

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 22ND
)
JUSTICE STEELE) DAY OF AUGUST, 2024
)

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 OLD MM GP INC.

(the "**Applicant**")

CCAA TERMINATION AND DISTRIBUTION ORDER

THIS MOTION, made by Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of Old MM GP Inc. (f/k/a Mastermind GP Inc.) and Old MM LP (f/k/a Mastermind LP) (together, the "**Debtor Companies**" and each, a "**Debtor Company**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, *inter alia* (i) approving the Reports (as defined below), including the Fifth Report of the Monitor dated August 13, 2024 (the "**Fifth Report**"), and the fees and activities referred to therein and in the fee affidavits sworn in support thereof (together, the "**Fee Affidavits**"), (ii) approving the Fee Estimate (as defined in the Fifth Report) of the Monitor and its counsel, Bennett Jones LLP (the "**Monitor's Counsel**"), (iii) authorizing and directing the Monitor, for and on behalf of the Debtor Companies, to establish the Administrative Reserve (as defined below), (iv) approving the distribution methodology described in the Fifth Report (the "**Distribution Methodology**"), (v) authorizing the Monitor to make the distributions contemplated by the Distribution Methodology (collectively, the "**Distributions**" and each, a "**Distribution**"), (vi) authorizing each of the Debtor Companies to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), (vii) terminating these CCAA proceedings and discharging A&M as the Monitor upon

the filing of the Monitor's Certificate (as defined below), and (viii) granting certain related relief, was heard this day by judicial videoconference via Zoom.

ON READING the Notice of Motion of the Monitor and the Reports, and on hearing the submissions of counsel for the Monitor, and such other counsel that were present, no one else appearing although duly served as appears from the affidavit of service, filed:

SERVICE

1. **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.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein have the meaning ascribed to them in the Fifth Report, the Initial Order of the Honourable Madam Justice Steele dated November 23, 2023 (as amended and restated on November 30, 2023, the "**Initial Order**") or the Claims Procedure Order of the Honourable Madam Justice Steele dated March 8, 2024 (the "**Claims Procedure Order**"), as applicable.

APPROVAL OF THE MONITOR'S REPORTS, ACTIVITIES AND FEES

3. **THIS COURT ORDERS** that the Pre-Filing Report of the Monitor dated November 22, 2023, the First Report of the Monitor dated November 29, 2023, the Second Report of the Monitor dated December 10, 2023, the Third Report of the Monitor dated January 8, 2024, the Fourth Report of the Monitor dated February 28, 2024, and the Fifth Report (collectively, the "**Reports**"), and the activities of the Monitor referred to therein be and are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

4. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and the Monitor's Counsel, as set out in the Fifth Report and the Fee Affidavits, be and are hereby approved.

5. **THIS COURT ORDERS** that the Fee Estimate be and is hereby approved.

ADMINISTRATIVE RESERVE

6. **THIS COURT ORDERS** that the Monitor, for and on behalf of the Debtor Companies, is hereby authorized and directed to establish a cash reserve (the “**Administrative Reserve**”) from the Debtor Companies’ cash on hand in an amount determined by the Monitor as being reasonably sufficient for the payment of:

- (a) the professional fees and disbursements of the Monitor, the Monitor’s Counsel, and the Debtor Companies’ counsel incurred or to be incurred in connection with these proceedings, including any outstanding claim secured by the Administration Charge and the Fee Estimate;
- (b) any outstanding claim secured by the D&O Charge;
- (c) any expense incurred or to be incurred by the Debtor Companies (or either of them) that relates to the period after the Filing Date;
- (d) the fees and disbursements of the Trustee (as defined below) and the Trustee’s counsel to be incurred in connection with the intended assignments of the Debtor Companies into bankruptcy pursuant to the BIA; and
- (e) any other contingent amounts the Monitor deems appropriate in the circumstances to ensure the availability of sufficient funding to undertake and complete the orderly wind-down of the Debtor Companies and all ancillary activities in connection therewith.

7. **THIS COURT ORDERS** that, subject to the Monitor’s confirmation that all matters to be attended to in connection with these CCAA proceedings have been completed to the satisfaction of the Monitor, including, without limitation, the payment of all fees and disbursements secured by the Administration Charge, the Monitor is hereby authorized and directed to transfer all remaining cash in the Administrative Reserve to the Trustee immediately prior to the CCAA Termination Time (the “**Bankruptcy Reserve**”).

DISTRIBUTION METHODOLOGY AND DISTRIBUTIONS

8. **THIS COURT ORDERS** that the Distribution Methodology for the Distributions to be made pursuant to this Order and for any subsequent Distributions of the Property of the Debtor Companies as set out in the Fifth Report, is hereby approved.

9. **THIS COURT ORDERS** that, subject to establishing the Administrative Reserve, the Monitor, for and on behalf of the Debtor Companies, is hereby authorized, directed and empowered to make one or more Distributions to each Claimant holding a Claim that has been finally determined in accordance with the Claims Procedure (each such Claim, a “**Proven Claim**”) for such Claimant’s *pro rata* amount of the Cash Pool, in each case, in accordance with the Distribution Methodology.

10. **THIS COURT ORDERS** that all Distributions shall be made in Canadian dollars, regardless of the currency indicated in any Proof of Claim, calculated by the Monitor in accordance with paragraph 8 of the Claims Procedure Order.

11. **THIS COURT ORDERS** that the Monitor, for and on behalf of the Debtor Companies, shall be entitled to make the Distributions contemplated by the Distribution Methodology and the provisions of this Order by way of: (i) cheque sent by prepaid ordinary mail to the address set forth on each applicable Claimant’s Proof of Claim or, in the discretion of the Monitor, the last known address of each applicable Claimant; (ii) electronic funds transfer (including through the Debtor Companies’ internal vendor systems); (iii) direct deposit; or (iv) wire transfer.

12. **THIS COURT ORDERS** that the Monitor and the Debtor Companies are hereby authorized to take all reasonably necessary steps and actions to effect the Distributions in accordance with the Distribution Methodology and the provisions of this Order.

13. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency or termination of these CCAA proceedings;
- (b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the BIA, in respect of the Debtor Companies (or either of them) and any bankruptcy or receivership order issued pursuant to any such applications;

- (c) any assignment in bankruptcy made in respect of the Debtor Companies (or either of them); and
- (d) any provisions of any federal or provincial legislation,

the Distributions authorized herein shall be made free and clear of all Encumbrances, including the Charges, shall be final and irreversible and shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor Companies (or either of them), and shall not be void or voidable by creditors of the Debtor Companies (or either of them) nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. **THIS COURT ORDERS** that the Monitor, the Debtor Companies and any other Person facilitating the Distributions pursuant to the Distribution Methodology and the provisions of this Order shall be entitled to deduct and withhold from any such Distribution to any Claimant such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other Person entitled thereto as may be required by such law, including in respect of any Employee's Proven Claim.

15. **THIS COURT ORDERS** that if any Distribution to a Claimant is returned as undeliverable or is not cashed (in each case, an "**Undeliverable Distribution**"), no further Distributions to such Claimant shall be made unless and until the Monitor is notified by such Claimant of its current address, at which time any such Distributions shall be made to such Claimant without interest.

16. **THIS COURT ORDERS** that all claims for an Undeliverable Distribution in respect of a Proven Claim must be made by no later than November 29, 2024, after which date the Proven Claim of such Claimant or successor or assign of such Claimant with respect to such Undeliverable Distribution shall be forever discharged and barred, without any compensation therefor, notwithstanding any applicable law to the contrary, at which time the cash amount held by the Monitor, for and on behalf of the Debtor Companies, in relation to such Proven Claim shall be

added to the Bankruptcy Reserve. Nothing in this Order shall require the Monitor or the Debtor Companies to attempt to locate the holder of any Proven Claim.

MONITOR'S PROTECTIONS

17. **THIS COURT ORDERS** that, in carrying out the terms of this Order and taking such other actions and fulfilling such other roles incidental thereto, the Monitor shall: (i) have all of the protections afforded to it by the CCAA, the Initial Order, the Expansion of Monitor's Powers Order and any other Orders of the Court in these CCAA proceedings, or as an officer of the Court, including the stay of proceedings in its favour provided pursuant to the Initial Order; (ii) incur no liability or obligation, including as a result of making, or in connection with, any Distribution, other than in respect of gross negligence or wilful misconduct; (iii) be entitled to rely on the books and records of the Debtor Companies and any information provided by the Debtor Companies, all without independent investigation; and (iv) not be liable for any claims or damages resulting from any errors or omissions in such books, records or information or in any information provided by any Claimant, except to the extent that the Monitor has acted with gross negligence or wilful misconduct.

18. **THIS COURT ORDERS AND DECLARES** that the Distributions shall not constitute a "distribution" and the Monitor shall not constitute a "legal representative" or "representative" of the Debtor Companies (or either of them) or "other person" for the purposes of section 107 of the *Corporations Tax Act*, R.S.O. 1990, c. C.40, section 117 of the *Taxation Act, 2007*, S.O. 2007, c. 11, Sched A, section 22 of the *Retail Sales Tax Act*, R.S.O. 1990, c. R.31, section 159 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp), section 270 of the *Excise Tax Act*, R.S.C. 1985, c. E-15, sections 46 and 86 of the *Employment Insurance Act*, S.C. 1996, c. 23 or any other similar applicable federal, provincial or territorial tax legislation (collectively, the "**Statutes**"). Without limiting the generality of the foregoing, in making the Distributions in accordance with the Distribution Methodology and the provisions of this Order, the Monitor is not "distributing", nor shall it be considered to have "distributed", funds or assets for the purposes of the Statutes, and the Monitor shall not incur any liability under the Statutes in respect of the Distributions or failing to withhold amounts, ordered or permitted hereunder, and shall not have any liability for any of the Debtor Companies' tax liabilities regardless of how or when such liabilities may have arisen,

and is hereby forever released, remised and discharged from any claims against it under or pursuant to the Statutes or otherwise at law, arising in respect of or as a result of the Distributions made by it in accordance with the Distribution Methodology and this Order and any claims of this nature are hereby forever barred.

TERMINATION OF THESE CCAA PROCEEDINGS

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

20. **THIS COURT ORDERS AND DIRECTS** the Monitor to file a copy of the Monitor’s Certificate with the Court as soon as practical following the CCAA Termination Time.

21. **THIS COURT ORDERS** that the Administration Charge and the D&O Charge shall be and are hereby terminated, released and discharged effective as of the CCAA Termination Time without any further act or formality.

DISCHARGE OF THE MONITOR

22. **THIS COURT ORDERS** that effective as of the CCAA Termination Time, A&M shall be discharged as the Monitor and shall have no further duties, obligations or responsibilities as Monitor from and after the CCAA Termination Time; provided that, notwithstanding its discharge as Monitor, A&M shall have the authority from and after the CCAA Termination Time to carry out, complete or address any matters in its role as Monitor that are ancillary or incidental to these CCAA proceedings, as may be required or appropriate.

23. **THIS COURT ORDERS** that, notwithstanding the Monitor’s discharge, the termination of these CCAA proceedings or any other provision of this Order, nothing herein shall affect, vary,

derogate from, limit or amend, and A&M and its counsel shall continue to have the benefit of, any and all rights, approvals and protections in favour of the Monitor and its counsel at law or pursuant to the CCAA, the Initial Order, any other Order of this Court granted in these CCAA proceedings or otherwise, all of which are expressly continued and confirmed from and after the CCAA Termination Time, including in connection with any actions that may be taken by the Monitor following the CCAA Termination Time with respect to the Debtor Companies (or either of them) or these CCAA proceedings.

BANKRUPTCY

24. **THIS COURT ORDERS** that each of the Debtor Companies is hereby authorized to make an assignment in bankruptcy pursuant to the BIA prior to the CCAA Termination Time naming A&M as the licensed insolvency trustee of such Debtor Company (in such capacity, the “**Trustee**”). The Monitor is hereby authorized and empowered to execute and file such documents in the name of each of the Debtor Companies and take all such steps as are necessary to make each of the Debtor Companies’ assignments in bankruptcy pursuant to the BIA.

25. **THIS COURT ORDERS** that the Trustee shall be and is hereby authorized to administer the bankruptcy estates as if such estates were in respect of a single bankrupt for the purposes of carrying out its duties and responsibilities as trustee under the BIA (the “**Consolidated Bankruptcy Proceedings**”), including, without limitation:

- (a) administering the bankruptcy estates of Old MM GP Inc. (f/k/a Mastermind GP Inc.) and Old MM LP (f/k/a Mastermind LP) under a single court file number and title of proceeding;
- (b) sending a notice of the first meeting of creditors (the “**Notice**”) in the manner prescribed by section 102 of the BIA by sending a consolidated Notice for both of the Debtor Companies to accompany the Notice set out in subsection 102(2) of the BIA;
- (c) convening meetings of creditors and inspectors in the bankrupt estates of the Debtor Companies through one combined advertisement and conducting such meetings

jointly provided that the results of any creditors' vote shall be separately tabulated for each such bankrupt estate;

- (d) using a consolidated form of proof of claim that directs creditors to identify the bankrupt estate in which a claim is made for voting and for distribution purposes;
- (e) maintaining a consolidated bank account with respect to the Debtor Companies' respective bankruptcy estates;
- (f) issuing consolidated reports in respect of the bankruptcy estates of the Debtor Companies;
- (g) performing a consolidated making, filing, advertising and distribution of all filings and notices in the bankrupt estates of the Debtor Companies required under the BIA; and
- (h) appointing a single group of inspectors to be the inspectors for the consolidated bankruptcy estates of the Debtor Companies.

26. **THIS COURT ORDERS** that the Consolidated Bankruptcy Proceedings are not a substantive consolidation of the bankrupt estates of the Debtor Companies and will automatically terminate if the Trustee is replaced as licensed insolvency trustee of either, but not both, of the estates of the Debtor Companies.

27. **THIS COURT ORDERS** that the Consolidated Bankruptcy Proceedings do not:

- (a) affect the separate legal status of the corporate structure of the Debtor Companies;
- (b) cause any of the bankrupt estates of the Debtor Companies to be liable for any claim for which it is otherwise not liable, or cause either of the Debtor Companies to have any interest in any asset which it otherwise would not have; or
- (c) affect the bankrupt estates of the Debtor Companies filing obligations under the BIA.

RELEASES

28. **THIS COURT ORDERS** that, effective as of the CCAA Termination Time, (i) the current and former directors, officers, employees, partners, managers, agents and advisors of the Debtor Companies, and (ii) the Monitor, the Monitor's Counsel, the Debtor Companies' counsel and each of their respective present and former affiliates and officers, directors, partners, employees, agents and advisors (the persons listed in clauses (i) to (ii) being collectively, the "**Released Parties**" and each a "**Released Party**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of actions, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries and obligations of any nature or kind whatsoever that any Person may have or be entitled to assert against the Released Parties (whether direct or indirect, known or unknown, absolute or contingent, accrued or unassured, liquidated or unliquidated, matured or unmatured, due or not yet due, foreseen or unforeseen, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the CCAA Termination Time or undertaken or completed in connection with or in respect of, relating to, or arising out of (x) the Debtor Companies, the business, operations, assets, property and affairs of the Debtor Companies, wherever or however conducted or governed, the administration and/or management of the Debtor Companies, these CCAA proceedings or their respective conduct in these CCAA proceedings or (y) the Sale Agreement and/or any document, instrument, matter or transaction involving the Debtor Companies arising in connection with or pursuant to any of the foregoing (collectively, subject to the excluded matters below, the "**Released Claims**" and each, a "**Released Claim**"), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar any claim against a Released Party that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA or with respect to any act or omission that is finally determined by a court of competent jurisdiction to have constituted actual fraud, wilful misconduct or gross negligence.

29. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against any of the Released Parties in any way arising from or related to any Released Claim, except with prior leave of this Court on at least seven (7) days' prior written notice to the applicable Released Party, and provided that any such Order granting leave includes a term granting the applicable Released Party security for its costs and the costs of its counsel in connection with any proposed action or proceeding, such security to be on terms this Court deems just and appropriate.

GENERAL

30. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

31. **THIS COURT ORDERS** that the Monitor may apply to this Court to amend, vary or supplement this Order or for advice and directions concerning the discharge of its powers and duties under this Order or the interpretation or application of this Order.

32. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside Canada to give effect to this Order and to assist the Monitor, the Debtor Companies 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 Monitor, as an officer of this Court, and the Debtor Companies as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and the Debtor Companies and their respective agents in carrying out the terms of this Order.

33. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

SCHEDULE "A"

FORM OF MONITOR'S CERTIFICATE

Court File No.: CV-23-00710259-00CL

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
OLD MM GP INC.**

Applicant

MONITOR'S CERTIFICATE

RECITALS

A. Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as the monitor (in such capacity, the "**Monitor**") of Old MM GP Inc. (f/k/a Mastermind GP Inc.) and Old MM LP (f/k/a Mastermind LP) in the within proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November 23, 2023.

B. Pursuant to an order of the Court dated August 22, 2024 (the "**CCAA Termination Order**"), A&M is to be discharged as the Monitor effective upon service on the Service List of a certificate confirming that the Distributions have been made in accordance with the CCAA Termination Order and that all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor.

C. Capitalized terms used but not defined herein have the meanings ascribed to them in the CCAA Termination Order.

THE MONITOR CERTIFIES the following:

1. The Distributions have been made pursuant to the terms of the CCAA Termination Order.

2. All matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor.

ACCORDINGLY, the CCAA Termination Time has occurred.

DATED at Toronto, Ontario this ____ day of _____, 202__.

**ALVAREZ & MARSAL CANADA INC.,
solely in its capacity as Monitor of Old
MM GP Inc. (f/k/a Mastermind GP Inc.)
and Old MM LP (f/k/a Mastermind LP),
and not in its personal or corporate
capacity**

Per: _____
Name:
Title:

**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 OLD MM GP INC.**

Applicant

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

Proceeding commenced at Toronto

**CCAA TERMINATION AND
DISTRIBUTION ORDER**

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Lawyers for Alvarez & Marsal Canada Inc.,
solely in its capacity as the Court-appointed
Monitor and not in its personal or corporate
capacity