

Court File No. CV-13-10279-00CL

**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  
GROWTHWORKS CANADIAN FUND LTD.**

**SEVENTH REPORT OF  
FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

April 3, 2014

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SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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IN ITS CAPACITY AS MONITOR**

1. On October 1, 2013, GrowthWorks Canadian Fund Ltd. (the “**Fund**” or the “**Applicant**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”, a copy of which is attached hereto as Appendix “A”) was made by the Honourable Justice Newbould of the Ontario Superior Court (Commercial List) (the “**Court**”) granting, *inter alia*, a stay of proceedings against the Applicant until October 31, 2013, which stay of proceedings was thereafter extended until April 10, 2014 (the “**Stay of Proceedings**”) and appointing FTI Consulting Canada Inc. as monitor of the Fund (the “**Monitor**”). The proceedings commenced by the Fund under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

2. The Fund is a labour sponsored venture capital fund that currently has a mature and diversified portfolio consisting primarily of investments made in small and medium-sized Canadian businesses. The Fund was formed in 1988 with the investment objective of achieving long term appreciation for its Class A shareholders, whom principally comprise retail investors.

3. The Fund experienced liquidity issues because of, *inter alia*, an inability to access short-term financing as well as unfavourable market conditions impacting its ability to divest, at a profit, its relatively illiquid investments. As a result of these liquidity issues, the Fund was unable to meet its obligations as they became due, including the obligation of the Fund to make a \$20 million dollar payment to Roseway Capital S.a.r.l (“**Roseway**”), its sole secured creditor, which payment became due on September 30, 2013. With the consent of Roseway, the Fund filed for and obtained protection under the CCAA on October 1, 2013.
4. Prior to September 30, 2013 and the commencement of these CCAA Proceedings, the Fund’s day to day operations were delegated to GrowthWorks WV Management Ltd. (the “**Manager**”) pursuant to a Management Agreement dated July 15, 2006 (“**Management Agreement**”). In accordance with the terms of the Management Agreement, the Manager was permitted to delegate its duties under the Management Agreement to third parties. Pursuant to the Management Agreement, the Manager delegated the Manager’s obligations to GrowthWorks Capital Ltd. On September 30, 2013, the Fund terminated the Management Agreement for the reasons outlined in the Affidavit of Ian Ross, sworn September 30, 2013 and filed.
5. Pursuant to an Order granted by the Court on October 29, 2013, the Initial Order was amended and restated (the “**Amended and Restated Initial Order**”). A copy of the October 29, 2013 Order attaching the Amended and Restated Initial Order is attached hereto as Appendix “B”.
6. Pursuant to an Order granted by the Court On November 18, 2013, the Court approved a sales and investor solicitation process (“**SISP**”) for the purpose of offering the opportunity for potential investors to purchase or invest in the business or property of the Fund.

7. On November 28, 2013, the Court granted an Order authorizing the Fund, with the consent of the Monitor to, *inter alia*, make distributions to Roseway provided that certain priority payables are able to be paid by the Applicant when due.

8. On January 9, 2014, the Court approved an Order: (i) establishing a claims procedure to identify, determine and resolve claims of creditors of the Fund (the “**Claims Procedure**”); and (ii) extending the Stay of Proceedings until March 7, 2014.

9. Pursuant to an Order dated February 28, 2014, the Court extended the time for the Fund to call its annual general meeting of shareholders until and including October 31, 2014.

10. On March 6, 2014, the Court granted an Order extending the Stay of Proceedings from March 15, 2014 to and including April 10, 2014.

### **PURPOSE OF THIS REPORT**

11. The purpose of this seventh report of the Monitor is to update and inform the Court on the following:

- (a) the status of the Claims Procedure;
- (b) the status of the restructuring of the Fund and the restructuring plan of the Fund going forward in light of the results of the SISP;
- (c) the status of the litigation proceedings commenced by Allen-Vanguard Corporation (“**Allen-Vanguard**”) against, *inter alia*, the Fund;
- (d) the Monitor’s comments on the Allen-Vanguard litigation and its responses to certain of the matters raised by Justice Brown in his reasons dated March 24, 2014;

- (e) the receipts and disbursements of the Fund for the period March 1, 2014 to March 28, 2014;
- (f) the Fund's cash flow projections for the period from March 29, 2014 to May 9, 2014;
- (g) an update on the distribution of funds to Roseway; and
- (h) the Monitor's comments on the Fund's request for an extension of the Stay of Proceedings.

#### **TERMS OF REFERENCE**

12. In preparing this report, the Monitor has relied upon unaudited financial information, other information available to the Monitor, where appropriate the Applicants' books and records and discussions with various parties including advisors to Roseway and the Fund's management and advisors.
13. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
14. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
15. Capitalized terms not defined herein shall have the meaning ascribed to in the affidavit of Ian Ross, Chairman of the Fund, sworn March 31, 2014 and filed (the "**March 31 Affidavit**").

16. This report should be read in conjunction with the March 31 Affidavit as certain information contained in the March 31 Affidavit have not been included herein in order to avoid unnecessary duplication.

### **THE STATUS OF THE CLAIMS PROCEDURE**

17. On January 9, 2014, the Fund sought and obtained approval of the Claims Procedure. Pursuant to the terms of the Claims Procedure, anyone asserting a Claim or D&O Claim was required to submit their Proof of Claim with the Monitor by no later than 5:00pm EST on March 6, 2014.

18. On or about the Claims Bar Date, the Monitor received approximately 255 claims totalling in excess of \$725 million. The total claims submitted to the Monitor include duplicative claims filed against the Fund and its directors and officers, various marker and/or contingent claims and claims filed by shareholders of the Fund. Despite the passing of the Claims Bar Date, the Monitor continues to receive claims filed by shareholders in respect of their share holdings.

#### *Nature of Claims Filed*

19. The claims filed against the Fund and/or its directors and officers include the following types of claims:

- (a) a claim filed by the former manager of the Fund for an amount in excess of \$18 million;
- (b) a claim filed by Allen Vanguard for \$650 million as outlined in the Claims Procedure Order;
- (c) a claim filed by the Offeree Shareholders (as defined herein) for an unspecified amount;

- (d) a claim filed by Douglas Milburn and other plaintiffs in the litigation against the Fund as a shareholder of Advanced Glazing Technologies for an amount in excess of \$28 million;
- (e) claims filed by equity claimants holding shares in the Fund; and
- (f) claims submitted by various individual which provided no information as to the nature of the claim.

*Status of Claims Filed*

20. As indicated in the Monitor's Sixth Report dated March 5, 2014 (the "**Sixth Report**", attached hereto as Appendix "C"), other than in accordance with the Claims Procedure Order, there is no deadline by which the Monitor must review and adjudicate claims. The Monitor does not anticipate responding to or adjudicating disputed claims until such time as Roseway is paid in full and there are, or are likely to be, remaining funds for distribution to unsecured creditors of the Fund.

21. The Claims Procedure Order specifically carves out claims of Allen-Vanguard such that the procedure for determining any claims of Allen-Vanguard will be determined only after the hearing or determination of the Allen-Vanguard Motion and Cross Motion (each as defined herein) unless the parties otherwise agreed.

**THE STATUS OF THE RESTRUCTURING EFFORTS OF THE FUND**

22. The Applicant implemented and carried out a two-phased sale and investor solicitation process to: (i) solicit sales and investment proposals; and (ii) implement one or a combination of proposals pursuant to the terms of the SISF.

23. As described in further detail in the Sixth Report, as of February 3, 2014, the Phase II Bid Deadline, the Financial Advisor received two proposals, neither of which constituted Qualified Bids since, *inter alia*, the proposals did not contain cash consideration sufficient to pay Roseway in full. Accordingly, the Fund recommended to Roseway that it retain its assets to be managed and realized to repay Roseway and to preserve value for other stakeholders.

24. In light of the results of the SISP which revealed no acceptable offers to purchase the assets of the Fund, the Fund and Roseway, with the consultation and oversight of the Monitor, met to discuss a path forward for the Fund, including appropriate cost reductions for the ongoing operation of the Fund. Such discussions led to a draft term sheet between Roseway and the Fund (the “**Term Sheet**”) and initial drafts of an investment advisor agreement to be entered into between the Fund and Roseway, subject to the approval by the Court.

25. The Term Sheet contemplates retaining Roseway to provide investment management and other ancillary services to the Fund in relation to its Portfolio. In consideration of Roseway acting as investment advisor to the Fund, including making investment and divestment decisions for and on behalf of the Fund, Roseway shall be entitled to: (i) an annual base fee; and (ii) following the payment by the Fund in full of the indebtedness owing to Roseway, an incentive fee equal to a percentage of the aggregate proceeds of disposition of the remaining assets in the Fund at such time.

26. The Fund and Roseway, with the oversight of the Monitor, are working to reach a definitive agreement and it appears that such definitive agreement between the parties will be concluded shortly. In addition, the Monitor understands that the Fund and Roseway have had



discussions with the OSC in order to keep them apprised of the Fund's intention to engage Roseway to manage its Portfolio.

## **THE STATUS OF THE ALLEN-VANGUARD LITIGATION PROCEEDINGS**

### *General Background*

27. As outlined more fully in the Third Report of the Monitor dated November 15, 2013, on October 28, 2013, counsel to Allen-Vanguard served the Fund, the Monitor and all parties on the service list in the within proceedings, a notice of motion (the "**Allen-Vanguard Motion**") for, *inter alia*, an Order by this Court that the Stay of Proceedings does not apply to the continuation of the proceedings bearing Court File No. 08-CV-43188 and Court File No. 08-CV-43544.

28. The Allen-Vanguard Motion was derived from the litigation proceedings (the "**Allen-Vanguard Litigation**") commenced by Allen-Vanguard against the Fund and other offeree shareholders (the "**Offeree Shareholders**") and relates to Allen-Vanguard's purchase of shares previously held by the Fund and the Offeree Shareholders in Med-Eng Systems Inc. ("**Med-Eng**"). Allen-Vanguard claims against the Fund and the Offeree Shareholders, damages for fraudulent and/or negligent misrepresentation and breach of contract in the amount of \$650 million, of which \$40 million would be paid out of an escrow fund established on closing of the sale of the Med-Eng shares (the "**Escrow**").

29. On November 28, 2013, the Fund served a Notice of Cross Motion returnable February 11, 2013 (the "**Cross Motion**"). The Cross Motion was for an Order directing the trial of certain issues to be heard by way of "mini trial" in the CCAA Proceedings. The issues proposed and/or questions to be dealt with by way of a mini-trial included the following:

- (a) whether the claims of Allen-Vanguard were extinguished at law when it amalgamated with Allen-Vanguard Technologies Inc., formerly Med-Eng, on January 1, 2011?
- (b) whether Allen-Vanguard released the Offeree Shareholders from any and all claims and causes of action in its Plan of Arrangement and reorganization?
- (c) whether Allen-Vanguard is entitled under the share purchase agreement with the Fund and the Offeree Shareholders to seek damages in excess of the escrow for alleged breaches and misrepresentations?

30. The Allen-Vanguard Motion and the Cross Motion (together with the Allen-Vanguard Motion, the “**Motions**”) were heard on February 11, 2014. On March 24, 2014, Justice Brown released his decision with respect to the Motions. In his reasons (the “**Reasons**”), Justice Brown posed a series of questions to the Fund and requested that the Monitor also provide its views with respect to same.

*The Monitor’s General Comments*

31. As noted in the Reasons, the SISP did not succeed and consequently, a merger transaction was not realized. These factors formed the basis of the Fund’s original position that a trial of issues or “mini trial” should proceed within the Fund’s CCAA Proceedings. Accordingly, the Monitor acknowledges that the specific reasons for the relief requested by the Fund (namely, an Order for a “mini trial”) have changed as well as the urgency in which to adjudicate the Allen-Vanguard Litigation.

32. As explained above, restructuring of the Fund will involve the long-term harvesting of the Portfolio in order to maximize the returns that may be available to creditors and

shareholders of the Fund. The Fund's investments are, for the most part, illiquid minority positions in private companies. Accordingly, realizing on the Portfolio in a manner that will maximize stakeholder recovery will take time and is largely dependent on the existence of favourable market conditions for appropriate exit opportunities.

33. Within this context, the Fund estimates that prudent harvesting of the Portfolio should generate sufficient realization to fully repay Roseway prior to the end of 2015, with realization of the remaining Portfolio estimated to be completed during 2016. In the interim however, the Monitor is of the view that there is no reason why the litigation between the parties cannot proceed in a timely and cost- efficient manner in order to facilitate the resolution of the Allen-Vanguard Litigation. Proceeding with the litigation will ensure that the Allen-Vanguard Litigation will not delay and/or impede the Fund's ability to make any potential distributions to unsecured creditors of the Fund if and when funds become available. Once the Allen-Vanguard Litigation is either finally adjudicated or determined to be limited to the funds held in Escrow, a determination can be made as to whether Allen-Vanguard is an unsecured creditor of the Fund and the Fund can then be in a position to make distributions, if any, to unsecured creditors with proven claims and to shareholders of the Fund after Roseway is paid in full.

34. The Monitor understands that there have been significant delays to date in adjudicating the Allen-Vanguard Litigation, including numerous days of discovery, extensive document productions, highly contested motions and assertions of failure by each party against the other as to its procedural obligations.

35. Additionally the parties are unable to agree as to how the litigation should now proceed. After a telephone call held between counsel to the parties and the Monitor on Friday March 27, 2014, the Monitor, via email correspondence on Sunday March 30, 2014, and attached

hereto as Appendix “D”, strongly urged all parties to work together before the scheduled Court appearance on April 8, 2014, to reach agreement as to how this litigation is to proceed on a timely and cost efficient basis. The Monitor in its email correspondence also communicated its view that any solution with respect to the litigation going forward, should be framed in a way as to limit the involvement of the Fund’s CCAA professionals as much as possible.

36. The Monitor has received from the Fund and counsel to the Offeree Shareholders their proposed timetable and estimate of costs of a mini trial as described above. At the date of this report the Monitor has requested, but not received the fee estimate or proposed timetable of counsel to Allen-Vanguard. Should the requested information be received sufficiently in advance of the stay extension hearing, the Monitor intends to file a further brief report prior to the return of the stay extension motion with respect to the fee estimates and costs provided by the parties.

37. At this time, the Monitor is unable to make a specific recommendation as to the manner in which the Allen-Vanguard Litigation should proceed given that the parties appear to strongly disagree as to the length, complexity and cost of a mini trial and we have not, as at the date of this report received the response of Allen-Vanguard to the questions posed by his honour in the Reasons. Notwithstanding the disagreement between the parties however, the Monitor is principally concerned: (i) with the costs of the litigation on the Fund’s estate; and (ii) that the Allen-Vanguard Claim be resolved in an expeditious manner, and in any event prior to the end of 2015 such that it will not delay the claims process and payments, if any, to unsecured creditors and shareholders.

38. The Monitor notes that in most instances, litigation commenced prior to CCAA proceedings are adjudicated as part of a claims process to reduce costs and to expedite the ultimate resolution of the litigation in order to facilitate the restructuring of the CCAA debtor.

Given the outcome of the SISP, the facts in this case do not support the continuation of the claims process generally at this time as the outcome of the adjudication of the Allen-Vanguard Litigation will not have an immediate impact or assist in facilitating the restructuring of the Fund. However, the Monitor is of the view that the Allen-Vanguard Litigation needs to be dealt with and would benefit from a court-supervised process where the supervising court can establish a timetable that will prevent any further potential lengthy and undue delays as a result of the inability of the parties to come to any consensual resolution.

39. In the Monitor's view a summary procedure to determine the claim, if any, of Allen-Vanguard against the Fund, within the CCAA proceedings or in Ottawa, with parameters and restrictions as to timing and evidence established by this CCAA Court, will best address the Monitor's concerns as to the cost of the litigation and further delays.

**ACTUAL RECEIPTS AND DISBURSEMENTS OF THE FUND FOR THE PERIOD  
FROM MARCH 1, 2014 TO MARCH 28, 2014**

40. The Fund's actual net cash flow for the period from March 1, 2014 to March 28, 2014 (the "**Current Period**") together with an explanation of key variances as compared to the March 1 Forecast is set out below. Actual net cash flows for the Current Period were approximately \$146,000 lower than forecast, summarized as follows:

\$000	Forecast	Actual	\$ Variance
<b>Cash Inflow</b>			
Venture Exits and/or Interest Payments	\$ 3,588	\$ 2,806	\$ (783)
<b>Total Cash Inflow</b>	<b>\$ 3,588</b>	<b>\$ 2,806</b>	<b>\$ (783)</b>
<b>Cash Outflow</b>			
Follow on Funding	\$ 31	\$ 38	\$ 7
CEO Fees & Expenses	\$ 37	\$ -	\$ (37)
Insurance Fees	\$ -	\$ -	\$ -
Legal & Financial Advisor Fees	\$ 270	\$ 63	\$ (208)
Other	\$ 61	\$ 2	\$ (59)
<b>Total Cash Outflow</b>	<b>\$ 399</b>	<b>\$ 103</b>	<b>\$ (296)</b>
<b>Restructuring Costs</b>			
Monitor's Legal and Professional Fees	\$ 169	\$ 75	\$ (93)
Fund Legal Fees	\$ 247	\$ -	\$ (247)
<b>Total Restructuring Fees</b>	<b>\$ 415</b>	<b>\$ 75</b>	<b>\$ (340)</b>
<b>Net Cash Flow</b>	<b>\$ 2,773</b>	<b>\$ 2,627</b>	<b>\$ (146)</b>
<b>Opening Cash Balance</b>	<b>\$ 7,915</b>	<b>\$ 7,915</b>	<b>\$ -</b>
Net Cash Flow	\$ 2,773	\$ 2,627	\$ (146)
Repayment of Obligation to Roseway	\$ (5,851)	\$ (6,074)	\$ (224)
Unrealized FX Gain/Loss	\$ -	\$ (13)	\$ (13)
<b>Ending Cash Balance</b>	<b>\$ 4,838</b>	<b>\$ 4,456</b>	<b>\$ (383)</b>

41. The variance in actual receipts and disbursements is comprised primarily of the following:

- (a) a variance of approximately \$780,000 in venture exits and/or distributions from Portfolio Companies. This variance is temporary in nature and is expected to reverse as proceeds are received in respect of the disposition of the Fund's interest in certain of its Portfolio Companies; and
- (b) a variance of approximately \$450,000 in professional and other restructuring fees. This variance is temporary in nature, due to timing differences between receipt of bills and payment thereof. The positive variance will reverse over the coming weeks.

**THE FUND’S CASH FLOW FORECAST**

42. The Fund has prepared a revised cash flow forecast for the period March 29, 2014 to May 9, 2014 (the “**March 29 Forecast**”). A copy of the March 29 Forecast is attached as Appendix “E”. The March 29 Forecast shows a positive net cash flow of approximately \$450,000., and is summarized below:

	<b>\$000</b>
Cash Inflow	
Venture Exits and/or Distributions	1,689
<b>Total Cash Inflow</b>	<b>1,689</b>
Cash Outflow	
Follow on Funding	-
CEO Fees & Expenses	81
Payroll & Benefits	25
Insurance Fees	-
Legal & Financial Advisor Fees	231
Board Fees	100
Rent, Communications & Utilities	2
Other	148
<b>Total Cash Outflow</b>	<b>587</b>
Restructuring Costs	
Financial Advisor Fees	654
<b>Total Restructuring Fees</b>	<b>654</b>
<b>Net Cash Flow</b>	<b>449</b>
Opening Cash Balance	4,455
Net Cash Flow	449
Repayment of Obligation to Roseway	(678)
<b>Ending Cash Balance</b>	<b>4,226</b>

43. It is anticipated that the Fund’s projected liquidity requirements throughout the March 29 Forecast period will continue to be met by existing cash available to the Fund.

**DISTRIBUTIONS TO ROSEWAY**

44. On November 28, 2013, the Court granted an Order authorizing the Fund, with the consent of the Monitor to, *inter alia*, make distributions to Roseway provided that certain priority payables are able to be paid by the Applicant when due (the “**Distribution Order**”).

45. Pursuant to the Distribution Order and since the date of the filing of the Sixth Report, the Fund, with the consent of the Monitor, have made three distributions to Roseway. The total amount of distributions to date made by the Fund to Roseway is detailed below:

	USD	CAD
March 7, 2014	\$ 1,978,603	\$ 3,659,412
March 24, 2014	\$ 212,700	\$ -
April 1, 2014	\$ 613,156	\$ -
<b>Total</b>	<b>\$ 2,804,459</b>	<b>\$ 3,659,412</b>

### STAY EXTENSION

46. The stay period currently expires on April 10, 2014 (the "Stay Period") and the Fund is seeking an extension of the Stay of Proceedings to May 9, 2014. The Monitor is supportive of the stay extension of the Fund in order to conclude a management and advisory agreement with Roseway for the long-term harvesting and realization of the Portfolio through ordinary course exit opportunities. An extension of the Stay Period will assist in the preservation and maximization of the value of the Fund's assets for the benefit of its stakeholders.

47. Without the protection of the CCAA stay to enable the Fund to manage and realize on its illiquid assets in the ordinary course, it is the Monitor's view that the net recovery from the sale of the assets comprising the Portfolio may be substantially diminished. Should the stay be lifted, the Monitor expects that Roseway will bring an application for the appointment of a receiver. The appointment of a Receiver will likely result in the realization of Fund's portfolio assets at a discount to value otherwise obtainable by the Fund.

48. In addition to the foregoing, the Monitor is of the belief that the various stakeholders and creditors of the Fund would not be materially prejudiced by the extension of the Stay Period. The Monitor is also of the belief that the Fund has acted, and is acting, in good faith



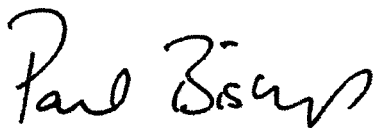
and with due diligence and that circumstances exist that warrant an extension of the stay to May 9, 2014.

The Monitor respectfully submits to the Court this Seventh Report.

Dated this 3rd day of April, 2014.

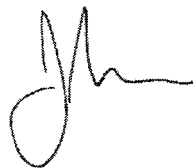
FTI Consulting Canada Inc.

in its capacity as Monitor of GrowthWorks Canadian Fund Ltd. and not in its personal or corporate capacity

A handwritten signature in black ink, appearing to read "Paul Bishop". The signature is fluid and cursive, with the first name "Paul" being larger and more prominent than the last name "Bishop".

Paul Bishop

Senior Managing Director

A handwritten signature in black ink, appearing to read "Jodi B. Porepa". The signature is cursive and somewhat stylized, with the first name "Jodi" being the most prominent part.

Jodi B. Porepa

Managing Director

## APPENDIX "A"

Court File No.: »

CV-13-10279-

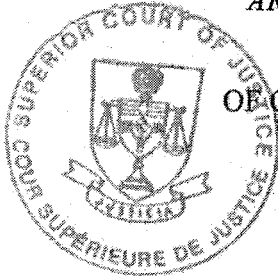
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR. ) TUESDAY, THE 1<sup>ST</sup>  
JUSTICE NEWBOULD ) DAY OF OCTOBER, 2013

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

AND IN THE MATTER OF A PROPOSED PLAN  
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
GROWTHWORKS CANADIAN FUND LTD.  
(the "APPLICANT")



**INITIAL ORDER**

THIS APPLICATION, made by the Applicant, pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of C. Ian Ross sworn September 30, 2013 and the Exhibits thereto (the "Ross Affidavit"), and on being advised that Roseway Capital S.a.r.l. ("Roseway"), the secured creditor who is likely to be affected by the charges created herein was given notice, and on hearing the submissions of counsel for the Applicants, counsel for Roseway and counsel for the proposed Monitor, FTI Consulting Canada Inc., counsel for the Manager (defined below) and on reading the consent of FTI Consulting Canada Inc. to act as the Monitor,

THIS APPLICATION, made by the Applicant, pursuant to the CCAA was heard this day at 330 University Avenue, Toronto, Ontario.

### **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 the Applicant is a company to which the CCAA applies.

### **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicant 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 Applicant shall remain in possession and control of its 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 Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant shall be 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 it, with liberty to retain such further Assistants as it deems 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 Applicant shall be entitled to utilize a central cash management system (a "**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 Applicant 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 Applicant, 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 the 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 Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all reasonable transition costs of the Manager (as defined below), and 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 management agreements, compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant 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;

- (b) Follow on Investments in Portfolio Companies (as defined in the Ross Affidavit) for which provision is made in the Cash Flow Projection (as defined in the Ross Affidavit) or which are approved by the Monitor; and
- (c) payment for goods or services actually supplied to the Applicant following the date of this Order.

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

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant 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 Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is 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 Applicant to any of its creditors as of this date except as provided in the Cash Flow Projection; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

#### **RESTRUCTURING**

11. THIS COURT ORDERS that the Applicant 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 its business or operations, and to dispose of redundant or non-material assets not exceeding \$25,000 in any one transaction or \$100,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate and terminate the provision of transitional services by the Manager (as defined below); and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**"). For greater clarity, dispositions of the Applicant's interest in a Portfolio Company (as defined in the Ross Affidavit) as part of a liquidity event, is an ordinary course transaction that does not require Court approval.



12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's 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 Applicant's 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 Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it 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 Applicant's claim to the fixtures in dispute.

13. 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 Applicant 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 Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-release such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

14. THIS COURT ORDERS that until and including October 31, 2013, 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 Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is 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.

16. THIS COURT ORDERS that any rights or obligations, including any right or obligation under a contract, an agreement or other document affecting or relating to a Portfolio Company (as defined in the Ross Affidavit), that arise, come into effect or are "triggered" by the insolvency of the Applicant, by the commencement of these proceedings or the making of this Order shall be of no effect and no person shall be entitled to exercise any rights or remedies in connection therewith.

#### **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 Applicant or any right, renewal right, contract, agreement, licence or permit in favour

of or held by a Portfolio Company to the extent relevant to the Applicant, the Business, the Property or these proceedings, except with the written consent of the Applicant 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 Applicant 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 Applicant, 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 Applicant, and that the Applicant shall be entitled to the continued use of its 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant 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 Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

-9- *this Order is without prejudice to any arguments of the Fund, - 25*

**CRITICAL SUPPLIERS**

20. THIS COURT ORDERS AND DECLARES that Growthworks WV Management Ltd. (the "Manager"), GrowthWorks Capital Ltd. ("GWC"), and each ~~Person engaged or contracted by the Manager and/or GWC (not including employees of the Manager or GWC) in connection with providing services to the Applicant pursuant to the Management Agreement described in the Ross Affidavit (the "Management Agreement") is a critical supplier to the Applicant as contemplated by Section 11.4 of the CCAA (each, a "Critical Supplier").~~ *or 25*

21. THIS COURT ORDERS that each Critical Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the "Critical Suppliers' Charge") on the Property of the Applicant in an amount equal to the lesser of (a) the value of the goods and services supplied by such Critical Supplier and received by the Applicant after the date of this Order less all amounts paid to such Critical Supplier in respect of such goods and services; (b) the amount to which the Manager is entitled to be paid under section 8.6(b) of the Management Agreement; and (c) \$50,000. The Critical Supplier Charge shall have the priority set out in paragraphs 36 and 38 herein.

*to the extent this Court declares any Person a critical supplier as contemplated by Section 11.4 of the CCAA by subsequent order*

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

22. 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 Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

*each, a "Critical Supplier" 25*

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

23. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant 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.

24. THIS COURT ORDERS that the directors and officers of the Applicant 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 \$1,000,000, as security for the indemnity provided in paragraph 23 of this Order. The Directors' Charge shall have the priority set out in paragraphs 36 and 38 herein.

25. 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 Applicant's 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 23 of this Order.

### **APPOINTMENT OF MONITOR**

26. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant 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.

27. 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 Applicant's 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) advise the Applicant in its preparation of the Applicant's cash flow statements;
- (d) advise the Applicant in respect to the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property including the premises, the premises of the Manager to the extent Property of the Applicant is located on the Manager's premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order and all Persons, including the Applicant and the Manager, shall permit such full and complete access to such Property to the Monitor;
- (g) 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;
- (h) establish one or more accounts to hold any proceeds of the disposition of the Portfolio Companies (the "Proceeds Accounts");

- (i) administer the Proceeds Accounts for and on behalf of the Applicants and to distribute funds from such Proceeds Accounts from time to time to satisfy expenses that the Applicant is entitled and/or required to pay pursuant to this Order, as directed by the Applicant and in accordance with the Cash Flow Projection and any update cash flow projections; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

28. THIS COURT ORDERS that the Monitor shall not take possession of the Property with the exception of the Proceeds Accounts, and shall take no part whatsoever in the management or supervision of the management of the Business or the businesses of the Portfolio Companies 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.

29. THIS COURT ORDERS that McCarthy Tétrault LLP is entitled to transfer the funds held by it in trust as described in the Ross Affidavit at paragraph 88, and any future proceeds that may be received by it from time to time from the disposition of the Portfolio Companies, to the Monitor for deposit into the Proceeds Accounts to be held by the Monitor for and on behalf of the Applicant in accordance with the terms of this Order.

30. 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.

31. THIS COURT ORDERS that that the Monitor shall provide to any creditor of the Applicant information provided by the Applicant 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 Applicant 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 Applicant may agree.

32. 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 (including, without limitation, with respect to administering the Proceeds Accounts for and on behalf of the Applicants), 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.

33. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicant and CCC, retainers in the amount of \$50,000,



respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

34. 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.

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor, CCC (as defined in the Ross Affidavit), and the Applicant's 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 \$500,000, 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 36 and 38 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

36. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the Critical Suppliers' Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – Directors' Charge (to the maximum amount of \$1,000,000); and

Third – Critical Suppliers' Charge (to the maximum amount of \$50,000).

37. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge and the Critical Suppliers' Charge (collectively, 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.

38. THIS COURT ORDERS that each of the Charges (as constituted and defined herein) shall constitute a charge on the Property and the 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.

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

40. 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**") thereunder 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 *Bankruptcy and Insolvency Act* (the "**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 Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is 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; and

- (c) neither the payments made by the Applicant pursuant to this Order nor the granting of the Charges shall constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

#### **SERVICE AND NOTICE**

42. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in [newspapers specified by the Court] a notice containing the information prescribed under the CCAA, (ii) within five 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 the Applicant of more than \$1000, 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.

43. THIS COURT ORDERS that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

44. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as

recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at <http://cfcanada.fticonsulting.com/gcfl>.

**GENERAL**

45. THIS COURT ORDERS that the Applicant 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.
46. 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 Applicant, a Portfolio Company, the Business or the Property.
47. 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 Applicant, 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 Applicant 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 Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
48. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
49. THIS COURT ORDERS that any interested party (including the Applicant 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.

50. 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.

  
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OCT 01 2013

## APPENDIX "B"

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

THE HONOURABLE MR. ) TUESDAY, THE 1<sup>ST</sup>  
 )  
JUSTICE NEWBOULD ) DAY OF OCTOBER, 2013

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

AND IN THE MATTER OF A PROPOSED PLAN  
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
GROWTHWORKS CANADIAN FUND LTD.  
(the "APPLICANT")

**AMENDED AND RESTATED INITIAL ORDER**

THIS APPLICATION, made by the Applicant, pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of C. Ian Ross sworn September 30, 2013 and the Exhibits thereto (the "Ross Affidavit"), and on being advised that Roseway Capital S.a.r.l. ("Roseway"), the secured creditor who is likely to be affected by the charges created herein was given notice, and on hearing the submissions of counsel for the Applicants, counsel for Roseway and counsel for the proposed Monitor, FTI Consulting Canada Inc., counsel for the Manager (defined below) and on reading the consent of FTI Consulting Canada Inc. to act as the Monitor,

THIS APPLICATION, made by the Applicant, pursuant to the CCAA was heard this day at 330 University Avenue, Toronto, Ontario.

## **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 the Applicant is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicant 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 Applicant shall remain in possession and control of its 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 Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant shall be 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 it, with liberty to retain such further Assistants as it deems 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 Applicant shall be entitled to utilize a central cash management system (a "**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 Applicant 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 Applicant, 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 the 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 Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all reasonable transition costs of the Manager (as defined below) pursuant to the terms of the Critical Transition Services Agreement (as defined below), and 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 management agreements, compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant 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;

- (b) Follow on Investments in Portfolio Companies (as defined in the Ross Affidavit, the "Portfolio Companies", each a "Portfolio Company") for which provision is made in the Cash Flow Projection (as defined in the Ross Affidavit) or which are approved by the Monitor; and
- (c) payment for goods or services actually supplied to the Applicant following the date of this Order.

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

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant 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 Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is 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 Applicant to any of its creditors as of this date except as provided in the Cash Flow Projection; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

#### **RESTRUCTURING**

11. THIS COURT ORDERS that the Applicant 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 its business or operations, and to dispose of redundant or non-material assets not exceeding \$25,000 in any one transaction or \$100,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate and terminate the provision of transitional services by the Manager (as defined below); and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**"). For greater clarity, dispositions of the Applicant's interest in a Portfolio Company as part of a liquidity event, is an ordinary course transaction that does not require Court approval.

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's 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 Applicant's 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 Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it 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 Applicant's claim to the fixtures in dispute.

13. 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 Applicant 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 Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

14. THIS COURT ORDERS that until and including October 31, 2013, 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 Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is 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.

16. THIS COURT ORDERS that any rights or obligations, including any right or obligation under a contract, an agreement or other document affecting or relating to a Portfolio Company, that arise, come into effect or are "triggered" by the insolvency of the Applicant, by the commencement of these proceedings or the making of this Order shall be of no effect and no person shall be entitled to exercise any rights or remedies in connection therewith.

#### **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 Applicant or any right, renewal right, contract, agreement, licence or permit in favour

of or held by a Portfolio Company to the extent relevant to the Applicant, the Business, the Property or these proceedings, except with the written consent of the Applicant 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 Applicant 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 Applicant, 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 Applicant, and that the Applicant shall be entitled to the continued use of its 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant 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 Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## CRITICAL SUPPLIERS

20. THIS COURT ORDERS AND DECLARES that this Order is without prejudice to any arguments of the Fund, Growthworks WV Management Ltd. (the “**Manager**”) or GrowthWorks Capital Ltd. (“**GWC**”), in connection with the purported termination of the Management Agreement described in the Ross Affidavit (the “**Management Agreement**”).

21. THIS COURT ORDERS that, the Manager, GWC, and each Person engaged or contracted by the Manager and/or GWC (not including employees of the Manager or GWC) in connection with providing transitional services to the Applicant pursuant to the Management Agreement on or after October 1, 2013 is a critical supplier to the Applicant as contemplated by Section 11.4 of the CCAA (each, a “**Critical Supplier**”) and each Critical Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the “**Critical Suppliers’ Charge**”) on the Property of the Applicant in an amount equal to the lesser of (a) the value of the goods and services supplied by such Critical Supplier and received by the Applicant after the date of this Order less all amounts paid to such Critical Supplier in respect of such goods and services; and, (b) the amount to which the Manager is entitled to be paid under the Critical Transition Services Agreement attached hereto as Schedule “1”. The Critical Supplier Charge shall have the priority set out in paragraphs 38 and 40 herein.

22. THIS COURT ORDERS that each Critical Supplier shall, in addition to any other obligations it has under this Initial Order, supply and continue to supply the Applicant with transitional services pursuant to the Management Agreement. In the case of the Manager, it shall supply and continue to supply the Critical Transition Services (as defined in the Critical Transition Services Agreement) pursuant to and as set out in the Critical Transition Services Agreement. No Critical Supplier may require the payment of a deposit or the posting of any security in connection with the supply of such services after the date of this Order.

## PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. 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 Applicant, or against any current or future Applicant-nominated director of any of the Portfolio Companies (the "**Portfolio Company Directors**") with respect to any claim against the directors, officers or Portfolio Company Directors that arose before, on or after the date hereof and that relates, (i) in the case of the former, current or future directors or officers of the Applicant, to any obligations of the Applicant, or (ii) in the case of the Portfolio Company Directors, to any obligations of the Portfolio Companies, and in either case whereby the directors, officers or Portfolio Company Directors 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 Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

## DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers, and may indemnify the Portfolio Company Directors if, in its own discretion and in consultation with the Monitor, it elects to do so, against obligations and liabilities that they may incur as directors or officers of the Applicant or directors of a Portfolio Company after the commencement of the within proceedings, except to the extent that, with respect to any director, officer or Portfolio Company Director, the obligation or liability was incurred as a result of the director's, officer's or Portfolio Company Director's gross negligence or wilful misconduct. The Applicant and the Portfolio Company Directors will use reasonable commercial efforts to address any dispute regarding the indemnity coverage with the guidance and assistance of the Monitor, and, if required, this Court.

25. THIS COURT ORDERS that the directors and officers of the Applicant 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 \$1,000,000, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

26. THIS COURT ORDERS that the Portfolio Company Directors shall be entitled to the benefit of and are hereby granted a charge (the "**Portfolio Company Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$10,000,000, as security for the indemnity referred to in paragraph 24 of this Order, to the extent one is provided by the Applicant. The Portfolio Company Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

27. 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 or the Portfolio Company Directors' Charge, and (b) the Applicant's 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 24 of this Order, and the Portfolio Company Directors shall only be entitled to the benefit of the Portfolio Company 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 by the Applicant, to the extent an indemnity is provided by the Applicant accordance with paragraph 24 of this Order.

#### **APPOINTMENT OF MONITOR**

28. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant 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.

29. 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 Applicant's 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) advise the Applicant in its preparation of the Applicant's cash flow statements;
- (d) advise the Applicant in respect to the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property including the premises, the premises of the Manager to the extent Property of the Applicant is located on the Manager's premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order and all Persons, including the Applicant and the Manager, shall permit such full and complete access to such Property to the Monitor;
- (g) 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;

- (h) establish one or more accounts to hold any proceeds of the disposition of the Portfolio Companies (the "Proceeds Accounts");
- (i) administer the Proceeds Accounts for and on behalf of the Applicants and to distribute funds from such Proceeds Accounts from time to time to satisfy expenses that the Applicant is entitled and/or required to pay pursuant to this Order, as directed by the Applicant and in accordance with the Cash Flow Projection and any update cash flow projections; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

30. THIS COURT ORDERS that the Monitor shall not take possession of the Property with the exception of the Proceeds Accounts, and shall take no part whatsoever in the management or supervision of the management of the Business or the businesses of the Portfolio Companies 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.

31. THIS COURT ORDERS that McCarthy Tétrault LLP is entitled to transfer the funds held by it in trust as described in the Ross Affidavit at paragraph 88, and any future proceeds that may be received by it from time to time from the disposition of the Portfolio Companies, to the Monitor for deposit into the Proceeds Accounts to be held by the Monitor for and on behalf of the Applicant in accordance with the terms of this Order.

32. 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.

33. THIS COURT ORDERS that that the Monitor shall provide to any creditor of the Applicant information provided by the Applicant 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 Applicant 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 Applicant may agree.

34. 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 (including, without limitation, with respect to administering the Proceeds Accounts for and on behalf of the Applicants), 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.

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis and, in

addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicant and CCC (as defined in the Ross Affidavit), retainers in the amount of \$50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time

36. 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.

37. THIS COURT ORDERS that the Monitor, counsel to the Monitor, CCC (as defined in the Ross Affidavit), and the Applicant's 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 \$500,000, 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 38 and 40 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the Critical Suppliers' Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – Directors' Charge (to the maximum amount of \$1,000,000);

Third – Critical Suppliers' Charge (to the maximum amount of \$50,000);

and,

Fourth – Portfolio Company Directors' Charge and Critical Suppliers' Charge to the extent that it exceeds \$50,000.

39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the Critical Suppliers' Charge and the Portfolio Company Directors' Charge (collectively, 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.

40. THIS COURT ORDERS that each of the Charges (as constituted and defined herein) shall constitute a charge on the Property and that the entire Directors' Charge, the entire Administration Charge and the Critical Suppliers' Charge to a maximum amount of \$50,000 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. To the extent the Critical Suppliers' Charge exceeds \$50,000, such additional amount, together with the Portfolio Company Directors' Charge, shall rank *pari passu* with one another behind the Encumbrances.

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

42. 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") thereunder 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 *Bankruptcy and Insolvency Act* (the "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 Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is 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; and
- (c) neither the payments made by the Applicant pursuant to this Order nor the granting of the Charges shall constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

#### **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 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 the Applicant of more than \$1000, 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.

45. THIS COURT ORDERS that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

46. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at <http://cfcanada.fficonsulting.com/gcfl>.

#### **GENERAL**

47. THIS COURT ORDERS that the Applicant 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.

48. 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 Applicant, a Portfolio Company, the Business or the Property.

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

50. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

51. THIS COURT ORDERS that any interested party (including the Applicant 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.

52. 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.

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## APPENDIX "C"

Court File No. CV-13-10279-00CL

**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  
GROWTHWORKS CANADIAN FUND LTD.

**SIXTH REPORT OF**  
**FTI CONSULTING CANADA INC.,**  
**IN ITS CAPACITY AS MONITOR**

March 5, 2014

**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  
GROWTHWORKS CANADIAN FUND LTD.

**SIXTH REPORT OF  
FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

1. On October 1, 2013, GrowthWorks Canadian Fund Ltd. (the “**Fund**” or the “**Applicant**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”, a copy of which is attached hereto as Appendix “A”) was made by the Honourable Justice Newbould of the Ontario Superior Court (Commercial List) (the “**Court**”) granting, *inter alia*, a stay of proceedings against the Applicant until October 31, 2013, which stay of proceedings was thereafter extended until March 7, 2014 (the “**Stay of Proceedings**”) and appointing FTI Consulting Canada Inc. as monitor of the Fund (the “**Monitor**”). The proceedings commenced by the Fund under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

2. The Fund is a labour sponsored venture capital fund that currently has a mature and diversified portfolio consisting primarily of investments made in small and medium-sized Canadian businesses. The Fund was formed in 1988 with the investment objective of achieving long term appreciation for its Class A shareholders, whom principally comprise retail investors.

3. The Fund experienced liquidity issues because of, *inter alia*, an inability to access short-term financing as well as unfavourable market conditions impacting its ability to divest, at a profit, its relatively illiquid investments. As a result of these liquidity issues, the Fund was unable to meet its obligations as they became due, including the obligation of the Fund to make a \$20 million dollar payment to Roseway Capital S.a.r.l (“**Roseway**”), its sole secured creditor, which payment became due on September 30, 2013. With the consent of Roseway, the Fund filed for and obtained protection under the CCAA on October 1, 2013.

4. Prior to September 30, 2013 and the commencement of these CCAA Proceedings, the Fund’s day to day operations were delegated to GrowthWorks WV Management Ltd. (the “**Manager**”) pursuant to a Management Agreement dated July 15, 2006 (“**Management Agreement**”). In accordance with the terms of the Management Agreement, the Manager was permitted to delegate its duties under the Management Agreement to third parties. Pursuant to the Management Agreement, the Manager delegated the Manager’s obligations to GrowthWorks Capital Ltd. On September 30, 2013, the Fund terminated the Management Agreement for the reasons outlined in the Affidavit of Ian Ross, sworn September 30, 2013 and filed.

5. Pursuant to an Order granted by the Court on October 29, 2013, the Initial Order was amended and restated and the Stay of Proceedings was extended until January 15, 2014 (the “**Amended and Restated Initial Order**”). A copy of the October 29, 2013 Order attaching the Amended and Restated Initial Order is attached hereto as Appendix “B”.

6. Pursuant to an Order granted by the Court On November 18, 2013, the Court approved a sales and investor solicitation process (“**SISP**”, a copy of which is attached hereto as Appendix “C”) for the purpose of offering the opportunity for potential investors to purchase or invest in the business or property of the Fund.

7. On November 28, 2013, the Court granted an Order authorizing the Fund, with the consent of the Monitor to, *inter alia*, make distributions to Roseway provided that certain priority payables are able to be paid by the Applicant when due.

8. On January 9, 2014, the Court approved an Order: (i) establishing a claims procedure to identify, determine and resolve claims of creditors of the Fund (the “**Claims Procedure**”); and (ii) extending the Stay of Proceedings until March 7, 2014.

9. Pursuant to an Order dated February 28, 2014, the Court extended the time for the Fund to call its annual general meeting of shareholders until and including October 31, 2014.

#### **PURPOSE OF THIS REPORT**

10. The purpose of this sixth report of the Monitor is to update and inform the Court on the following:

- (a) the status of the SISP;
- (b) the status of the litigation proceedings commenced by Allen-Vanguard Corporation (“**Allen-Vanguard**”);
- (c) the status of the Claims Procedure;
- (d) the receipts and disbursements of the Fund for the period January 4, 2014 to February 28, 2014;
- (e) the proposed distribution of funds to Roseway;
- (f) the Fund’s cash flow projections for the period from March 1, 2014 to May 2, 2014; and

- (g) the Monitor's comments on the Applicant's request for an extension of the Stay of Proceedings.

#### **TERMS OF REFERENCE**

11. In preparing this report, the Monitor has relied upon unaudited financial information, other information available to the Monitor, where appropriate the Applicants' books and records and discussions with various parties including advisors to Roseway and the Fund's management and advisors.

12. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

14. Capitalized terms not defined herein shall have the meaning ascribed to in the affidavit of Ian Ross, Chairman of the Fund, sworn March 3, 2014 and filed (the "**March Affidavit**"), the Claims Procedure or the Fifth Report of the Monitor dated January 8, 2014 (the "**Fifth Report**", attached hereto as Appendix "D").

15. This report should be read in conjunction with the March Affidavit as certain information contained in the March Affidavit have not been included herein in order to avoid unnecessary duplication.

## THE SISP

16. As outlined in the Fifth Report, since early November 2013, the Applicant has implemented and carried out a two-phased sale and investor solicitation process to: (i) solicit sales and investment proposals; and (ii) implement one or a combination of proposals pursuant to the terms of the SISP. In that regard, a list of potential purchasers and investors was developed by the Financial Advisor with the assistance and in consultation with the Fund and the Monitor. The Monitor also published in the Globe and Mail (National Edition) and the Wall Street Journal an advertisement of the acquisition or investment opportunity for the Fund's business and assets.

17. During Phase 1 of the SISP, non binding indications of interest were solicited from potential investors and purchasers. Those potential purchasers and investors that were determined to be Qualified Bidders (as defined in the SISP) commenced due diligence on the Fund and its portfolio.

18. The activity during Phase I of the SISP can be summarized as follows:

- (i) approximately 157 potential purchasers and investors were contacted by the Financial Advisor notifying them of the investment/sale opportunity;
- (ii) of those 157 parties contacted, approximately 125 parties requested and were sent teaser letters;
- (iii) approximately 55 parties executed a confidential non-disclosure agreement ("NDA");
- (iv) of the 55 parties who executed NDAs, 36 parties, each of whom were deemed to be Qualified Bidders, requested and were sent a confidential



information memorandum outlining in detail the opportunity to acquire or invest in the business of the Fund and were also given access to an electronic data room maintained by the Financial Advisor; and

(v) approximately 30 Qualified Bidders accessed the electronic data room.

19. As of December 13, 2013, (the “**Phase 1 Bid Deadline**”), the Financial Advisor received seven letters of intent (“**LOIs**”) from potential parties.

20. On December 16, 2013, the Fund, the Financial Advisor and the Monitor met to: (i) review the seven LOIs received; (ii) determine whether the SISP should continue into Phase II; and (iii) if it was determined that the SISP should continue into Phase II, evaluate which of the parties that submitted LOIs should be invited to continue.

21. The seven LOIs were evaluated on the basis of whether they met the Qualified LOI criteria as defined in paragraph 19 of the SISP. Out of the seven LOIs received, six of the LOIs were determined to be Qualified LOIs. At this time, the Special Committee in consultation with the Financial Advisor and with the consent of the Monitor determined that there was a reasonable prospect of obtaining a Qualified Bid (as defined therein) and accordingly, that the SISP should continue into Phase II.

22. As a result of the foregoing, six Qualified Bidders were invited to participate in Phase II of the SISP which commenced on December 20, 2013. During Phase II of the SISP, the six Qualified Bidders were granted further access to due diligence materials, including updated financial information of the Fund. In addition, the six Qualified Bidders were also given the opportunity to participate in due diligence calls conducted by the Financial Advisor and senior management of certain of the Portfolio Companies.

23. As of February 3, 2014, (the “**Phase II Bid Deadline**”, which deadline was not extended by the Fund pursuant to the terms of the SISP), the Financial Advisor received two proposals. Neither of the two proposals constituted Qualified Bids since, *inter alia*, neither of the proposals contained cash consideration sufficient to pay the Roseway Claims in full. The first proposal contemplated a purchase of a portion of the Fund’s assets at a price unacceptable to the Fund and the Financial Advisor (the “**Discounted Sale Offer**”). The second proposal was neither a purchase proposal nor an investment proposal but rather a proposal to manage the assets of the Fund.

24. Shortly after the Phase II Bid Deadline, the Fund, the Financial Advisor and the Monitor met with Roseway and its advisors to consider the two proposals submitted. The Fund, in consultation with the Financial Advisor, did not accept the Discounted Sale Offer principally on the basis that: (i) the purchase price reflected an unacceptable discount for the selected portion of assets to be purchased; and (ii) the remaining assets would still require a manager to harvest the portfolio. Instead, the Fund recommended to Roseway that the assets be retained by the Fund and that the Fund be managed for the continued harvesting of the portfolio in order to generate proceeds to repay Roseway on a timely basis and to preserve value for other stakeholders. In that regard, the Fund and Roseway, with the consultation and oversight of the Monitor, continue to discuss a path forward for the Fund, including appropriate cost reductions for the ongoing operation of the Fund.

#### **THE STATUS OF THE ALLEN-VANGUARD LITIGATION PROCEEDINGS**

25. As outlined more fully in the Third Report of the Monitor dated November 15, 2013, on October 28, 2013, counsel to Allen-Vanguard served the Fund, the Monitor and all parties on the service list in the within proceedings, a notice of motion (the “**Allen-Vanguard**

**Motion**") for, *inter alia*, an Order by this Court that the Stay of Proceedings does not apply to the continuation of the proceedings bearing Court File No. 08-CV-43188 and Court File No. 08-CV-43544.

26. The Allen-Vanguard Motion is derived from litigation proceedings commenced by Allen-Vanguard against the Fund and other offeree shareholders and relates to Allen-Vanguard's purchase of shares held by the Fund and other offeree shareholders in Med-Eng Systems Inc. ("**MES**"). Allen-Vanguard claims against the Fund and the other offeree shareholders, damages for fraudulent and/or negligent misrepresentation and breach of contract in the amount of \$650 million, of which \$40 million would be paid out of an escrow agreement entered into on closing of the sale of the MES shares.

27. On November 28, 2013, the Fund served a Notice of Cross Motion returnable February 11, 2013 (the "**Cross Motion**"). The Cross Motion is for an Order directing the trial of certain issues to be heard by way of mini trial in the CCAA Proceedings.

28. The Allen-Vanguard Motion and the Cross Motion was heard on February 11, 2014 and is still pending determination by this Court.

### **THE CLAIMS PROCEDURE**

29. On January 9, 2014, the Fund sought and obtained approval of the Claims Procedure. Pursuant to the terms of the Claims Procedure, anyone asserting a Claim or D&O Claim is required to submit their Proof of Claim with the Monitor by no later than 5:00pm EST on March 6, 2014.

30. Pursuant to the Claims Procedure Order, on January 13, 2014, the Monitor posted a copy of the Proof of Claims Document Package on the Monitor's website and on January 15,

2014, caused the Notice to Claimants to be published once in the Globe and Mail Newspaper (National Edition). A copy of the published Notice to Claimants in the Globe and Mail Newspaper is attached hereto as Appendix "E". In addition, the Monitor sent a Proof of Claims document package to all known Creditors, other than to Allen-Vanguard.

31. As noted in the Fifth Report, the Monitor will review all Proofs of Claim filed. However, as indicated therein, there is no deadline by which the Monitor must review and adjudicate claims. Accordingly, the Monitor will use its discretion to respond to and, if necessary, adjudicate disputed claims only when and if circumstances necessitate doing so. Other than in accordance with the Claims Procedure, the Monitor does not anticipate responding to or adjudicating disputed claims until such time as Roseway is paid in full and there are, or are likely to be, remaining funds for distribution to unsecured creditors of the Fund.

**ACTUAL RECEIPTS AND DISBURSEMENTS OF THE FUND FOR THE PERIOD  
FROM JANUARY 4, 2014 TO FEBRUARY 28, 2014**

32. The Fund's actual net cash flow for the period from January 4, 2014 to February 8, 2014 (the "Current Period") together with an explanation of key variances as compared to the January 4 Forecast is set out below. Actual net cash flows for the Current Period were approximately \$1.1 million lower than forecast, summarized as follows:

\$000	Forecast	Actual	\$ Variance
Cash Inflow			
Venture Exits and/or Interest Payments	\$ 6,150	\$ 3,692	\$ (2,458)
<b>Total Cash Inflow</b>	<b>\$ 6,150</b>	<b>\$ 3,692</b>	<b>\$ (2,458)</b>
Cash Outflow	\$ -	\$ -	\$ -
Follow on Funding	\$ 69	\$ 62	\$ (7)
CEO Fees & Expenses	\$ 66	\$ 50	\$ (16)
Insurance Fees	\$ 301	\$ 301	\$ (0)
Financial Advisor Fees	\$ 419	\$ 198	\$ (221)
Other	\$ 407	\$ 157	\$ (250)
<b>Total Cash Outflow</b>	<b>\$ 1,261</b>	<b>\$ 767</b>	<b>\$ (495)</b>
Restructuring Costs			
Monitor's Legal and Professional Fees	\$ 400	\$ 257	\$ (143)
Fund Legal Fees	\$ 968	\$ 288	\$ (680)
<b>Total Restructuring Fees</b>	<b>\$ 1,368</b>	<b>\$ 546</b>	<b>\$ (823)</b>
<b>Net Cash Flow</b>	<b>\$ 3,520</b>	<b>\$ 2,380</b>	<b>\$ (1,140)</b>
Opening Cash Balance	\$ 5,392	\$ 5,392	\$ -
Net Cash Flow	\$ 3,520	\$ 2,380	\$ (1,140)
Unrealized FX Gain/Loss	\$ -	\$ 143	\$ 143
<b>Ending Cash Balance</b>	<b>\$ 8,913</b>	<b>\$ 7,916</b>	<b>\$ (997)</b>

33. The variance in actual receipts and disbursements is comprised primarily of the following:

- (a) a variance of approximately \$2.5 million in venture exits and/or distributions from Portfolio Companies. The variance is made up of:
  - (i) a negative variance of approximately \$3 million. This variance is temporary in nature and is expected to reverse as proceeds are received in respect of the disposition of the Fund's interest in one of its Portfolio Companies;
  - (ii) a positive variance of approximately \$450,000. This variance is permanent in nature and is the result of the receipt of additional proceeds in excess of forecast in respect of a disposition of the Fund's interest in one of its Portfolio Companies; and

- (iii) a positive variance of approximately \$30,000. These funds are in dispute and relate to a distribution from GrowthWorks Commercialization Fund that were not previously forecasted. These funds are being maintained in a separate account.
- (b) a variance of approximately \$250,000 in other fees. This variance is temporary in nature and is due to timing differences between receipt of bills and payment thereof. The positive variance is expected to reverse over the coming weeks; and
- (c) a variance of approximately \$1 million in professional and other restructuring fees. This variance may be temporary in nature and due to timing differences between receipt of bills and payment thereof. The positive variance may reverse over the coming weeks.

#### **DISBURSEMENT TO ROSEWAY**

34. On November 28, 2013, the Court granted an Order authorizing the Fund, with the consent of the Monitor to, *inter alia*, make distributions to Roseway provided that certain priority payables are able to be paid by the Applicant when due.

35. The Special Committee approved a resolution on February 27, 2014 to distribute funds to Roseway in respect of: (i) proceeds received regarding the recent disposal of the Fund's interest in one of its Portfolio Companies; and (ii) funds in the approximate amount of US\$2 million included in the cash at bank under the control of the Monitor that are subject to a dispute between Roseway and the Fund (the "**Segregated Funds**", the particulars of which are further described in the Fifth Report).

36. The total amount to be distributed to Roseway includes:

Funds to be Paid to Roseway		
CAD Bank Account	\$	3,659,412
Disputed USD Funds	\$	1,978,603

37. Based on discussions with the Fund and Roseway, the Monitor understands that: (i) the Fund has agreed to distribute the Segregated Funds; and (ii) Roseway has agreed to accept the Segregated Funds, each on a without prejudice basis.

38. In addition, the Monitor has been advised that both the Fund and Roseway have agreed that the status quo ante, as at the time just prior to the distribution by the Fund of the Segregated Funds to Roseway, will be assumed for the purposes of any arguments that either the Fund or Roseway may later wish to assert.

39. The Monitor supports the distribution by the Fund to Roseway in the amount of CAD\$3,659,412 and US\$1,978,603 (together, the “**Interim Distribution Amount**”). The Monitor is satisfied that (i) the Priority Payables (as defined in the Order of the Court dated November 28, 2013 and attached hereto as Appendix “F”) are being paid when due from funds held by the Monitor upon receipt of approval by the Fund; and (ii) the funds remaining in the hands of the Applicant and/or the Monitor after distribution to Roseway of the Interim Distribution Amount are sufficient to pay the Priority Payables accrued to the date hereof.

#### **THE COMPANY’S CASH FLOW FORECAST**

40. The Fund has prepared a revised cash flow forecast for the period March 1, 2014 to May 2, 2014 (the “**March 1 Forecast**”). A copy of the March 1 Forecast is attached as Appendix “G”. The March 1 Forecast shows a positive net cash flow of approximately \$5.17 million, and is summarized below:

<b>Cash Inflow</b>	
Venture Exits and/or Distributions	6,202
<b>Total Cash Inflow</b>	<b>6,202</b>
<b>Cash Outflow</b>	
Follow on Funding	31
CEO Fees & Expenses	37
Payroll & Benefits	53
Insurance Fees	-
Legal & Financial Advisor Fees	280
Board Fees	100
Rent, Communications & Utilities	1
Other	66
<b>Total Cash Outflow</b>	<b>568</b>
<b>Restructuring Costs</b>	
Financial Advisor Fees	467
<b>Total Restructuring Fees</b>	<b>467</b>
<b>Net Cash Flow</b>	<b>5,167</b>
Opening Cash Balance	7,915
Net Cash Flow	5,167
Repayment of Obligation to Roseway	(5,851)
<b>Ending Cash Balance</b>	<b>7,232</b>

41. It is anticipated that the Fund's projected liquidity requirements throughout the March 1 Forecast period will continue to be met by existing cash available to the Fund.

### STAY EXTENSION

42. The stay period currently expires on March 7, 2014 (the "Stay Period"). Continuation of the Stay of Proceedings is required for the Fund to continue its discussions with Roseway to formulate a path forward for the Fund, including the formulation and development of a management and realization plan. The materials filed by the Fund on Tuesday March 4, 2014, noted that the Fund was seeking an extension of the Stay Period to May 2, 2014.

43. After further discussions between the Fund and Roseway, the parties agreed that the Fund would instead seek a shorter extension of the Stay of Proceedings until April 10, 2014.



44. The Monitor is supportive of the stay extension until April 10, 2014 and is of the belief that the various stakeholders and creditors of the Fund would not be materially prejudiced by the extension of the Stay Period. The Monitor is also of the belief that the Fund has acted, and is acting, in good faith and with due diligence and that circumstances exist that warrant an extension of the stay to April 10, 2014.

The Monitor respectfully submits to the Court this Sixth Report.  
Dated this 5th day of March, 2014.

FTI Consulting Canada Inc.

in its capacity as Monitor of GrowthWorks Canadian Fund Ltd. and not in its personal or corporate capacity



Paul Bishop  
Senior Managing Director



Jodi B. Porepa  
Managing Director

## APPENDIX "D"

## **Fell, Caitlin**

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**From:** Bishop, Paul [Paul.Bishop@fticonsulting.com]  
**Sent:** Sunday, March 30, 2014 5:06 PM  
**To:** kmcelcheran@mccarthy.ca; Meredith, Heather L. (HMEREDITH@MCCARTHY.CA);  
elederman@litigate.com; Thomas G. Conway (TConway@cavanagh.ca)  
(TConway@cavanagh.ca); leonj@bennettjones.ca  
**Cc:** Wasserman, Marc; Fell, Caitlin; Porepa, Jodi  
**Subject:** Growthworks Canadian Fund Ltd. (the "Fund")

Counsel,

Further to our conference call on Thursday, we are not intending to file our report until we have had the opportunity to fully review the Fund's motion materials. However, we thought it might be helpful to share with all parties concerned, the Monitor's thoughts on the current status of the Fund and on a number of other matters discussed with, counsel to Allen-Vanguard, the Fund and the offeree shareholders.

### **The Current Status**

The Fund's investments are, for the most part, illiquid minority positions in private companies. Accordingly, realizing on the portfolio in a manner that will maximize stakeholder recovery will take time. We do not know how long this process will take; however, it is the Monitor's view that it is unlikely that the realization of the portfolio will be completed in less than 2 to 3 years. In addition, no one can know with certainty what the total recovery of the Fund's assets will be. What we do know however, is that not a single qualifying bid was received in the Court approved sales and investor solicitation process, a clear indication that the market values the Fund's assets at a level significantly below their current book value. While, we have not undertaken a valuation of the Fund's assets, the Monitor does expect that proceeds from realizing on the Fund's assets will be less than book value, perhaps by a sizeable margin.

Maximization of recovery for the benefit of all stakeholders will require a stable environment, experienced oversight and professional management properly incented to maximize recovery on the Fund's assets. The Fund, working with Roseway Capital S.a.r.l ("Roseway"), its secured creditor, is in the process of putting in place these necessary elements to allow an orderly managed harvesting of its portfolio.

### **Timing of the Claims Process**

Given the uncertainty as to timing and quantum of recovery, if any, for unsecured creditors, we see no merit in incurring the cost of adjudicating claims until such time as it is clear that there will be funds available to unsecured creditors. The Fund's estimates as to timing and quantum of recovery would indicate that it will not be necessary to commence adjudicating claims until sometime in 2015.

### **Extension of the stay**

The Fund is in default under the terms of its secured lending agreement with Roseway. Therefore, should the Court not approve the extension of the stay of proceedings, one can anticipate that Roseway would seek to enforce its debt by asking the Court to appoint a receiver over the property, assets and undertakings of the Fund. The Monitor is of the view that a receivership would not be in the best interest of the Fund's creditors or its shareholders. Accordingly, the Monitor is of the view that a short-term extension of the current stay is necessary to allow for completion of the management agreement currently being finalised with Roseway. Once an agreement is in place with Roseway, we would suggest that a longer term stay would be appropriate in order to avoid unnecessary and costly stay extension hearings.

### **The Allen-Vanguard Litigation**

We are advised by the Fund's counsel that a mini trial on certain discrete issues would allow a determination as to whether Allen Vanguard's claim extends beyond the funds currently held in escrow. However, the Monitor understands that counsel to Allen Vanguard questions the extent that a mini trial would expedite the litigation in a cost effective manner as well as the CCAA Court's jurisdiction over the litigation. Accordingly, Allen-Vanguard is reluctant to proceed on this basis. Moreover, there is disagreement between the parties as to what evidence would be necessary for the mini-trial, the issues to be addressed and the impact of a mini trial on other aspects of the litigation.

All parties to the litigation have expressed a desire to move forward with the litigation on a timely basis, however, as Justice Brown noted; "some 5.5 years after their commencement, the Ottawa Proceedings have not yet gone to trial. Indeed they have not been set down for trial". Further, his comments on page 12 of his reasons would seem to indicate that he views further lengthy delays as a distinct possibility.

While the timetable for the claims process has eased the pressure to adjudicate claims in the near future, we see no reason why the litigation between the parties should not proceed in a timely manner, without further and costly delay. To date the Court has seen little but disagreement between the parties, a state of affairs unlikely to be tolerated indefinitely. We therefore, strongly urge all parties to work together before the scheduled Court appearance on April 8, 2014, to reach agreement as to how this litigation is to proceed on a timely and cost efficient basis. Given the outcome of the sale and investor solicitation process, the potential proceeds available from realization of the Fund's assets, and the Fund's potential liability in Allen Vanguard action, the Monitor notes that any such solution should be framed in a way as to limit the involvement of the Fund's CCAA professionals as much as possible. We and our counsel are available to discuss and assist.

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## APPENDIX "E"

Growitworks Canadian Fund Ltd.  
6 Week Cash Flow Forecast  
C:AD \$800

	Week 1 4-Apr	Week 2 11-Apr	Week 3 18-Apr	Week 4 25-Apr	Week 5 2-May	Week 6 9-May	6 week Total
Week Ending Cash Inflow	-	-	1,106	-	583	-	1,689
Venture Exits and/or Distributions	-	-	1,106	-	583	-	1,689
<b>Total Cash Inflow</b>	-	-	1,106	-	583	-	1,689
<b>Cash Outflow</b>							
Follow on Funding	-	-	-	-	-	-	-
CEO Fees & Expenses	22	48	-	11	-	-	81
Payroll & Benefits	-	-	-	-	13	13	25
Insurance Fees	-	-	-	-	-	-	-
Legal & Financial Advisor Fees	39	15	112	65	-	-	231
Board Fees	-	-	100	-	-	-	100
Rent, Communications & Utilities	-	-	-	1	-	1	2
Audit and Other Expenses	16	127	6	-	-	-	148
<b>Total Cash Outflow</b>	77	190	217	77	13	14	587
<b>Restructuring Costs</b>							
Advisor Fees	135	238	90	56	124	10	654
<b>Total Restructuring Fees</b>	135	238	90	56	124	10	654
<b>Net Cash Flow</b>	(212)	(427)	799	(133)	447	(24)	449
Opening Cash Balance	4,455	3,565	3,138	3,936	3,803	4,250	4,455
Net Cash Flow	(212)	(427)	799	(133)	447	(24)	449
Repayment of the Roseway Obligation	(678)	-	-	-	-	-	(678)
Ending Cash Balance	3,565	3,138	3,936	3,803	4,250	4,226	4,226

- 1 The purpose of this Cash Flow Forecast is to determine the liquidity requirements for Growitworks Canadian Fund Ltd. during the CCAA Proceedings.
- 2 Receipts have been forecast based on expected venture exits and/or distributions from Portfolio Companies.
- 3 Follow on Funding is based on management's estimate of possible requirements.
- 4 Operating expenses are forecast based on historical analysis and estimates from services providers.
- 5 Estimated Restructuring costs are based on projected costs associated with legal and professional fees relating to the CCAA Proceedings.
- 6 The Repayment of the Roseway Obligation includes proceeds from the recent disposal of the Fund's interest in one of its Portfolio Companies.

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  
GROWTHWORKS CANADIAN FUND LTD.

Court File No: CV-13-10279-00CL

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**THE SEVENTH REPORT OF  
FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

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