



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

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

THE HONOURABLE MR. ) THURSDAY, THE 19TH  
)  
JUSTICE PENNY ) DAY OF JANUARY, 2023

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

AND IN THE MATTER OF A PROPOSED PLAN  
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
GROWTHWORKS CANADIAN FUND LTD.

**DISTRIBUTION, TERMINATION AND DISCHARGE ORDER**

**THIS MOTION**, made by GrowthWorks Canadian Fund Ltd. (the "**Applicant**" or the "**Fund**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order:

- (i) extending the stay period defined in paragraph 14 of the Initial Order (defined below) (the "**Stay Period**");
- (ii) granting certain relief related to the liquidation of the Applicant's portfolio;
- (iii) authorizing the making of distributions to Class "A" shareholders and Class "B" shareholders of the Applicant;
- (iv) approving the following reports (collectively, the "**Reports**") Twenty-First Report of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as monitor of the Applicant (the "**Monitor**") dated December 14, 2017 (the "**Twenty-First Report**"), the Twenty-Second Report of the Monitor dated June 25, 2018 ("**Twenty-Second Report**"), the Twenty-Third Report of the Monitor dated February 14, 2019 ("**Twenty-Third**

**Report**”), the Twenty-Fourth Report of the Monitor dated March 21, 2019 (“**Twenty-Fourth Report**”), the Twenty-Fifth Report of the Monitor dated December 16, 2019 (the “**Twenty-Fifth Report**”), the Twenty-Sixth Report of the Monitor dated September 18, 2020 (“**Twenty-Sixth Report**”), the Twenty-Seventh-Report of the Monitor dated June 25, 2021 (“**Twenty-Seventh-Report**”), the Twenty-Eighth Report of the Monitor dated November 27, 2021 (the “**Twenty-Eighth Report**”), the Twenty-Ninth Report of the Monitor dated March 22, 2022 (the “**Twenty-Ninth Report**”) and the Thirtieth Report of the Monitor dated December 9, 2022 (the “**Thirtieth Report**”) as well as the activities outlined in each such report;

- (v) approving the fees and disbursements of the Monitor and its legal counsel;
- (vi) providing for the release of the Monitor, the Applicant and their Representatives (as defined below);
- (vii) as of the CCAA Termination Time (defined below), dissolving the Applicant, discharging the Monitor, terminating the CCAA Proceedings (defined below) and discharging the Administration Charge and the Directors’ Charge (as each is defined in the Initial Order (defined below));
- (viii) sealing a confidential exhibit; and
- (ix) approving an extension to the Amended and Restated Investment Advisor Agreement between Crimson Capital Inc. (“**Crimson Capital**”) and the Fund (the “**Second Amended and Restated IAA**”),

was heard this day by way of judicial video conference via Zoom in Toronto, Ontario.

**ON READING** the Motion Record of the Fund, including the Notice of Motion (the “**Motion Record**”) and the affidavit of C. Ian Ross sworn on December 2, 2022 (the “**Ross Affidavit**”), the Responding Motion Record of GrowthWorks WV Management Ltd. (the “**Former Manager**”), including the affidavit of Derek Lew sworn on December 23, 2022, the Reply Motion

Record of the Fund, including the affidavit of C. Ian Ross sworn on January 6, 2023, and the Thirtieth Report, and on hearing the submissions of counsel for the Applicant, the Former Manager and the Monitor, and such other counsel that were present as listed on the Participant Slip, no one else appearing although properly served as appears from the affidavit of service, filed:

## INTERPRETATION

1. **THIS COURT ORDERS** that, in addition to terms defined elsewhere herein, (i) capitalized terms used, but not defined, herein shall have the meanings given to them in the Initial Order, and (ii) the following terms shall have the following meanings:

- a. **“Applicable Law”** means:
  - i. any applicable domestic or foreign law including any statute, subordinate legislation or treaty, as well as the common law; and
  - ii. any applicable and enforceable rule, regulation, requirement, order, judgment, injunction, award or decree of a Governmental Authority.
- b. **“Available Cash”** means the available cash and cash equivalents of the Applicant;
- c. **“Business Day”** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- d. **“CCAA Proceedings”** means the within proceedings in respect of the Applicant under the CCAA;
- e. **“CCAA Termination Date”** means the date on which that the Monitor delivers the Monitor’s CCAA Completion Certificate (defined below);
- f. **“CCAA Termination Time”** means such time on the CCAA Termination Date as the Monitor may determine and designate in the Monitor’s CCAA Completion Certificate (defined below);
- g. **“Class A Distribution Pool”** means, in respect of any Distribution, the Available

Cash on the Distribution Record Date for such Distribution less (i) the aggregate amount of any Distributions to be made pursuant to paragraph 9 of this Order and any further order of this Court made pursuant to paragraph 10 of this Order, (ii) any amounts due and owing to creditors of the Applicant on such Distribution Record Date, (iii) the estimated costs of the Applicant in making such Distribution, and (iv) a reserve for the estimated costs of the Applicant, the Monitor and their respective Representatives from such Distribution Record Date to the CCAA Termination Time, in each case determined by the Applicant in consultation with the Monitor;

- h. “**Class A Eligible Shareholder**” means, in respect of any Distribution, a holder of one or more Class “A” shares of the Applicant as of the close of business on the Distribution Record Date for such Distribution that has not been barred from receiving distributions pursuant to paragraphs 11 or 13 hereof;
- i. “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- j. “**Director**” means any Person who, as at the CCAA Termination Time, is a former or current director or officer of the Applicant or any other Person of a similar position or who by Applicable Law is deemed to be or is treated similarly to a director or officer of the Applicant or who currently manages or supervises the management of the business and affairs of the Applicant or did so in the past;
- k. “**Distribution**” means a distribution to be made pursuant to this Order;
- l. “**Distribution Date**” means the date on which a Distribution is made pursuant to this Order as designated in a Monitor’s Distribution Certificate (defined below);
- m. “**Distribution Record Date**” means, in respect of any Distribution, the date that is seven Business Days prior to the date upon which such Distribution is made;
- n. “**Filing Date**” means October 1, 2013;
- o. “**Governmental Authority**” means any domestic or foreign legislative, executive, judicial or administrative body or person having jurisdiction in the relevant

circumstances;

- p. “**including**” means including, without limitation;
- q. “**Initial Order**” means the initial order of the Court made in the CCAA Proceedings on October 1, 2013, as amended and restated on October 29, 2013;
- r. “**Monitor’s Website**” means the website established by the Monitor in respect of the CCAA Proceedings;
- s. “**Person**” means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union, government authority or any agency, regulatory body or officer thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity;
- t. “**Released Claims**” means any and all demands, claims (including claims for contribution or indemnity), actions, causes of action, counterclaims, suits, debts, sums of money, liabilities, accounts, covenants, damages, judgments, orders (including orders for injunctive relief or specific performance and compliance orders), expenses, executions, encumbrances and recoveries on account of any liability, obligation, demand or cause of action of whatever nature (including for, in respect of or arising out of environmental matters, pensions or post-employment benefits or alleged oppression, misrepresentation, wrongful conduct, fraud or breach of fiduciary duty by the Applicant or any of its Representatives) that any Person has or may be entitled to assert, whether known or unknown, matured or unmatured, contingent or actual, direct, indirect or derivative, at common law, in equity or under statute, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, matter or occurrence existing or taking place at or prior to the CCAA Termination Time, that in any way relate to or arise out of or in connection

with (i) the assets, obligations, business or affairs of the Applicant, including the investment portfolio of the Applicant; or (ii) the CCAA Proceedings or any matter, transaction or occurrence involving the Applicant, the Monitor or any of their respective Representatives occurring in or in connection with the CCAA Proceedings, but “Released Claims” does not include a claim that cannot be compromised due to the provisions of subsection 5.1(2) of the CCAA;

- u. “**Released Parties**” means each of the Directors, the Monitor and its Representatives and the Applicant’s Representatives;
- v. “**Representatives**” means, in relation to a Person, such Person’s current and former directors, officers, partners, employees, consultants, legal counsel, accountants, auditors, actuaries, advisors and agents, the current and former directors, officers, partners and employees of any such consultant, legal counsel, accountant, auditor, actuary, advisor or agent, and, in each case, including their respective heirs, executors, administrators and other legal representatives, successors and assigns; and
- w. “**Service List**” means the service list in the CCAA Proceedings.

## **STAY EXTENSION**

2. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including the earlier of: (i) December 31, 2024; and (ii) the CCAA Termination Time (the “**Stay Extension Period**”).

## **COMPLETION OF ORDERLY LIQUIDATION**

3. **THIS COURT ORDERS** that, during the Stay Extension Period, the Applicant may continue to take such steps as the Applicant, in consultation with Crimson Capital (for so long as Crimson Capital continues to serve as an investment advisor to the Fund) and the Monitor, determines is appropriate to effect an orderly liquidation of its investment portfolio.

4. **THIS COURT ORDERS** that if the Applicant, in consultation with Crimson Capital (for so long as Crimson Capital continues to serve as an investment advisor to the Fund) and the Monitor,

determines that it is no longer appropriate to continue its efforts to liquidate its investment portfolio considering the proceeds likely to be realized, the estimated cost of such efforts and such other factors as the Applicant, in consultation with the Monitor, determines relevant in the circumstances, the Applicant may cease taking any further steps to liquidate its investment portfolio.

5. **THIS COURT ORDERS** that, upon the Applicant ceasing to take any further steps to liquidate its investment portfolio, the Applicant, in consultation with the Monitor, may donate any security held by the Applicant to one or more charities or otherwise deal with any security held by the Applicant in the manner determined by the Applicant, in consultation with the Monitor, or in accordance with further order of this Court.

#### **AUTHORIZATION OF DISTRIBUTIONS**

6. **THIS COURT ORDERS** that the Applicant or its transfer agent or other third party appointed by the Applicant, with oversight of and assistance from the Monitor, or the Monitor, for and on behalf of the Applicant, may make one or more Distributions from the Class A Distribution Pool to Class A Eligible Shareholders in accordance with the respective terms of the various outstanding series of Class “A” shares of the Applicant.

7. **THIS COURT ORDERS** that, on each Distribution Date, the Monitor shall serve on the Service List and post on the Monitor’s Website, a certificate in the form attached as **Schedule “A”** hereto (a “**Monitor’s Distribution Certificate**”) certifying that a Distribution has been made and specifying the aggregate amount of the Distribution to Class A Eligible Shareholders and the amount of the Distribution made on account of each Class “A” share held by a Class A Eligible Shareholder pursuant to this Order.

8. **THIS COURT ORDERS** that any Distribution to a Class A Eligible Shareholder shall be made by (i) cheque sent by prepaid ordinary mail to the address of such Class A Eligible Shareholder on file with the Applicant or its transfer agent on the Distribution Record Date for such Distribution, or (ii) electronic transfer of immediately available funds to an account designated in writing by such Class A Eligible Shareholder.

9. **THIS COURT ORDERS** that, on the initial Distribution Date, the Applicant or its transfer

agent or other third party appointed by the Applicant, with oversight of and assistance from the Monitor, or the Monitor, for and on behalf of the Applicant, may make a Distribution to the holder of the Class “B” shares of the Applicant as of such Distribution Record Date in accordance with the terms of the Class “B” shares of the Applicant by (i) cheque sent by prepaid ordinary mail to the address of the applicable shareholder on file with the Applicant or its transfer agent on the Distribution Record Date for such Distribution, or (ii) electronic transfer of immediately available funds to an account designated in writing by the applicable shareholder.

10. **THIS COURT ORDERS AND DECLARES** that the entitlement of the holder of the Class “C” shares of the Applicant to receive any further dividends or payments on account of those shares, and the priority of any such dividends or payments, shall be subject to further order of this Court.

11. **THIS COURT ORDERS** that the Applicant and any other Person facilitating payments pursuant to this Order will be entitled to deduct and withhold from any such payment to any Person such amounts as may be required to be deducted or withheld under any Applicable Law and to remit such amounts to the appropriate Governmental Authority or other Person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate Governmental Authority or other Person, such withheld or deducted amounts will be treated for all purposes hereof as having been paid to such Person as the remainder of the payment in respect of which such withholding or deduction was made. Any Class A Eligible Shareholder whose address on file with the Applicant or its transfer agent on the applicable Distribution Record Date is not a Canadian address will be treated as a non-resident of Canada for purposes of any applicable non-resident withholding tax on all payments hereunder, subject to receipt by the Applicant of information satisfactory to it (in their sole discretion) that such Class A Eligible Shareholder is not a non-resident. No gross-up or additional amount will be paid on any payment hereunder to the extent the Applicant or any other Person deducts or withholds amounts pursuant to this paragraph. Notwithstanding any withholding or deduction, each Person receiving a payment will have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority (including income and other tax obligations on account of such distribution).



12. **THIS COURT ORDERS** that, if any Distribution made to a Class A Eligible Shareholder under this Order is returned as undeliverable or is unable to be electronically transferred (an “**Undeliverable Distribution**”), then neither the Applicant nor the Monitor will be required to make further efforts to deliver such Distribution to such Class A Eligible Shareholder unless and until the Applicant and Monitor are notified in writing by such Class A Eligible Shareholder of such Class A Eligible Shareholder’s current address or provides written transfer instructions acceptable to the Applicant and the Monitor in their sole discretion, at which time all such Distributions will be made to such Class A Eligible Shareholder. The obligations of the Applicant and Monitor to a Class A Eligible Shareholder with respect to an Undeliverable Distribution will expire on the first Business Day that is six months following the applicable Distribution Date, after which date any entitlement with respect to such Undeliverable Distribution and any further Distributions pursuant to this Order will be forever released, discharged and barred, without any compensation therefor. No interest will be payable in respect of an Undeliverable Distribution. On the first Business Day that is six months following the applicable Distribution Date for an Undeliverable Distribution, the amount of any Undeliverable Distribution will be released to the Applicant and form part of Available Cash.

13. **THIS COURT ORDERS** that, if any cheque or electronic transfer on account of a Distribution to a Class A Eligible Shareholder under this Order is not cashed or accepted, as applicable, within six months after the date of the applicable Distribution Date (an “**Uncashed Distribution**”):

- a. such cheque may be cancelled by the Applicant, the Monitor or any other Person facilitating payments pursuant to this Order, as applicable, after which date any entitlement with respect to such Distribution and any further Distributions pursuant to this Order will be forever discharged and forever barred and the obligations of the Applicant and Monitor with respect thereto will expire, without any compensation therefor; and
- b. the amount otherwise payable pursuant to such cancelled cheque will be released to the Applicant and form part of Available Cash.

14. **THIS COURT ORDERS** that all amounts to be paid by the Applicant hereunder will be

calculated by the Applicant, with the assistance of the Monitor. All calculations made by the Applicant will be conclusive, final and binding upon Class A Eligible Shareholders, the Applicant and any other Person, absent manifest error.

15. **THIS COURT ORDERS** that, if at any time the Applicant determines, in consultation with the Monitor, that the costs of making a Distribution are likely to exceed the remaining Available Cash, the Applicant, in consultation with the Monitor, may donate any portion of the remaining Available Cash to one or more charities or otherwise deal with the Available Cash in the manner determined by the Applicant and the Monitor or in accordance with further order of this Court.

16. **THIS COURT ORDERS AND DECLARES** that notwithstanding: (i) the pendency of these CCAA Proceedings; (ii) any applications for a bankruptcy, receivership or other order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), the CCAA or otherwise in respect of the Applicant and any bankruptcy, receivership or other order issued pursuant to any such applications; and (iii) any assignment in bankruptcy made or deemed to be made in respect of the Applicant, all Distributions and payments contemplated by this Order will not constitute nor be deemed to constitute a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA, CCAA or any other applicable federal, provincial or territorial legislation, nor will any Distribution or payment contemplated by this Order constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal, provincial or territorial legislation.

17. **THIS COURT ORDERS AND DECLARES** that any distributions, payments or deliveries under this Order made or assisted by the Monitor shall not constitute a “distribution” and the Monitor shall not constitute a “legal representative” or “representative” of the Applicant or “other person” for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 46 of the *Employment Insurance Act* (Canada), section 22 of the *Retail Sales Tax Act* (Ontario), section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial or territorial tax legislation (collectively, the “**Statutes**”), and the Monitor in making any such payments or deliveries of funds or assets in relation to this Order is not “distributing”, not shall it be considered to have “distributed”, such funds or assets for the purposes

of the Statutes, and the Monitor shall not incur any liability under the Statutes for making any payments or deliveries under this Order or failing to withhold amounts, ordered or permitted hereunder, and the Monitor shall not have any liability for any of the Applicant's tax liabilities regardless of how or when such liabilities may have arisen, and is hereby forever released, remised and discharged from any claims against it under or pursuant to the Statutes or otherwise at law, arising as a result of the distributions and deliveries under this Order and any claims of this nature are hereby forever barred.

## **ORDERS IN THE CCAA PROCEEDINGS**

18. **THIS COURT ORDERS** that:

- a. except to the extent that the Initial Order has been varied by or is inconsistent with this Order or any further Order of this Court, the provisions of the Initial Order shall remain in full force and effect until the CCAA Termination Time;
- b. the releases, injunctions and prohibitions provided for in the Claims Procedure Order issued in the CCAA Proceedings and dated January 9, 2014 and the Post-Filing Claims Procedure Order issued in the CCAA Proceedings and dated November 30, 2021, be and are hereby confirmed and shall operate in addition to the provisions of this Order, including the releases, injunctions and prohibitions provided for hereunder and thereunder, respectively; and
- c. all other Orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by this Order or any further Orders of this Court in the CCAA Proceedings.

19. **THIS COURT ORDERS** that the Applicant and the Monitor shall have all of the protections given to them by the CCAA, the Initial Order and any further order issued by the Court in the CCAA Proceedings and that none of the Applicant, the Directors, the Monitor or their respective Representatives shall incur any liability or obligation as a result of carrying out their

obligations under, or exercising any authority or discretion granted by, this Order.

## **TERMINATION, DISCHARGE AND DISSOLUTION**

20. **THIS COURT ORDERS** that immediately upon the Monitor serving on the Service List, posting on the Monitor's Website and filing with the Court a certificate substantially in the form attached as **Schedule "B"** hereto (the "**Monitor's CCAA Completion Certificate**") certifying the completion of all matters to be attended to in connection with the CCAA Proceedings to the satisfaction of the Monitor, the CCAA Proceedings are hereby terminated without any other act or formality and the Administration Charge and Directors' Charge (as each are defined in the Initial Order) shall be terminated, released and discharged.

21. **THIS COURT ORDERS** that, from and after the CCAA Termination Time, the Applicant shall be dissolved without any further act or formality, including any approval, consent or authorization of any shareholder or other security holder of the Applicant or any Governmental Authority, provided, however, that the Applicant shall cause to be filed with the appropriate Governmental Authority such articles, agreements or other documents of dissolution for the Applicant to the extent required by Applicable Law.

22. **THIS COURT ORDERS** that at the CCAA Termination Time, without any further act or formality, FTI is hereby discharged from its duties as Monitor and has no further duties, obligations, or responsibilities as Monitor from and after the CCAA Termination Time; provided however, notwithstanding the discharge of FTI as Monitor, the Monitor shall have the authority to carry out, complete or address any matters that are ancillary or incidental to the CCAA Proceedings following the CCAA Termination Time, as may be required (collectively, the "**Monitor Incidental Matters**") and shall be entitled to act as Monitor in relation to such Monitor Incidental Matters.

23. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of the CCAA Proceedings or the discharge of the Monitor, (i) nothing herein shall affect, vary, derogate from, limit or amend, and FTI and its legal counsel shall continue to have the benefit of, all of the rights, approvals, releases, and protections in favour of the Monitor and its legal counsel at common law or pursuant to the CCAA, the Initial Order, or any other order of this Court in the

CCAA Proceedings, all of which are expressly continued and confirmed, including in connection with any Monitor Incidental Matters or any other actions taken by the Monitor pursuant to this Order following the CCAA Termination Time, and (ii) nothing herein impacts the validity of any orders of this Court made in the CCAA Proceedings or any actions or steps taken by any Person pursuant to or as authorized by any orders of this Court made in the CCAA Proceedings.

## **RELEASES**

24. **THIS COURT ORDERS AND DECLARES** that, as at the CCAA Termination Time, the Released Parties are hereby fully, finally and irrevocably released and discharged from all Released Claims and any such Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability or obligation in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of gross negligence or willful misconduct on the part of the applicable Released Party.

25. **THIS COURT ORDERS** that, as at the CCAA Termination Time, all Persons shall be and shall be deemed to be permanently and forever barred, estopped, stayed and enjoined from: (i) commencing, conducting, continuing or making in any manner or forum, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties with respect to any and all Released Claims; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties or their property with respect to any and all Released Claims; (iii) commencing, conducting, continuing or making against any other Person in any manner or forum, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to a Released Claim if such other Person commences, conducts, continues or makes a claim or might reasonably be expected to commence, conduct, continue or make, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum), including by way of contribution or indemnity or other relief, against one or more of the Released Parties, unless such

claim of such other Person is itself a Released Claim; and (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any encumbrance of any kind against any of the Released Parties or their property or assets with respect to any and all Released Claims.

26. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against of the Released Parties in any way arising from or related to the CCAA Proceedings, except with prior leave of this Court and on prior written notice to the applicable Released Parties.

#### **APPROVAL OF MONITOR ACTIVITIES**

27. **THIS COURT ORDERS AND DECLARES** that each of the Reports and the respective activities and conduct of the Monitor as described therein be and are hereby ratified and approved.

28. **THIS COURT ORDERS AND DECLARES** that the Monitor has satisfied all of its obligations up to and including the date of this Order and all claims of any kind or nature against the Monitor arising from or relating to these CCAA Proceedings up to and including the date of this Order are hereby barred, extinguished and released save and except for claims of gross negligence or wilful misconduct on the part of the Monitor.

29. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and the powers provided to the Monitor herein and under the other Orders of this Court, shall be and is hereby authorized, directed and empowered to perform its functions and fulfill its obligations under this Order and to complete all matters incidental to the termination of the CCAA Proceedings.

#### **APPROVAL OF FEES**

30. **THIS COURT ORDERS** that (i) the fees and disbursements of the Monitor from June 1, 2017 to October 31, 2022 totaling CAD \$521,267.76 (including HST) and its estimate of fees and disbursements from November 1, 2022 through completion of its remaining activities in connection with these CCAA Proceedings of \$355,000 (excluding HST) and (ii) the fees and disbursements of legal counsel to the Monitor from May 1, 2017 to October 31, 2022 totaling CAD\$194,204.75 (including HST) and its estimate of fees and disbursements from November 1, 2022 through

completion of the remaining activities in connection with these CCAA Proceedings of CAD\$120,000 (excluding HST), be and are hereby approved.

31. **THIS COURT ORDERS** that the Monitor and its legal counsel shall not be required to pass any further accounts in these CCAA Proceedings unless otherwise requested by the Applicant.

#### **EXTENSION OF SECOND AMENDED AND RESTATED IAA**

32. **THIS COURT ORDERS** that the Applicant is authorized to execute and deliver an Extension Notice extending the Term of the Second Amended and Restated IAA to and including the last day of the Stay Extension Period (the “**Extended Term**”) and that such extension is hereby approved (as each term is defined in the Second Amended and Restated IAA).

33. **THIS COURT ORDERS** that the Applicant is authorized to continue to perform its obligations under the Second Amended and Restated IAA during the Extended Term.

34. **THIS COURT ORDERS** that paragraphs 4 to 7 of the Stay Extension Order of the Honourable Mr. Justice Hainey made March 22, 2019 shall continue to apply during the Extended Term.

#### **SEALING ORDER**

35. **THIS COURT ORDERS** that Confidential Exhibit “H” to the Ross Affidavit, which contains a confidential summary of the Fund’s significant remaining investments shall be kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the court file for these proceedings, in a sealed envelope attached to a notice that sets out the title of these proceedings and the statement that the contents are subject to this Motion and sealing Order, and remain under seal until further Order of this Court.

#### **NOTICE**

36. **THIS COURT ORDERS** that, as soon as practicable after the granting of this Order, the Monitor shall cause a copy of this Order to be posted on the Monitor’s Website, and the Applicant shall serve a copy on the parties on the Service List and those parties who appeared at the hearing of

the motion for this Order.

37. **THIS COURT ORDERS** that the measures in paragraph 36 shall constitute good and sufficient service and notice of this Order on all Persons who may be entitled to receive notice thereof or who may have an interest in these proceedings, and no other form of notice or service need be made on such Persons and no other document or material need be served on such Persons in respect of these proceedings.

#### **GENERAL**

38. **THIS COURT ORDERS** that notwithstanding any other provision of this Order, the Applicant and the Monitor shall each remain entitled to seek advice, directions or assistance from the Court in respect of any matters arising from or in relation to the matters set out herein.

39. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all persons against whom it may be enforceable.

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

41. **THIS COURT ORDERS** that the Applicant and the Monitor shall be at liberty and are 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.



42. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court of any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada) and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or territory of Canada and any court or any judicial, regulatory or administrative body of the United States of America, and of any other nation or state, to act in aid of and to be complementary to this Court in carrying out the terms of this Order.



A handwritten signature in blue ink, appearing to read "Perry J.", is written over a horizontal line.

**SCHEDULE “A”**

**FORM OF MONITOR’S DISTRIBUTION CERTIFICATE**

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 PROPOSED PLAN  
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
GROWTHWORKS CANADIAN FUND LTD.

**MONITOR’S DISTRIBUTION CERTIFICATE**

**WHEREAS** pursuant to the Order of this Court dated October 1, 2013, as amended and restated on October 29, 2013, FTI Consulting Canada Inc. was appointed as the monitor (the “**Monitor**”) of the Applicant;

**AND WHEREAS** pursuant to the Order of this Court dated January 19, 2023 (the “**Distribution, Termination and Discharge Order**”), this Court authorized the Applicant or its transfer agent or other third party appointed by the Applicant, with oversight of and assistance from the Monitor, or the Monitor, for and on behalf of the Applicant, to make one or more Distributions from Available Cash to Eligible Shareholders;

**AND WHEREAS** paragraph 7 of the Distribution, Termination and Discharge Order requires the Monitor, on each Distribution Date, to serve on the Service List and post on the Monitor’s Website a certificate certifying that a Distribution has been made and specifying the aggregate amount of the Distribution and the amount of the Distribution made on account of each Class “A” share held by an Eligible Shareholder;

**AND WHEREAS** a Distribution has been made;

**AND WHEREAS** all capitalized terms used, but not defined, herein shall have the meanings

given to them in the Distribution, Termination and Discharge Order.

**THE MONITOR HEREBY CERTIFIES** that:

1. a Distribution was made on \_\_\_\_\_, which is a Distribution Date for the purposes of the Distribution, Termination and Discharge Order;
2. the aggregate amount of the Distribution to Class A Eligible Shareholders was \$ \_\_\_\_\_; and
3. the amount of the Distribution made on account of each Class “A” share held by a Class A Eligible Shareholder was \$ \_\_\_\_\_.

**FTI Consulting Canada Inc.**, solely in its capacity as court appointed monitor of the Applicant, and not in its personal capacity or in any other capacity

Per:

\_\_\_\_\_

Name:

Title:

**SCHEDULE “B”**

**FORM OF MONITOR’S CCAA COMPLETION CERTIFICATE**

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 PROPOSED PLAN  
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO  
GROWTHWORKS CANADIAN FUND LTD.

**MONITOR’S CCAA COMPLETION CERTIFICATE**

**WHEREAS** pursuant to the Order of this Court dated October 1, 2013, as amended and restated on October 29, 2013, FTI Consulting Canada Inc. was appointed as the monitor (the “**Monitor**”) of the Applicant;

**AND WHEREAS** pursuant to the Order of this Court dated January 19, 2023 (the “**Distribution, Termination and Discharge Order**”), this Court authorized the Applicant to cease taking any further steps to liquidate its investment portfolio if the Applicant, in consultation with Crimson Capital (for so long as Crimson Capital continues to serve as an investment advisor to the Applicant) and the Monitor, determined that it was no longer appropriate to continue those efforts considering the proceeds likely to be realized and the cost of such efforts;

**AND WHEREAS** the Monitor is satisfied that the Applicant has taken appropriate steps to effect an orderly liquidation of its investment portfolio;

**AND WHEREAS** pursuant to the Distribution, Termination and Discharge Order, this Court authorized the Applicant or its transfer agent or other third party appointed by the Applicant, with oversight of and assistance from the Monitor, or the Monitor, for and on behalf of the Applicant, to make one or more Distributions;

**AND WHEREAS** one or more Distributions have been made in accordance with the Distribution, Termination and Discharge Order;

**AND WHEREAS** the Applicant has determined, in consultation with the Monitor, that the costs of making a further Distribution are likely to exceed the Available Cash;

**AND WHEREAS** paragraph 20 of the Distribution, Termination and Discharge Order requires that, upon the completion of all matters to be attended to in connection with the CCAA Proceedings to the satisfaction of the Monitor, the Monitor shall serve on the Service List, post on the Monitor's Website and file with the Court a certificate certifying that all matters to be attended to in connection with the CCAA Proceedings have been, to the satisfaction of the Monitor, attended to;

**AND WHEREAS** the Monitor is satisfied that all matters to be attended to in connection with the CCAA Proceedings have been attended to;

**AND WHEREAS** all capitalized terms used, but not defined, herein shall have the meanings given to them in the Distribution, Termination and Discharge Order.

**THE MONITOR HEREBY CERTIFIES** that:

1. All matters to be attended to in connection with the CCAA Proceedings have been attended to;
2. Upon the filing of this Monitor's CCAA Completion Certificate:
  - a. the CCAA Proceedings shall be terminated;
  - b. the Applicant shall be dissolved without any further act or formality, including any approval, consent or authorization of any shareholder or other security holder of the Applicant or any Governmental Authority;
  - c. FTI Consulting Canada Inc. shall be discharged and released from its duties, obligations and responsibilities as Monitor of the Applicant and shall be forever

released, remised and discharged from any claims against it relating to its activities as Monitor of the Applicant;

- d. the releases and injunctions provided for in the Distribution, Termination and Discharge Order shall become effective; and
  - e. the Administration Charge and Directors' Charge shall be terminated, released and discharged;
3. This Certificate is delivered by the Monitor on \_\_\_\_\_ at \_\_\_\_\_ which is the CCAA Termination Time for the purposes of the Distribution, Termination and Discharge Order.

**FTI Consulting Canada Inc.**, solely in its capacity as court appointed monitor of the Applicant, and not in its personal capacity or in any other capacity

Per:

\_\_\_\_\_  
Name:

Title:

C-50, AS AMENDED AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE  
OR ARRANGEMENT WITH RESPECT TO GROWTHWORKS CANADIAN FUND LTD.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**DISTRIBUTION, TERMINATION AND  
DISCHARGE ORDER**

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