

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

**B E T W E E N :**

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

**AND IN THE MATTER OF A PLAN  
OF COMPROMISE OR ARRANGEMENT OF  
GROWTHWORKS CANADIAN FUND LTD.**

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

March 30, 2017

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SUPERIOR COURT OF JUSTICE  
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**NINETEENTH REPORT OF  
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IN ITS CAPACITY AS MONITOR**

1. On October 1, 2013, GrowthWorks Canadian Fund Ltd. (the “**Fund**”) made an application under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”, a copy of which is attached hereto as **Appendix “A”**) was made by the Honourable Justice Newbould of the Ontario Superior Court (Commercial List) (the “**Court**”) granting, *inter alia*, a stay of proceedings against the Applicant until October 31, 2013, which stay of proceedings was thereafter extended until June 30, 2017 (the “**Stay of Proceedings**”), and appointing FTI Consulting Canada Inc. as monitor of the Fund (the “**Monitor**”). The proceedings commenced by the Fund under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

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

3. The Fund experienced liquidity issues because of, *inter alia*, an inability to access short-term financing as well as unfavourable market conditions impacting its ability to divest, at a profit, its relatively illiquid investments. As a result of these liquidity issues, the Fund was unable to meet its obligations as they became due.

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

5. On May 14, 2014, following a failed court-approved sale process in the CCAA Proceedings, this Court approved the execution of an Investment Advisor Agreement with Roseway Capital S.a.r.l, the Fund’s former sole secured creditor (“**Roseway**”), pursuant to which Roseway was retained by the Fund to provide investment management services to the Fund in relation to its Portfolio. Following payment to Roseway in full, the Fund terminated the Investment Advisor Agreement with Roseway and the Court, on June 30, 2016, approved the Fund entering into an Investment Advisor Agreement with Crimson Capital Inc.

6. Prior to the commencement of these CCAA Proceedings, the Fund’s Portfolio was managed by GrowthWorks WV Management Ltd. (the “**Former Manager**”), pursuant to a Management Agreement dated July 15, 2006 (“**Management Agreement**”). Just prior to the commencement of these proceedings, on September 30, 2013, the Fund terminated the Management Agreement as a result of a purported breach by the Former Manager of its obligations under the Management Agreement.

7. On January 9, 2014, this Court approved a claims procedure order (the “**Claims Procedure Order**”, a copy of which is attached hereto as **Appendix “C”**) to solicit and determine all claims against the Fund. Other than in respect to certain claims, including the claim of the Former Manager, under the Claims Procedure Order, claimants were required to submit their proof of claim with the Monitor by no later than 5:00pm EST on March 6, 2014 (the “**Claims Bar Date**”). Pursuant to the Claims Procedure Order, any claimant who did not file a proof of claim by the Claims Bar Date: (i) is forever barred from making or enforcing such claim, (ii) the claim is forever extinguished, barred, discharged and released as against

the Fund; and (iii) such claimant is not be entitled to any further notice of, or to participate in, as a claimant or a creditor, the CCAA Proceedings in respect of such claim.

8. Pursuant to the terms of the Claims Procedure Order, the Former Manager filed a statement of claim in the CCAA Proceedings in the approximate amount of \$18 million as a result of the termination of the Management Agreement by the Fund. The Fund in response served and filed a statement of defence and issued a counter claim in the amount of \$25 million. In addition, the Former Manager served a motion against the Fund in respect of a post filing claim in the approximate amount of \$500,000. The Fund and the Former Manager have in essence completed discovery and cross examinations and the litigation trial between the Fund and the Former Manager is anticipated to commence in July of 2017 (the “**Former Manager Litigation**”).

9. The Former Manager’s claim against the Fund represents the largest unsecured claim filed in the estate and, accordingly, this claim, along with the Fund’s counter claim will dictate the amount of recovery to unsecured creditors, if any, and to equity holders of the Fund.

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

10. The purpose of this nineteenth report of the Monitor is to provide the Court with the Monitor’s observations and comments with respect to the motion of:

- (a) Cornerstone Securities Canada Inc. (“**Cornerstone**”) for an order that Cornerstone be served with all materials that have been filed in respect to the Former Manager Litigation and continue to be served with any materials that are filed in respect thereof; and
- (b) the Fund for an order that Cornerstone be removed from the service list in the CCAA Proceedings and that Cornerstone has no standing in the litigation between the Fund and the Former Manager.

## **TERMS OF REFERENCE**

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

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

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

## **BACKGROUND TO CORNERSTONE**

14. As described in the Thirteenth Report of the Monitor dated February 26, 2015, on January 2, 2015, Mr. Gerry Fields of Cornerstone notified the Monitor and the other parties on the CCAA service list of a purported claim by Cornerstone against the Fund and numerous other parties. Since that date Mr. Fields has sent further correspondence to the Monitor, the Fund and the Service List, on a regular basis, demanding payment of his claim.

15. The Monitor understands that Mr. Fields asserts that Cornerstone is owed approximately \$604,478.75 by the Former Manager, Matrix Asset Management Inc., Growth Works Capital Ltd., each of the Seamark Entities, Seamark Asset Management (2013) Ltd., Marquest Asset Management Inc., R.C. Morris & Company Ltd. and each of their respective affiliates. The Monitor understands that Cornerstone is asserting that the Fund is also liable for the outstanding indebtedness of \$604,478.75 through the terms of an engagement letter and indemnity agreement (together, the "**Engagement and Indemnity Agreement**").

16. On February 17, 2015, the Fund appeared before the Court to deal with matters relating to the claim of the Former Manager. Mr. Fields attended this motion, without notice to the Court, the Monitor or the Fund, to seek an Order permitting Cornerstone to file a proof of claim in the claims process, notwithstanding the expiry of the Claims Bar Date. The Court

made an endorsement on February 17, 2015, a copy of which is attached hereto as **Appendix "D"**, permitting Mr. Fields to arrange a 9:30 hearing on a date convenient to the Monitor and the parties. Mr. Fields did not arrange the 9:30 hearing despite requests by the Fund and the Monitor to do so and Mr. Fields has to this date not submitted a proof of claim to the Monitor.

17. On March 3, 2015, Mr. Fields attended the motion brought by the Fund to approve a distribution on account of a settlement between the Fund and another claimant. At this hearing, counsel to the Fund and the Monitor explained to Mr. Fields that in order for the Fund to consent to the late filing of any proof of claim submitted by Cornerstone, the Monitor and the Fund would require some evidence of Cornerstone's claim, since, as noted above Mr. Fields had not submitted a proof of claim.

18. On March 17, 2015, Mr. Fields had three binders of materials (the "**Initial Materials**") couriered to the Monitor's counsel. Monitor's counsel reviewed the Initial Materials provided by Mr. Fields and was unable to locate, in the Initial Materials, any evidence of an indemnity or guarantee by the Fund for the unpaid fees of Cornerstone, or any other information that would support a claim by Cornerstone against the Fund. Accordingly on March 31, 2015, Monitor's counsel informed Mr. Fields that the Monitor was unable to recommend that the Fund agree to the late filing of Cornerstone's claim.

19. Counsel to the Monitor also requested that Mr. Fields identify the document in the Initial Materials by which Mr. Fields asserted that the Fund indemnified or guaranteed the fees of Cornerstone. Mr. Fields did not provide a response but rather sent an email on April 14, 2015, requesting times that the Fund and the Monitor could be available for a 9:30 hearing.

20. In response to Mr. Fields' request for times for a 9:30 hearing, counsel to the Fund, responded by email on April 14, 2015, a copy of which is attached as **Appendix "E"** hereto, and again reiterated to Mr. Fields that the Fund was prepared to consider the request of Cornerstone for an Order permitting the late filing of Cornerstone's claim once Mr. Fields provided the Fund and the Monitor with the documentation establishing the Fund's liability for Cornerstone's fees. Counsel to the Fund further advised that, in the absence of such

evidence supporting its claim, the Fund would not consent to an Order relieving it from the effect of the Claims Procedure Order. Mr. Fields did not respond to this request.

21. On May 1, 2015, counsel to the Monitor emailed Mr. Fields, a copy of which is attached hereto as **Appendix “F”** indicating that the Monitor would like to seek resolution of the issue with Cornerstone and accordingly proposed that Cornerstone produce the indemnity on which its claim is purported to be based. Mr. Fields did not respond.

22. On May 8, 2015, Mr. Fields couriered a binder of additional materials to counsel to the Fund and to counsel to the Monitor (the "**Second Materials**"). Counsel to the Fund reviewed the Second Materials and responded to Mr. Fields by email on May 13, 2015, a copy of which is attached as **Appendix “G”**. In the May 13th email, counsel to the Fund stated that the Fund would not consent to an order permitting the filing of a late claim by Cornerstone for the following reasons:

- (a) The key document being relied upon by Cornerstone, the engagement letter dated April 8, 2010, is signed by Matrix on behalf of it and its affiliates. On its face, the engagement letter was not executed on behalf of the Fund and was executed by David Levi only in his capacity as CEO of Matrix, with Matrix purporting to also bind affiliates of Matrix.
- (b) The Fund is not an affiliate of Matrix but rather was subject to a management contract.
- (c) There is nothing included in the Second Materials that supports Mr. Field's assertion that the Fund is bound by the engagement letter or should be responsible for any of Cornerstone's fees.

23. Counsel to the Monitor also reviewed the Second Materials provided by Mr. Fields and on May 13, 2015 informed Mr. Fields by email, a copy of which is attached hereto as **Appendix “H”**, that the Monitor also did not consent to an Order permitting Cornerstone to file a late claim. In its May 13th email, counsel to the Monitor indicated to Mr. Fields that it would also be available for a 9:30 hearing the week of May 18, 2015 to schedule a motion to determine whether Cornerstone should be entitled to file its late claim. Mr. Fields did not

respond to counsel's offer of availability for a 9:30 hearing and a 9:30 hearing was not scheduled.

24. Since the commencement of these CCAA proceedings Mr. Fields has sent regular notices to the service list demanding that the Fund make the payment allegedly owing to Cornerstone. Mr. Fields has not to date: (i) filed a proof of claim; or (ii) brought a motion to deal with the late filing of any proof of claim. The Monitor understands that Mr. Fields is a lawyer, however given that Mr. Fields is unrepresented, the Monitor did endeavour to work with Mr. Fields to determine whether in fact he did have a claim against the Fund. As the Monitor was not provided with any evidence of a proven claim against the Fund by Cornerstone and given that Cornerstone has not to date brought any motion to deal with its claim, there is little the Monitor can do at this point to assist Mr. Fields.

25. As Mr. Fields is on the CCAA service list in these proceedings, Mr. Fields has been served with materials filed by the Fund with respect to the CCAA proceedings with exception to the materials filed and served by the Fund and the Former Manager solely pertaining to the litigation between them. Those materials have only been served by the Fund and the Former Manager as between the parties and the Monitor. Accordingly, the service list, including Mr. Fields, has not been provided with materials concerning the Former Manager Litigation.

#### **RECENT EVENTS WITH CORNERSTONE**

26. On Friday March 17, 2017, Mr. Fields appeared before the Court in these CCAA proceedings on an ex parte basis seeking an order that Mr. Fields be served with the litigation materials between the Fund and the Former Manager. The Monitor, its counsel and the Fund and its counsel were not provided with any notice of this hearing, nor did Mr. Fields contact the Monitor prior to this hearing to request that he be provided with the litigation materials.

27. On March 23, 2017, counsel to the Monitor, the Fund, and counsel to the Former Manager attended a conference call to try to resolve any issues between them. During that call, the Monitor suggested that it would post on its website the material filed with the Court in respect of the Former Manager Litigation for the benefit of all stakeholders. At this time, Mr. Fields indicated that he was supportive of this resolution however the Fund expressed



concern as to the standing of Mr. Fields in the litigation and that it was concerned that Mr. Fields' intent was to appear during the trial and be disruptive.

28. The Monitor has expressly communicated to all parties its concern with the costs and necessity of this motions brought by the Fund and by Cornerstone given that the Monitor had agreed to post the litigation materials on the Monitor's website and provide notice on its website as to the dates of the Former Manager Litigation.

29. In an effort to avoid unnecessary costs of the hearing of this motion, on March 28, 2017, the Monitor proposed to Mr. Fields, counsel to the Former Manager and counsel to the Fund a solution to address all parties concerns. Attached hereto as **Appendix "I"** is the summary of terms and conditions proposed by the Monitor, including that: (i) the Fund would provide the Monitor with a USB of all of the filed litigation materials to date; (ii) the Monitor would post all of the litigation materials on the CCAA website; and (ii) Mr. Fields would refrain from involving himself in any way in the litigation between the Fund and the Former Manager and that Mr. Fields would refrain from sending demands to the service list for payment of his claim. Mr. Fields could however file a motion record in respect of any claim he may have on notice to the Monitor and the Fund.

30. Mr. Fields, by return email rejected the Monitor's proposal. A copy of Mr. Fields email is attached as **Appendix "J"**.

The Monitor respectfully submits to the Court this Nineteenth Report.

Dated this 30<sup>th</sup> day of March, 2017.

FTI Consulting Canada Inc.

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

A handwritten signature in black ink that reads "Paul Bishop". The signature is written in a cursive, flowing style.

Paul Bishop  
Senior Managing Director

# **APPENDIX A**

Court File No.: »

CV-13-10279-  
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

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

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



**INITIAL ORDER**

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

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

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

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to utilize a central cash management system (a "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or

application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all reasonable transition costs of the Manager (as defined below), and all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing management agreements, compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

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

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the

landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date except as provided in the Cash Flow Projection; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

### **RESTRUCTURING**

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA have the right to:

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

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

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

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

14. THIS COURT ORDERS that until and including October 31, 2013, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process



in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

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

#### **NO INTERFERENCE WITH RIGHTS**

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant or any right, renewal right, contract, agreement, licence or permit in favour

of or held by a Portfolio Company to the extent relevant to the Applicant, the Business, the Property or these proceedings, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

19. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

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

**CRITICAL SUPPLIERS**

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

to the extent this Court declares any Person

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

a critical Supplier as contemplated by Section 11.4 of the CCAA by subsequent order

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

22. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

(each, a "Critical Supplier"); 25

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

23. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

24. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for the indemnity provided in paragraph 23 of this Order. The Directors' Charge shall have the priority set out in paragraphs 36 and 38 herein.

25. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 23 of this Order.

## **APPOINTMENT OF MONITOR**

26. THIS COURT ORDERS that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

27. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its preparation of the Applicant's cash flow statements;
- (d) advise the Applicant in respect to the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property including the premises, the premises of the Manager to the extent Property of the Applicant is located on the Manager's premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order and all Persons, including the Applicant and the Manager, shall permit such full and complete access to such Property to the Monitor;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) establish one or more accounts to hold any proceeds of the disposition of the Portfolio Companies (the "**Proceeds Accounts**");

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

28. THIS COURT ORDERS that the Monitor shall not take possession of the Property with the exception of the Proceeds Accounts, and shall take no part whatsoever in the management or supervision of the management of the Business or the businesses of the Portfolio Companies and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

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

30. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the

"**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. THIS COURT ORDERS that that the Monitor shall provide to any creditor of the Applicant information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

32. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order (including, without limitation, with respect to administering the Proceeds Accounts for and on behalf of the Applicants), save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

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

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

34. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

35. THIS COURT ORDERS that the Monitor, counsel to the Monitor, CCC (as defined in the Ross Affidavit), and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 36 and 38 hereof.

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

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

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

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

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

37. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge and the Critical Suppliers' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.



38. THIS COURT ORDERS that each of the Charges (as constituted and defined herein) shall constitute a charge on the Property and the Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

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

40. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

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

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

#### **SERVICE AND NOTICE**

42. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in [newspapers specified by the Court] a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

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

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

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

## **GENERAL**

45. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

46. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, a Portfolio Company, the Business or the Property.

47. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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

49. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

50. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

  
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ENQUÊTE DE LA COUR À TORONTO  
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OCT 01 2013

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF GROWTHWORKS CANADIAN FUND LTD.

Court File No: CV-13-10279-0002

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

Proceeding commenced at Toronto

**INITIAL ORDER**

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Lawyers for the Applicant  
#12547919

# **APPENDIX B**

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

THE HONOURABLE MADAME ) TUESDAY, THE 29<sup>TH</sup>  
 )  
JUSTICE MESBUR ) DAY OF OCTOBER, 2013

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

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



**ORDER**

THIS MOTION, made by the Applicant, for an order extending the Stay Period (the "Stay Period") defined in paragraph 14 of the Initial Order of the Honourable Mr. Justice Newbould dated October 1, 2013 (the "Initial Order") until January 15, 2014, and amending and restating the Initial Order to, among other things, declare certain persons critical suppliers and permit the Applicant to provide an indemnity for certain Applicant-nominated directors of companies in the Applicants' investment portfolio and a related charge, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of C. Ian Ross sworn October 25, 2013 and the Exhibits thereto (the "Ross Affidavit") and the Second Report (the "Second Report") of FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "Monitor"), on being advised that Roseway Capital S.a.r.l. consents to the relief requested in this motion, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for Growthworks WV Management Ltd. (the "Manager), no one appearing for any other party although duly served as appears from the affidavit of service,

or ✓ "counsel for Roseway," see





**SCHEDULE "A" – AMENDED AND RESTATED INITIAL ORDER**

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

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

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

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

**AMENDED AND RESTATED INITIAL ORDER**

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

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

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

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to utilize a central cash management system (a "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or

application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all reasonable transition costs of the Manager (as defined below) pursuant to the terms of the Critical Transition Services Agreement (as defined below), and all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing management agreements, compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

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

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area

maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date except as provided in the Cash Flow Projection; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

#### **RESTRUCTURING**

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA have the right to:

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

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

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

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

14. THIS COURT ORDERS that until and including October 31, 2013, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process

in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

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

#### **NO INTERFERENCE WITH RIGHTS**

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant or any right, renewal right, contract, agreement, licence or permit in favour



of or held by a Portfolio Company to the extent relevant to the Applicant, the Business, the Property or these proceedings, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

19. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **CRITICAL SUPPLIERS**

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

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

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

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant, or against any current or future Applicant-nominated director of any of the Portfolio Companies (the "**Portfolio Company Directors**") with respect to any claim against the directors, officers or Portfolio Company Directors that arose before, on or after the date hereof and that relates, (i) in the case of the former, current or future directors or officers of the Applicant, to any obligations of the Applicant, or (ii) in the case of the Portfolio Company Directors, to any obligations of the Portfolio Companies, and in either case whereby the directors, officers or Portfolio Company Directors are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

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

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

25. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on

the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

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

27. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge or the Portfolio Company Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order, and the Portfolio Company Directors shall only be entitled to the benefit of the Portfolio Company Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified by the Applicant, to the extent an indemnity is provided by the Applicant accordance with paragraph 24 of this Order.

#### **APPOINTMENT OF MONITOR**

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

powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

29. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its preparation of the Applicant's cash flow statements;
- (d) advise the Applicant in respect to the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property including the premises, the premises of the Manager to the extent Property of the Applicant is located on the Manager's premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order and all Persons, including the Applicant and the Manager, shall permit such full and complete access to such Property to the Monitor;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

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

30. THIS COURT ORDERS that the Monitor shall not take possession of the Property with the exception of the Proceeds Accounts, and shall take no part whatsoever in the management or supervision of the management of the Business or the businesses of the Portfolio Companies and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

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

32. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other

contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. THIS COURT ORDERS that that the Monitor shall provide to any creditor of the Applicant information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

34. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order (including, without limitation, with respect to administering the Proceeds Accounts for and on behalf of the Applicants), save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

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

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

36. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. THIS COURT ORDERS that the Monitor, counsel to the Monitor, CCC (as defined in the Ross Affidavit), and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

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

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

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

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

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

and,

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



39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the Critical Suppliers' Charge and the Portfolio Company Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. THIS COURT ORDERS that each of the Charges (as constituted and defined herein) shall constitute a charge on the Property and that the entire Directors' Charge, the entire Administration Charge and the Critical Suppliers' Charge to a maximum amount of \$50,000 shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person. To the extent the Critical Suppliers' Charge exceeds \$50,000, such additional amount, together with the Portfolio Company Directors' Charge, shall rank *pari passu* with one another behind the Encumbrances.

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

42. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e)

any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) neither the payments made by the Applicant pursuant to this Order nor the granting of the Charges shall constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

#### **SERVICE AND NOTICE**

44. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

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

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

#### **GENERAL**

47. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, a Portfolio Company, the Business or the Property.

49. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative

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

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

51. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

52. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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**SCHEDULE "1" – CRITICAL TRANSITION SERVICES AGREEMENT**

**CRITICAL TRANSITION SERVICES AGREEMENT**

This agreement is made as of the 15th day of October, 2013.

BETWEEN

**GROWTHWORKS CANADIAN FUND LTD.**  
(the "Fund")

OF THE FIRST PART

and

**GROWTHWORKS WV MANAGEMENT LTD.**  
(the "Manager")

OF THE SECOND PART

**WHEREAS** the Fund and the Manager were parties to an amended and restated management agreement dated July 15, 2006 (the "**Management Agreement**") in relation to which the Fund delivered a termination notice on September 30, 2013 (the "**Notice**");

**AND WHEREAS** the Manager disputes the validity of the Notice;

**AND WHEREAS** sections 8.4, 8.5 and 8.6 of the Management Agreement (the "**Transition Provisions**") provide, among other things, that the Manager is to (i) deliver to the Fund all records, including electronic records or data in a form accessible to the Fund, of or relating to the affairs of the Fund in its custody, possession or control, and (ii) use reasonable commercial efforts to co-operate with the Fund and any successor manager to facilitate an orderly transition such that the Services (as defined in the Management Agreement) will be provided to the Fund by the successor without delay or compromise of service; and that the Fund will pay to the Manager all reasonable transfer, wind-down and transition costs incurred by or put to the Manager as a result of having to transition operations to a successor manager;

**AND WHEREAS** the Fund applied for and obtained an order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "**CCAA**") on October 1, 2013 (the "**Initial Order**"), which, among other things, appointed FTI Consulting Canada Inc. as the Court-appointed monitor (the "**Monitor**");

**AND WHEREAS** the Fund's application to have the Manager declared a critical supplier of transition services (the "**Critical Transition Services**") was adjourned pending discussions among the parties;

**AND WHEREAS**, without prejudice to the parties' respective rights under the Management Agreement, and/or the parties' claims as they relate to the Notice, the parties hereto have agreed on the scope of the Critical Transition Services to be provided as critical supplies under the Initial Order and the payments to be made by the Fund to the Manager in relation thereto;

**NOW THEREFORE** in consideration of the promises and the agreements herein contained, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties hereto), it is agreed as follows:

1. This agreement and the performance of the parties' obligations under this agreement, are without prejudice to claims that arose prior to the Notice and claims relating to the Notice and the Manager's conduct under the Management Agreement (the "**Pre-Filing Dispute**"). For greater clarity, nothing herein shall prevent the parties from exercising their set-off rights in any action, proceeding, litigation or claim regarding the Pre-Filing Dispute.
2. The Critical Transitional Services to be provided by the Manager to the Fund pursuant to the Management Agreement shall include the following:
  - (a) Assistance with the Fund's ongoing audit and valuation for fiscal 2013 as required by KPMG, which includes signing the management representation letter in favour of the auditor and assistance of certain employees of the Manager to complete and provide working papers to KPMG, answer questions, provide follow up information, and otherwise assist KPMG, as required.
  - (b) Providing to the Fund copies of any agreements, retainer letters or other paperwork, if any, documenting the relationship with any third party vendors used or retained by the Manager in relation to the services provided by the Manager to the Fund under the Management Agreement as well as the names and contact details for such third party vendors. In addition, with respect to the software provider, Just Systems, providing access to the data in a form that is accessible in their system.
  - (c) Attendance by the Manager's employees Tim Lee, Peter Clark, Diane Vaselenak and Pat Brady (collectively, the "**Nominee Directors**") at meetings in relation to the issue of the Fund's representation on boards of Portfolio Companies (as defined in the affidavit of Ian Ross, dated September 30, 2013) during which meetings the Nominee Directors will be expected to provide a verbal outline of the issues and relevant information relating to the Fund's interest in each of the Portfolio Companies.
  - (d) Providing information to the Fund based on reasonable requests made by the Fund.
  - (e) The Nominee Directors will resign from their respective positions on the boards of the Portfolio Companies by no later than October 31, 2013, unless such date is extended by mutual agreement.
3. The Fund will pay the Manager for the Critical Transition Services on the following basis:
  - (a) The Manager will provide estimates of its costs related to the Critical Transition Services to the Fund. The costs will be calculated as the sum of the time expected to be spent by each employee performing Critical Transitional Services at an hourly rate equal to the actual annual salary of the individual employee, plus benefits and other employment costs related to that person, divided by 1840 working hours per year.

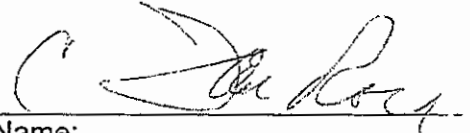
- (b) The Fund and the Monitor will review the cost estimates provided by the Manager in relation to the Critical Transition Services to determine if they are reasonable. The Fund acknowledges that the estimate provided by the Manager on October 11, 2013 was reviewed by the Monitor and is reasonable.
  - (c) The Fund will include payment of these costs in a revised cash flow projection, which will be adjusted as necessary to the extent the scope of the Critical Transition Services is modified.
  - (d) The Manager's employees will keep detailed timesheets with respect to the Critical Transition Services and the Manager will invoice the Fund weekly for the cost of these Critical Transition Services, which invoice will include copies of the detailed timesheets.
  - (e) The Monitor and Fund will review the invoices to ensure the services invoiced are consistent with the Critical Transition Services agreed upon, that the time spent is reasonable, and that the Critical Transition Services were performed by an appropriate person.
  - (f) The Fund will pay the Manager within two weeks of receiving an invoice, as set out above, provided the invoice meets the reasonability requirement in step (e). If it does not meet that requirement, the Fund and Manager will use best efforts to address the dispute about the invoice quickly, with the guidance and assistance from the Monitor and, if required, by the Court in the CCAA proceedings of the Fund.
  - (g) On or before October 29, 2013, the Fund shall obtain an order substantially in the form attached hereto as **Schedule '1'**.
4. This agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
5. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, and it shall not be necessary in making proof of this agreement to produce or account for more than one such counterpart. Transmission of a copy of an executed signature page of this agreement by any party hereto to each other party hereto by facsimile transmission or e-mail in pdf format, shall be as effective as delivery to the other parties hereto of a manually executed counterpart hereof.



**IN WITNESS WHEREOF** the parties have executed this Critical Transition Services Agreement as of the date set out at the commencement hereof.

**GROWTHWORKS CANADIAN FUND LTD.**

Per



Name:

Title: *PETERU CEO*


Per:

Name:

Title:

GROWTHWORKS WV MANAGEMENT LTD.

Per



Name:

*David Levi*

Title:

*President & CEO*

Per:

Name:

Title:

**SCHEDULE "1" - ORDER**

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

THE HONOURABLE ) TUESDAY, THE 29<sup>TH</sup>  
JUSTICE )  
DAY OF OCTOBER, 2013

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

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

**ORDER**

THIS MOTION, made by the Applicant, for an order extending the Stay Period (the "Stay Period") defined in paragraph 14 of the Initial Order of the Honourable Mr. Justice Newbould dated October 1, 2013 (the "Initial Order") until January 15, 2014, and amending and restating the Initial Order to, among other things, declare certain persons critical suppliers and permit the Applicant to provide an indemnity for certain Applicant-nominated directors of companies in the Applicants' investment portfolio and a related charge, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of C. Ian Ross sworn October 25, 2013 and the Exhibits thereto (the "Ross Affidavit") and the Second Report (the "Second Report") of FTI Consulting Canada Inc., in its capacity as Court-appointed monitor (the "Monitor"), [on being advised that Roseway Capital S.a.r.l. consents to the relief requested in this motion], and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for Growthworks WV Management Ltd. (the "Manager), no one appearing for any other party although duly served as appears from the affidavit of service,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the supporting materials is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

**STAY EXTENSION**

2. THIS COURT ORDERS that the Stay Period is hereby extended until and including January 15, 2014.

**MONITOR'S ACTIVITIES AND REPORT**

3. THIS COURT ORDERS that the First Report of the Monitor dated October 8, 2013 and the Second Report of the Monitor and the activities described therein are hereby approved.

**AMENDED AND RESTATED INITIAL ORDER**

4. THIS COURT ORDERS AND DECLARES that the Initial Order is hereby amended and restated in the form attached hereto as Schedule "A".

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**SCHEDULE "A" - AMENDED AND RESTATED INITIAL ORDER**

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

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

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

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

**AMENDED AND RESTATED INITIAL ORDER**

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

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

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

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to utilize a central cash management system (a "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or



application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all reasonable transition costs of the Manager (as defined below) pursuant to the terms of the Critical Transition Services Agreement (as defined below), and all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing management agreements, compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

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

8. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area

maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date except as provided in the Cash Flow Projection; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

### **RESTRUCTURING**

11. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA have the right to:

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

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

12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

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

14. THIS COURT ORDERS that until and including October 31, 2013, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process

in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

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

#### **NO INTERFERENCE WITH RIGHTS**

17. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant or any right, renewal right, contract, agreement, licence or permit in favour

of or held by a Portfolio Company to the extent relevant to the Applicant, the Business, the Property or these proceedings, except with the written consent of the Applicant and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

18. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

19. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **CRITICAL SUPPLIERS**

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

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

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

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

23. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant, or against any current or future Applicant-nominated director of any of the Portfolio Companies (the "**Portfolio Company Directors**") with respect to any claim against the directors, officers or Portfolio Company Directors that arose before, on or after the date hereof and that relates, (i) in the case of the former, current or future directors or officers of the Applicant, to any obligations of the Applicant, or (ii) in the case of the Portfolio Company Directors, to any obligations of the Portfolio Companies, and in either case whereby the directors, officers or Portfolio Company Directors are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

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

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

25. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on



the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for the indemnity provided in paragraph 24 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

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

27. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge or the Portfolio Company Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order, and the Portfolio Company Directors shall only be entitled to the benefit of the Portfolio Company Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified by the Applicant, to the extent an indemnity is provided by the Applicant accordance with paragraph 24 of this Order.

#### **APPOINTMENT OF MONITOR**

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

powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

29. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its preparation of the Applicant's cash flow statements;
- (d) advise the Applicant in respect to the Plan and any amendments to the Plan;
- (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property including the premises, the premises of the Manager to the extent Property of the Applicant is located on the Manager's premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order and all Persons, including the Applicant and the Manager, shall permit such full and complete access to such Property to the Monitor;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

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

30. THIS COURT ORDERS that the Monitor shall not take possession of the Property with the exception of the Proceeds Accounts, and shall take no part whatsoever in the management or supervision of the management of the Business or the businesses of the Portfolio Companies and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

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

32. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other

contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

33. THIS COURT ORDERS that that the Monitor shall provide to any creditor of the Applicant information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

34. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order (including, without limitation, with respect to administering the Proceeds Accounts for and on behalf of the Applicants), save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

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

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

36. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

37. THIS COURT ORDERS that the Monitor, counsel to the Monitor, CCC (as defined in the Ross Affidavit), and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

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

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

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

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

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

and,

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

39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the Critical Suppliers' Charge and the Portfolio Company Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. THIS COURT ORDERS that each of the Charges (as constituted and defined herein) shall constitute a charge on the Property and that the entire Directors' Charge, the entire Administration Charge and the Critical Suppliers' Charge to a maximum amount of \$50,000 shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person. To the extent the Critical Suppliers' Charge exceeds \$50,000, such additional amount, together with the Portfolio Company Directors' Charge, shall rank *pari passu* with one another behind the Encumbrances.

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

42. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e)

any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) neither the payments made by the Applicant pursuant to this Order nor the granting of the Charges shall constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

#### **SERVICE AND NOTICE**

44. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

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

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

#### **GENERAL**

47. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, a Portfolio Company, the Business or the Property.

49. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative



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

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

51. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

52. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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**SCHEDULE "1" – CRITICAL TRANSITION SERVICES AGREEMENT**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF GROWTHWORKS CANADIAN FUND LTD.

Court File No: CV-13-10279-OOCL

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

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

**McCARTHY TÉTRAULT LLP**  
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Law Society No. 48354R

Lawyers for the Applicant  
#12547919

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF GROWTHWORKS CANADIAN FUND LTD.

Court File No: CV-13-10279-OOCL

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

Proceeding commenced at Toronto

**ORDER  
(STAY EXTENSION AND AMENDING AND  
RESTATING INITIAL ORDER)**

**McCARTHY TÉTRAULT LLP**  
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Law Society No. 48354R

Lawyers for the Applicant  
#12883346

# **APPENDIX C**

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

THE HONOURABLE MR. ) THURSDAY, THE 9<sup>TH</sup>  
JUSTICE T. MCEWEN )

JUSTICE MCEWEN ) DAY OF JANUARY, 2014

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.



**CLAIMS PROCEDURE ORDER**

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the "**Applicant**") for an order establishing a claims procedure to identify, determine and resolve claims of creditors of the Applicant, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of C. Ian Ross sworn on January 6, 2014, and the Fifth Report (the "**Fifth Report**") of FTI Consulting Canada Inc., in its capacity as monitor of the Applicant (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, the Monitor, Roseway Capital S.a.r.l. ("**Roseway**") and GrowthWorksWV Management Ltd. (the "**Manager**"), no one appearing for any other party although duly served as appears from the affidavit of service.

**SERVICE**

1. THIS COURT ORDERS that the time for service of this Motion and the Fifth Report is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

## DEFINITIONS AND INTERPRETATION

2. THIS COURT ORDERS that, for the purposes of this Order establishing a claims process for the Creditors (as defined herein) of the Applicant (and in addition to terms defined elsewhere herein), the following terms shall have the following meanings ascribed thereto:

“**Administration Charge**” has the meaning given to that term in paragraph 37 of the Initial Order.

“**AGTL Shareholders**” means the plaintiffs in the Supreme Court of Nova Scotia action, Court File No. SN296202, against the Applicant and certain other defendants.

“**Allen-Vanguard**” means Allen-Vanguard Corporation.

“**Allen-Vanguard Action**” means the proceedings in Court File No. 08-CV-43544.

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

“**Business Day**” means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario.

“**CCAA**” means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C36, as amended.

“**CCAA Proceedings**” means the proceedings commenced by the Applicant in the Court at Toronto under Court File No. CV-13-10279-00CL.

“**CCAA Service List**” means the service list in the CCAA Proceedings posted on the Monitor's Website, as amended from time to time.

“**Claim**” means any right or claim of any Person, other than an Excluded Claim, but including an Equity Claim, that may be asserted or made in whole or in part against the Applicant, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by

reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person (including Directors and Officers) to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Claims Bar Date, (B) relates to a time period prior to the Claims Bar Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA had the Applicant become bankrupt on the Claims Bar Date.

**“Claimant”** means any Person having a Claim, including a D&O Indemnity Claim, or a D&O Claim and includes the permitted transferee or assignee of a Claim, a D&O Indemnity Claim or a D&O Claim or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through any such Person.

**“Claimants’ Guide to Completing the D&O Proof of Claim”** means the guide to completing the D&O Proof of Claim form, in substantially the form attached as Schedule “C-2” hereto.

**“Claimants’ Guide to Completing the Proof of Claim”** means the guide to completing the Proof of Claim form, in substantially the form attached as Schedule “B-2” hereto.

**“Claims Bar Date”** means March 6, 2014.

**“Court”** means the Ontario Superior Court of Justice (Commercial List).

**“Creditor”** means any Person having a Claim, D&O Claim and/or a D&O Indemnity Claim and includes, without limitation, the transferee or assignee of a Claim, D&O Claim or D&O



Indemnity Claim transferred and recognized as a Creditor in accordance with paragraph 55 hereof or a trustee, executor, liquidator, receiver, receiver and manager or other Person acting on behalf of or through such Person.

**“Creditors’ Meeting”** means any meeting of creditors called for the purpose of considering and/or voting in respect of any Plan, if one is filed, to be scheduled pursuant to further order of the Court.

**“Director”** means any natural person who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a) a director or *de facto* director of the Applicant or b) a Portfolio Company Director.

**“Directors’ Charge”** has the meaning given to that term in paragraph 25 of the Initial Order.

**“Dispute Notice”** means a written notice to the Monitor, in substantially the form attached as Appendix “1” to Schedule “E” hereto, delivered to the Monitor by a Person who has received a Notice of Revision or Disallowance, of its intention to dispute such Notice of Revision or Disallowance.

**“D&O Claim”** means (i) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers that relates to a Claim for which such Directors or Officers are by law liable to pay in their capacity as Directors or Officers, or (ii) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers, in that capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof, is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal,

equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity from any such Directors or Officers or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof (A) is based in whole or in part on facts prior to the Claims Bar Date, or (B) relates to a time period prior to the Claims Bar Date, but not including an Excluded Claim.

**“D&O Indemnity Claim”** means any existing or future right of any Director or Officer against the Applicant, which arose or arises as a result of any Person filing a D&O Proof of Claim in respect of such Director or Officer for which such Director or Officer is entitled to be indemnified by the Applicant.

**“D&O Indemnity Claims Bar Date”** has the meaning set out in paragraph 19 hereof.

**“D&O Indemnity Proof of Claim”** means the indemnity proof of claim in substantially the form attached as Schedule “D” hereto to be completed and filed by a Director or Officer setting forth its purported D&O Indemnity Claim and which shall include all supporting documents in respect of such D&O Indemnity Claim.

**“D&O Proof of Claim”** means the proof of claim, in substantially the form attached as Schedule “C” hereto, to be completed and filed by a Person setting forth its D&O Claim and which shall include all supporting documentation in respect of such D&O Claim.

**“Equity Claim”** has the meaning set forth in Section 2(1) of the CCAA.

**“Excluded Claim”** means:

- (i) any Claim entitled to the benefit of the Administration Charge;
- (ii) the Claims of Roseway pursuant to the Participation Agreement dated May 28, 2010, including the disputed portion of such Claims, which shall be determined separately in these CCAA Proceedings; and,

(iii) any Post-Filing Claims.

“**Filing Date**” means October 1, 2013.

“**Government Authority**” means a federal, provincial, state, territorial, municipal or other government or government department, agency or authority (including a court of law) having jurisdiction over the Applicant.

“**Initial Order**” means the Initial order of the Honourable Justice Newbould made October 1, 2013 in the CCAA Proceedings, as amended and restated on October 29, 2013 and as may be amended, extended, restated or varied from time to time.

“**Manager Claim**” has the meaning ascribed thereto in paragraph 49.

“**Monitor’s Website**” means <http://cfcanada.fticonsulting.com/gcfl/default.htm>.

“**Notice of Revision or Disallowance**” means a notice, in substantially the form attached as Schedule “E” hereto, advising a Claimant that the Monitor has revised or disallowed all or part of a Claim, D&O Claim or D&O Indemnity Claim submitted by such Claimant pursuant to this Order.

“**Notice to Claimants**” means the notice to Claimants for publication in substantially the form attached as Schedule “A” hereto.

“**Officer**” means any natural person who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of the Applicant.

“**Person**” is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Government Authority or any agency, regulatory body, officer or instrumentality 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.

**“Plan”** means any proposed plan(s) of compromise or arrangement to be filed by the Applicant pursuant to the CCAA as amended, supplemented or restated from time to time in accordance with the terms thereof.

**“Portfolio Company Directors”** has the meaning given to that term in paragraph 23 of the Initial Order.

**“Portfolio Company Directors’ Charge”** has the meaning given to that term in paragraph 26 of the Initial Order.

**“Post-Filing Claims”** means any claims against the Applicant that arose from the provision of authorized goods and services provided or otherwise incurred on or after the Filing Date in the ordinary course of business.

**“Proof of Claim”** means the proof of claim in substantially the form attached as Schedule “B” hereto to be completed and filed by a Person setting forth its purported Claim and which shall include all supporting documentation in respect of such purported Claim.

**“Proof of Claim Document Package”** means a document package that includes a copy of the Notice to Claimants, the Proof of Claim form, the D&O Proof of Claim form, the Claimants’ Guide to Completing the Proof of Claim form, the Claimants’ Guide to Completing the D&O Proof of Claim form, and such other materials as the Monitor, in consultation with the Applicant, may consider appropriate or desirable.

**“Proven Claim”** means each Claim, D&O Claim or D&O Indemnity Claim that has been proven in accordance with this Order.

3. THIS COURT ORDERS that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. EST on such Business Day unless otherwise indicated herein.

4. THIS COURT ORDERS that all references to the word “including” shall mean “including without limitation”, that all references to the singular herein include the plural, the plural include the singular, and that any gender includes all genders.

## GENERAL PROVISIONS

5. THIS COURT ORDERS that the Monitor, in consultation with Applicant, is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and the time in which they are submitted, and may, where it is satisfied that a Claim, a D&O Claim or a D&O Indemnity Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of completion, execution and time of delivery of such forms. Further, the Monitor may request any further documentation from a Person that the Monitor, in consultation with the Applicant, may require in order to enable it to determine the validity of a Claim, a D&O Claim or a D&O Indemnity Claim.

6. THIS COURT ORDERS that if any purported Claim, D&O Claim or D&O Indemnity Claim arose in a currency other than Canadian dollars, then the Person making such Claim, D&O Claim or D&O Indemnity Claim shall complete its Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim, as applicable, indicating the amount of the purported Claim, D&O Claim or D&O Indemnity Claim in such currency, rather than in Canadian dollars or any other currency.

7. THIS COURT ORDERS that a Person making a Claim, D&O Claim or D&O Indemnity Claim shall complete its Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim, as applicable, indicating the amount of the Claim, D&O Claim or D&O Indemnity Claim, including interest calculated to the Filing Date.

8. THIS COURT ORDERS that the form and substance of each of the Notice to Claimants, Proof of Claim, Claimants' Guide to Completing the Proof of Claim, D&O Proof of Claim, Claimants' Guide to Completing the D&O Proof of Claim, D&O Indemnity Proof of Claim, Notice of Revision or Disallowance and the Dispute Notice attached as Appendix "1" thereto, substantially in the forms attached as Schedules "A", "B", "B-2", "C", "C-2", "D" and "E", respectively, to this Order are hereby approved. Notwithstanding the foregoing, the Monitor, in consultation with the Applicant, may from time to time make non-substantive changes to such forms as the Monitor, in consultation with the Applicant, considers necessary or advisable.

9. THIS COURT ORDERS that copies of all forms delivered by a Creditor or the Monitor hereunder, as applicable, shall be maintained by the Monitor and, subject to further order of the Court, the relevant Creditor will be entitled to have access thereto by appointment during normal business hours on written request to the Monitor.

#### **MONITOR'S ROLE**

10. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

11. THIS COURT ORDERS that (i) in carrying out the terms of this Order, the Monitor shall have all of the protections given to it by the CCAA, the Initial Order, other orders in the CCAA Proceedings, and this Order, or as an officer of the Court, including the stay of proceedings in its favour, (ii) the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, (iii) the Monitor shall be entitled to rely on the books and records of the Applicant and any information provided by the Applicant, the Directors and Officers and any Claimant, all without independent investigation, and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

#### **NOTICE TO CLAIMANTS, DIRECTORS AND OFFICERS**

12. THIS COURT ORDERS that:

- (a) the Monitor shall, no later than two (2) Business Days following the making of this Order, post a copy of the Proof of Claim Document Package on the Monitor's Website;
- (b) the Monitor shall, no later than seven (7) Business Days following the making of this Order, cause the Notice to Claimants to be published once in The Globe and Mail newspaper (National Edition) and any other newspaper or journals as the Monitor, in consultation with the Applicant, considers appropriate, if any;

- (c) the Monitor shall, provided such request is received in writing by the Monitor prior to the Claims Bar Date, deliver as soon as reasonably possible following receipt of a request therefor, a copy of the Proof of Claim Document Package to any Person requesting such material; and
- (d) the Monitor shall send to any Director or Officer named in a D&O Proof of Claim received on or before the Claims Bar Date a copy of such D&O Proof of Claim, including copies of any documentation submitted to the Monitor by the D&O Claimant, as soon as practicable.

13. THIS COURT ORDERS that within seven (7) Business Days following the making of this Order, the Monitor shall send a Proof of Claim Document Package to all known Creditors, including the Manager and the AGTL Shareholders, other than Allen-Vanguard, in accordance with the Applicant's books and records.

14. THIS COURT ORDERS that, except as otherwise set out in this Order or any other orders of the Court, neither the Monitor nor the Applicant is under any obligation to send or provide notice to any Person holding a Claim, a D&O Claim or a D&O Indemnity Claim, and, without limitation, neither the Monitor nor the Applicant shall have any obligation to send or provide notice to any Person having a security interest in a Claim, D&O Claim or D&O Indemnity Claim (including the holder of a security interest created by way of a pledge or a security interest created by way of an assignment or transfer of a Claim, D&O Claim or D&O Indemnity Claim), and all Persons shall be bound by any notices published pursuant to paragraphs 12(a) and 12(b) of this Order regardless of whether or not they received actual notice, and any steps taken in respect of any Claim, D&O Claim or D&O Indemnity Claim in accordance with this Order.

15. THIS COURT ORDERS that the delivery of a Proof of Claim, D&O Proof of Claim, or D&O Indemnity Proof of Claim by the Monitor to a Person shall not constitute an admission by the Applicant or the Monitor of any liability of the Applicant or any Director or Officer to any Person.

## **CLAIMS BAR DATE**

### *Claims and D&O Claims*

16. THIS COURT ORDERS that Proofs of Claim and D&O Proofs of Claim shall be filed with the Monitor on or before the Claims Bar Date. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed in respect of every Claim or D&O Claim, regardless of whether or not a legal proceeding in respect of a Claim or D&O Claim has been previously commenced.

17. THIS COURT ORDERS that, in respect of any Claim, any Person that does not file a Proof of Claim as provided for herein such that the Proof of Claim is received by the Monitor on or before the Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such Claim against the Applicant and/or the Property (as defined in the Initial Order) and all such Claims shall be forever extinguished, barred, discharged and released as against the Applicant and the Property, and the Applicant shall not have any liability whatsoever in respect thereof; (b) shall be and is hereby forever barred from making or enforcing such Claim as against any other Person who could claim contribution or indemnity from the Applicant and/or against the Property; (c) shall not be entitled to vote such Claim at any Creditors' Meeting in respect of any Plan or to receive any distribution thereunder in respect of such Claim; and (d) shall not be entitled to any further notice of, and shall not be entitled to participate as a Claimant or Creditor in, the CCAA Proceedings in respect of such Claim.

18. THIS COURT ORDERS that, in respect of any D&O Claim, any Person that does not file a D&O Proof of Claim as provided for herein such that the D&O Proof of Claim is received by the Monitor on or before the Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing such D&O Claim against any Director or Officer or the insurers of such Director or Officer, and all such D&O Claims shall be forever extinguished, barred, discharged and released as against the Directors and Officers and the Property and the Directors and Officers shall not have any liability whatsoever in respect thereof; (b) shall be and is hereby forever barred from making or enforcing such D&O Claim as against any other Person who could claim contribution or indemnity from any Director or Officer and/or against the Property; (c) shall not be entitled to receive any distribution in respect of such D&O Claim; and (d) shall



not be entitled to any further notice of, and shall not be entitled to participate as a Claimant or Creditor in, the CCAA Proceedings in respect of such D&O Claim.

*D&O Indemnity Claims*

19. THIS COURT ORDERS that any Director or Officer wishing to assert a D&O Indemnity Claim shall deliver a D&O Indemnity Proof of Claim to the Monitor in accordance with paragraph 59 hereof so that it is received by no later than fifteen (15) Business Days after the date of deemed receipt of the D&O Proof of Claim pursuant to paragraph 58 hereof by such Director or Officer (with respect to each D&O Indemnity Claim, the “**D&O Indemnity Claims Bar Date**”).

20. THIS COURT ORDERS that, in respect of any D&O Indemnity Claim, any Director or Officer that does not file a D&O Indemnity Proof of Claim as provided for herein such that the D&O Indemnity Proof of Claim is received by the Monitor on or before the applicable D&O Indemnity Claims Bar Date: (a) shall be and is hereby forever barred from making or enforcing such D&O Indemnity Claim against the Applicant, and such D&O Indemnity Claim shall be forever extinguished, barred, discharged and released as against the Applicant and the Property and the Applicant shall not have any liability whatsoever in respect thereof; (b) shall be and is hereby forever barred from making or enforcing such D&O Indemnity Claim as against any other Person who could claim contribution or indemnity from the Applicant and/or against the Property; (c) shall not be entitled to vote such D&O Indemnity Claim at any Creditors’ Meeting or to receive any distribution in respect of such D&O Indemnity Claim; and (d) shall not be entitled to any further notice of, and shall not be entitled to participate as a Claimant or Creditor in, the CCAA Proceedings in respect of such D&O Indemnity Claim.

*Excluded Claims*

21. THIS COURT ORDERS that Persons with Excluded Claims shall not be required to file a Proof of Claim in this process in respect of such Excluded Claims, unless required to do so by further order of the Court.

### **PROOFS OF CLAIM**

22. THIS COURT ORDERS that each Person shall include any and all Claims it asserts against the Applicant in a single Proof of Claim.

23. THIS COURT ORDERS that each Person shall include any and all D&O Claims it asserts against one or more Directors or Officers in a single D&O Proof of Claim.

24. THIS COURT ORDERS that each Person shall include any and all D&O Indemnity Claims it asserts against the Applicant in a single D&O Indemnity Proof of Claim.

25. THIS COURT ORDERS that if a Person submits a Proof of Claim and a D&O Proof of Claim in relation to the same matter, then that Person shall cross-reference the D&O Proof of Claim in the Proof of Claim and the Proof of Claim in the D&O Proof of Claim.

### **REVIEW OF PROOFS OF CLAIM & D&O PROOFS OF CLAIM**

26. THIS COURT ORDERS that the Monitor, subject to the terms of this Order, shall review all Proofs of Claim and D&O Proofs of Claim filed, consult with the Applicant with respect thereto, and at any time:

- (a) may request additional information from a Claimant;
- (b) may request that a Claimant file a revised Proof of Claim or D&O Proof of Claim, as applicable;
- (c) (i) with the consent of the Applicant and any Person whose liability may be affected or (ii) with Court approval in a further order of the Court, may resolve and settle any issue or Claim arising in a Proof of Claim or D&O Proof of Claim or in respect of a Claim or D&O Claim and/or accept the Claim in a Proof of Claim or D&O Proof of Claim; and

- (d) may, in consultation with the Applicant with respect to the Proofs of Claim and the Directors and Officers named in the applicable D&O Proof of Claim with respect to the D&O Proofs of Claim, as applicable, revise or disallow (in whole or in part) any Claim or D&O Claim.

27. THIS COURT ORDERS that where a Claim or D&O Claim has been accepted by the Monitor in accordance with this Order such Claim or D&O Claim, as applicable, shall constitute such Claimant's Proven Claim.

28. THIS COURT ORDERS that where a Claim or D&O Claim is revised or disallowed (in whole or in part), the Monitor (or the Applicant, where applicable) shall deliver to the Claimant a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

29. THIS COURT ORDERS that where a Claim or D&O Claim has been revised or disallowed (in whole or in part), the revised or disallowed Claim or D&O Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 38 to 41 (or, with respect to the Allen-Vanguard Claim and Manager Claim (each as defined below), paragraphs 42 to 46 or 47 to 54, respectively) hereof or as otherwise ordered by the Court.

30. THIS COURT ORDERS that the failure by the Monitor (or the Applicant, where applicable) to send a Notice of Revision and Disallowance shall not result in any Claim or D&O Claim being accepted as a Proven Claim or being deemed to be accepted as a Proven Claim.

#### **REVIEW OF D&O INDEMNITY PROOFS OF CLAIM**

31. THIS COURT ORDERS that the Monitor, subject to the terms of this Order, shall review all D&O Indemnity Proofs of Claim filed, and at any time:

- (a) may request additional information from a Director or Officer;
- (b) may request that a Director or Officer file a revised D&O Indemnity Proof of Claim;
- (c) may attempt to resolve and settle any issue or Claim arising in a D&O Indemnity Proof of Claim or in respect of a D&O Indemnity Claim;

- (d) may accept (in whole or in part) any D&O Indemnity Claim; and
- (e) may, by notice in writing, revise or disallow (in whole or in part) any D&O Indemnity Claim.

32. THIS COURT ORDERS that where a D&O Indemnity Claim has been accepted by the Monitor in accordance with this Order such D&O Indemnity Claim shall constitute such Director or Officer's Proven Claim.

33. THIS COURT ORDERS that where a D&O Indemnity Claim is revised or disallowed (in whole or in part), the Monitor shall deliver to the Director or Officer a Notice of Revision or Disallowance, attaching the form of Dispute Notice.

34. THIS COURT ORDERS that where a D&O Indemnity Claim has been revised or disallowed (in whole or in part), the revised or disallowed D&O Indemnity Claim (or revised or disallowed portion thereof) shall not be a Proven Claim until determined otherwise in accordance with the procedures set out in paragraphs 38 to 41 (or, with respect to the Allen-Vanguard Claim and Manager Claim (each as defined below), paragraphs 42 to 46 or 47 to 54, respectively) hereof or as otherwise ordered by the Court.

35. THIS COURT ORDERS that the failure by the Monitor to send a Notice of Revision and Disallowance shall not result in any D&O Indemnity Claim being accepted as a Proven Claim or being deemed to be accepted as a Proven Claim.

#### **DISPUTE NOTICE**

36. THIS COURT ORDERS that a Person who has received a Notice of Revision or Disallowance in respect of a Claim, a D&O Claim or a D&O Indemnity Claim and who intends to dispute such Notice of Revision or Disallowance shall file a Dispute Notice with the Monitor not later than the fifteenth (15<sup>th</sup>) Business Day following deemed receipt of the Notice of Revision or Disallowance pursuant to paragraph 58 of this Order. The filing of a Dispute Notice with the Monitor in accordance with this paragraph shall result in such Claim, D&O Claim or D&O Indemnity Claim being determined as set out in paragraphs 38 to 41 (or, with respect to the

Allen-Vanguard Claim and Manager Claim (each as defined below), paragraphs 42 to 46 or 47 to 54, respectively) of this Order.

37. THIS COURT ORDERS that where a Claimant that receives a Notice of Revision or Disallowance fails to file a Dispute Notice with the Monitor within the requisite time period provided in this Order, the amount of such Claimant's Claim, D&O Claim or D&O Indemnity Claim, as applicable, shall be deemed to be as set out in the Notice of Revision or Disallowance and such amount, if any, shall constitute such Claimant's Proven Claim (or, if the Claim, D&O Claim or D&O Indemnity Claim, as applicable, is disallowed in full in the Notice of Revision or Disallowance, the applicable Claimant shall be deemed to accept such disallowance and the Claim, D&O Claim or D&O Indemnity Claim, as applicable, shall be deemed to be fully disallowed), and the balance of such Claimant's Claim, D&O Claim, or D&O Indemnity Claim, as applicable, if any, shall be forever extinguished, barred, discharged and released as against the Applicant, the Property and the Directors and Officers, as applicable, and the Property and the Applicant and/or Directors and Officers, as applicable, shall not have any liability whatsoever in respect thereof.

#### **RESOLUTION OF CLAIMS, D&O CLAIMS AND D&O INDEMNITY CLAIMS**

38. THIS COURT ORDERS that, as soon as practicable after the delivery of the Dispute Notice to the Monitor, the Monitor shall attempt to resolve and settle the Claim or D&O Claim with the Claimant, subject to the terms of this Order.

39. THIS COURT ORDERS that as soon as practicable after the delivery of the Dispute Notice in respect of a D&O Indemnity Claim to the Monitor, the Monitor shall attempt to resolve and settle the purported D&O Indemnity Claim with the applicable Director or Officer.

40. THIS COURT ORDERS that in the event that a dispute raised in a Dispute Notice is not settled within a time period or in a manner satisfactory to the Monitor in consultation with the Applicant and the applicable Claimant, the Monitor shall seek directions from the Court concerning an appropriate process for resolving the dispute.

41. THIS COURT ORDERS that any Claims and related D&O Claims and/or D&O Indemnity Claims shall be determined at the same time and in the same proceeding and any

claims of the Applicant against a purported Claimant may, at the option of the Applicant, be determined at the same time and in the same proceeding as the claims by the purported Claimant against the Applicant.

#### **ALLEN-VANGUARD CLAIM**

42. THIS COURT ORDERS that, notwithstanding anything in this Order, Allen-Vanguard shall be deemed to have submitted a Proof of Claim in the amount of \$650,000,000 of which it states \$40,000,000 shall be distributed to Allen-Vanguard in accordance with the terms of the Escrow Agreement (as defined in the Statement of Claim of Allen-Vanguard filed in the Allen-Vanguard Action (the “**Allen-Vanguard Statement of Claim**”)) plus pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended and costs on a substantial indemnity basis, in reliance on the grounds set out in the Allen-Vanguard Statement of Claim and Reply of Allen-Vanguard in the Allen-Vanguard Action (the “**Allen-Vanguard Claim**”).

43. THIS COURT ORDERS that the Monitor shall be deemed to have delivered a Notice of Revision and Disallowance disallowing the Allen-Vanguard Claim in its entirety in reliance on the grounds set out in the Statement of Defence of the “Offeree Shareholders” in the Allen-Vanguard Action and that Allen-Vanguard shall be deemed to have submitted a Dispute Notice disputing such disallowance in its entirety.

44. THIS COURT ORDERS that, for greater clarity, nothing contained in this Order shall prejudice Allen-Vanguard’s rights in respect of the Allen-Vanguard Action (Court File No. 08-CV-43544), related actions involving Allen-Vanguard (Court File Nos. 08-CV-43188 and 08-CV-41899), or the pending motion of Allen-Vanguard in these proceedings, now scheduled for February 11, 2014.

45. THIS COURT ORDERS that, for greater clarity, nothing contained in this Order shall prejudice the Applicant’s or the Monitor’s rights to object to or otherwise oppose, on any and all bases, the validity and/or amount of the Claims asserted by Allen-Vanguard.

46. THIS COURT ORDERS that, notwithstanding any provision of this Order (except paragraphs 42 to 45, inclusive), the procedure for determining the Allen-Vanguard Claim shall

not be determined until after the hearing or other determination of the pending motion of Allen-Vanguard and cross-motion of the Applicant, now scheduled for February 11, 2014, unless otherwise agreed by the Applicant, the Monitor and Allen-Vanguard, or by further Order of the Court.

## MANAGER CLAIM

47. THIS COURT ORDERS that notwithstanding any other term of this Order, the Manager shall, for purposes only of crystalizing its maximum damages claim as against the Applicant, be deemed to have submitted a Proof of Claim in the amount of \$18,000,000 pursuant to the letter of Dentons LLP dated and delivered to the Applicant's counsel on November 26, 2013 (the "**Manager's Proof of Claim**").

48. Notwithstanding paragraph 47 and any other term of this Order, the Manager Claim (as defined below) shall be determined in accordance with the procedure set out in paragraphs 49 to 54. For greater certainty, neither the deemed submission of the Manager's Proof of Claim nor any other term of this Order shall operate or be deemed in any way to prejudice the Manager's right to have the Manager Claim determined on the basis of the record and in accordance with such procedure.

49. THIS COURT ORDERS that, in addition of the Manager Proof of Claim, the Manager may deliver a Statement of Claim setting out its claim against the Applicant (collectively with the Manager's Proof of Claim the "**Manager Claim**"), which Statement of Claim shall comply with the rules of pleading in the *Rules of Civil Procedure*(Ontario) (the "**Rules of Pleading**"). The Manager Claim, if any, shall be delivered to the Applicant and the Monitor on or before the Claim Bar Date.

50. THIS COURT ORDERS that, notwithstanding any provision of this Order, the Applicant, in consultation with the Monitor, may revise or disallow the Manager Claim (in whole or in part) and dispute any allegation contained in the Manager Claim, if any, by delivering to the Manager a Notice of Revision or Disallowance in accordance with the terms of this Order, which shall attach a Statement of Defence and Counterclaim setting out the basis for

the revision or disallowance and any counterclaims against the Manager, which Statement of Defence and Counterclaim shall comply with the Rules of Pleading.

51. THIS COURT ORDERS that, to the extent the Manager intends to dispute the Notice of Revision or Disallowance (including any allegations contained in the attached Statement of Defence and Counterclaim), the Manager shall deliver a Notice of Dispute in accordance with the terms of this Order except that it shall have 30 days to file such Notice of Dispute with the Monitor, and shall attach a Reply and Defence to Counterclaim, which shall comply with the Rules of Pleading.

52. THIS COURT ORDERS that, in the discretion of the Applicant, in consultation with the Monitor, the Applicant may deliver to the Manager and the Monitor a Reply to Defence to Counterclaim, which shall comply with the Rules of Pleading.

53. THIS COURT ORDERS that if a dispute in relation to the Manager's Claim and any counterclaim by the Applicant (the "**Manager Dispute**") is not settled within a time period satisfactory to the Monitor in consultation with the Applicant and the Manager (after delivery of the pleadings described in paragraphs 48 to 52) or in a manner satisfactory to the Monitor in consultation with the Applicant and the Manager, then the Applicant, the Manager and the Monitor shall attend before a judge of the Court to set a timetable for all procedural steps necessary for the hearing of the Manager Dispute, which shall include (unless this Court orders otherwise) discoveries, delivery of expert reports (if any), mediation, and a hearing (which shall be before a judge of the Court), among other possible steps.

54. THIS COURT ORDERS that, the pleadings described in paragraphs 48 to 52 shall not be issued by the Court. The pleadings shall form part of the record in the event a Manager Dispute occurs.

#### **NOTICE OF TRANSFEREES**

55. THIS COURT ORDERS that neither the Monitor nor the Applicant shall be obligated to send notice to or otherwise deal with a transferee or assignee of a Claim, D&O Claim or D&O Indemnity Claim as the Claimant in respect thereof unless and until (i) actual written notice of the permitted transfer or assignment, together with satisfactory evidence of such transfer or



assignment, shall have been received by the Monitor, and (ii) the Monitor shall have acknowledged in writing such transfer or assignment, and thereafter such transferee or assignee shall for all purposes hereof constitute the "Claimant" in respect of such Claim, D&O Claim or D&O Indemnity Claim. Any such transferee or assignee of a Claim, D&O Claim or D&O Indemnity Claim shall be bound by all notices given or steps taken in respect of such Claim, D&O Claim or D&O Indemnity Claim in accordance with this Order prior to the written acknowledgement by the Monitor of such transfer or assignment.

56. THIS COURT ORDERS that the transferee or assignee of any Claim, D&O Claim or D&O Indemnity Claim (i) shall take the Claim, D&O Claim or D&O Indemnity Claim subject to the rights and obligations of the transferor/assignor of the Claim, D&O Claim or D&O Indemnity Claim, and subject to the rights of the Applicant and any Director or Officer against any such transferor or assignor, including any rights of set-off which the Applicant, Director, or Officer had against such transferor or assignor, and (ii) cannot use any transferred or assigned Claim, D&O Claim or D&O Indemnity Claim to reduce any amount owing by the transferee or assignee to the Applicant, Director or Officer, whether by way of set off, application, merger, consolidation or otherwise.

## **DIRECTIONS**

57. THIS COURT ORDERS that the Monitor, the Applicant and any Person (but only to the extent such Person may be affected with respect to the issue on which directions are sought) may, at any time, and with such notice as the Court may require, seek directions from the Court with respect to this Order and the claims process set out herein, including the forms attached as Schedules hereto.

## **SERVICE AND NOTICE**

58. THIS COURT ORDERS that the Monitor may, unless otherwise specified by this Order, serve and deliver the Proof of Claim Document Package, the D&O Indemnity Proof of Claim, the Notice of Revision or Disallowance, and any letters, notices or other documents to Claimants, Directors, Officers, or other interested Persons, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to such

Persons (with copies to their counsel as appears on the CCAA Service List if applicable) at the address as last shown on the records of the Applicant or set out in such Person's Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim. Any such service or notice shall be deemed to have been received: (i) if sent by ordinary mail, on the fourth Business Day after mailing; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by electronic or digital transmission by 6:00 p.m. on a Business Day, on such Business Day, and if delivered after 6:00 p.m. or on a day other than on a Business Day, on the following Business Day. Notwithstanding anything to the contrary in this paragraph 58, Notices of Revision or Disallowance shall be sent only by (i) email or facsimile to a number or email address that has been provided in writing by the Claimant, Director or Officer, or (ii) courier.

59. THIS COURT ORDERS that any notice or other communication (including Proofs of Claim, D&O Proofs of Claims, D&O Indemnity Proofs of Claim and Notices of Dispute) to be given under this Order by any Person to the Monitor shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by prepaid ordinary mail, prepaid registered mail, courier, personal delivery or electronic transmission addressed to:

FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor

Address: TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010  
P.O. Box 104  
Toronto, Ontario Canada  
M5K 1G8

Fax No.: (416) 649-8101

Email: [growthworkscanadianfundltd@fticonsulting.com](mailto:growthworkscanadianfundltd@fticonsulting.com)

Attention: Paul Bishop and Jodi Porepa

Any such notice or other communication by a Person to the Monitor shall be deemed received only upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, the next Business Day.

60. THIS COURT ORDERS that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary mail and then not received shall not, absent further Order of the Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery or electronic or digital transmission in accordance with this Order.

61. THIS COURT ORDERS that, in the event that this Order is later amended by further order of the Court, the Monitor shall post such further order on the Monitor's Website and such posting shall constitute adequate notice of such amendment.

## **INSURANCE**

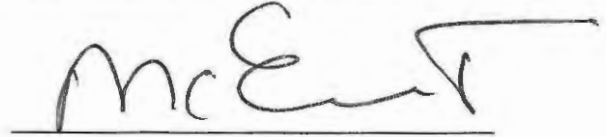
62. THIS COURT ORDERS that, except as provided in paragraph 18 hereof, nothing in this Order shall prejudice the rights and remedies of any Directors, Officers or other Persons under the Directors' Charge or Portfolio Company Directors' Charge, as applicable; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or D&O Claim or portion thereof for which the Person receives payment directly from or confirmation that she is covered by the Applicant's insurance or any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors, Officers and/or other Persons shall not be recoverable as against the Applicant or Director or Officer, as applicable.

## **MISCELLANEOUS**

63. THIS COURT ORDERS that nothing in this Order shall constitute or be deemed to constitute an allocation or assignment of Claims, D&O Claims, D&O Indemnity Claims, or Excluded Claims into particular affected or unaffected classes for the purpose of a Plan and, for greater certainty, the treatment of Claims, D&O Claims, D&O Indemnity Claims, Excluded Claims or any other claims are to be subject to a Plan or further order of the Court and the class

or classes of Creditors for voting and distribution purposes shall be subject to the terms of any proposed Plan or further order of the Court.

64. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.



A handwritten signature in black ink, appearing to read "M. E. T.", is written over a horizontal line.

ENTERED AT / INSCRIT & TORONTO  
ON / BOOK NO.  
LE / DANS LE REGISTRE NO.



A blue circular stamp or mark, possibly a seal or a stamp, is located below the registration text.

JAN 09 2014

## SCHEDULE "A"

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**NOTICE TO CLAIMANTS  
AGAINST GROWTHWORKS CANADIAN FUND LTD.**  
(hereinafter referred to as the "Applicant")

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**RE: NOTICE OF CLAIMS PROCEDURE FOR THE APPLICANT PURSUANT TO THE COMPANIES' CREDITORS ARRANGEMENT ACT (the "CCAA")**

PLEASE TAKE NOTICE that on January 9, 2014, the Superior Court of Justice of Ontario issued an order (the "Claims Procedure Order") in the CCAA proceeding of the Applicant requiring that all Persons who assert a Claim (capitalized terms used in this notice and not otherwise defined have the meaning given to them in the Claims Procedure Order) against the Applicant, whether unliquidated, contingent or otherwise, and all Persons who assert a claim against Directors or Officers of the Applicant (as defined in the Claims Procedure Order, a "D&O Claim"), **must file a Proof of Claim (with respect to Claims against the Applicant) or D&O Proof of Claim (with respect to D&O Claims) with FTI Consulting Canada Inc. (the "Monitor") on or before 5:00 p.m. (prevailing Eastern time) on March 6, 2014 (the "Claims Bar Date"), by sending the Proof of Claim or D&O Proof of Claim to the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:**

**FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor**  
**Address:** TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario Canada, M5K 1G8  
**Fax No.:** (416) 649-8101  
**Email:** [growthworkscanadianfundltd@fticonsulting.com](mailto:growthworkscanadianfundltd@fticonsulting.com)  
**Attention:** Paul Bishop and Jodi Porepa

Pursuant to the Claims Procedure Order, Proof of Claim Document Packages, including the form of Proof of Claim and D&O Proof of Claim will be sent to known Creditors as specified in the Claims Procedure Order by mail, on or before January 20, 2014. Claimants may also obtain the Claims Procedure Order and a Proof of Claim Document Package from the website of the Monitor at <http://cfcanada.fticonsulting.com/gcfl/default.htm>, or by contacting the Monitor by telephone (1-855-431-3185).

Only Proofs of Claim and D&O Proofs of Claim actually received by the Monitor on or before **5:00 p.m. (prevailing Eastern time) on March 6, 2014** will be considered filed by the Claims Bar Date. **It is your responsibility to ensure that the Monitor receives your Proof of Claim or D&O Proof of Claim by the Claims Bar Date.**

**CLAIMS AND D&O CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.**

DATED this • day of •, 2014.

**SCHEDULE "B"**

**PROOF OF CLAIM FORM FOR CLAIMS AGAINST  
GROWTHWORKS CANADIAN FUND LTD.**

(hereinafter referred to as the "Applicant")

**1. Original Claimant (the "Claimant")**

Legal Name of Claimant _____	Name of Contact _____
Address _____	Title _____
_____	Phone # _____
_____	Fax # _____
City _____ Prov /State _____	email _____
Postal/Zip Code _____	

**2. Assignee, if claim has been assigned**

Legal Name of Assignee _____	Name of Contact _____
Address _____	Phone # _____
_____	Fax # _____
City _____ Prov /State _____	email: _____
Postal/Zip Code _____	

**3 Amount of Claim**

The Applicant was and still is indebted to the Claimant as follows:

Currency	Original Currency Amount	Unsecured Claim	Secured Claim
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

**4. Documentation**

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the Applicant to the Claimant and estimated value of such security.

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<b>5. Certification</b>	
I hereby certify that:	
<ol style="list-style-type: none"><li>1. I am the Claimant or authorized representative of the Claimant.</li><li>2. I have knowledge of all the circumstances connected with this Claim.</li><li>3. The Claimant asserts this Claim against the Applicant as set out above.</li><li>4. Complete documentation in support of this claim is attached.</li></ol>	
Signature: _____	Witness: _____
Name: _____	(signature)
Title: _____	(print)
Dated at _____ this _____ day of _____, 2014	

**6. Filing of Claim**

**This Proof of Claim must be received by the Monitor by 5:00 p.m. (prevailing Eastern time) on March 6, 2014 by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:**

**FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor**

**Address: TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario Canada, M5K 1G8**

**Attention: Paul Bishop and Jodi Porepa  
Email: [growthworkscanadianfundltd@fticonsulting.com](mailto:growthworkscanadianfundltd@fticonsulting.com)  
Fax No.: (416) 649-8101**

For more information see <http://cfcanada.fticonsulting.com/gcfl/default.htm>, or contact the Monitor by telephone at 416-649-8087 or toll-free at 1-855-431-3185.

## **SCHEDULE "B-2"**

### **CLAIMANT'S GUIDE TO COMPLETING THE PROOF OF CLAIM FORM FOR CLAIMS AGAINST GROWTHWORKS CANADIAN FUND LTD.**

This Guide has been prepared to assist Claimants in filling out the Proof of Claim form for Claims against GrowthWorks Canadian Fund Ltd. (the "Applicant"). If you have any additional questions regarding completion of the Proof of Claim, please consult the Monitor's website at <http://cfcanada.fticonsulting.com/gcfl/default.htm> or contact the Monitor, whose contact information is shown below.

Additional copies of the Proof of Claim may be found at the Monitor's website address noted above.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on January 9, 2014 (the "Claims Procedure Order"), the terms of the Claims Procedure Order will govern.

#### **SECTION 1 – ORIGINAL CLAIMANT**

1. A separate Proof of Claim must be filed by each legal entity or person asserting a claim against the Applicant.
2. The Claimant shall include any and all Claims it asserts against the Applicant in a single Proof of Claim.
3. The full legal name of the Claimant must be provided.
4. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
5. If the Claim has been assigned or transferred to another party, Section 2 must also be completed.
6. Unless the Claim is assigned or transferred, all future correspondence, notices, etc. regarding the Claim will be directed to the address and contact indicated in this section.

#### **SECTION 2 – ASSIGNEE**

7. If the Claimant has assigned or otherwise transferred its Claim, then Section 2 must be completed.
8. The full legal name of the Assignee must be provided.
9. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
10. If the Monitor in consultation with the Applicant is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the Claim will be directed to the Assignee at the address and contact indicated in this section.



### **SECTION 3 - AMOUNT OF CLAIM OF CLAIMANT AGAINST APPLICANT**

11. Indicate the amount the Applicant was and still is indebted to the Claimant.

#### **Currency, Original Currency Amount**

12. The amount of the Claim must be provided in the currency in which it arose.

13. Indicate the appropriate currency in the Currency column.

14. If the Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.

#### **Unsecured Claim**

15. Check this box **ONLY** if the Claim recorded on that line is an unsecured claim.

#### **Secured Claim**

16. Check this box **ONLY** if the Claim recorded on that line is a secured claim.

### **SECTION 4 - DOCUMENTATION**

17. Attach to the Proof of Claim form all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the Applicant to the Claimant and estimated value of such security.

### **SECTION 5 - CERTIFICATION**

18. The person signing the Proof of Claim should:

- (a) be the Claimant or authorized representative of the Claimant.
- (b) have knowledge of all the circumstances connected with this Claim.
- (c) assert the Claim against the Applicant as set out in the Proof of Claim and certify all supporting documentation is attached.
- (d) have a witness to its certification.

19. By signing and submitting the Proof of Claim, the Claimant is asserting the claim against the Applicant.

### **SECTION 6 - FILING OF CLAIM**

20. The Proof of Claim **must be received by the Monitor by 5:00 p.m. (prevailing Eastern time) on March 6, 2014 (the "Claims Bar Date")** by prepaid ordinary mail,

registered mail, courier, personal delivery or electronic transmission at the following address:

**FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor**

**Address:** TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario Canada, M5K 1G8  
**Attention:** Paul Bishop and Jodi Porepa  
**Email:** growthworkscanadianfundltd@fticonsulting.com  
**Fax No.:** (416) 649-8101

Failure to file your Proof of Claim so that it is actually received by the Monitor by 5:00 p.m., on the Claims Bar Date will result in your claim being barred and you will be prevented from making or enforcing a Claim against the Applicant. In addition, you shall not be entitled to further notice in and shall not be entitled to participate as a creditor in these CCAA proceedings.



**4. Documentation**

Provide all particulars of the D&O Claim and supporting documentation, including amount and description of transaction(s) or agreement(s) or legal breach(es) giving rise to the D&O Claim.

**5. Certification**

I hereby certify that:

1. I am the Claimant or authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this D&O Claim against the Director(s) and/or Officer(s) as set out above.
4. Complete documentation in support of this claim is attached.

Signature: _____	Witness: _____
Name: _____	(signature)
Title: _____	(print)
Dated at _____ this _____ day of _____, 2014	

**6. Filing of Claim**

This D&O Proof of Claim must be received by the Monitor by 5:00 p.m. (prevailing Eastern time) on March 6, 2014 by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:

**FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor**  
**Address: TD Waterhouse Tower**  
**79 Wellington Street West**  
**Suite 2010, P.O. Box 104**  
**Toronto, Ontario Canada, M5K 1G8**  
**Attention: Paul Bishop and Jodi Porepa**  
**Email: growthworkscanadianfundltd@fticonsulting.com**  
**Fax No.: (416) 649-8101**

For more information see <http://cfcanada.fticonsulting.com/gcfl/default.htm>, or contact the Monitor by telephone at 416-649-8087 or toll-free at 1-855-431-3185.

## SCHEDULE "C-2"

### CLAIMANT'S GUIDE TO COMPLETING THE D&O PROOF OF CLAIM FORM FOR CLAIMS AGAINST DIRECTORS OR OFFICERS OF GROWTHWORKS CANADIAN FUND LTD.

This Guide has been prepared to assist Claimants in filling out the D&O Proof of Claim form for claims against the Directors or Officers of GrowthWorks Canadian Fund Ltd. (the "Applicant"). If you have any additional questions regarding completion of the D&O Proof of Claim, please consult the Monitor's website at <http://cfcanada.fticonsulting.com/gcfl/default.htm> or contact the Monitor, whose contact information is shown below.

The D&O Proof of Claim form is for Claimants asserting a claim against the Directors and/or Officers of GrowthWorks Canadian Fund Ltd., and NOT for claims against GrowthWorks Canadian Fund Ltd. itself. For claims against GrowthWorks Canadian Fund Ltd., please use the form titled "Proof Of Claim Form For Claims Against GrowthWorks Canadian Fund Ltd.", which is available on the Monitor's website at <http://cfcanada.fticonsulting.com/gcfl/default.htm>.

Additional copies of the D&O Proof of Claim may be found at the Monitor's website address noted above.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on January 9, 2014 (the "Claims Procedure Order"), the terms of the Claims Procedure Order will govern.

#### SECTION 1 – ORIGINAL CLAIMANT

1. A separate D&O Proof of Claim must be filed by each legal entity or person asserting a claim against the Directors or Officers (as defined in the Claims Procedure Order) of the Applicant.
2. The Claimant shall include any and all D&O Claims it asserts against the Directors or Officers of the Applicant in a single D&O Proof of Claim.
3. The full legal name of the Claimant must be provided.
4. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
5. If the claim has been assigned or transferred to another party, Section 2 must also be completed.
6. Unless the claim is assigned or transferred, all future correspondence, notices, etc. regarding the claim will be directed to the address and contact indicated in this section.

#### SECTION 2 – ASSIGNEE

7. If the Claimant has assigned or otherwise transferred its claim, then Section 2 must be completed.
8. The full legal name of the Assignee must be provided.

9. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
10. If the Monitor in consultation with the Applicant is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the claim will be directed to the Assignee at the address and contact indicated in this section.

### **SECTION 3 - AMOUNT OF CLAIM OF CLAIMANT AGAINST DIRECTOR OR OFFICER**

11. Indicate the amount the Director(s) and/or Officer(s) was/were and still is/are indebted to the Claimant and provide all other requested details.

#### **Currency, Original Currency Amount**

12. The amount of the claim must be provided in the currency in which it arose.
13. Indicate the appropriate currency in the Currency column.
14. If the claim is denominated in multiple currencies, use a separate line to indicate the claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.

### **SECTION 4 - DOCUMENTATION**

15. Attach to the D&O Proof of Claim form all particulars of the claim and supporting documentation, including amount and description of transaction(s) or agreement(s) or legal breach(es) giving rise to the D&O Claim.

### **SECTION 5 - CERTIFICATION**

16. The person signing the D&O Proof of Claim should:
  - (a) be the Claimant or authorized representative of the Claimant.
  - (b) have knowledge of all the circumstances connected with this claim.
  - (c) assert the claim against the Director(s) and/or Officer(s) as set out in the D&O Proof of Claim and certify all supporting documentation is attached.
  - (d) have a witness to its certification.
17. By signing and submitting the D&O Proof of Claim, the Claimant is asserting the claim against the Director(s) and Officer(s) identified therein.

### **SECTION 6 - FILING OF CLAIM**

18. **The D&O Proof of Claim must be received by the Monitor by 5:00 p.m. (prevailing Eastern time) on March 6, 2014 (the "Claims Bar Date") by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:**

**FTI Consulting Canada Inc., GrowthWorksCanadian Fund Ltd. Monitor**

**Address:** TD Waterhouse Tower  
79 Wellington Street West, Suite 2010, P.O. Box 104  
Toronto, Ontario Canada, M5K 1G8

**Attention:** Paul Bishop and Jodi Porepa

**Email:** [growthworkscanadianfundltd@fticonsulting.com](mailto:growthworkscanadianfundltd@fticonsulting.com)

**Fax No.:** (416) 649-8101

**Failure to file your D&O Proof of Claim so that it is actually received by the Monitor by 5:00 p.m., on the Claims Bar Date will result in your claim being barred and you will be prevented from making or enforcing a claim against the Directors and Officers of the Applicant. In addition, you shall not be entitled to further notice in and shall not be entitled to participate as a creditor in these CCAA proceedings.**

**SCHEDULE "D"**

**PROOF OF CLAIM FORM FOR INDEMNITY CLAIMS BY  
DIRECTORS OR OFFICERS OF GROWTHWORKS CANADIAN FUND LTD.  
(the "D&O Indemnity Proof of Claim")**

This form is to be used only by Directors and Officers of GrowthWorks Canadian Fund Ltd. (the "Applicant") who are asserting an indemnity claim against the Applicant in relation to a D&O Claim against them and NOT for claims against the Applicant itself or for claims against Directors and Officers of the Applicant. For claims against the Applicant, please use the form titled "Proof Of Claim Form For Claims Against GrowthWorks Canadian Fund Ltd.". For claims against Directors and Officers of the Applicant, please use the form titled "Proof of Claim Form for Claims Against Directors or Officers of GrowthWorks Canadian Fund Ltd.". Both forms are available on the Monitor's website at <http://cfcanada.fticonsulting.com/gcf/default.htm>.

**1. Director and/or Officer Particulars (the "Indemnitee")**

Legal Name of Indemnitee \_\_\_\_\_

Address \_\_\_\_\_

Phone # \_\_\_\_\_

Fax # \_\_\_\_\_

City \_\_\_\_\_

Prov /State \_\_\_\_\_

email \_\_\_\_\_

Postal/Zip Code \_\_\_\_\_

**2. Indemnification Claim**

Position(s) Held \_\_\_\_\_

Dates Position(s) Held: From \_\_\_\_\_ to \_\_\_\_\_

Reference Number of Proof of Claim with respect to which this D&O Indemnity Claim is made: \_\_\_\_\_

Indicate whether the D&O Indemnity Claim is asserted as: unsecured claim

secured claim<sup>1</sup>

Particulars of and basis for D&O Indemnity Claim:

<sup>1</sup> A secured claim means a claim secured against the court-ordered Director's Charge or otherwise.



**3. Documentation**

Provide all particulars of the D&O Indemnity Claim and supporting documentation giving rise to the Claim.

**4. Filing of Claim**

This D&O Indemnity Proof of Claim and supporting documentation must be received by the Monitor within fifteen (15) Business Days of the date of deemed receipt by the Director or Officer of the D&O Proof of Claim form **by ordinary prepaid mail, registered mail, courier, personal delivery or electronic transmission at the following address:**

**FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor**

**Address: TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario Canada, M5K 1G8**

**Attention: Paul Bishop and Jodi Porepa**

**Email: paul.bishop@fticonsulting.com and jodi.porepa@fticonsulting.com**

**Fax No.: (416) 649-8101**

**Failure to file your D&O Indemnity Proof of Claim in accordance with the Claims Procedure Order will result in your D&O Indemnity Claim being barred and forever extinguished and you will be prohibited from making or enforcing such D&O Indemnity Claim against the Applicant.**

DATED at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2014

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

Signature: \_\_\_\_\_ (Former Director and/or Officer)

For more information see <http://cfcanada.fticonsulting.com/gcfl/default.htm>, or contact the Monitor by telephone (1-855-431-3185)

**SCHEDULE "E"**

---

**NOTICE OF REVISION OR DISALLOWANCE**

**For Persons that have asserted Claims against GrowthWorks Canadian Fund Ltd.,  
D&O Claims against the Directors and/or Officers of GrowthWorks Canadian Fund Ltd. or  
D&O Indemnity Claims against GrowthWorks Canadian Fund Ltd.**

---

Claims Reference Number: \_\_\_\_\_

TO: \_\_\_\_\_  
(the "Claimant")

Defined terms not defined in this Notice of Revision or Disallowance have the meaning ascribed in the Order of the Ontario Superior Court in the CCAA proceedings of GrowthWorks Canadian Fund Ltd. dated January 9, 2014 (the "Claims Procedure Order").

The Monitor hereby gives you notice that it has reviewed your Proof of Claim, D&O Proof of Claim or D&O Indemnity Proof of Claim and has revised or disallowed all or part of your purported Claim, D&O Claim or D&O Indemnity Claim, as the case may be. Subject to further dispute by you in accordance with the Claims Procedure Order, your Proven Claim will be as follows:

	Amount as submitted		Amount allowed by Monitor
	Currency		
A. Unsecured Claim		\$	\$
B. Secured Claim		\$	\$
C. D&O Claim		\$	\$
D. D&O Indemnity Claim		\$	\$
<b>E. Total Claim</b>		\$	\$

**Reasons for Revision or Disallowance:**

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## SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (prevailing time in Toronto) on the day that is fifteen (15) Business Days after this Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 58 of the Claims Procedure Order), deliver a Dispute Notice to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery or electronic transmission to the address below.

FTI Consulting Canada Inc., GrowthWorksCanadian Fund Ltd. Monitor  
Address: TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario Canada, M5K 1G8  
Fax No.: (416) 649-8101  
Email: [growthworkscanadianfundltd@fticonsulting.com](mailto:growthworkscanadianfundltd@fticonsulting.com)  
Attention: Paul Bishop and Jodi Porepa

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Dispute Notice is enclosed and can also be accessed on the Monitor's website at <http://cfcanada.fticonsulting.com/gcfl/default.htm>.

**IF YOU FAIL TO FILE A DISPUTE NOTICE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014

FTI Consulting Canada Inc., solely in its capacity as Court-appointed Monitor of GrowthWorksCanadian Fund Ltd., and not in its personal or corporate capacity

Per: \_\_\_\_\_

For more information see <http://cfcanada.fticonsulting.com/gcfl/default.htm>, or contact the Monitor by telephone at 416-649-8087 or toll-free at 1-855-431-3185.

**APPENDIX "1" to SCHEDULE "E"**

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**NOTICE OF DISPUTE OF NOTICE OF REVISION OR DISALLOWANCE**  
**With respect to GrowthWorksCanadian Fund Ltd.**

---

Claims Reference Number: \_\_\_\_\_

**1. Particulars of Claimant:**

Full Legal Name of Claimant (include trade name, if different)

\_\_\_\_\_  
\_\_\_\_\_  
(the "Claimant")

Full Mailing Address of the Claimant:

\_\_\_\_\_  
\_\_\_\_\_

Other Contact Information of the Claimant:

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Attention (Contact Person): \_\_\_\_\_

2. **Particulars of original Claimant from whom you acquired the Claim, D&O Claim or D&O Indemnity Claim, if applicable:**

Have you acquired this purported Claim, D&O Claim or D&O Indemnity Claim by assignment?

Yes:

No:

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): \_\_\_\_\_

3. **Dispute of Revision or Disallowance of Claim, D&O Claim or D&O Indemnity Claim, as the case may be:**

The Claimant hereby disagrees with the value of its Claim, D&O Claim or D&O Indemnity Claim, as the case may be, as set out in the Notice of Revision or Disallowance and asserts a Claim, D&O Claim or D&O Indemnity Claim, as the case may be, as follows:

	<b>Currency</b>	<b>Amount allowed by Monitor: (Notice of Revision or Disallowance)</b>	<b>Amount claimed by Claimant:</b>
A. Unsecured Claim		\$	\$
B. Secured Claim		\$	\$
C. D&O Claim		\$	\$
D. D&O Indemnity Claim		\$	\$
<b>E. Total Claim</b>		<b>\$</b>	<b>\$</b>

**REASON(S) FOR THE DISPUTE:**

*(Please attach all supporting documentation hereto).*

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**SERVICE OF DISPUTE NOTICES**

**If you intend to dispute a Notice of Revision or Disallowance, you must, no later than 5 p.m. (prevailing time in Toronto) on the day that is fifteen (15) Business Days after the Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 58 of the Claims Procedure Order), deliver this Dispute Notice to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery or electronic or digital transmission to the address below.**

FTI Consulting Canada Inc., GrowthWorks Canadian Fund Ltd. Monitor  
Address: TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P.O. Box 104  
Toronto, Ontario Canada, M5K 1G8  
Fax No.: (416) 649-8101  
Email: growthworkscanadianfundltd@fticonsulting.com  
Attention: Paul Bishop and Jodi Porepa

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

**IF YOU FAIL TO FILE THIS NOTICE OF DISPUTE OF NOTICE OF REVISION OR DISALLOWANCE WITHIN THE PRESCRIBED TIME PERIOD, THE NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014

Name of Claimant: \_\_\_\_\_

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
Name:  
Title:  
*(please print)*

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.

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

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

Proceeding Commenced at Toronto

**CLAIMS PROCEDURE ~~AND STAY~~**  
**~~EXTENSION ORDER~~**

**MCCARTHY TÉTRAULT LLP**  
Barristers and Solicitors  
Box 48, Suite 5300  
Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6

**Kevin McElcheran** LSUC# 22119H  
Tel.: (416) 601-7730  
Fax: (416) 868-0673

**Heather Meredith** LSUC# 48354R  
Tel.: (416) 601-8242  
Fax: (416) 868-0673

Lawyers for GrowthWorks Canadian  
Fund Ltd.

#13033974

# **APPENDIX D**



IN THE MATTER OR 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.

Nov 27/14 Court File No.: CV-13-10279-00CL

Nov 27/14

K. McElchren  
 A Kaufman

This motion is now scheduled to  
 be heard on February 17/15 (today).  
 Wilson - hkt

Feb 17/15

Order to go in the form Mr Kaufman  
 filed Mr McElchren  
 Mr Field

Mr Field for Connerstone  
 may obtain a date from the  
 office at 9:30 on a day convenient  
 to the parties to seek instructions  
 re the Commission request to  
 make a late filing.

*Spence*

ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 (Commercial List)  
 Proceedings commenced at  
 Toronto

RESPONDING AND CROSS MOTION RECORD  
 OF GROWTHWORKS WV MANAGEMENT LTD. AND  
 GROWTHWORKS CAPITAL LTD.

FASKEN MARTINEAU DUMOULIN LLP  
 Barristers and Solicitors  
 333 Bay Street, Suite 2400  
 Bay Adelaide Centre, Box 20  
 Toronto, ON M5H 2T6

Anthony E. Kaufman (LSUC 18829N)  
 Tel: 416 868 3538  
 Fax: 416 564 7813  
 Email: akauffman@fasken.com

Counsel for GrowthWorks WV Management Ltd., and  
 GrowthWorks Capital Ltd.

# **APPENDIX E**

Osler, Hoskin & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8

osler.com

**From:** Kevin McElcheran [<mailto:kevin@mcelcheranadr.com>]

**Sent:** Tuesday, April 14, 2015 11:03 AM

**To:** Gerry Fields; Fell, Caitlin

**Cc:** Lynne Silver

**Subject:** RE: Growthworks Canadian Fund Ltd. - Court File No. CV-13-10279 - Cornerstone's Claim, for \$629,903.75 as of April 15, 2015 - Our File No. 8114

Dear Mr. Field

I acknowledge your email of today asking for dates when I would be available for a 9:30 appointment.

As I have told you repeatedly, Growthworks Canadian Fund Ltd. continues to be prepared to consider your request for a consent order permitting Cornerstone to file a late proof of claim when and if you provide Growthworks Canadian Fund Ltd. with a copy of the one document on which you say your claim is based, an indemnity you say was executed by David Levi of Matrix. You say that the indemnity is binding on Growthworks Canadian Fund Ltd., the debtor in this CCAA proceeding, even though Growthworks Canadian Fund Ltd is not a signatory to the indemnity.

You first made that allegation many months ago and Growthworks Canadian Fund Ltd., through its counsel, has asked you repeatedly to provide a copy of the indemnity which you allege exists and on which Cornerstone's claim depends. You have not provided it.

I understand from Ms. Fell that you provided binders of documents to the Monitor for its review. However, you explicitly instructed her not to provide those documents to Growthworks Canadian Fund Ltd.

As a CCAA debtor, Growthworks Canadian Fund Ltd. has a responsibility to preserve the assets of the Fund and distribute the value preserved in this CCAA process to those entitled to receive it. The claims order, from which you seek relief, was made as part of that process.

In dealing with Cornerstone, we continue to be prepared to consider your claim if it has a contractual basis. However, if it has no contractual basis, it is our responsibility to avoid the cost of defending a baseless claim.

I repeat the position that I have made clear to you in previous correspondence. When you provide a copy of the indemnity and an opportunity to review it on behalf of my client, I will provide you with dates for a 9:30 appointment even though there is no motion outstanding for the court to consider.

My position is based on the basic requirements of due process. Cornerstone needs an order to file a late claim. You are right that Cornerstone did not receive an invitation to file a claim against Growthworks Canadian Fund Ltd. That is because Cornerstone was not a supplier to Growthworks Canadian Fund Ltd. Cornerstone was not a known creditor.

The lack of direct notice of the claims bar date to Cornerstone is not the only consideration. The debtor and the monitor have a responsibility to conduct an efficient process for the benefit of the legitimate stakeholders of the debtor. In that context, it is appropriate that Cornerstone provide some evidence that it actually has a claim against the debtor. In any motion for an order extending the time for proving a claim, some evidence of the claim itself is a requirement.

If Cornerstone is going to prove its claim against Growthworks Canadian Fund Ltd., Cornerstone will have to produce the evidence on which it relies, including the core document, the indemnity, to Growthworks Canadian Fund Ltd. If Cornerstone cannot or will not produce the indemnity, it cannot prove its claim. If Cornerstone cannot or will not prove its claim, there is no reason to grant an order relieving it from the effect of the claims bar order.

When are you going to provide Growthworks Canadian Fund Ltd. with the document you say makes it responsible for your \$630,000 claim?

Kevin McElcheran

**From:** Gerry Fields [<mailto:gfields@cornerstonegroup.com>]  
**Sent:** April 14, 2015 9:33 AM  
**To:** [cfell@osler.com](mailto:cfell@osler.com); Kevin McElcheran  
**Cc:** Gerry Fields; Lynne Silver  
**Subject:** Growthworks Canadian Fund Ltd. - Court File No. CV-13-10279 - Cornerstone's Claim, for \$629,903.75 as of April 15, 2015 - Our File No. 8114  
**Importance:** High

**DATE:** Tuesday, April 14, 2015 at 9:30 AM

**TO:** Caitlin Fell, Osler, Hoskin & Harcourt LLP

**AND TO:** Kevin McElcheran, Kevin P. McElcheran Professional Corporation

We have been advised to seek further Directions in Chambers before Mr. Justice Spence. Please advise me by email today what dates next week you are available for the hearing, failing which we will be required to bring an *ex parte* application.

Thank you.

Gerry Fields, LL.B., J.D.  
CORNERSTONE GROUP™  
The Exchange Tower  
130 King Street West  
Suite 1800, P.O. Box 427  
Toronto, Ontario  
M5X 1E3

Email: [gfields@cornerstonegroup.com](mailto:gfields@cornerstonegroup.com)  
Tel.: (416) 862-8000  
Fax: (416) 862-8001  
Mobile: (416) 567-7000 / (917) 965-5490

This email (including any attachments) may contain information that is confidential, privileged and exempt from disclosure. It is intended only for the person(s) named above. Any other use or disclosure is prohibited. If you have received this message in error, please delete it and notify us immediately by telephone or by return email. Thank you.

# **APPENDIX F**

## Schwarz, Karin

---

**From:** Fell, Caitlin  
**Sent:** Friday, May 22, 2015 12:04 PM  
**To:** Schwarz, Karin  
**Subject:** FW: Growthworks Canadian Fund Ltd. - Court File No. CV-13-10279 - Cornerstone's Claim, for \$629,903.75 as of April 15, 2015 - Our File No. 8114

OSLER

Caitlin Fell

416.862.6690 DIRECT  
416.862.6666 FACSIMILE  
[cfell@osler.com](mailto:cfell@osler.com)

Osler, Hoskin & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8

[osler.com](http://osler.com)

**From:** Fell, Caitlin  
**Sent:** Friday, May 1, 2015 10:04 AM  
**To:** 'Kevin McElcheran'; Gerry Fields  
**Cc:** Lynne Silver; 'Bishop, Paul'  
**Subject:** RE: Growthworks Canadian Fund Ltd. - Court File No. CV-13-10279 - Cornerstone's Claim, for \$629,903.75 as of April 15, 2015 - Our File No. 8114

Hi Mr. Fields,

The Monitor and the Fund have not yet heard back from you with respect to Mr. McElcheran's email below. The Monitor would like to seek resolution of this issue and accordingly, in order to move things forward we propose that Cornerstone produce the indemnity which is binding on Growthwork Canadian Fund Ltd., in respect of the fees owing by Matrix to Cornerstone. Once we receive the indemnity, within 2 weeks, Growthworks Canadian Fund Ltd. and the Monitor will elect whether they will consent to an Order permitting the late filing of Cornerstone's claim on such terms as are appropriate. If Growthworks Canadian Fund and/or the Monitor do not consent to such election, then the Monitor would arrange a 9:30 hearing in order to schedule the hearing of the motion by Cornerstone to file the late claim.

We believe that the foregoing is fair to the interests of both Cornerstone and Growthworks Canadian Fund Ltd. I would ask that both Mr. McElcheran for the Fund and Mr. Fields for Cornerstone acknowledge this email and indicate their agreement to this proposal.

OSLER

Caitlin Fell

416.862.6690 DIRECT  
416.862.6666 FACSIMILE  
[cfell@osler.com](mailto:cfell@osler.com)

# APPENDIX G

## Schwarz, Karin

---

**From:** Fell, Caitlin  
**Sent:** Friday, May 22, 2015 12:05 PM  
**To:** Schwarz, Karin  
**Subject:** FW: Growthworks Canadian Fund Ltd. and Cornerstone Proof of Claim No. 1 (the "Fund Claim") now for \$638,378.75 and Cornerstone Proof of Claim No. 2 ( the "D & O Proof of Claim") now for \$638,378.75 - Court File No. CV-13-10279- 00CL - Our File No. 8114

## OSLER

Caitlin Fell

416.862.6690 DIRECT  
416.862.6666 FACSIMILE  
cfell@osler.com

Osler, Hoskin & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8

osler.com

**From:** Kevin McElcheran [mailto:kevin@mcelcheranadr.com]  
**Sent:** Wednesday, May 13, 2015 1:39 PM  
**To:** Gerry Fields; Fell, Caitlin; MAG.CSD.To.SCJCom@ontario.ca  
**Cc:** Lynne Silver  
**Subject:** RE: Growthworks Canadian Fund Ltd. and Cornerstone Proof of Claim No. 1 (the "Fund Claim") now for \$638,378.75 and Cornerstone Proof of Claim No. 2 ( the "D & O Proof of Claim") now for \$638,378.75 - Court File No. CV-13-10279- 00CL - Our File No. 8114

Dear Mr. Fields

We have reviewed the binder that you provided to me on Thursday, May 8, 2015. We note the following:

- 1) There is no affidavit supporting Cornerstone's request for a consent order permitting it to file a proof of claim in the CCAA proceedings of Growthworks Canadian Fund Ltd. (the "Fund"). As a consequence of there being no affidavit, there is no admissible evidence supporting the claim. You have provided some documents but the commentary included in the binder is not evidence because it is not sworn.
- 2) The key document on which you rely, the engagement letter dated April 8, 2010 (the "Engagement Letter"), is signed by "Matrix Asset Management Inc. ("Matrix") on behalf of itself and its affiliates per: David Levi. President and Chief Executive Officer". Throughout your unsworn commentary you state incorrectly that the engagement letter was signed by David Levi as CEO of the Fund. (for example, on page 8 of tab 1) As demonstrated by the engagement letter itself, such statements are clearly false.
- 3) The copy of the Engagement Letter included in the binder is incomplete in that all of the schedules are blank. As a consequence, none of the transactions for which Cornerstone was to be the financial intermediary are disclosed.
- 4) The Fund is not an affiliate of Matrix. Clearly, as a financial advisor to Matrix and as a lawyer, you know that the Fund is not an affiliate of Matrix. In fact, the org. chart that you have provided in the binder clearly shows that



the Fund is not an affiliate but is subject to a management contract. Throughout your unsworn commentary, you refer to the public disclosure made by both the Fund and Matrix. That disclosure, at all times, made clear that the Fund is a widely held labour sponsored investment fund and at no time was controlled by Matrix.

- 5) There is nothing included in your binder that supports your assertion that the Fund is bound by the Engagement Letter or should be responsible for any of Cornerstone's fees for services provided under the Engagement Letter.

For these reasons the Fund will not consent to an order permitting a late-filed claim by Cornerstone. Cornerstone was not provided notice of the claims bar order by the Fund because it is not a creditor of the Fund. Because it has no claim against the Fund, Cornerstone was not affected by the claims bar order and is not entitled to relief from the provisions of that order which prevent Cornerstone from now filing a claim. We have been advised by the Monitor that it has also reviewed the materials you provided and, as a result of the lack of evidence supporting Cornerstone's assertions, it will not consent to an order permitting Cornerstone to file a claim.

In light of the position of the Fund and the Monitor, a 9:30 appointment with a Judge of the Commercial List will be necessary to set a timetable for the hearing of Cornerstone's motion. I am available to attend a 9:30 appointment any day next week.

The timetable for the hearing of a motion should include a deadline for the service of a notice of motion, draft order and affidavit of the moving party (Cornerstone, in this case), a deadline for responding parties to file evidence – in this context, it is important to remember that other creditors of the Fund have an interest in this motion and are entitled to file response material and oppose Cornerstone's motion, a time period for cross examinations, a deadline for filing written argument (a factum) and finally a hearing date. As the moving party, Cornerstone should suggest a timetable for comments by the Fund and the Monitor.

In the binder, you mention confidentiality concerns as a reason for not providing the Fund with a complete copy of the Engagement Letter. If Cornerstone is to bring a motion, it must serve admissible evidence of its alleged claim against the Fund on the service list including the Fund and the Monitor and will have to file that evidence in the court. However, it is possible to seek an order of the court that confidential evidence be sealed in the court file. The Fund will consent to such a sealing order if you can satisfy the court that some of Cornerstone's evidence is confidential. We can discuss a sealing order with the judge at the 9:30 appointment.

Yours truly

Kevin McElcheran

**From:** Kevin McElcheran

**Sent:** May 13, 2015 11:24 AM

**To:** 'Gerry Fields'; [cfell@osler.com](mailto:cfell@osler.com); [MAG.CSD.To.SCJCom@ontario.ca](mailto:MAG.CSD.To.SCJCom@ontario.ca)

**Cc:** Lynne Silver

**Subject:** RE: Growthworks Canadian Fund Ltd. and Cornerstone Proof of Claim No. 1 (the "Fund Claim") now for \$638,378.75 and Cornerstone Proof of Claim No. 2 ( the "D & O Proof of Claim") now for \$638,378.75 - Court File No. CV-13-10279- 00CL - Our File No. 8114

Mr. Fields

I acknowledge your email of last evening and receipt of the binder of documents you delivered to my office on the evening of Thursday, May 8<sup>th</sup>. We will be responding to your request today, but possibly not before your noon deadline.

Kevin McElcheran

# APPENDIX H

## Schwarz, Karin

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**From:** Fell, Caitlin  
**Sent:** Friday, May 22, 2015 12:05 PM  
**To:** Schwarz, Karin  
**Subject:** FW: Growthworks Canadian Fund Ltd. and Cornerstone Proof of Claim No. 1 (the "Fund Claim") now for \$638,378.75 and Cornerstone Proof of Claim No. 2 ( the "D & O Proof of Claim") now for \$638,378.75 - Court File No. CV-13-10279- 00CL - Our File No. 8114

OSLER

Caitlin Fell

416.862.6690 DIRECT  
416.862.6666 FACSIMILE  
[cfell@osler.com](mailto:cfell@osler.com)

Osler, Hoskin & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8

[osler.com](http://osler.com)

**From:** Fell, Caitlin  
**Sent:** Wednesday, May 13, 2015 1:53 PM  
**To:** 'Kevin McElcheran'; Gerry Fields; [MAG.CSD.To.SCJCom@ontario.ca](mailto:MAG.CSD.To.SCJCom@ontario.ca)  
**Cc:** Lynne Silver  
**Subject:** RE: Growthworks Canadian Fund Ltd. and Cornerstone Proof of Claim No. 1 (the "Fund Claim") now for \$638,378.75 and Cornerstone Proof of Claim No. 2 ( the "D & O Proof of Claim") now for \$638,378.75 - Court File No. CV-13-10279- 00CL - Our File No. 8114

As indicated below, the Monitor does not consent to an Order permitting Cornerstone to file its late claim. The Monitor is also available any day of next week for a 9:30am scheduling hearing.

OSLER

Caitlin Fell

416.862.6690 DIRECT  
416.862.6666 FACSIMILE  
[cfell@osler.com](mailto:cfell@osler.com)

Osler, Hoskin & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8

[osler.com](http://osler.com)

# **APPENDIX I**

## Nicole Rozario

---

**From:** Caitlin Fell  
**Sent:** Wednesday, March 29, 2017 3:04 PM  
**To:** Nicole Rozario  
**Subject:** FW: Growthworks  
**Attachments:** Term Sheet- Fields.DOCX



### Caitlin Fell

Associate  
d 416.865.7841 | f 416.865.7048  
[Caitlin.Fell@mcmillan.ca](mailto:Caitlin.Fell@mcmillan.ca)

Assistant: Michelle Yung | 416.865.7142 | [michelle.yung@mcmillan.ca](mailto:michelle.yung@mcmillan.ca)

### McMillan LLP

Lawyers | Patent & Trademark Agents  
Brookfield Place, 181 Bay Street, Suite 4400  
Toronto, Ontario M5J 2T3  
[mcmillan.ca](http://mcmillan.ca)

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**From:** Caitlin Fell  
**Sent:** Tuesday, March 28, 2017 4:27 PM  
**To:** 'Gerry Fields'; Hall, Geoff R.; Lewis, Atrisha S; Mel Solmon  
**Cc:** 'Bishop, Paul'; Brett Harrison  
**Subject:** Growthworks

Mr. Fields, Geoff and Mel,

As previously discussed, the Monitor is very concerned about the costs that would be incurred should the motion go ahead on March 31<sup>st</sup> and therefore feels that is incumbent on all parties to find a resolution.

Accordingly, please find attached a proposed resolution for all parties involved to avoid the costs of the hearing on Friday. The Monitor believes that this proposal addresses all concerns, namely that Mr. Fields gets access to information on the Monitor's website, and that there is no disruption in the litigation between the Former Manager and the Fund.

We will draft an Order that reflects these terms if everyone is in agreement.



### Caitlin Fell

Associate  
d 416.865.7841 | f 416.865.7048  
[Caitlin.Fell@mcmillan.ca](mailto:Caitlin.Fell@mcmillan.ca)

Assistant: Michelle Yung | 416.865.7142 | [michelle.yung@mcmillan.ca](mailto:michelle.yung@mcmillan.ca)

### McMillan LLP

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

**B E T W E E N :**

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

AND IN THE MATTER OF A PLAN  
OF COMPROMISE OR ARRANGEMENT OF  
GROWTHWORKS CANADIAN FUND LTD.

SUMMARY OF TERMS AND CONDITIONS BETWEEN FTI CONSULTING CANADA  
INC., IN ITS CAPACITY AS MONITOR OF GROWTHWORKS CANADIAN FUND LTD.,  
GROWTHWORKS CANADIAN FUND AND MR. GERRY FIELDS

MARCH 28, 2017

- PURPOSE:** To avoid disruption and minimize costs in the litigation proceedings relating to Growthworks Canadian Fund Ltd. (the "**Fund**").
- PARTIES:** FTI Consulting Canada Inc., in its capacity as monitor of the Fund (the "**Monitor**"), the Fund and Mr. Gerry Fields/Cornerstone Group ("**Mr. Fields**")
- RESPONSIBILITIES OF THE FUND:** The Fund shall provide the Monitor as soon as reasonably practicable with a USB drive containing all materials served by the Fund and Growthworks VW Management Ltd. (the "**Former Manager**") with respect to the litigation in these proceedings.
- RESPONSIBILITIES OF THE MONITOR:** The Monitor shall post all materials filed in the *Companies Creditors' Arrangement Act* proceedings of the Fund to the Monitor's website at <http://cfcanada.fticonsulting.com/gcfl/>, including any materials filed with respect to the litigation between the Fund and the Former Manager. The Monitor shall update the website with respect to the date of the trial between the Fund and the Former Manager.

**OBLIGATIONS OF FIELDS:**

Mr. Fields acknowledges and agrees that:

- He shall refrain from participating or involving himself in any way in the Litigation, including but not limited to refraining from making any submissions or oral statements to the Court during any motions or the trial pertaining to the Litigation; and
- He shall not send any further communications to the Fund, the Monitor or to the service list in these proceedings unless Mr. Fields files and serves a motion record in respect of any claim he may assert in the CCAA proceedings with notice and agreement from the Fund and the Monitor with respect to the date of such motion to determine his claim.

**RECOURSE:**

Should the parties not comply with the obligations set out herein, the Monitor shall seek advice and direction from the Court, including seeking costs against the relevant party for non-compliance.

# **APPENDIX J**



**From:** [Michelle Yung](mailto:Michelle.Yung)  
**To:** [Caitlin Fell](mailto:Caitlin.Fell)  
**Subject:** FW: GrowthWorks et al - March 28, 2017 at 5:35 PM  
**Date:** Thursday, March 30, 2017 12:57:27 PM  
**Importance:** High

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**From:** Gerry Fields [<mailto:gfields@cornerstonegroup.com>]  
**Sent:** Tuesday, March 28, 2017 5:36 PM  
**To:** Caitlin Fell; Hall, Geoff R.; Mel Solmon  
**Cc:** Bishop, Paul; Brett Harrison; Lewis, Atrisha S; Gerry Fields; Lynne Silver  
**Subject:** GrowthWorks et al - March 28, 2017 at 5:35 PM  
**Importance:** High

**TUESDAY, MARCH 28, 2017 AT 5:35 PM**

-  
Ms. Fell, Mr. Hall and Mr. Solmon,

We have reviewed your Proposal with external Senior Counsel.

The Proposal is **not** acceptable to the Applicant.

To be absolutely clear once again and so that there is no possibility whatsoever of any misunderstanding on Friday, there is not nor will there be any attempt to disrupt the litigation between the Former Manager and the Fund.

The granting of the requested Draft Order by Justice Hainey **relating only to service issues** does **not** in any manner disrupt the litigation between the Former Manager and the Fund and any suggestion to the contrary is entirely speculation and without any substance or merit.

**Once again, only service issues will be dealt with on Friday** pursuant to the **specific** Endorsement of Justice Hainey made on March 17, 2017 with Counsel for the Applicant and Counsel for the Fund both present.

Unless Counsel for the Fund, Counsel for the Former Manager **and** Counsel for the Monitor each consent in writing to the Applicant's Draft Order included in the Applicant's Motion Record served upon each of you on Monday, March 27, 2017 **by 5 PM ET on Wednesday, March 29, 2017**, we are proceeding with the scheduled Hearing before Mr. Justice Hainey this Friday at 10 AM.

Gerry Fields, LL.B., J.D.  
President and General Counsel  
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**From:** Caitlin Fell [<mailto:Caitlin.Fell@mcmillan.ca>]  
**Sent:** Tuesday, March 28, 2017 4:27 PM  
**To:** Gerry Fields <[gfields@cornerstonegroup.com](mailto:gfields@cornerstonegroup.com)>; Hall, Geoff R. <[GHALL@MCCARTHY.CA](mailto:GHALL@MCCARTHY.CA)>; Lewis, Atrisha S <[alewis@mccarthy.ca](mailto:alewis@mccarthy.ca)>; Mel Solmon <[msolmon@srglegal.com](mailto:msolmon@srglegal.com)>  
**Cc:** Bishop, Paul <[Paul.Bishop@fticonsulting.com](mailto:Paul.Bishop@fticonsulting.com)>; Brett Harrison <[Brett.Harrison@mcmillan.ca](mailto:Brett.Harrison@mcmillan.ca)>  
**Subject:** Growthworks

Mr. Fields, Geoff and Mel,

As previously discussed, the Monitor is very concerned about the costs that would be incurred should the motion go ahead on March 31<sup>st</sup> and therefore feels that is incumbent on all parties to find a resolution.

Accordingly, please find attached a proposed resolution for all parties involved to avoid the costs of the hearing on Friday. The Monitor believes that this proposal addresses all concerns, namely that Mr. Fields gets access to information on the Monitor's website, and that there is no disruption in the litigation between the Former Manager and the Fund.

We will draft an Order that reflects these terms if everyone is in agreement.



**Caitlin Fell**

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
GROWTHWORKS CANADIAN FUND LTD.

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

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

Proceeding commenced at Toronto

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

**McMILLAN LLP**  
Brookfield Place  
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Solicitor for the Monitor