

**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

**MOTION RECORD OF THE APPLICANTS
(Returnable July 13, 2023)**

July 11, 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")

SERVICE LIST
(as of July 11, 2023)

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

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Applicants

INDEX

TAB	DOCUMENT
1.	Notice of Motion, returnable July 13, 2023
2.	Affidavit of Eric Ehgoetz, sworn July 11, 2023
Exhibits to the Affidavit of Eric Ehgoetz, sworn July 11, 2023	
Exhibit A	First Affidavit of Eric Ehgoetz, sworn January 11, 2023 (without exhibits)
Exhibit B	Amended and Restated Initial Order dated January 20, 2023
3.	Draft Order

TAB 1

**ONTARIO
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Applicants

**NOTICE OF MOTION
(Returnable July 13, 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 July 13, 2023, at 9:30 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 updated on Caselines.

THE MOTION IS FOR:

1. An Order, among other things,
 - (i) 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; and
 - (ii) extending the stay of proceedings in favour of the Applicants up to and including October 31, 2023; and
 - (iii) such other relief as counsel may advise and this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

2. The Inscape Group is in the business of designing, manufacturing and selling office furniture and architectural walls for customers across North America and Europe on contract.

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 Inscape 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 in favour of the Applicants. Pursuant to the Initial Order, among other things, the Court:

- (a) granted an initial stay of proceedings in favour of the Applicants and their directors and officers up to and including January 20, 2023;
- (b) appointed Alvarez & Marsal Canada Inc. as the Monitor of the Applicants (in such capacity, the “**Monitor**”);
- (c) granted the following charges against the Property (as defined in the Initial Order), 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 (as defined in the Initial Order); 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 proposed KERP beneficiaries in the aggregate amount of \$350,000;
- (d) declared that, pursuant to section 5(5) of the *Wage Earner Protection Program Act* Inscap is a “former employer” in accordance with the criteria established by section 3.2 of the Wage Earner Protection Program Regulations;
- (e) authorized Inscap, 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

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.

March 24, 2023 Hearing

8. On March 24, 2023, Justice Conway granted the following orders:
- (a) an order (“**Approval and Vesting Order**”) among other things:
 - (i) approving an asset purchase agreement dated as of March 10, 2023 (“**Gordon Brothers Agreement**”) and made between Inscape, Inscape New York and Inscape Delaware as sellers, and Gordon Brothers Canada ULC, as purchaser (“**Gordon Brothers**”), and the transactions contemplated therein;
 - (ii) vesting in Gordon Brothers all of the Applicants’ right, title and interest in and to the Acquired Assets upon Closing, free and clear of all Claims and Encumbrances (all capitalized terms as defined in the Gordon Brothers Agreement);
 - (iii) authorizing the Applicants, with the assistance of Gordon Brothers as agent for the Applicants, to market and sell certain inventory of the Applicants in accordance with Article 6 of the Gordon Brothers Agreement (“**Inventory Sale**”), free and clear of all Claims and Encumbrances, which Claims and Encumbrances (net of amounts payable to Gordon Brothers pursuant to the Gordon Brothers Agreement) shall attach to the proceeds of the Inventory Sale; and
 - (b) an order (“**Ancillary Order**”), among other things:

- (i) scheduling a hearing on May 2, 2023 (“**Dealer Claim Motion**”) 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 (“**Inscape Receivable**”) on account of furniture products manufactured by Inscape and sold on by the Dealer to certain major end customers in the United States (“**Dealer Claim**”);
- (ii) ordering the Dealer to provide the Monitor with the Confidential Dealer Information (as defined in the Ancillary Order);
- (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 (“**Third Report**”), 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.

9. At the time of the issuance of the Ancillary Order, the Court was advised of the Applicants’ intention to continue to pursue their cross-motion which involved, *inter alia*, a claim for equitable remedies, including a constructive trust (“**Constructive Trust Motion**”). Justice

Conway scheduled a full-day hearing on July 11, 2023 for the hearing of the Constructive Trust Motion.

10. On April 20, 2023, the Dealer served a notice of abandonment (“**Notice of Abandonment**”), abandoning the Dealer Claim Motion.

11. On April 24, 2023, Justice Conway issued an order among other things, ordering Prevolv to pay the full amount of the Inscap Receivable and granting the Applicants’ request for leave to seek costs of the Notice of Abandonment (“**Costs Motion**”).

12. On May 2, 2023, Justice Conway made an Order. among other things, awarding the Applicants costs in the amount of \$165,693.35, inclusive of HST and disbursements.

13. On May 30, 2023, the Applicants and Prevolv executed a settlement agreement (“**Settlement Agreement**”) in respect of the Dealer Claim.

14. On June 9, 2023, Justice Conway made an Order (the “**Settlement Approval Order**”), among other things, approving the Settlement Agreement.

Update on CCAA Proceedings and Wind-Down

Liquidation Efforts

15. In accordance with the restructuring provisions at paragraph 12 of the Amended and Restated Initial Order, the Applicants were granted the right 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 of selling the Applicants’ business or property.

16. The Applicants' wind-down and liquidation efforts are now substantially complete. The assets that remain to be liquidated consist of raw material and finished goods of nominal value.

17. Contractors have been engaged by the Applicants to disassemble and decommission the Applicants' manufacturing facility at 67 Toll Road, ON (the "**Holland Landing Facility**"). It is expected that this process will be completed by July 14, 2023. The lease in respect of the Holland Landing Facility has been terminated and a new tenant has occupied the premises.

HST Refunds

18. The Applicants, the Monitor, and Deloitte Canada ("**Deloitte**"), the Applicants' tax advisor, are continuing to pursue a claimed HST refund that is now estimated to be approximately \$800,000. This amount was and continues to be withheld by Canada Revenue Agency pending the determination of a notice of objection. Progress is being made. As further described in the Monitor's Sixth Report, to be filed ("**Monitor's Sixth Report**"), the \$800,000 balance has been included in the updated cash flow forecast.

Leases

19. In furtherance of the wind-down and liquidation, and in consultation with the Monitor, the Applicants have negotiated agreements that provide for the termination of certain of their real property leases. Pursuant to these agreements, the Applicants' leased premises in New York City and in Washington DC have been terminated.

20. Marketing efforts by CBRE in respect of the Applicants' furniture showroom in Chicago at 800 W. Fulton Market Street, Chicago, County of Cook, Illinois ("**Chicago Showroom**") are ongoing. The Applicants and Prevolv are co-tenants under the Chicago Showroom lease. The

successful subleasing of the Chicago Showroom is an objective of the Applicants' Settlement with Prevolv, and may give rise to additional recoveries for the Applicants.

Accounts Receivable

21. The Applicants' efforts to collect outstanding accounts receivable are ongoing and close to complete. Since the Initial Order, approximately \$4,800,000 has been collected and approximately \$1,141,000 remains to be collected.

Dealer Claim Settlement

22. To date, the Applicants have received approximately USD \$323,000 under the Settlement (comprised of the initial payment of USD \$300,000 and the first of six monthly installment payments of approximately USD \$23,000).

23. The Settlement contemplates payment of certain amounts by Prevolv, depending on whether or not the Applicants and Prevolv secure a sublease agreement of the Chicago Showroom ("**Contingent Payments**"). The Contingent Payments may result in additional recoveries for the Applicants of up to USD \$312,500. As indicated, subleasing efforts are currently ongoing.

Lien Claim

24. As further described in the Monitor's Sixth Report, the Applicants have recently been made aware of a lien claim by Empire Office Inc. ("**Empire**"). Empire is one of the Applicants' furniture vendors. The lien claim is in respect of a New York based project that was completed prior to the Filing Date. It raises issues of New York law. The Monitor is working with the

parties to facilitate a resolution, if possible. Failing a resolution, the matter will need to be adjudicated.

Requested Stay Extension

25. The Applicants continue to act in good faith and with due diligence in respect of these CCAA proceedings. The requested extension of the stay to October 31, 2023 will afford time for the Applicants and the Monitor to, among other things:

- (a) continue to collect remaining collectible accounts receivable, including those funds contemplated to be paid by Prevolv under the Settlement;
- (b) complete the exit of the Holland Landing facility;
- (c) resolve issues having to do with the claimed HST refund;
- (d) complete remaining distributions to priority secured creditors and distribute any excess proceeds to the Applicants' unsecured creditors, as described in the Monitor's Sixth Report;
- (e) return to Court to seek approval of the Monitor's activities and fees, discharge the Monitor, and to terminate these CCAA proceedings.

26. As indicated in the updated cash flow forecast appended to the Monitor's Sixth Report, it is expected that the Applicants will have sufficient liquidity for the extended stay period.

27. The Monitor supports the extension of the stay to October 31, 2023.

General

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

29. 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

30. 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 July 11, 2023;
- (b) the Sixth Report of the Monitor, to be filed; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

July 11, 2023

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Lawyers for the Applicants

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 July 13, 2023)

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Lawyers for the Applicant

TAB 2

**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 July 11, 2023)**

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**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 July 11, 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) 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 October 31, 2023; and
 - (c) such further and other relief as counsel may advise and as this Honourable Court may deem just.

BACKGROUND

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 is 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 Inscap 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 liquidation of assets.

Initial Order

10. On January 12, 2023 (“**Filing Date**”), the Applicants applied for relief pursuant to the CCAA and this Court granted the Initial Order in favour of the Applicants. Pursuant to the Initial Order, among other things, the Court:

- (a) granted an initial stay of proceedings in favour of the Applicants and their directors and officers up to and including January 20, 2023;
- (b) appointed Alvarez & Marsal Canada Inc. as the Monitor of the Applicants (in such capacity, the “**Monitor**”);
- (c) granted the following charges against the Property (as defined in the Initial Order), 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 (as defined in the Initial Order); and
- (e) authorized the Applicants to maintain and continue to utilize their cash management system.

Comeback Hearing

11. 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 proposed 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.

12. Attached as **Exhibit “B”** is a copy of the Amended and Restated Initial Order of Justice Conway, which the Applicants seek to amend on this motion.

March 8, 2023 Hearing

13. 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.

March 24, 2023 Hearing

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

(a) an order (“**Approval and Vesting Order**”) among other things:

- (i) approving an asset purchase agreement dated as of March 10, 2023 (“**Gordon Brothers Agreement**”) and made between Inscape, Inscape New York and Inscape Delaware as sellers, and Gordon Brothers Canada ULC, as purchaser (“**Gordon Brothers**”), and the transactions contemplated therein;
- (ii) vesting in Gordon Brothers all of the Applicants’ right, title and interest in and to the Acquired Assets upon Closing, free and clear of all Claims and Encumbrances (all capitalized terms as defined in the Gordon Brothers Agreement);
- (iii) authorizing the Applicants, with the assistance of Gordon Brothers as agent for the Applicants, to market and sell certain inventory of the

Applicants in accordance with Article 6 of the Gordon Brothers Agreement (“**Inventory Sale**”), free and clear of all Claims and Encumbrances, which Claims and Encumbrances (net of amounts payable to Gordon Brothers pursuant to the Gordon Brothers Agreement) shall attach to the proceeds of the Inventory Sale; and

- (b) an order (“**Ancillary Order**”), among other things:
 - (iv) scheduling a hearing on May 2, 2023 (“**Dealer Claim Motion**”) and approving a motion timetable for the summary determination of the set-off claims that Inscape dealer Prevolv Inc. (“**Prevolv**” or the “**Dealer**”) has raised to refuse payment of a \$2,147,490 USD receivable (“**Inscape Receivable**”) on account of furniture products manufactured by Inscape and sold on by the Dealer to certain major end customers in the United States (“**Dealer Claim**”);
 - (v) ordering the Dealer to provide the Monitor with the Confidential Dealer Information (as defined in the Ancillary Order);
 - (vi) authorizing and directing the Monitor to make certain distributions to HUK 116 Limited up to the amount of its secured indebtedness;
 - (vii) 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 (“**Third Report**”), and the conduct and activities of the Monitor described in each report; and

- (viii) 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.

15. At the time of the issuance of the Ancillary Order, the Court was advised of the Applicants' intention to continue to pursue their cross-motion which involved, *inter alia*, a claim for equitable remedies, including a constructive trust ("**Constructive Trust Motion**"). Justice Conway scheduled a full-day hearing on July 11, 2023 for the hearing of the Constructive Trust Motion.

16. On April 20, 2023, the Dealer served a notice of abandonment ("**Notice of Abandonment**"), abandoning the Dealer Claim Motion.

17. On April 24, 2023, Justice Conway issued an order among other things, ordering Prevolv to pay the full amount of the Inscape Receivable and granting the Applicants' request for leave to seek costs of the Notice of Abandonment ("**Costs Motion**").

18. On May 2, 2023, Justice Conway made an Order. among other things, awarding the Applicants costs in the amount of \$165,693.35, inclusive of HST and disbursements.

19. On May 30, 2023, the Applicants and Prevolv executed a settlement agreement ("**Settlement Agreement**") in respect of the Dealer Claim.

20. On June 9, 2023, Justice Conway made an Order (the "**Settlement Approval Order**"), among other things, approving the Settlement Agreement.

UPDATE ON CCAA PROCEEDINGS

21. The following is a summary of material developments on the progress of the Applicants' wind-down, liquidation and collection efforts.

Liquidation Efforts

22. In accordance with the restructuring provisions at paragraph 12 of the Amended and Restated Initial Order, the Applicants were granted the right 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 of selling the Applicants' business or property.

23. The Applicants' wind-down and liquidation efforts are now substantially complete. The assets that remain to be liquidated consist of raw material and finished goods of nominal value.

24. Contractors have been engaged by the Applicants to disassemble and decommission the Applicants' manufacturing facility at 67 Toll Road, ON (the "**Holland Landing Facility**"). It is expected that this process will be completed by July 14, 2023. The lease in respect of the Holland Landing Facility has been terminated and a new tenant has occupied the premises.

HST Refunds

25. The Applicants, the Monitor, and Deloitte Canada ("**Deloitte**"), the Applicants' tax advisor, are continuing to pursue a claimed HST refund that is now estimated to be approximately \$800,000. This amount was and continues to be withheld by Canada Revenue Agency pending the determination of a notice of objection. Progress is being made. As further

described in the Monitor's Sixth Report, to be filed ("**Monitor's Sixth Report**"), the \$800,000 balance has been included in the updated cash flow forecast.

Leases

26. In furtherance of the wind-down and liquidation, and in consultation with the Monitor, the Applicants have negotiated agreements that provide for the termination of certain of their real property leases. Pursuant to these agreements, the Applicants' leased premises in New York City and in Washington DC have been terminated.

27. Marketing efforts by CBRE in respect of the Applicants' furniture showroom in Chicago at 800 W. Fulton Market Street, Chicago, County of Cook, Illinois ("**Chicago Showroom**") are ongoing. The Applicants and Prevolv are co-tenants under the Chicago Showroom lease. The successful subleasing of the Chicago Showroom is an objective of the Applicants' Settlement with Prevolv, and may give rise to additional recoveries for the Applicants.

Accounts Receivable

28. The Applicants' efforts to collect outstanding accounts receivable are ongoing and close to complete. Since the Initial Order, approximately \$4,800,000 has been collected and approximately \$1,141,000 remains to be collected.

Dealer Claim Settlement

29. To date, the Applicants have received approximately USD \$323,000 under the Settlement (comprised of the initial payment of USD \$300,000 and the first of six monthly installment payments of approximately USD \$23,000).

30. The Settlement contemplates payment of certain amounts by Prevolv, depending on whether or not the Applicants and Prevolv secure a sublease agreement of the Chicago

Showroom (“**Contingent Payments**”). The Contingent Payments may result in additional recoveries for the Applicants of up to USD \$312,500. As indicated, subleasing efforts are currently ongoing.

Lien Claim

31. As further described in the Monitor’s Sixth Report, the Applicants have recently been made aware of a lien claim by Empire Office Inc. (“**Empire**”). Empire is one of the Applicants’ furniture vendors. The lien claim is in respect of a New York based project that was completed prior to the Filing Date. It raises issues of New York law. The Monitor is working with the parties to facilitate a resolution, if possible. Failing a resolution, the matter will need to be adjudicated.

RELIEF SOUGHT

Extension of the Stay

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

33. The stay period is currently set to expire on July 14, 2023. The requested extension of the stay of proceedings up to and including October 31, 2023 will afford time for the Applicants and the Monitor to, among other things:

- (a) continue to collect remaining collectible accounts receivable, including those funds contemplated to be paid by Prevolv under the Settlement;
- (b) complete the exit of the Holland Landing facility;

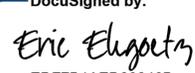
- (c) resolve issues having to do with the claimed HST refund;
- (d) complete remaining distributions to priority secured creditors and distribute any excess proceeds to the Applicants' unsecured creditors, as described in the Monitor's Sixth Report;
- (e) return to Court to seek approval of the Monitor's activities and fees, discharge the Monitor, and to terminate these CCAA proceedings.

34. The Monitor supports the proposed extension to the stay of proceedings. As set out in the updated Cash Flow Forecast, a copy of which will be appended to the Sixth Report, the Applicants will have sufficient liquidity to carry out the ongoing wind-down of operations, during the proposed extension.

FORM OF ORDERS AND CONCLUSION

35. 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 11th day of July, 2023

DocuSigned by:

 EDEF7B1AED28246B
ERIC EHGOETZ

DocuSigned by:

 A927328446B732A
 A Commissioner for taking Affidavits
MONICA FAHEIM

**This is Exhibit "A" referred to in the affidavit
of ERIC EHGOETZ, SWORN BEFORE ME
this 11th day of July, 2023**

DocuSigned by:

Monica Faleim

A927328446E742A

A COMMISSIONER FOR TAKING AFFIDAVITS

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)

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**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 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 Inscape 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 Inscape 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 Inscape 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 Inscape 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 Inscap 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 Inscap 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 Inscap Group are issued an AMEX corporate credit card for business purposes. On a monthly basis, the Inscap 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 Inscap 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 Inscap 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 Inscap 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

A Commissioner for taking Affidavits
MONICA FAHEIM

**This is Exhibit "B" referred to in the affidavit
of ERIC EHGOETZ, SWORN BEFORE ME
this 11th day of July, 2023**

DocuSigned by:

Monica Fakhim

A COMMISSIONER FOR TAKING AFFIDAVITS



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM) FRIDAY, THE 20TH
)
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**”), Inscap 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

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 JULY 11, 2023)

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Lawyers for the Applicants

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 13TH
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)
)
JUSTICE CAVANAGH) DAY OF JULY, 2023

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.

Applicants

ORDER

(STAY EXTENSION)

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

ON READING the notice of motion dated July 11, 2023, the affidavit of Eric Ehgoetz sworn July 11, 2023 ("**Ehgoetz Affidavit**"), the Sixth Report ("**Sixth Report**") of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as court-appointed monitor of the Applicants (the "**Monitor**"), 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, 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 October 31, 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.

GENERAL

4. **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.

5. **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.

6. **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.

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER
(STAY EXTENSION)**

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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

MOTION RECORD OF THE APPLICANTS
(Returnable July 13, 2023)

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