscape. AND, we all understood the critical timing involved regarding the showroom and being up and running at a new location prior to NeoCON 2021.

Since then, we have put together our team to work on the showroom relocation that now includes ConopCo (our project manager) and Skender (the general contractor) in addition to CBRE for our design and real estate needs. The schedule we developed together required us to start the Schematic Design process on Monday, October 12th so we are in jeopardy of falling behind schedule.

Regarding a joint venture between our two companies – I am excited AND ready to move forward with the due diligence that will need to take place in order for us to determine “together” if this makes the best business sense. However, this will take some time and we all agreed that it should not hold up our plans for relocating the showroom since it is critical to our joint success in Chicago whether we have a joint venture or not.

141. A copy of this October 16, 2020 e-mail from Ewine is attached as **Exhibit “II”**.

142. Inscape accepted Ewine’s “two parallel paths” proposal and agreed to the idea of new showroom location in late 2020. The LOI was signed around the same time, on January 15, 2021. The LOI outlines the hoped for “joint venture” that Ewine and I agreed would take additional time to “due diligence ... and determine ‘together’ if this makes the best business sense”.

143. Apart from the Lease aspect, Prevolv’s proposals to develop the type of future partnership contemplated by the LOI turned out to make little financial sense for Inscape, and were not seriously or actively pursued by either party. Although some meetings and calls were held, and some draft teaming agreements were exchanged, the efforts were intermittent, lacked momentum, and did not conclude. Ewine’s explanation (at paragraph 67 of the Ewine Affidavit) for not returning to teaming agreement negotiations after June 2022 on the basis they “would be challenging” is an understatement. Progress proved impossible. If anything continued discussions regarding the content of a teaming agreement, particularly financial terms, moved us further away from an agreement, not closer. As time progressed, I increasingly viewed Ewine’s “asks” regarding levels of expense rebates, expense recoupment, and hurdle rates of return to be insurmountable obstacles to a deal.

144. In the absence of reaching agreements contemplated by the LOI, Prevolv and Inscape worked under the Platinum Dealer Agreement for Chicago that Ewine puts in evidence at Exhibit “D” of his affidavit.

145. Prevolv claimed and received the benefit of all of the discounts, rebates and incentives to which the company was entitled pursuant to the Chicago Platinum Dealer Agreement. Prevolv never claimed (until this motion) the benefit or rebates associated with the LOI.

146. More specifically, Prevolv never submitted for a 3% future sales rebate calculated on Inscape product sold through the Chicago showroom.

147. Prevolv now claims set-off for the Chicago Showroom build-out in the approximate amount of USD \$1,804,351.42, plus what it described as a “reasonable hurdle rate of return” of 10% per annum over a 10-year period calculated as totalling USD \$2,861,356.34. With respect to the build-out costs, what was envisioned at the time of the LOI, as set out in the LOI, was that Prevolv would be eligible to recapture its build-out investment based solely on a capped (at 3%) rebate applying to prospective sales. The rebate was to be a sales incentive, tied to future performance, and without any guarantee of reimbursement within a given time frame, or at a given dollar amount, or at all. As Ewine describes in the Ewine Affidavit at paragraphs 56 to 70, the parties intermittently exchanged proposals and attempted to agree on rebate amounts, and limits and “hurdle rates”, but remained far apart and ultimately failed to agree on any of this.

148. To provide another example of how far apart the parties were on almost everything to do with Chicago, Inscape and Prevolv were also at odds on matters as basic as showroom build-out costs. This is apparent from the Ewine Affidavit at paragraph 69 wherein he attributes build-out costs coming in 30% over estimate to “last minute design changes requested by Inscape”. This statement could not be further from the truth. Prevolv made commitments to build-out the shared premises without any approvals from Inscape and without sharing budgets or costing. Prevolv continually changed showroom designs and preferences and ran up costs. In this regard, with reference to paragraph 47 of the Ewine Affidavit, Ms. Barski (Inscape VP Marketing and Product Development) was tasked by me to propose changes to bring costs into line with estimates.

149. Prevolv's general approach to the build-out exercise, as far as we could see, was that it would spare no expense in design and construction. At the same time Prevolv negotiated the draft Teaming Agreement to try and push the financial risk to Inscape. This was unacceptable to Inscape because it did not represent the actual no upfront-cost business case which was our sole basis considering a joint venture with Prevolv in the first place. As a result, the Teaming Agreement never advanced past the initial draft stage.

150. Ewine's contention at paragraph 41 of the Ewine Affidavit, and in other places, that he was unaware of Inscape's financial stresses in 2020, 2021 and 2022 is simply not possible. Inscape was at all times a public company listed on the TSX with all of the attendant financial reporting and disclosure duties. In the beginning of December 2020, Inscape published an earnings release. The numbers were dismal. We were burning cash and were relying on both Canadian and United States government Covid-related grants. We had also announced terminations, salary reductions and work share. Attached as **Exhibit "JJ"** are copies of a series of Inscape press releases from May to December 2020.

F. Chicago Showroom Lease

151. Prevolv seeks to set-off "up to \$2,750,000 USD for base rent and up to \$1,000,000 USD for additional rent" ("**Lease Damages**").

152. Paragraphs 77 to 93 of the Ewine Affidavit provide Prevolv's perspective on what can be broadly described as post-CCAA filing Lease mitigation efforts, including consideration given to subleasing efforts. Ewine's narrative in this respect is incomplete and self-serving and I reject the contention that Inscape has been unresponsive or is somehow not prepared to enter into discussions with the landlord, or engage with CBRE or Prevolv or others to effectively address the Lease.

153. On April 13, 2023, Inscape and Prevolv entered into an exclusive sublease listing agreement with CBRE. CBRE is currently marketing the Premises for sublease with a view to finding one or more new tenants. Inscape has and will continue to consider all steps as may be appropriate to address the Lease.

PREVOLV MOTION ABANDONED, ORDERS UNPAID

154. The Prevolv Motion asserting \$8,253,088 in set-off claims was served on April 10, 2023.

155. Without explanation, Prevolv abandoned the Prevolv Motion by serving a Notice of Abandonment on April 20, 2023. Attached as **Exhibit “KK”** is a copy of the Notice of Abandonment.

156. By order of Justice Conway dated April 24, 2023, which Prevolv did not oppose, Prevolv was ordered to pay the full amount of the Inscape Receivable (“**Interim Relief Order**”). Attached as **Exhibit “LL”** is a copy of the April 24, 2023 Order and Endorsement of Justice Conway.

157. By order of Justice Conway dated May 2, 2023, Prevolv was ordered to pay Inscape costs of the Prevolv Motion fixed in the amount of \$165,692.35 and payable forthwith (“**Cost Award**”). Attached as **Exhibit “MM”** is a copy of the Cost Award endorsement of Justice Conway dated May 2, 2023.

158. The Interim Relief Order directs Prevolv to provide Inscape with, among other things, an accounting of the source and disposition of all amounts (“**Accounting**”) that Prevolv received from its end customers on account of the Prevolv Orders (“**Inscape Product Collections**”).

159. Despite repeated requests, Inscape has not been provided with a complete Accounting. Attached as Exhibit “**NN**” is a copy of a letter from my counsel to Prevolv’s counsel dated April

27, 2023 requesting information in accordance with Interim Relief Order. Attached as **Exhibit “OO”** is copy of a follow-up correspondence dated May 1, 2023 requesting information by “end of day”. Attached as **Exhibit “PP”** is a single line email response from Prevolve counsel dated May 4, 2023, declining to provide any of the requested information.

160. Attached as **Exhibit “QQ”** is a copy of a Prevolve produced bank statement dated 3/19/23. The statement was provided to my counsel on April 24, 2023, but does not constitute an Accounting.

161. Despite demand, Prevolve has to date failed or refused to pay the Inscope Receivable or the Costs Award to Inscope.

SWORN BEFORE ME via video-conference with the deponent in the City of Mississauga, in the Province of Ontario, and the Commissioner in the City of Mississauga in the Province of Ontario this 5th day of May, 2023

DocuSigned by:

Eric Ehgoetz

ERIC EHGOETZ

DocuSigned by:

Monica Faheim

A Commissioner for taking Affidavits
MONICA FAHEIM

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.**
the Applicants

Estate/Court File No.: CV-23-00692784-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

AFFIDAVIT OF ERIC EHGOETZ
(SWORN MAY 5, 2023)

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Monica Faheim LSO# 82213R

Tel: 416.595.6087

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Lawyers for the Applicants

This is Exhibit “D” referred to in the Affidavit of Eric Ehgoetz sworn by Eric Ehgoetz of the City of Mississauga , in the Province of Ontario, before me at the City of Mississauga, in the Province of Ontario, on November 17, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Monica Faheim

Commissioner for Taking Affidavits (or as may be)

MONICA FAHEIM



67 Toll Road
Holland Landing, Ontario, L3N 2H1
T: 905-836-7676
myinscape.com

Eric Ehgoetz
1348 Glenburnie Road
Mississauga, ON L5G 3C8

January 10, 2023

Dear Mr. Ehgoetz

As you are aware, Inscape Corporation, Inscape (New York) Inc. and Inscape Inc. (collectively, the “**Companies**”) are making an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an initial order (the “**Initial Order**”), among other things, commencing proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the “**CCAA**”) and appointing Alvarez & Marsal Canada Inc. as monitor of the Companies in the CCAA Proceedings (in such capacity, the “**Monitor**”).

The Companies have determined that it is vital to the success of the CCAA Proceedings, and is in the best interest of all of the Companies’ stakeholders, to take immediate steps to secure your continued services as Chief Executive Officer of the Companies throughout the CCAA Proceedings, and to provide certain financial inducements and protections to you in connection therewith.

In recognition of your continued service with the Companies through and until your termination of employment by the Companies, which shall occur no later than immediately prior to the expiry or termination of the stay period under the CCAA, the Companies are pleased to offer you the following incentives (collectively, the “**Incentive Payments**”):

1. Continued payment of your base salary, benefits and normal course business expenses (including cell phone costs, travel expenses and other necessary costs you incur in the course of your work), in the ordinary course during the pendency of the CCAA Proceedings.
2. A retention bonus in the amount of \$50,000, less all applicable withholdings and deductions required by law, earned on the execution of this Agreement and payable within three (3) business days thereof.
3. Reimbursement of fees and expenses incurred for the provision of independent legal advice in connection with the CCAA Proceedings, up to the maximum amount of \$20,000 plus HST, as applicable, payable within three (3) business days of receiving an invoice for such fees and expenses.
4. A performance bonus in the amount of \$75,000, less all applicable withholdings and deductions required by law, earned upon the successful liquidation of the Companies’ assets within the CCAA Proceedings, payable as soon as the proceeds of such liquidation are sufficient to pay the following amounts, in full:
 - a) all outstanding amounts secured by the Administration Charge and the Directors’ Charge (each as defined in the Initial Order);
 - b) all amounts required, at law, to be paid in priority to claims of secured creditors; and

- c) all amounts owing to HUK 116 Limited under the loan agreement dated October 28, 2022, as amended and supplemented by the forbearance agreement dated January 10, 2023.

The Incentive Payments are included in the cash flow forecast prepared by the Companies with the assistance of the Monitor, and will be distributed in accordance with the Companies' Key Employee Retention Plan ("KERP"), once approved by the Court. In connection therewith, the Companies will further request that the Court approve a KERP charge at the Comeback Hearing to be held on January 20, 2023.

Also, in recognition of your continued service with the Companies, the Companies will seek the inclusion of a broad, irrevocable release and discharge in favour of the Companies' directors and officers from any and all present and future claims, liabilities, etc. in the Court's final order following liquidation of the Companies' assets, subject to review and comment by your independent legal advisor in connection with the CCAA Proceedings.

All references to currency in this letter agreement are references to Canadian Dollars.

This letter agreement contains all of the understandings and representations between the Companies and you relating to your Incentive Payments and release in the Court's final order and supersedes all prior and contemporaneous understandings, discussions, agreements, representations and warranties, both written and oral, in relation thereto. This letter agreement may not be amended or modified unless in writing signed by both the Companies and you. This letter agreement may be executed in one or more counterparts, each of which will be taken together and constitute one agreement, and such counterparts may be delivered by facsimile or other electronic transmission. This letter agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

To confirm your acceptance of these terms, please sign a copy of this letter agreement where indicated below and return the signed copy to the undersigned.

Yours truly,

Authorized Signatory

Inscape Corporation, Inscape (New York) Inc., Inscape Inc.

I have read and understood this letter and I accept the terms of this offer. I acknowledge that the Companies have provided me with a reasonable opportunity to obtain independent legal advice regarding this offer.

Eric Ehgoetz
Chief Executive Officer



67 Toll Road
Holland Landing, Ontario, L3N 2H1
T: 905-836-7676
myinscape.com

Jon Szczur
37 Robert Hunter Crescent
Mount Albert, ON L0G 1M0

January 10, 2023

Dear Mr. Szczur

As you are aware, Inscape Corporation, Inscape (New York) Inc. and Inscape Inc. (collectively, the “**Companies**”) are making an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an initial order (the “**Initial Order**”), among other things, commencing proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the “**CCAA**”) and appointing Alvarez & Marsal Canada Inc. as monitor of the Companies in the CCAA Proceedings (in such capacity, the “**Monitor**”).

The Companies have determined that it is vital to the success of the CCAA Proceedings, and is in the best interest of all of the Companies’ stakeholders, to take immediate steps to secure your continued services as Chief Financial Officer of the Companies throughout the CCAA Proceedings, and to provide certain financial inducements and protections to you in connection therewith.

In recognition of your continued service with the Companies through and until your termination of employment by the Companies, which shall occur no later than immediately prior to the expiry or termination of the stay period under the CCAA, the Companies are pleased to offer you the following incentives (collectively, the “**Incentive Payments**”):

1. Continued payment of your base salary, benefits and normal course business expenses (including cell phone costs, travel expenses and other necessary costs you incur in the course of your work), in the ordinary course during the pendency of the CCAA Proceedings.
2. A retention bonus in the amount of \$25,000, less all applicable withholdings and deductions required by law, earned on the execution of this Agreement and payable within three (3) business days thereof.
3. A performance bonus in the amount of \$75,000, less all applicable withholdings and deductions required by law, earned upon the successful liquidation of the Companies’ assets within the CCAA Proceedings, payable as soon as the proceeds of such liquidation are sufficient to pay the following amounts, in full:
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 - b) all amounts required, at law, to be paid in priority to claims of secured creditors; and
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All references to currency in this letter agreement are references to Canadian Dollars.

This letter agreement contains all of the understandings and representations between the Companies and you relating to your Incentive Payments and release in the Court's final order and supersedes all prior and contemporaneous understandings, discussions, agreements, representations and warranties, both written and oral, in relation thereto. This letter agreement may not be amended or modified unless in writing signed by both the Companies and you. This letter agreement may be executed in one or more counterparts, each of which will be taken together and constitute one agreement, and such counterparts may be delivered by facsimile or other electronic transmission. This letter agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

To confirm your acceptance of these terms, please sign a copy of this letter agreement where indicated below and return the signed copy to the undersigned.

Yours truly,

Authorized Signatory
Inscape Corporation, Inscape (New York) Inc., Inscape Inc.

I have read and understood this letter and I accept the terms of this offer. I acknowledge that the Companies have provided me with a reasonable opportunity to obtain independent legal advice regarding this offer.

Jon Szczur
Chief Financial Officer

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.**
the Applicants

Estate/Court File No.: CV-23-00692784-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

AFFIDAVIT OF ERIC EHGOETZ
(SWORN NOVEMBER 17, 2023)

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Lawyers for the Applicants

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TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

THE HONOURABLE

)
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)

FRIDAY, THE 28th

JUSTICE

DAY OF NOVEMBER, 2023

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
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.

Applicants

ORDER

(CCAA TERMINATION)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things: (i) extending the stay of proceedings; (ii) approving each of the fourth report, the fifth report, the sixth report and the seventh report prepared and filed by Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as court-appointed monitor of the Applicants (in such capacity, the "**Monitor**"), and the fees, disbursements and activities of the Monitor and its counsel described therein; (iii) terminating the proceedings of the Applicants under the CCAA (the "**CCAA Proceedings**") upon the Monitor's filing of Discharge Certificate (as defined below); (iv) discharging A&M as Monitor at the CCAA Termination Time (as defined below); (v) terminating the KERP Charge, Administration Charge and the Directors' Charge upon the filing of the Discharge Certificate; and (vi) approving certain releases, was heard this day by Zoom videoconference,

ON READING the notice of motion of the Applicants, the affidavit of Eric Ehgoetz sworn November 17, 2023 ("**Ehgoetz Affidavit**") and exhibits thereto, the Eighth Report of the Monitor,

to be filed, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and such other parties listed on the Counsel Slip, and no one appearing for any other party although duly served as appears from the affidavit of service, filed,

DEFINED TERMS

1. **THIS COURT ORDERS** that all terms capitalized but not defined herein shall have the meanings ascribed to such terms in the amended and restated initial order of Justice Conway dated January 20, 2023 (“**Amended and Restated Initial Order**”).

SERVICE

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

EXTENSION OF STAY

3. **THIS COURT ORDERS** that until and including the earlier of: (i) December 15, 2023 and (ii) the CCAA Termination Time, 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 Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

APPROVAL OF MONITOR’S REPORTS AND ACTIVITIES APPROVAL

4. **THIS COURT ORDERS** that each of the Fourth Report of the Monitor dated April 15, 2023, the Fifth Report of the Monitor dated June 6, 2023, the Sixth Report of the Monitor dated July 11, 2023, the Seventh Report dated October 24, 2023, and the Eighth Report dated November [●], 2023 (the “**Eighth Report**”), and the activities and conduct of the Monitor described in each report be and hereby approved; provided, however, that only the Monitor, in its personal capacity

and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, along with fee accruals for the completion of remaining activities in connection with the CCAA Proceedings, as set out in the Eighth Report and more particularized within the fee affidavits of appended thereto, be and are hereby approved.

TERMINATION OF CCAA PROCEEDINGS & DISCHARGE OF THE MONITOR

6. **THIS COURT ORDERS** that upon service by the Monitor of an executed certificate substantially in the form attached hereto as **Schedule “A”** (the “**Monitor’s Termination Certificate**”) on the service list in these CCAA proceedings (“**Service List**”) certifying that, to the best of the knowledge and belief of the Monitor, all matters to be attended to in connection with the CCAA proceedings have been completed, the within CCAA proceedings shall be terminated without any further act or formality (the “**CCAA Termination Time**”), save and except as provided in this Order, and provided that nothing herein impacts the validity of any Orders made in these CCAA proceedings or any actions or steps taken by any Person.

7. **THIS COURT ORDERS AND DIRECTS** the Monitor to file a copy of the Monitor’s Termination Certificate with the Court and post a copy of the Monitor’s Termination Certificate on the Case Website as soon as is practicable following the CCAA Termination Time.

DISCHARGE OF MONITOR

8. **THIS COURT ORDERS** that effective at the CCAA Termination Time, A&M shall be and is hereby discharged from its duties as the Monitor and shall have no further duties, obligations or responsibilities as Monitor from and after the CCAA Termination Time, provided that, notwithstanding its discharge as Monitor, A&M shall have the authority to carry out, complete or address any matters in its role as Monitor that are ancillary or incidental to these CCAA proceedings following the CCAA Termination Time, as may be required or appropriate (“**Monitor Incidental Matters**”). In completing any such Monitor Incidental Matters, A&M shall continue to have the benefit of the provisions of all Orders made in the CCAA Proceedings and all protections under the CCAA, including all approvals, protections and stays of proceedings in

favour of A&M in its capacity as the Monitor, and nothing in this Order shall affect, vary, derogate from or amend any of the protections in favour of the Monitor pursuant to any Order issued in the CCAA Proceedings.

9. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the Monitor's discharge or the termination of these CCAA proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor shall continue to have the benefit of, all of the rights, approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, or any other Order of this Court in these CCAA proceedings or otherwise, all of which are expressly continued and confirmed following and after the CCAA Termination Time, including in connection with any Monitor Incidental Matters and other actions taken by the Monitor following the CCAA Termination Time with respect to the Applicants or these CCAA proceedings.

TERMINATION OF PRIORITY CHARGES

10. **THIS COURT ORDERS** that the Directors' Charge, KERP Charge and Administration Charge shall be and are hereby terminated at the CCAA Termination Time without any further act or formality.

RELEASES

11. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Termination Certificate, (i) the current directors, officers, employees, legal counsel and advisors of the Applicants and (ii) the Monitor and its legal counsel (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place

prior to the filing of the Monitor's Certificate arising in connection with or relating to the within CCAA proceedings, or related to the management, operations or administration of the Applicants (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

12. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity as Monitor, including in connection with any Monitor Incidental Matters taken after the CCAA Termination Time, except with prior leave of this Court on not less than fifteen (15) days prior notice to the Monitor.

GENERAL

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, 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 Applicants 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 Foreign Representative in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that each of the Applicants 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.

15. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

16. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

Court File No.: CV-23-00692784-00CL

**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
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.

MONITOR'S TERMINATION CERTIFICATE

RECITALS

1. Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as the Monitor of the Applicants in the within proceedings commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 12, 2023 (as amended, the "**Initial Order**").
2. Pursuant to an Order of this Court dated November 28, 2023 (the "**CCAA Termination Order**"), among other things, A&M shall be discharged as the Monitor and the Applicants' CCAA proceedings shall be terminated upon the service of this Monitor's Termination Certificate on the Service List in these CCAA proceedings, all in accordance with the terms of the CCAA Termination Order.

THE MONITOR HEREBY CERTIFIES the following:

3. To the knowledge of the Monitor, all matters to be attended to in connection with the Applicants' CCAA Proceedings (Court File No. CV-23-00692784-00CL) have been completed.

ACCORDINGLY, the CCAA Termination Time as defined in the CCAA Termination Order has occurred.

DATED at Toronto, Ontario this _____ day of _____, 2023.

ALVAREZ & MARSAL CANADA INC., solely in its capacity as the Monitor of the Applicants and not in its personal or corporate capacity

Per: _____

Name:

Title:

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.

Court File No.: CV-23-00692784-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at TORONTO

ORDER
(CCAA TERMINATION RETURNABLE
NOVEMBER 28, 2023)

MILLER THOMSON LLP

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David Ward LSO#33541W

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Tel: 416.595.8625

Monica Faheim LSO#82213R

mfaheim@millerthomson.com
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IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **INSCAPE
CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.**
the Applicants

Estate/Court File No.: CV-23-00692784-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

MOTION RECORD OF THE APPLICANTS
(Returnable November 28, 2023)

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