designee, and the Corporation shall deliver to Schroder Canada and Schroder UK the Put Purchase Price.

7. PUBLIC OFFERING

7.1 If the Corporation proceeds with a public offering of its securities pursuant to a prospectus, registration statement or a similar document under the relevant jurisdiction (the "**Public Offering**"), it shall advise the Shareholders and CAV of its intention to do so no later than sixty (60) days prior to the intended date for filing of the preliminary prospectus, registration statement or similar document with the *Ontario Securities Commission* or any other securities commission having jurisdiction in the matter. The notice shall provide the Shareholders and CAV with the possibility to qualify the Shares held by the Shareholders and CAV (including Shares issuable upon conversion of the Schroder Convertible Debentures and the CAV Convertible Debenture), so as to permit the resale of such Shares pursuant to the terms of the said prospectus or otherwise as long as the underwriters agree.

7.2 In the event a maximum number of Shares can be sold pursuant to such secondary offering, 50% of the Shares subject to the secondary offering shall be allocated to Schroder Canada, Schroder UK and CAV, on a pro rata basis (calculated on a fully-diluted basis) and 50% of the Shares subject to the secondary offering shall be allocated to all Shareholders (including Schroder Canada, Schroder UK and CAV) who are not subject to regulatory escrow requirements, on a pro rata basis (calculated on a fully-diluted basis).

7.3 In the event that the Corporation enters into an underwriting agreement or other agreement relating to said Public Offering, the Corporation shall permit the Shareholders, Schroder Canada, Schroder UK and CAV to sell their Shares to the underwriter on the terms and conditions set forth in the said agreement so long as the underwriters agree.

7.4 In the event that any Shareholder, Schroder Canada, Schroder UK or CAV elects to retain its Shares, the Corporation shall use all reasonable efforts to obtain an exemption under securities law, if applicable and to convince the underwriter of such in order to ensure that none of the Shares held by the Shareholders, Schroder Canada, Schroder UK and CAV be subject to any escrow requirement.

7.5 Schroder Canada, Schroder UK and CAV shall not be required to make any representation and warranty whatsoever in connection with the Public Offering with respect to the business, assets or financial situation of the Corporation or any of its Subsidiaries, unless required by a securities commission or underwriter.

7.6 The Shareholders, Schroder Canada, Schroder UK and CAV shall pay all selling expenses incurred in connection with any distribution of their Shares, including the fees and expenses of any investment dealer and all transfer taxes applicable to the sale of their Shares. All registration expenses including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel for the Corporation, fees and expenses relating to the preparation of any prospectuses, audits incidental thereto or required by any such registration incurred in connection with any such registration, qualification or compliance shall be paid by the Corporation.

7.7 The Corporation shall indemnify and hold harmless the Shareholders, Schroder Canada, Schroder UK and CAV and their officers, directors, advisers and employees, in connection with

any registration, qualification or filing that has been effected pursuant to this Article 7, from and against all claims, damages and liabilities arising out of or based upon any untrue statement or alleged untrue statement of a material fact pertaining to the Corporation, which has not been disclosed in writing to the Shareholders, Schroder Canada, Schroder UK and CAV, contained in any prospectus, offering circular, offering memorandum or other document ancillary to such registration, qualification or filing, or based on any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make a statement therein not misleading or against any violation of any securities law or rule of any state or province applicable to the Corporation.

7.8 The Corporation will consult and work with the Shareholders, Schroder Canada, Schroder UK and CAV in selecting the underwriter(s), it being understood and agreed that the Shareholders, Schroder Canada, Schroder UK and CAV will not have a veto right in connection with the selection of the underwriter(s).

8. SALE OF SHARES ON THE DEATH OF A SHAREHOLDER

8.1 Definition. In this Article 8:

(a) "**Purchase Price**" shall have the meaning set forth in Section 8.3, as applicable;

(b) "**Vendor**" means, in the case of a Shareholder's death, the legal personal representatives of the estate of such deceased Shareholder and "**Vendor's Shares**" means the Shares owned by the deceased Shareholder;

(c) "**Richard's Shares**" means the Shares owned or controlled by Richard and/or 1062455; and

(d) "**Vincent's Shares**" means the shares owned or controlled by Vincent and/or Danielle.

8.2 Purchase/Sale Option on Death of Richard or Vincent. Following the death of Richard or Vincent, either the Corporation or the Vendor may give written notice to the other requiring a purchase and sale of all or a portion of Richard's Shares for a maximum purchase price of $2 million or all or a portion of Vincent's Shares for a maximum purchase price of $1 million, as the case may be, for the Purchase Price and on the terms set out in this Article 8. Notice of exercise of this option must be given on or after seventy-five (75) days after and within two hundred and seventy (270) days of the date of death. The purchase agreement thereby arising shall be completed on the thirtieth (30th) day following the later of the date of delivery of the written notice hereunder, the fulfilment of all other legal requirements and preconditions for the sale of the Vendor's Shares and the receipt by the Corporation of all insurance proceeds payable on the death of Richard or Vincent, if and as applicable.

8.3 Purchase Price and Payment thereof. The Purchase Price for the Vendor's Shares under Section 8.2 (the "**Purchase Price**") shall be the Fair Market Value of the Shares being purchased and sold. All insurance proceeds from the policies referred to in Section 8.7 hereof, received as a result of the death of Richard or Vincent, as the case may be, shall be paid on the closing date on account of the Purchase Price.

8.4 Sale of Shares by the Shareholders other than Vincent or Richard. Following the death of an individual Shareholder other than Vincent or Richard, either the Corporation or the Vendor may give written notice to the other requiring a purchase and sale of all of such individual Shareholder's Shares for the Purchase Price and on the terms set out in this Article 8. Notice of exercise of this option must be given on or after seventy-five (75) days after and within two hundred and seventy (270) days of the date of death. The purchase agreement thereby arising shall be completed on the thirtieth (30th) day following the later of the date of delivery of the written notice hereunder, the fulfilment of all other legal requirements and preconditions for the sale of the Vendor's Shares.

8.5 Purchase Price and Payment thereof. The Purchase Price for the Vendor's Shares under Section 8.4 (the "**Purchase Price**") shall be the Fair Market Value of the Shares being purchased and sold. The Purchase Price shall be paid on the closing date.

8.6 Tax Matters.

(a) If requested by the Vendor and notwithstanding any other provision of this agreement, in the event insurance proceeds are payable to the Corporation on the death of Vincent, the Corporation shall approve the transfer of his Shares to Danielle within sixty (60) days of the date of death of his death. In the event of any such transfer under this Section **8.6(a)**, Danielle shall be entitled, on notice to the Corporation within thirty (30) days from the date Danielle acquired Vincent's Shares, to sell Shares pursuant to this Article 8 in the same manner that Shares of Vincent could have been sold to the Corporation by the Vendor pursuant to this Article 8. In the event of the transfer of Shares to Danielle under this Section **8.6(a)** the Corporation shall be entitled, on notice to Danielle, within thirty (30) days from the date Danielle acquired Vincent's Shares, to purchase all such Shares from Danielle in the same manner that the Corporation would have been entitled to purchase Shares from the Vendor pursuant to this Article 8.

(b) If the Corporation receives insurance proceeds on the death of Richard or Vincent, the proceeds shall be allocated to the capital dividend account of the Corporation and the Corporation shall elect under the *Income Tax Act* (Canada) that the deemed dividend arising on the purchase of the Vendor's Shares shall be paid out of its capital dividend account.

8.7 Insurance.

(a) The Shareholders agree to obtain and maintain insurance on the lives of Richard and Vincent for a maximum of $2 million in the case of Richard and $1 million in the case of Vincent and the Shareholders agree that in each and every year within ninety (90) days following the fiscal year end of the Corporation such insurance shall be revised by the mutual agreement of the Shareholders, and failing such agreement the insurance amount will be determined by the Board of Directors, at not less than the amount that would be required to fund the Corporation's purchase of Richard's and Vincent's Shares on their death up to a maximum of $2 million for Richard and $1 million for Vincent.

(b) Each of Richard and Vincent shall use his best efforts to assist in the obtaining and maintaining of the insurance, including, but not limited to, attending for physical examinations, answering such questions as may be reasonably necessary and executing consents to the placing of such insurance coverage.

(c) Subject to subsection 8.7(e), in the event of the purchase of the Shares held by any Shareholder which does not require or does not involve the use of proceeds of insurance issued in the name of such Shareholder as insured, if any policy of insurance shall still be in force with respect to such Shareholder, the person or persons whose life is insured under any such policy shall have the right, exercisable within sixty (60) days from the date of the purchase of the Shares under this Agreement, to purchase such policy from the Corporation for a price equal to the aggregate of:

(i) the unexpired portion of any premiums paid as determined by the insurer;

(ii) the cash surrender value, if any; and

(iii) the sum of Ten Dollars ($10.00).

In the event that any person or persons whose life is insured elects to exercise this right to purchase, the Corporation and all remaining Shareholders shall forthwith execute all such documents as may be necessary to give effect to the transfer of the policy or policies. In the event that any person or persons whose life is insured shall fail to notify the Corporation within the said period of sixty (60) days of his or their election to purchase the said policy or policies, the Corporation and/or all remaining Shareholders shall forthwith surrender the policy or policies to the insurer for the cash surrender value thereof together with the amount of any accumulated dividends or other distributions thereof, which, when received, shall be retained by the Corporation and/or the Shareholders.

(d) Notwithstanding the provisions of subsection 8.7(c), the Corporation and/or Shareholders shall be permitted to retain such insurance on a party ceasing to be, directly or indirectly, a Shareholder as may equate from time to time with the amounts which may be owing by the Corporation or the other Shareholders, as the case may be, to such party. The amount of insurance to be retained in such circumstances shall be reviewed on the anniversary dates of the date the party, whose life is insured, has ceased to be, directly or indirectly, a Shareholder, and such party may purchase such portion of the insurance which the Company no longer requires to cover the amounts which may be owing to such party. Such right to purchase shall be exercisable within sixty (60) days of the termination by the Company of the amount of insurance being maintained in accordance with this subsection 8.7(d) and the provisions of subsection 8.7(c) shall otherwise apply mutatis mutandis.

(e) If, pursuant to subsection 8.7(d), the Corporation and/or the remaining Shareholders retain insurance on a party who has ceased to be, directly or indirectly, a Shareholder and such party dies while funds are owing to such party by the Corporation or the other Shareholders, as the case may be, then, the Corporation and the other Shareholders shall cause such insurance proceeds paid on the death of such party to be immediately applied to the indebtedness owing by the Corporation or the other Shareholders, as the case may be, to such party.

8.8 Any previous agreement to buy Shares of a Shareholder on the death of a Shareholder or Principal is hereby terminated.

9. BOARD OF DIRECTORS

9.1 Board of Directors. The Shareholders agree that:

(a) the Board of Directors of the Corporation will consist of eight (8) persons as elected by a majority of the shareholders of the Corporation. The Shareholders shall vote their Shares so that collectively (i) Schroder Canada and Schroder UK, together, shall have four (4) nominees on the Board and shall have the right to appoint the chairman of the board for so long as they maintain an equity participation of at least 40%, collectively, on a fully-diluted basis; (ii) Schroder Canada and Schroder UK, together, shall have three (3) nominees on the Board for so long as they maintain an equity participation of at least 30%, collectively, on a fully-diluted basis; (iii) Schroder Canada and Schroder UK, together, shall have two (2) nominees on the Board for so long as they maintain an equity participation of at least 20%, collectively, on a fully-diluted basis; (iv) Schroder Canada and Schroder UK, together, shall have one (1) nominee on the Board for so long as they maintain an equity participation of at least 10%, collectively, on a fully-diluted basis; (v) CAV shall have one (1) nominee on the Board for so long as the CAV Convertible Debenture is outstanding or CAV maintains an equity participation of at least 10% on a fully-diluted basis; (vi) Richard shall have one (1) nominees on the Board for so long as he maintains an equity participation, and (vii) the other Shareholders (including Schroder Canada and Schroder UK, together, but only if they maintain an equity participation below 40%, collectively, on a fully-diluted basis) shall have two (2) nominees on the Board.

(b) the Chairman of the Board, if appointed by Schroder Canada and Schroder UK, shall have a second or casting vote in respect of any matter submitted to the vote of any meeting;

(c) the number of directors from time to time constituting a quorum at the meetings of the Board shall be five (5) persons, including three (3) representatives of Schroder Canada and Schroder UK, provided that if quorum has not been achieved at a meeting, another meeting shall be held in the next seven (7) days and if two (2) successive meetings of the Board shall have been properly convened with due notice and a quorum has not been achieved at such meetings, the quorum for a third meeting duly convened with notice shall be five (5) persons among any members of the Board;

(d) on the appointment or election of each director, the Secretary of the Corporation shall make note of the nominator of the director in the records of the Corporation and the nominator shall be entitled by direction in writing, from time to time, to remove its nominee or nominees and to nominate a successor or successors who shall promptly be elected or appointed a director as contemplated herein; and

(e) a majority of the persons from time to time nominated to the Board shall be resident Canadians, as such term is defined in the *Business Corporations Act* (Ontario).

9.2 Regular meetings of the Board of Directors shall be held on a quarterly basis. Other meetings of the Board of Directors shall be held at such time as may be requested by any Director. All meetings of the Board of Directors shall be held at the place designated in the

notice of such meeting, provided that unless otherwise agreed to by all of the members of the Board of Directors, such meetings shall be held in Ottawa, province of Ontario. Notice of each meeting and the business to be transacted thereat shall be given to each Director not less than ten Business Days prior to the date of the meeting unless such notice is waived in accordance with the *Business Corporations Act* (Ontario) and the articles of the Corporation. Nothing herein shall restrict the holding of meetings of the Board of Directors by telephone, electronic or other communication facilities in the manner and on the conditions contemplated by the articles of the Corporation.

9.3 Schroder Canada and Schroder UK, together, shall have the right to appoint 50% of the members of any committee of the board of directors, for so long as Schroder Canada and Schroder UK maintain an equity participation of at least 40% collectively on a fully diluted basis.

9.4 No action, or decision which relates to the following matters shall be taken by the Corporation without the consent of a majority of the board of directors:

(a) Dividend policy;

(b) Issues of Shares or securities convertible into Shares;

(c) Change of auditors or bankers;

(d) Change in the accounting principles of the Corporation;

(e) Modification to the articles of the Corporation or its by-laws;

(f) Approval of the audited financial statements

(g) Annual budgets, including capital expenditures budgets;

(h) Acquisitions or sales of assets outside the normal course of business;

(i) Borrowings outside the normal course of business;

(j) Acquisitions, mergers and joint ventures;

(k) Stock option plans;

(l) Hiring, firing and compensation of key senior executives;

(m) Change in the number of directors;

(n) Change in the nature of the Company;

(o) Wind-up or voluntary dissolution.

10. ARBITRATION

10.1 Arbitration. In the event that any disagreement (save and except for determination of the Fair Market Value of Shares) arises among the parties hereto with reference to this Agreement, or any matter arising hereunder and upon which the parties cannot agree, then every such disagreement shall be referred to arbitration pursuant to the provisions of the *Arbitrations Act, 1991* and in accordance with the following:

(a) for the purpose of this Section, if there are only two (2) parties to the disagreement, the following provisions shall govern any arbitration hereunder:

(i) the reference to arbitration shall be to three (3) arbitrators, one of whom shall be chosen by each party to the disagreement and the third by the two so chosen and the third arbitrator so chosen shall be the chairman;

(ii) the award may be made by the majority of the arbitrators;

(iii) if the arbitrators have allowed their time or extended time for making any award, as provided in the *Arbitrations Act, 1991* to expire without making any award, or if the chairman shall have delivered to the parties to the arbitration a notice in writing stating that the arbitrators cannot agree, any party to the arbitration may apply to the Supreme Court of Ontario or to a Judge thereof to appoint any umpire who shall have the like power to act in the reference and to make an award as if he had been duly appointed by all the parties to the submission and by the consent of all the parties who originally appointed the arbitrators thereof;

(iv) if any umpire is appointed pursuant to the foregoing subsection (iii), such umpire shall make his award within one (1) month after the original or extended time appointed for making the award of the arbitrators has expired or on or before any later date to which the parties to the reference by any writing signed by them may from time to time enlarge the time for making the award, or if the parties have not agreed, then within such time as the Court or Judge who appointed such umpire may deem proper.

(b) In the event that there are more than two parties to the disagreement, the disagreement shall be determined by arbitration by a single arbitrator who shall be selected by agreement of all parties. Failing unanimous agreement, the arbitrator shall be selected in accordance with the provisions of the *Arbitration Act, 1991*. The arbitrator shall make his award in writing either within three (3) months after entering on the reference or after having been called on to act by notice in writing from any party to the submission, whichever is the earlier, or on or before any later date to which the parties to the submission by writing signed by them may from time to time enlarge the time for making the award.

(c) There shall be an appeal from the award of the arbitrators or arbitrator in accordance with the provisions of the *Arbitrations Act, 1991*.

11. GENERAL PROVISIONS

11.1 General Sale Provisions.

(a) A Shareholder who sells Shares pursuant to any provision of this Agreement (the "**Seller**") hereby warrants to Schroder Canada, Schroder UK, CAV and any other Shareholder or to the Corporation purchasing such Shares (the "**Buyer**"), that, at the time of closing of the transaction of purchase and sale in question, (i) the Seller has a good and marketable title to such Shares and (ii) the Buyer will acquire such Shares free of any encumbrance of any kind, and the Seller shall indemnify and save harmless the Buyer against any loss suffered by the Buyer as a result of there being any encumbrance upon or any defect in the title of the Seller to such Shares.

(b) In the event that the purchase price is not paid in full by the Buyer to the Seller on the closing date, then the Shares purchased and sold shall be pledged by the Buyer to the Seller under the terms of a share pledge agreement which shall provide, *inter alia*, that upon default by the Buyer in payment of any sum due to the Seller, whether on account of principal or interest, then the Seller shall have the right either to retain the pledged Shares in satisfaction of the obligation secured or to sell such Shares subject to compliance with Section 12.3, all in accordance with the provisions of the *Personal Property Security Act* (Ontario).

(c) Unless otherwise provided in this Agreement or specified in any notice under this Agreement, the transaction of purchase and sale shall be completed at the offices of the Corporation's solicitors on the thirtieth (30th) day following delivery of the notice creating the agreement of purchase and sale, at which time the Seller shall resign as a director, officer and employee of the Corporation and the purchase price shall be paid in full by certified cheque of the Buyer to the Seller.

(d) Contemporaneously with the completion of the transaction of purchase and sale, the Buyer shall acquire from the Seller or retire the full amount of any shareholder's loans advanced by the Seller to the Corporation, by payment to the Seller of an amount equal to the principal sum thereof then outstanding together with all unpaid interest accrued thereon to the date of closing.

(e) Contemporaneously with the completion of the transaction of purchase and sale, the Buyer shall deliver to the Seller a release of all personal guarantees, covenants of indemnification, endorsements or similar obligations made or given by the Seller for or in support of any liabilities, indebtedness or obligations of the Corporation, or if any such release cannot be obtained, the Buyer and the Corporation shall deliver a joint agreement of indemnification in favour of the Seller with respect to such contingent liability, and such indemnification agreement shall be collaterally secured by a pledge of the Shares being purchased and sold together with all other Shares owned by the Buyer. The agreement of indemnification and share pledge agreement shall be satisfactory to the Seller's solicitors both as to form and substance.

(f) Contemporaneously with the completion of the transaction of purchase and sale, the Seller shall repay and return the full amount of all shareholder's advances from the

Corporation to the Seller, and the Buyer may withhold from the purchase price any such amount and pay such amount directly to the Corporation at the time of closing.

11.2 Agreement Binding on Transferees. No Shares shall be

(a) issued, or

(b) sold, assigned, transferred, or conveyed, whether pursuant to Section 5.5 or otherwise, by a Shareholder or his legal representative

to any person other than a party to this Agreement, until the proposed subscriber or transferee, as the case may be, enters into a counterpart of this Agreement and of any amendments to it with the other parties to this Agreement.

12. NON-COMPETITION AND CONFIDENTIALITY

12.1 Definition. For the Purposes of this Article 12, Shareholder shall include only Richard and Vincent.

12.2 (a) Non-Competition. While a Shareholder and for a period of four (4) years until April 19, 2001 or for a period of three (3) years thereafter after ceasing to be a Shareholder, no Shareholder, or his Principal, shall, and each shall ensure that all of his affiliates, as that term is defined in the *Securities Act* (Ontario), directly or indirectly controlled by him do not, directly or indirectly, in any manner whatsoever, including without limitation, either individually or in partnership or jointly, or in conjunction with any other Person or Persons, as principal, agent, shareholder, employee, Shareholder, officer or otherwise or in any other manner whatsoever, compete in any way with or directly or indirectly have a financial interest of more than 2% in any business competing with the Business of the Corporation in Canada, the United States, Europe or in any place in which the Corporation carries on or proposes to carry on its Business.

(b) Reasonable Limitation. The parties acknowledge that the concept and nature on which the Corporation's current business is based is applicable on a worldwide basis and that the protection provided hereunder is necessary to preserve the growth potential and therefore the inherent value of the Corporation for the benefit of the current and future Shareholders. Accordingly, the parties hereto acknowledge that the foregoing provision is not an unreasonable limitation of the Shareholders and is a reasonable protection for the Corporation and its shareholders including the Shareholders.

(c) Severability. If any term, covenant or condition of this Section or the application thereof to any person or entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Section and this Agreement and/or the application of such term, covenant or condition to Persons or entity or circumstances other than those to which it is held to be invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of Section and this agreement shall be separately valid and enforceable to the fullest extent permitted by law.

12.3 Confidentiality. For so long as the Corporation carries on Business, each of the Shareholders, his Principal, and the Corporation shall keep in the strictest confidence, not disclose and not use, without the consent of the Corporation or such Shareholder to which the information relates, all non-public information pertaining to or concerning the Corporation and the Shareholders including, without limitation, all budgets, forecasts, analyses, and financial results, costs, margins, wages and salaries, bids and other business activities, all supplier and customer lists, all non-public intellectual property including trade secrets, unfilled patents, trade-marks, technical expertise and know-how, documentation including standard terms and agreements and all other information not generally known outside the Corporation except to persons through business dealings with the Corporation. However, no party hereto shall be obliged to keep in confidence or shall incur any liability for disclosure of information which:

(a) was already in the public domain or comes into the public domain without any breach of this Agreement;

(b) is required to be disclosed pursuant to applicable laws or pursuant to policies or regulations of any regulatory authority or private or public body having jurisdiction over a party or of which the party is a member;

(c) is required to be disclosed in any valuation, arbitration or legal proceeding hereunder;

(d) is made in connection with a bona fide proposed sale of at least 51% of the Shares of the Corporation (including without limitation any Shares) by any Shareholders; provided that the disclosing party shall cause the recipient to comply with the terms hereof as if it were a party to this Agreement; or

(e) is made to a professional or other adviser to such disclosing party, in which event such disclosing party shall, so far as reasonably possible, cause the recipient to comply with the terms hereof as if it were a party to this Agreement.

13. GENERAL

13.1 Schroder Canada, Schroder UK, CAV and the Shareholders covenant and agree that they shall act and vote and shall cause their nominee or nominees to act and vote as Shareholders and/or Directors and otherwise in such manner as may be necessary to comply with the provisions of this Agreement.

13.2 A waiver by any party of any of his rights or of the performance of any other party or parties of any of his or their obligations under this Agreement shall be without prejudice to all or any of his other rights under this Agreement and shall not constitute a waiver of any other of such rights or of the performance by the other party or parties of any other of his or their obligations under this Agreement.

13.3 Nothing in this Agreement shall be deemed in any way or for any purpose to constitute any party a partner of any other party to this Agreement, in the conduct of any business or otherwise or as member of a joint venture or joint enterprise with any other party to this Agreement.

13.4 All certificates or documents representing Shares of the Corporation shall have written on the face thereof the following:

> "The shares evidenced by this certificate are subject to the terms of, and disposition, mortgage, pledge, hypothecation, and transfer of such shares is restricted in accordance with, the provisions of an agreement dated as of April 19, 2000 between the Corporation and its shareholders."

13.5 The provisions of this agreement relating to Shares of the Corporation shall apply *mutatis mutandis* to any shares into which the Shares or any of them may be converted or changed, or to any shares resulting from a reclassification, subdivision or consolidation of any Shares, and also to any Shares of the Corporation which are received by the holders of Shares as a stock dividend, and to any shares or other securities of the Corporation or of any successor body corporate which may be received by the holders of Shares on an amalgamation, reorganization, merger or combination of the Corporation.

13.6 Time shall be of the essence of this agreement and of every part thereof.

13.7 The parties to this Agreement shall execute and deliver such further and other instruments, agreements and writings and shall cause such meetings to be held, resolutions passed and by-laws enacted, exercise their votes and influence, do and perform and cause to be done and performed, such further and other acts and things that may be necessary or desirable in order to give full effect to this Agreement and every part thereof. Without limiting the generality of the forgoing, each of the Shareholders covenants and agrees with the others to vote its Shares at the next meeting of Shareholders of the Corporation in such a manner as to approve, confirm and ratify the execution and delivery of this Agreement by the Corporation.

13.8 All notices required or permitted to be given by one party to another party under the terms of this Agreement may be delivered personally or sent by prepaid registered mail or transmitted by telex, telecopier or other form of recorded telecommunication transmission:

(a) to Schroder Canada at:

1155 René-Lévesque Blvd West
Suite 2705
Montreal, Quebec
H3B 2K8

Attention: Catherine Lyng

Fax: (514) 861-2495

(b) to Schroder UK at:

20 Southampton St.
London, England
WC2E 7QG

Attention: Gerard Lloyd

Fax: 11-44-207-240-5346

(c) to Richard or 1062455 at:

3203 Carriage Hill Place
Gloucester, Ontario
K1T 3X2

(d) to Vincent at:

13 Saddle Crescent
Ottawa, Ontario
KIG 5L4

(e) to Danielle at:

13 Saddle Crescent
Ottawa, Ontario
KIG 5L4

(f) to Trustee at:

MED-ENG SYSTEMS INC.
2400 St-Laurent Blvd
Ottawa, Ontario
KIG 6C4

Attention: President

Fax: (613) 739-4536

(g) to CAV at:

CAPITAL ALLIANCE VENTURES INC.
Suite 600, 60 Queen Street
Ottawa, Ontario
KIP 5Y7

Attention: Mr. Richard Charlebois

Fax: (613) 567 3979

(h) to the Corporation at:

MED-ENG SYSTEMS INC.
2400 St-Laurent Blvd
Ottawa, Ontario
KIG 6C4

Attention: President

Fax: (613) 739-4536

or at such other address as the parties may from time to time deliver pursuant to this Section. Any notice delivered or transmitted by telex or other form of recorded telecommunication shall be deemed to be given and received on the date of its delivery or transmission, as the case may be, provided that such day is not a Saturday, Sunday or statutory holiday. Any notice mailed shall be deemed to have been given and received on the third business day following the date of its mailing.

13.9 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The parties hereby attorn to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising under this Agreement or any of the schedules or documents to be entered into or delivered pursuant to this Agreement.

13.10 Severability. In the event that any provision of this Agreement shall be invalid, illegal or unenforceable it shall not affect the validity, legality or enforceability of any other provision of this Agreement.

13.11 Entire Agreement. This Agreement, together with the agreements and other documents to be delivered pursuant to this Agreement, constitute the entire agreement between the parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions of the parties, whether written or oral, and there are no warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement. No amendment, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless expressly provided.

13.12 Successors and Assigns. This Agreement shall enure to the benefit of and be binding upon the parties to this Agreement and their respective heirs, executors, administrators, successors and assigns.

13.13 Unanimous Shareholders' Agreement. This Agreement is a unanimous Shareholders' agreement within the meaning of the *Business Corporations Act* (Ontario).

13.14 Voting Trust Agreement. The parties to the Voting Trust Agreement attached hereto as Schedule "A" shall be for all purposes and intent of this Agreement a party to this Agreement as though they were named parties hereto and shall have no less and no greater rights and obligations than the Trustee under this Agreement.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the day, month and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of

MED-ENG SYSTEMS INC.

Per: _____

SCHRODER VENTURE MANAGERS (CANADA) LIMITED
in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5 and Schroder Canadian Buy-Out Fund II Limited Partnership CLP6.

Per: _____

SCHRODER VENTURES HOLDINGS LIMITED
in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf of Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of Schroder Ventures International Investment Trust plc, pursuant to a power of attorney duly executed on April 6, 2000

Per: _____

1062455 ONTARIO INC.

Per: _____

Virginia Schweitzer
Witness

RICHARD L'ABBÉ

Virginia Schweitzer
Witness

VINCENT CRUPI

Virginia Schweitzer
Witness

DANIELLE CRUPI by her attorney in fact, Vincent L'Abbé

Virginia Schweitzer
Witness

RICHARD L'ABBÉ, as voting trustee

CAPITAL ALLIANCE VENTURES INC.

Per: _____

Shareholders Agreement

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the day, month and year first above written.

SIGNED, SEALED AND DELIVERED
In the presence of

MED-ENG SYSTEMS INC.

Per: _____

SCHRODER VENTURE MANAGERS (CANADA) LIMITED
in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5 and Schroder Canadian Buy-Out Fund II Limited Partnership CLP6.

Per: _____

SCHRODER VENTURES HOLDINGS LIMITED
in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf of Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of Schroder Ventures International Investment Trust plc, pursuant to a power of attorney duly executed on April 6, 2000

Per: _____

SCHEDULE "A"

Voting trust agreement

Thomas Csathy
William Sparfel
Aris Makris
Mario Demers
Steven Maynes
Bogdan Capruciu
Derrick Poon Young
Anderson Soublière Inc.
Pakenham Holdings Ltd.

SCHEDULE "B"

Registered Shareholders of MED-ENG SYSTEMS INC.		
Name	***Number of Class A Shares***	***Number of Class B Shares***
Schroder Canada	-	11,425,467
Schroder UK	-	5,965,837
Richard	530,500	-
1064255 Ontario Inc.	9,568,000	-
Vincent	851,680	-
Danielle	1,182,420	-
Trustee	601,271	-
TOTAL:	**12,733,871**	**17,391,304**

Beneficial Owners of Shares of MED-ENG SYSTEMS INC.

Name	***Number of Class A Shares***	***Number of Claas B Shares***
Schroder Canadian Buy-Out Fund II Limited Partnership CLP1	-	1,540,831
Schroder Canadian Buy-Out Fund II Limited Partnership CLP2	-	1,938,152
Schroder Canadian Buy-Out Fund II Limited Partnership CLP3	-	2,325,783
Schroder Canadian Buy-Out Fund II Limited Partnership CLP4	-	2,248,280
Schroder Canadian Buy-Out Fund II Limited Partnership CLP5	-	2,248,280
Schroder Canadian Buy-Out Fund II Limited Partnership CLP6	-	1,124,141
Schroder Canadian Buy-Out Fund II UKLP	-	4,895,118
Schroder Canadian Buy-Out Fund II Coinvestment Scheme	-	44,365

Name	*Number of Class A Shares*	*Number of Claas B Shares*
Schroder Ventures International Investment Trust plc	-	1,026,354
Richard	530,500	-
1064255 Ontario Inc.	9,568,000	-
Vincent	851,680	-
Danielle	1,182,420	-
Trustee	601,271[1]	-
TOTAL:	**12,733,871**	**17,391,304**

[1] For:

Aris Makris	34,000
Mario Demers	17,500
Steve Maynes	34,000
Bogdan Capruciu	33,000
Derrick Poon Young	2,500
Pakenham Holdings Ltd.	142,989
Anderson Soublière Inc.	142,989
Thomas Csathy	174,293
William Sparfel	20,000

Registered Debentureholders of MED-ENG SYSTEMS INC.		
Name	***Amount of Convertible Debentures ($)***	***Amount of Subordinated Debentures ($)***
Schroder Canada	1,511,235	1,280,864
Schroder UK	789,095	668,806
CAV	2,000,000	-
TOTAL:	**4,300,330**	**1,949,670**

Beneficial Owners of Debentures of MED-ENG SYSTEMS INC.		
Name	***Amount of Convertible Debentures ($)***	***Amount of Subordinated Debentures ($)***
Schroder Canadian Buy-Out Fund II Limited Partnership CLP1	203,804	172,736
Schroder Canadian Buy-Out Fund II Limited Partnership CLP2	256,357	217,279
Schroder Canadia n Buy-Out Fund II Limited Partnership CLP3	307,629	260,734
Schroder Canadian Buy-Out Fund II Limited Partnership CLP4	297,378	252,046
Schroder Canadian Buy-Out Fund II Limited Partnership CLP5	297,378	252,046
Schroder Canadian Buy-Out Fund II Limited Partnership CLP6	148,689	126,023
Schroder Canadian Buy-Out Fund II UKLP	647,472	548,772
Schroder Canadian Buy-Out Fund II Coinvestment Scheme	5,868	4,974
Schroder Ventures International Investment Trust plc	135,755	115,060
CAV	2,000,000	-
TOTAL:	**4,300,330**	**1,949,670**

SCHEDULE "C"

INVESTMENT AGREEMENT AND POWER OF ATTORNEY

INVESTMENT AGREEMENT
AND
POWER OF ATTORNEY

BETWEEN: Schroders Ventures Holdings Limited (the "Manager")

AND: Schroder Ventures International Investment Trust plc (the "Investor")

SUBJECT: MED-ENG Systems Inc. ("MED-ENG")
AcquisitionCo

WHEREAS the Investor is a limited partner in Schroder Canadian Buy-Out Fund II UKLP (the "Partnership") and the Manager is acting as the General Partner of the Partnership.

WHEREAS the Investor is a coinvestor pursuant to the UK Coinvestment Opportunity Agreement dated December 14, 1994 and amended on August 20, 1996, among the Manager, the Investor and other parties (the "UK Coinvestment Agreement").

WHEREAS the Manager, as General Partner of and acting for the Partnership, has invited the Investor to acquire shares of MED-ENG and debentures of AcquisitionCo, as more fully identified in the Schedule hereto.

WHEREAS it is proposed that certain agreements to be entered into with MED-ENG and with AcquisitionCo be signed on behalf of the Investor by the Manager and, further, that certain management and other functions be delegated to the Manager.

NOW IT IS HEREBY AGREED as follows:

1. The Investor hereby appoints the Manager as its agent to participate in or acquire, for the account of the Investor, the securities and debentures identified in the Schedule hereto and any securities and debentures subscribed thereafter (collectively, the "Subject Securities") on the terms hereinafter appearing.

   1.1 The Manager is hereby authorized to manage the Subject Securities and any shares, cash, securities or other investments which may derive from the Subject Securities with full power for the account of and in the name of the Investor at the Manager's discretion to sell, redeem, exchange, vary or transpose the Subject Securities and the Manager shall render the Investor such reports concerning the Subject Securities and any other cash securities or investments derived therefrom as the Investor may reasonably require.

1.2 During the continuance of this Agreement, the Manager shall be authorized and entitled to exercise any voting rights or other rights attaching to the Subject Securities and to give any consents, grants or authorizations whatsoever which may be requested in connection with the Subject Securities pursuant to the Shareholders' Agreement or the Debentures referred to below or any other agreements relating to the investment.

1.3 The Manager, subject to subclause 1.1 hereof, shall hold all cash or other securities or investments derived from the Subject Securities and any sale proceeds on the disposal of any or all of the Subject Securities exclusively for the account of the Investor and shall pay or transfer such cash, securities or other investments to the Investor as the Investor may direct.

2. In the event that the Manager shall cease to be the general partner of the Partnership, the Manager shall immediately transfer the Subject Securities and all cash, securities and other investments derived therefrom and held for the account of the Investor to the Investor or to such person as the Investor may direct, subject to the provisions of the Shareholders' Agreement.

3. The Investor, by its execution hereof, hereby irrevocably makes, constitutes and appoints the Manager as its true and lawful agent and attorney-in-fact, with full power of substitution and full power and authority in its name, place and stead, to make execute, sign, acknowledge, swear to, record and file (i) a Shareholders' Agreement among, *inter alia*, MED-ENG, the Manager and the other shareholders of MED-ENG, substantially in the form attached hereto, a Subordinated Debenture and a Convertible Debenture between AcquisitionCo and the Investor, substantially in the forms attached hereto and any other instruments, agreements, letters or documents in connection with the exercise of the rights, including voting rights, proxies, consents or authorizations in connection with or derived from the Subject Securities , and (ii) any and all instruments, agreements, letters, deeds or documents in connection with anything to be done or performed under or as a result of this Agreement. The foregoing power of attorney is coupled with an interest, shall be irrevocable and shall, to the extent permitted by applicable law, survive the incapacity of the Investor. The Investor undertakes that all and each of the acts, deeds and things done by the Manager for the aforesaid purposes shall be good, valid and effectual as if the same had been signed, sealed and delivered, given, made or done by the Investor and the Investor undertakes at all times hereafter to ratify and confirm whatsoever the Manager shall lawfully do or cause to be done by virtue of this power of attorney.

4. This Agreement shall continue and remain in full force and effect unless and until terminated by the agreement of both parties.

5. The Manager shall not be precluded from providing services of a like nature to any other person, firm or corporation, and the Manager shall not be liable to account for any profits earned from any such transaction.

6. The Investor shall indemnify, save and hold harmless and exculpate the Manager and its directors, officers, employees, agents and advisors from all claims, expenses, losses,

damages and liabilities arising directly or indirectly in connection herewith, except if the Manager has committed gross negligence, willful default or fraud.

7. The Investor hereby acknowledges that his participation in or acquisition of the Subject Securities is made pursuant to the terms of the UK Coinvestment Agreement. Notwithstanding the foregoing, the Investor hereby waives any formalities contained in Article II of the UK Coinvestment Agreement which may not have been complied with by the Manager.

8. No provision of this Agreement may be changed, varied, discharged or discounted except in writing signed by the parties hereto.

9. This Agreement shall be governed by and construed in accordance with the laws of England.

10. This Agreement may be executed in one or more counterparts all of which taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF this Investment Agreement and Power of Attorney has been executed the day and year hereafter mentioned.

Dated this ~~●th day of March~~ 6th day of April 2000.

SCHRODER VENTURES HOLDINGS LIMITED

By: _____

Title: _____

SCHRODER VENTURES INTERNATIONAL INVESTMENT TRUST plc

By: _____

Title: DIRECTOR

FOR SCHRODER INVESTMENT MANAGEMENT LIMITED
SECRETARIES

SCHEDULE

11. 1. Subject Securities

- 1,026,354 Class B shares in the capital of MED-ENG Systems Inc. for an aggregate purchase price of $472,123;
- Convertible Debentures in the principal amount of $135,755 issued by AcquisitionCo;
- Subordinated Debentures in the principal amount of $115,060 issued by AcquisitionCo.

2. Name of Investor

- Schroder Ventures International Investment Trust plc.

3. Address

- 31 Gresham Street
  London EC2V 7QA

  Fax: 011-4420-7-658-3538

SCHEDULE "D"

POWER OF ATTORNEY

AGREEMENT AND POWER OF ATTORNEY

BETWEEN: Vincent Crupi ("Vincent")

AND: Danielle Crupi ("Danielle")

SUBJECT: Med-Eng Systems Inc. ("Med-Eng")

WHEREAS Danielle is the registered and beneficial owner of 1,182,420 Class A Common Shares of Med-Eng ("Danielle's Shares").

WHEREAS it is proposed that a shareholders agreement dated as of April 19, 2000, to be entered into with Med-Eng be signed on behalf of Danielle by Vincent and, further, that Vincent act as agent and attorney-in-fact for Danielle;

NOW IT IS HEREBY AGREED as follows:

1. Danielle appoints Vincent as her agent to exercise any voting rights attaching to Danielle's Shares and to give any consents, grants or authorizations whatsoever which may be requested in connection with Danielle's Shares pursuant to the Shareholders' Agreement or any other agreements relating thereto.

2. Danielle by her execution hereof, hereby irrevocably makes, constitutes and appoints Vincent as her true and lawful agent and attorney-in-fact, with full power of substitution and full power and authority in her name, place and stead, to make, execute, sign, acknowledge, swear to, record and file (i) the Shareholders' Agreement **substantially in the form attached hereto** and any other instruments, agreements, letters or documents in connection with the exercise of the rights, including voting rights, proxies, consents or authorizations in connection with or derived from Danielle's Shares, and (ii) any and all instruments, agreements, letters, deeds or documents in connection with anything to be done or performed under or as a result of the Shareholders Agreement. The foregoing power of attorney is coupled with an interest, shall be irrevocable and shall to the extent permitted by applicable law, survive the incapacity of Vincent. Danielle undertakes that all and each of the acts, deeds and things done by Vincent for the aforesaid purposes shall be good, valid and effectual as if the same had been signed, sealed and delivered, given, made or done by Danielle and Danielle undertakes at all times hereafter to ratify and confirm whatsoever Vincent shall lawfully do or cause to be done by virtue of this power of attorney.

3. This Agreement and Power of Attorney shall continue and remain in full force and effect unless and until terminated by the agreement of both parties.

4. No provision of this Agreement and Power of Attorney may be changed, varied, discharged or discounted except in writing signed by the parties hereto.

5. This Agreement and Power of Attorney shall be governed by and construed in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF this Agreement and Power of Attorney has been executed the day and year hereafter mentioned.

Dated this 19th day of April, 2000.

Danielle Crupi

Vincent Crupi

TAB B

This is Exhibit B referred to in the affidavit of Donna Parr sworn before me, this 15th day of December 20 14

A COMMISSIONER FOR TAKING AFFIDAVITS

CITATION: Growthworks Canadian Fund Ltd. (Re), 2014 ONSC 1856
COURT FILE NO.: CV-13-10279-00CL
DATE: 20140324

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO Growthworks Canadian Fund Ltd., Applicant

BEFORE: D. M. Brown J.

COUNSEL: K. McElcheran, for the Applicant, Growthworks Canadian Fund Ltd.

J. Dacks, for the Monitor, FTI Consulting Canada Inc.

R. Slaght and I. MacLeod, for Allen-Vanguard Corporation

T. Conway and J. Leon, for the Offeree Shareholders in Ottawa Court Files Nos. 08-CV-43188 and 08-CV-43544

HEARD: February 11, 2014

REASONS FOR DECISION

I. Lift stay and contingent claim process motions in a *CCAA* proceeding

[1] Two events form the backdrop to these competing motions. First, the October, 2007 closing of the sale of shares in Med-Eng Systems Inc. to Allen-Vanguard Corporation ultimately spawned two 2008 lawsuits up in Ottawa: one initiated by the selling shareholders (the "Offeree Shareholders") (Action No. 08-CV-43188: the "Offeree's Action"), and one by the purchaser (08-CV-43544: the "AVC Action"), collectively the "Ottawa Proceedings". 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.

[2] Growthworks Canadian Fund Ltd. ("Growthworks" or the "Fund") was one of the selling shareholders of Med-Eng Systems and is a party to the Ottawa Proceedings, which brings me to the second event. On October 1, 2013, Newbould J. granted an initial order in Growthworks' application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. Paragraph 14 of the Initial Order contained the standard Model Order stay provision which ordered that:'

> no proceeding…in any court…shall be…continued against…the Applicant…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.

[3] Against that background, the parties brought two competing motions in the *CCAA* proceeding. First, Allen-Vanguard Corporation ("AVC") moved for an order that the stay of proceedings under the Initial Order did not apply to the continuation of the Ottawa Proceedings or, alternatively, for an order that the stay of proceedings had no effect on the continuation of the Ottawa Proceedings "against or in respect of any other party named therein, except for Growthworks…on such terms as are just".

[4] On its part, Growthworks moved for orders directing the trial of two issues in respect of AVC's claim against it by way of a mini-trial, making the determination of those issues binding on AVC and the Offeree Shareholders for all purposes, and restraining AVC from taking any steps in the AVC Action that would affect Growthworks in any way. The two issues for which Growthworks seeks a determination at a mini-trial are the following:

(i) Were the claims of AVC extinguished at law when it amalgamated with Allen-Vanguard Technologies Inc., formerly Med-Eng Systems Inc., on January 1, 2011? and,

(ii) Assuming that AVC is capable of proving fraud on the part of the former management of Med-Eng, is AVC entitled under the August 3, 2007 Share Purchase Agreement to seek damages from Growthworks and the other Offeree Shareholders in excess of the "Indemnification Escrow Amount" for the alleged breaches and misrepresentations of Med-Eng?

I will refer to these two issues as the "Proposed Claims Issues".

[5] At the hearing of the motion I informed counsel that I would contact RSJ Hackland in Ottawa to ascertain the state of the trial list there. I did so. On March 17, 2014, I received an email from Monitor's counsel advising that McEwen J. had extended the *CCAA* stay of proceedings until April 10, 2014 and informing me about the Sixth Report of the Monitor posted on its website. I have read that report and other court materials posted by the Monitor on the case website. On March 17, 2014, I received an email report from Master MacLeod regarding a case conference held that day in the Ottawa Proceedings, which I forwarded to counsel.

II. Growthworks Canadian Fund Ltd. and its initiation of *CCAA* proceedings

[6] Formed in 1988, Growthworks is a labour-sponsored retail venture capital fund with an investment portfolio focused on small and medium-sized Canadian businesses. Growthworks filed for *CCAA* protection because it could not make a $20 million payment obligation to Roseway Capital S.a.r.l. due on September 30, 2013 under its May, 2010 Participation Agreement with Roseway. The Fund's debt to Roseway is its only outstanding secured debt. Growthworks informed the court that it lacked access to short-term financing and would have difficulty realizing upon assets in its portfolio because of their illiquidity consisting, as they did, of minority equity positions in private companies and restricted equity securities in a publicly traded company. Nevertheless, as of September 30, 2013, the total net asset value of the Fund was about $84.62 million, with assets of approximately $115 million.

[7] Ian Ross, the Fund's Chair, in his September 30, 2013 affidavit sworn in support of the Initial Order, explained why Growthworks needed the benefit of a stay of proceedings:

> If the Fund is protected from the negative effects of a fire sale of its assets by a stay in these proceedings, and if it is able to continue to service its Venture Portfolio to preserve the value of its assets pending a restructuring, the Fund expects to be able to satisfy the obligations owing to Roseway in full through a combination of judicious dispositions, new debt financing and/or a merger or other transaction.
>
> The Fund has been in serious discussions with a possible merger partner and has received a letter agreement setting out a proposed transaction…A stay of proceedings would permit the Fund time to continue discussions with the merger partner, with the goal of a successful merger transaction, while at the same time enabling it to explore other options without the threat of a forced sale of its interests and related losses.
>
> …
>
> [T]he Fund seeks the protection of the Court pursuant to the [*CCAA*], including a stay of proceedings, to provide a safe context to restructure the Fund by refinancing, merger or judicious divestitures, and to resolve its legal and factual disputes with Roseway and the Manager, while at the same time ensuring the Fund has access to its critical documents and systems and the assistance of the Manager and GWC as needed to provide transitional services that enable the Fund to continue to operate and service its Venture Portfolio pending such a restructuring.

In his discussion about why the Fund required a stay of proceedings Ross did not refer to the Ottawa Proceedings.

[8] Ross appended to his affidavit filed in support of the Initial Order the 2012 audited financial statements of the Fund (as of August 31, 2012). Those statements did not refer specifically to the Ottawa Proceedings. Note 10, dealing with "Contingencies", stated:

> In the normal course of operations, various claims and legal proceedings are initiated against the Fund. Legal proceedings are often subject to numerous uncertainties and it is not possible to predict the outcome of individual cases. In management's opinion, the Fund has made adequate provision or has adequate insurance to cover all claims and legal proceedings. Consequently, any settlements reached should not have a material effect on the Fund's net assets.

[9] The stay of proceedings granted under the Initial Order ran until October 31, 2013. Growthworks moved to extend the stay period until January 15, 2014. In his October 25, 2013 affidavit in support of that extension Ross reported on the Fund's on-going efforts to finalize and execute a merger agreement with a potential merger partner by November 15, 2013. Ross stated: "[O]ne of the elements of that transaction will be the ability for the Fund to canvass the market to seek competing bids…in an attempt to identify a superior offer to any merger transaction". Ross made no mention of the Ottawa Proceedings in that affidavit.

[10] In its First Report (October 8, 2013), the Monitor stated that "there are no known creditors of the Fund who have a claim of more than $1,000..." Neither the Monitor's First Report nor its Second Report (October 28) mentioned the Ottawa Proceedings.

[11] On October 28, the day before the stay extension hearing, AVC delivered its motion materials seeking relief in respect of the Ottawa Proceedings. The hearing of that motion ultimately was adjourned to February 11, 2014. I will turn shortly to the subject-matter of the Ottawa Proceedings, but first it would be worthwhile to provide an overview of how the *CCAA* proceeding has unfolded since October 29, 2013, because that history provides a necessary part of the context for consideration of the competing motions.

[12] First, by order made October 29, 2013, Mesbur J. extended the stay period until January 15, 2014.

[13] Next, by order made November 18, 2013, Morawetz J. approved a sale and investor solicitation process ("SISP") for all of the Fund's property which used a Phase 1 Bid Deadline of December 13 and a final, Phase 2 Bid Deadline of roughly late January or early February, 2014. Running the second phase depended upon receipt of a qualified letter of intent in Phase 1 and a determination by the Fund's special committee of directors that there existed a reasonable prospect of obtaining a qualified bid.

[14] In its Third Report (November 15) dealing with the SISP motion, the Monitor commented on the Ottawa Proceedings:

> The outcome of this dispute could potentially impact the timing of distributions from any proceeds realized in the SISP process to stakeholders other than Roseway. Accordingly, it is the view of the Fund and the Monitor that this limited issue should be resolved quickly.

[15] By order made November 28, 2013, Mesbur J. authorized Growthworks to make distributions of collateral to Roseway under its security agreement and to repay Roseway from any proceeds of the SISP, subject to the payment of certain priority payables.

[16] By order made January 9, 2014, McEwen J. extended the stay period to March 7, 2014 and approved a claims process (the "Claims Procedure Order"). According to the affidavit filed by Ross, the Fund proposed a claims process to identify and ultimately quantify and adjudicate claims against the Fund "to provide potential bidders with clarity, to the extent required for the form of transaction they may propose, regarding the claims against the Fund". In his affidavit Ross explained in some detail why the Fund thought clarity about claims was "important and likely essential for any proposed merger transaction":

> [A]ny potential merger partner (and possibly other bidders depending on the type of transaction proposed) will want to identify the claims against the Fund and either adjudicate and quantify such claims prior to closing or specifically identify the disputed and undisputed claims and address them in their bid.
>
> ...

> Accordingly, identifying the disputed and undisputed claims against the Fund may be required shortly after the Phase 2 Bid Deadline, depending on the form of transaction identified and the closing date of any such transaction.
>
> ...
>
> The timely identification of claims against the Fund is also important for the restructuring process generally and for the Fund's stakeholders, in particular, in order to permit distributions to be made (beyond distributions to Roseway Capital S.a.r.l... in relation to its agreed upon secured obligations) to the extent possible.

[17] Ross identified two types of known claims against the Fund. First, Roseway and the Fund's manager were asserting contractual claims. Second, the Fund was named as defendant in two lawsuits – the AVC Action in which $650 million was claimed, and a Nova Scotia proceeding in which AGTL Shareholders claimed $28 million in damages from the Fund.

[18] The approved claims process set March 6, 2014 as the claims bar date. The process required the filing of proofs of claim with the Monitor, review by the Monitor, and a dispute resolution process before the Monitor with the Monitor able to seek directions from the court concerning an appropriate process to resolve the dispute. The AVC claim received separate treatment in the Claims Procedure Order, with the order deeming AVC to have submitted a proof of claim in the amount of $650 million (the "AVC Claim"), deeming the Monitor to have disallowed the claim, and deeming AVC to have submitted a dispute notice. The order stated that the procedure for determining the AVC Claim would not be determined until after the determination of the two present motions "or by further Order of the Court".

[19] The AVC and Growthworks motions were heard on February 11, 2014.

[20] Finally, by order made March 6, 2014, McEwen J. extended the stay period until April 10, 2014. On that motion the Fund reported that by the SISP's final deadline it had received two proposals, but neither was a qualifying bid that would pay in full and in cash the claims of Roseway. Growthworks did not receive an offer to complete a merger transaction, only a bid to purchase a portion of the Fund's assets and one to take over management of the portfolio. In his supporting affidavit Ross deposed that the Fund was recommending that it continue to manage and realize its assets to repay Roseway and to preserve value for other stakeholders. The Fund advised that it would discuss with Roseway "an appropriate cost reduction and asset management proposal" and it sought an extension of the stay period to allow the Fund to develop a management arrangement, identify exit opportunities to realize on the value of its investments, and assess and address tax implications for its shareholders.

[21] In its Sixth Report (March 5) the Monitor provided additional details about the SISP process: it had seen overtures to 157 parties, the execution of confidentiality agreements by 55 parties, 36 of whom were deemed to be qualified bidders and who had received a confidential information memorandum, with 30 bidders gaining access to the electronic data room. In Phase 1 seven (7) letters of intent were received and six of the parties were invited to participate in Phase 2. By the Phase 2 deadline only two proposals had been received, neither of which constituted qualified bids, and neither of which was pursued. The Monitor made no suggestion

that the existence of unresolved claims against the Fund, including the AVC Claim, had influenced the results of the SISP.

[22] The Monitor also reported that since there was no deadline by which it was required to review and adjudicate received proofs of claim, it would:

> 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.

[23] So, there sits the Fund's *CCAA* proceeding. Let me now turn to consider the dispute involving AVC.

III. The Med-Eng share sale

[24] Growthworks, Schroder Venture Managers (Canada) Limited, Schroder Ventures Holding Limited, Richard L'Abbé and 1062455 Ontario Inc. (collectively the "Offeree Shareholders") owned approximately 80% of the shares of Med-Eng; Growthworks held about 12.4% of the Med-Eng shares.

[25] By Share Purchase Agreement made as of August 3, 2007, the Offeree Shareholders sold their shares in Med-Eng to AVC for about $650 million. The transaction closed on September 17, 2007, with the Fund receiving about $72 million for its 12.4% shareholding. Shortly thereafter Med-Eng was amalgamated with Allen-Vanguard Holdings Ltd., which changed its name the following year to Allen-Vanguard Technologies Inc. ("AVTI"), which ultimately merged with AVC on January 1, 2011.

[26] The SPA included an Escrow Agreement which provided that $40 million of the purchase price paid by AVC was to be held in escrow to indemnify AVC should certain types of claims arise (the "Indemnification Escrow Amount"). Section 4.1(a) of the Escrow Agreement stipulated that if AVC was entitled to indemnification in accordance with sections 7.02 or 7.04 of the SPA, it could draw upon the Indemnification Escrow Amount for such claims. Section 7.02 of the SPA specified the circumstances in which Med-Eng was required to indemnify AVC from claims incurred by the purchaser resulting from Med-Eng's breach of covenants, certain reps and warranties, or breach of a Teaming Agreement. Section 7.04 dealt with third party indemnification.

[27] Section 7.02(2) placed a $40 million cap, or limit, on the amount for which AVC could seek indemnification under section 7.02:

> 7.02(2) Notwithstanding any of the other provisions of this Agreement, the Corporation will not be liable to any Purchaser Indemnitee in respect of:
>
> ...

> (b) any inaccuracy or misrepresentation in any representation or warranty set forth in Section 3.01 or any contravention of, non-compliance with or other breach, on or before the Closing Date, of the GD Teaming Agreement:
>
> ...
>
> (ii) in excess of the Indemnification Escrow Amount;
>
> other than, in all cases, any Claim attributable to fraud.

[28] The Escrow Agreement provided that on December 21, 2008, the Indemnification Escrow Amount was to be reduced by the value of any claims made by AVC under SPA ss. 7.02 and 7.04 which remained pending as of that date, with the balance of the amount to be distributed to the Offeree Shareholders.

[29] On September 10, 2008, about a year after the closing, AVC delivered a notice of claim under the SPA and Escrow Agreement alleging breaches of representations and warranties, and contending that the aggregate amount of its claims was $40 million. AVC did not break-down the dollar amount of its claim by category of alleged breach. On October 6, 2008, the Offeree Shareholders delivered a notice of objection.

[30] Litigation then ensued.

IV. The Ottawa Proceedings

A. The Offeree's Action

[31] First to file were the Offeree Shareholders who issued their Statement of Claim in the Offeree's Action on November 12, 2008 seeking a declaration that they were entitled on December 21, 2008 to the payment and distribution of the Indemnification Escrow Amount of $40 million. AVC and AVTI filed a statement of defence dated December 18, 2008.

B. The AVC Action

[32] Instead of filing a counter-claim in the Offeree Action, AVC commenced its own action on December 18, 2008 seeking:

> Indemnification and/or damages for fraudulent and/or negligent misrepresentation and breach of contract in the amount of $40,000,000, which shall be distributed to Allen-Vanguard Corporation in accordance with the terms of the Escrow Agreement.

The Offeree Shareholders defended on February 10, 2009.

[33] As originally framed, both actions put in play entitlement to the $40 million Indemnification Escrow Amount, and Growthworks was not exposed to any liability beyond foregoing its notional *pro rata* share of the funds held in escrow.

C. History of the Ottawa Proceedings: 2009 - 2013

[34] On these motions the parties filed evidence describing the (slow) progress of the Ottawa Proceedings. The slow pace to date of the Ottawa Proceedings will inform, in part, my exercise of discretion under the *CCAA*, so let me highlight the key points.

[35] The proceedings went into case management in September, 2009 at which time the court ordered productions to be completed by the end of that year. That did not occur. In February, 2010 Master MacLeod was continuing to order AVC to complete its productions.

[36] He also ordered the parties to agree on dates in June, 2010 for the start of discoveries. That did not occur. The first discovery did not start until December, 2010. Most discoveries were completed by the summer of 2011, with a few further days of examination of AVC's representative in late 2012 and early 2013. To date the scorecard of examination dates has been: 21 days of examination of AVC's representative, 6 days of Schroder Venture, 1 day for Richard L'Abbé, 2 days for 1062455 Ontario, and one (1) day for Growthworks' representative, for a total of 31 days of examinations for discovery. As put by David Luxton, AVC's chair, in his affidavit in support of AVC's motion:

> The single day of discovery of Richard Charlebois (a retired employee of Growthworks Capital Ltd.) reflects the very limited involvement and role of Growthworks in the litigation.

[37] I highlight these delays in productions and discoveries not to ascribe blame to one side or the other – Master MacLeod has commented on the conduct of some parties during the course of his various decisions - but to illustrate the on-going non-compliance with judicial case management timetables which, in turn, causes me to discount representations made on these motions about the feasibility of quickly moving the Ottawa Proceedings to trial. The track record of these proceedings cannot support such optimism.

[38] On September 10, 2008, AVC defended a separate, earlier action brought by Paul Timmis, a former executive with Med-Eng, in respect of an escrow fund related to his compensation. Master MacLeod in Ottawa case managed both the Ottawa Proceedings and the Timmis action.

[39] By case conference endorsement made April 16, 2012, Master MacLeod ordered that a 10-week trial of the Ottawa Proceedings commence September 3, 2013, and he issued detailed and comprehensive pre-trial management directions to ensure that the parties would meet that trial date. On December 4, 2012, Master MacLeod confirmed that the Offeree Action and AVC Action would be tried together, and his order contemplated the conduct of discoveries in the Timmis proceeding in January, 2013. (The materials did not explain why, given that the Timmis Action pre-dated the commencement of the Ottawa Proceedings, AVC only got around to conducting substantive examinations of Timmis after most of the discoveries had been completed in the Ottawa Proceedings.)

[40] As a result of its examination for discovery of Timmis in late December, 2012 and early January, 2013, AVC sought to make radical changes to its Statement of Claim in the AVC Action. I say radical because AVC increased its claim for damages from the $40 million

Indemnification Escrow Amount to $650 million, essentially asking for the return of the purchase price under the SPA. AVC alleged that the former management of Med-Eng had known, before the closing, that one of the company's largest customers intended to test a Med-Eng product against that of a competitor, yet deliberately withheld that information in order to ensure AVC completed the share purchase transaction. Although its initial claims had included one for indemnification based on fraudulent misrepresentation, AVC moved to add a second fraudulent misrepresentation claim.

[41] On February 19, 2013, Master MacLeod granted AVC leave to issue its proposed amended statement of claim. The Offeree Shareholders appealed. By reasons dated May 22, 2013, RSJ Hackland dismissed their appeal. The amended statement of claim was issued on June 11, 2013. Inexorably the September 3, 2013 trial date went out the window, as Master MacLeod directed in his May 30, 2013 endorsement. As Master MacLeod pointed out, in an understated fashion: "I see no option but to adjourn the matter if it is the intention of the parties to try all of the issues".

[42] It is worth considering parts of the analysis undertaken by RSJ Hackland in his reasons dismissing the appeal. He described the significance of the proposed amendments:

> The Master was well aware of the fact that the amendment if granted would expose the Med-Eng shareholders to potential liability for the full purchase price of the business and not simply for their respective interests in the $40 million holdback fund created on closing in order to secure any possible claims for misrepresentation and breach of warranty, as provided for in an escrow agreement. *The amendment in issue is indeed potentially "game changing"*, as the Master observed.[1]

He then commented on the essential nature of the amended claim:

> On the facts of this case, it is common ground that *all of the critical representations and warranties were given by Med-Eng management on behalf of the corporation being acquired and not by the vendors, the offeree shareholders…*
>
> It would appear to be common ground in this case that *any liability on the part of the vendor shareholders could only be based on an obligation arising from the Share Purchase Agreement in the context of fraud.* As the Master accurately observed, the effect of this amendment to the pleading will be totally dependent on proving fraud…[2]

RSJ Hackland agreed with the analysis conducted by Master MacLeod:

> I respectfully agree with the Master's analysis, which is captured in paragraph 22 of his careful reasons:

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[1] 2013 ONSC 2950, para. 2 (emphasis added).
[2] *Ibid.*, paras. 4 and 5 (emphasis added).

> Since there is no fraud asserted against any defendant offeree shareholder, the defendants contend that this provision in article 7.02 (5) is a complete defence to a claim beyond the $40 million in the escrow fund. *They may be right.* Mr. Conway puts this argument persuasively and it is consistent with the intent of the agreement to limit the exposure of the vendors. Nevertheless I am not able to say with certainty that this is the only possible interpretation of the agreement. Mr. Lederman argues that no court can condone an interpretation which would unjustly enrich the former shareholders at the expense of the plaintiff if it was a victim of fraudulent misrepresentation. *There is sufficient ambiguity in these interrelated provisions that I am unable to find only one possible interpretation of the contract. I cannot say that on the face of the agreement the plaintiff could never succeed.*[3]
>
> ...
>
> Like the Master, *I cannot say that the proposed amendment was untenable in the sense that it could never succeed.* And I specifically do not accept the appellants' submission that it was an error of law for the Master to fail to articulate the specific ambiguity in the Share Purchase Agreement on which the respondent's amendment could succeed.[4]

[43] It is also worth noting several of the observations made by Master MacLeod in his May 30, 2013 endorsement adjourning the trial of the Ottawa Proceedings:

> [6] ...[T]he amendment effects a fundamental change to the exposure of the offeree shareholders and it also adds issues that were either not before the court previously or which now attract enhanced significance.
>
> [7] For example, it is now pleaded that the misrepresentations of Med-Eng and the completion of the purchase based on those misrepresentations caused Allen-Vanguard to spiral into insolvency...
>
> [8] On the other hand there was some discussion at the hearing concerning the possibility of bifurcating the trial and [counsel for the Offeree Shareholders] wishes to bring a summary judgment motion. *I have ruled that it is not possible based on the wording of the SPA alone to determine that there are no circumstances that would permit recovery of more than $40 million from the offeree shareholders. RSJ Hackland has come to the same conclusion. In his decision he notes that it may be necessary to consider parol evidence.* Of course the admission of parol evidence requires that the court first find that the exceptions to the "parol evidence rule" apply and the nature and extent of the evidence that will then be admitted is itself open to argument. I am included to agree with the submissions of Mr. Slaght that it is quite unlikely that a judge will make that kind of decision on a summary judgment motion.

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[3] *Ibid.*, para. 7 (emphasis added).
[4] *Ibid.*, para. 9 (emphasis added).

> [9] *On the other hand it might be possible to try that question. The question is whether or not the SPA caps the liability of the offeree shareholders even if there was fraud providing it is not fraud on the part of those shareholders. Counsel could agree to try that issue.*
>
> [10] There are other threshold questions. Allen Vanguard must prove that there were misrepresentations. They must prove that the misrepresentations were relied upon and that it was reasonable to do so in the face of Allen-Vanguard's own due diligence. In order to have any possibility of a claim above the amount in the escrow fund they must prove that the misrepresentations were fraudulent. Losing on any one of those issues is either fatal or would confine the remedy to the escrow fund.

[44] Luxton, in his October 28, 2013 affidavit, clarified the nature of AVC's amended claim against Growthworks:

> Allen-Vanguard has not alleged that Growthworks made any fraudulent misrepresentations, but rather that it is liable (along with the other Offeree Shareholders) *under the terms of the Share Purchase Agreement* for the fraudulent misrepresentations committed by [Med-Eng] and its former management... (emphasis added)

[45] The Offeree Shareholders filed an Amended Statement of Defence (June 28, 2013) and AVC delivered a Reply (August 22, 2013). Five weeks later Growthworks obtained the *CCAA* Initial Order.

[46] On October 2, 2013, Master MacLeod set December 10 as the date for a privilege motion in the Ottawa Proceedings and advised that RSJ Hackland would hear a summary judgment motion by the Offeree Shareholders. Evidently the existence of the Initial Order was not disclosed at that case conference, and it appears that none of the counsel present at that case conference knew about it.

[47] In subsequent correspondence with Master MacLeod, counsel for the Offeree Shareholders, including Growthworks, took the position that his clients would not be delivering any motion materials in light of the stay of proceedings in the Initial Order until issues with Growthworks were sorted out in the *CCAA* proceeding.

[48] Paul Echenberg, the President of a firm advising the Offeree Shareholders in the Ottawa Proceedings, expressed the view in his November 24, 2013 affidavit that those proceedings were "nowhere ready for trial", an assessment that I accept as reasonably accurate. The evidence filed on these motions disclosed that production, discovery, refusals and privilege issues remain outstanding in the Ottawa Proceedings. That state of affairs was confirmed by the information provided by Master MacLeod in his March 17, 2014 email report to me, which I circulated to counsel:

> Ordinarily if such a trial is then adjourned because the timetable goes awry we will not provide a new fixed date until at least one of the parties is in a position to set the matter down. We have not reached that point. In fact there are motions contemplated which would make that unlikely and our current timetable has been put on hold due to the allegation in Toronto that everything about the Ottawa action is currently stayed.