

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

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

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

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

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

May 12, 2014

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

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ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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

1. On October 1, 2013, GrowthWorks Canadian Fund Ltd. (the “**Fund**” or the “**Applicant**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) and an initial order 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 May 16, 2014 (the “**Stay of Proceedings**”) and appointing FTI Consulting Canada Inc. as monitor of the Fund (the “**Monitor**”). The proceedings commenced by the Fund under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

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

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

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

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

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

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

8. On January 9, 2014, the Court approved an Order establishing a claims procedure to identify, determine and resolve claims of creditors of the Fund.

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

10. On May 5, 2014, the Court granted an Order extending the Stay of Proceedings until and including May 16, 2014.

11. On May 9, 2014, the Monitor filed a notice of motion and the Ninth Report of the Monitor in support of the Monitor's request for an Order approving its fees and activities in the within CCAA proceeding for the motion returnable May 14, 2014.

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

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

- (a) the status of the litigation proceedings commenced by Allen-Vanguard Corporation ("**Allen-Vanguard**") against, *inter alia*, the Fund;
- (b) the Monitor's comments and recommendations with respect to the Applicant's request for an Order approving an investment advisor agreement between the Fund and Roseway (the "**Investment Advisor Agreement**");

- (c) the Monitor's comments and recommendations for an Order enhancing the powers of the Monitor with respect to its duties and obligations under the Investment Advisor Agreement;
- (d) the status of the transitional services provided by the Former Manager to the Fund;
- (e) the receipts and disbursements of the Fund for the period from April 26, 2014 to May 9, 2014;
- (f) the Fund's cash flow projections for the period from May 10, 2014 to November 30, 2014; and
- (g) the Monitor's comments on the Fund's request for an extension of the Stay of Proceedings.

#### **TERMS OF REFERENCE**

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

14. 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.

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

16. Capitalized terms not defined herein shall have the meaning ascribed to in the affidavit of Ian Ross, Chairman of the Fund, sworn May 9, 2014 and filed (the “**May 9<sup>th</sup> Affidavit**”).

17. This report should be read in conjunction with the May 9<sup>th</sup> Affidavit as certain information contained in the May 9<sup>th</sup> Affidavit have not been included herein in order to avoid unnecessary duplication.

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

### *General Background*

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

19. The Allen-Vanguard Motion was derived from the litigation proceedings (the “**Allen Vanguard Litigation**”) commenced by Allen-Vanguard against the Fund and other offeree shareholders (the “**Offeree Shareholders**”) and relates to Allen-Vanguard’s purchase of shares previously held by the Fund and the Offeree Shareholders in Med-Eng Systems Inc. (“**Med-Eng**”).

20. On November 28, 2013, the Fund served a Notice of Cross Motion returnable February 11, 2013 (the “**Cross Motion**”). The Allen-Vanguard Motion and the Cross Motion were heard on February 11, 2014.

21. Justice Brown rendered his decision with respect to the Allen-Vanguard Motion and Cross Motion and held, *inter alia*, that the Stay of Proceedings was lifted solely with respect to the Allen-Vanguard Litigation. In addition, Justice Brown imposed strict terms and conditions on the lifting of the Stay of Proceedings (the “**Initial Reasons**”). The partial lifting of the Stay of Proceedings in respect of the Allen-Vanguard Litigation was granted until the date until which the current Stay of Proceedings of the Fund expires and the Applicant would be seeking approval from the Court for a long-term extension of the Stay of Proceedings.

22. As the Fund and Roseway have concluded the Investment Advisor Agreement, the Fund is seeking a long-term extension of the stay for the harvesting and realization of the Portfolio by Roseway through ordinary course exit opportunities. For this motion scheduled May 14, 2014, the Monitor understands, based on the Initial Reasons, that the Court will also consider the continuation of the partial lifting of the stay in respect of the Allen-Vanguard Litigation.

23. As the Monitor reported in its Eighth Report dated April 29, 2014 (the “**Eighth Report**”), the parties to the Allen-Vanguard Litigation have been unable to secure time from the Ottawa Court for a case conference early enough for the parties thereto to be able to meet the timelines and conditions set forth in the Initial Reasons imposed by Justice Brown.

24. As reported in the Eighth Report, the Monitor was advised by both parties that, notwithstanding the lack of Ottawa Court time available, the parties have spoken, emailed, and met in person to resolve procedural issues in a constructive manner without Master Macleod's assistance. Counsel for the Offeree Shareholders and Allen-Vanguard have advised the Monitor that, as was previously disclosed by the Monitor in its Eighth Report, and as was reported by the parties on May 2, 2014, the parties in the Allen-Vanguard Litigation have been working in a constructive manner to deal with procedural and timing issues.

25. The Monitor understands that the parties have continued to meet to discuss these issues and both parties have reported to the Monitor that the conversations have continued to be constructive and helpful, and that the parties are continuing to engage in discussions. The parties are currently seeking to obtain and/or confirm instructions from their respective clients and are in the process of documenting various arrangements. The parties have also secured a case conference date with Master MacLeod on May 27, 2014. The Monitor understands that the parties will be in attendance at this motion and that the parties will be able to address the current state of discussions at that time, if so requested.

26. The Monitor will endeavour to keep apprised as to the status of the Allen Vanguard Litigation and to update the Court, prior to the expiry of the proposed Stay Period in November 2014, if and as to any material issues that may prevent the parties from meeting the conditions and timelines imposed by his Honour in the Initial Reasons.

#### **APPROVAL OF THE INVESTMENT ADVISOR AGREEMENT**

27. All terms not defined herein shall have the meaning ascribed thereto in the Investment Advisor Agreement.

28. As described in further detail in the Seventh Report dated April 3, 2014, in light of the results of the SISP which revealed no acceptable offers to purchase the assets of the Fund, the Fund and Roseway, with the consultation and oversight of the Monitor, sought to negotiate an agreement between the Fund and Roseway that, subject to the approval by the Court, would provide that Roseway would manage the Portfolio.

29. As noted in the Eighth Report of the Monitor dated April 29, 2014, the Fund sought a short one week stay extension from May 10, 2014 to May 16, 2014 in order to finalize a draft investment advisor agreement with Roseway. We are pleased to inform the Court that the



Fund and Roseway have agreed to the terms of an Investment Advisor agreement, subject to approval by this Court. The Investment Advisor Agreement contemplates retaining Roseway to provide investment management and other administrative services to the Fund in relation to its Portfolio.

30. The salient provisions of the Investment Advisor include the following:

*Term*

- (a) The term of the Investment Advisor Agreement shall be the earlier of (A) four years from the date of the agreement; and (B) the day following disposition of all or substantially all of the Portfolio.

*Governance*

- (b) The Fund will use reasonable efforts to obtain the resignations of seven members of the board of directors of the Fund, three remaining board members on the board of directors of the Fund.
- (c) The Fund will take reasonable steps to cause one of the Investment Advisor's representatives to be appointed as the Fund's nominee on the board of directors and/or as an observer to the board of directors of each Portfolio Company.

*OPKO Dispute Between Roseway and the Fund*

- (d) The dispute between Roseway and the Fund with respect to the common stock of Opko Health Inc., shall not be resolved until such time as the Monitor has advised the parties that the Fund will have sufficient cash resources to merit pursuing such resolution.

*Duties of the Investment Advisor related to the Portfolio*

- (e) Roseway shall, *inter alia*, make arrangements to implement the sale of the Portfolio in the ordinary course and otherwise in accordance with the CCAA.
- (f) Roseway shall monitor and deliver quarterly written reports to the Fund and the Monitor with respect to any disposition of Portfolio Securities as well as significant corporate developments with respect thereto.
- (g) In the event that there is a conflict of interest with respect to an investment or divestment which involves Roseway and (A) the Fund; (B) any Related Party; or (C) any Other Client of Roseway (a “**Conflicted Opportunity**”), Roseway must present to the Monitor for its review and written approval, such Conflicted Opportunity. If the approval of such Conflicted Opportunity is withheld by the Monitor, the Fund, with the oversight of the Monitor, shall determine the appropriate course of action.

*Fees to be paid to Roseway*

- (h) Roseway shall be entitled to an annual fee in the amount of \$350,000.
- (i) Provided that the Roseway debt is repaid in full, Roseway shall be entitled to a fee equal to 15% of the aggregate proceeds of disposition of the remaining Portfolio Securities.
- (j) Upon termination of the Investment Advisor Agreement, and provided that the Roseway debt is repaid in full and the agreement has not been terminated by Fund as a result of the material breach by Roseway of the agreement, Roseway shall be

entitled to 15% of the aggregate proceeds of disposition of the remaining Portfolio Securities provided that, in each case, such disposition is completed within six (6) months following the effective date of termination.

- (k) In addition to the foregoing fees, Roseway shall be entitled to be reimbursed for necessary out of pocket expenses in the course of dispositions of the Portfolio to a maximum aggregate amount of \$25,000 per annum plus a maximum of \$10,000 per annum for D&O Insurance Premiums.

*Expenses of the Fund*

- (l) The Fund shall be entitled to retain up to a specified amount agreed upon by the parties and the Monitor in order to pay the GW Expenses, including the expenses of the board, maintenance of shareholder and accounting information and expenses to permit the Fund to provide on-going disclosure, the fees and disbursements of the Monitor and the Annual Fee to Roseway.

*Follow-on Investments*

- (m) For as long as the Roseway debt remains outstanding, Roseway shall be entitled to an assignment of the Fund's rights to participate in a follow-on financing of a Portfolio Company and in consideration of such assignment, the Fund shall be entitled to 5% of the Net Divestment Proceeds in respect of such follow-on financing.
- (n) Each follow on financing that is assigned to Roseway must be approved by the Monitor.

- (o) From and after the time that the Roseway debt is repaid in full, the Fund shall determine, with the consent of the Monitor whether it shall participate in any Follow-on Financing.

31. The Monitor has reviewed the terms of the Investment Advisor Agreement and believes that the terms therein are fair and reasonable.

32. The implementation of the Investment Advisor Agreement should substantially reduce the costs being incurred by the Fund in these proceedings by minimizing both legal and administration expenses relating the CCAA proceedings. The Claims Process, including the adjudication and resolution of claims, will not be commenced by the Monitor until such time as the Roseway debt is substantially repaid and expected to be paid in full.

33. In addition, the Investment Advisor Agreement will assist with the long-term harvesting and disposition of the Portfolio at appropriate exit opportunities, in order to maximize value for stakeholders of the Fund. The 15% fee payable to Roseway from any dispositions from and after the time that Roseway is paid in full should incent Roseway to continue to manage the Fund with a view to maximizing value for unsecured creditors and shareholders of the Fund.

#### **ENHANCEMENT OF THE POWERS OF THE MONITOR**

34. Pursuant to the terms of the Investment Advisor Agreement, the Monitor will have an oversight role over the management of the Portfolio by Roseway, including *inter alia*, reviewing and approving all Conflicted Opportunities and all Follow-on Financings that are assigned to Roseway during the time that the Roseway debt is outstanding. In addition, the Monitor has agreed to act on behalf of the Fund with respect to certain duties and obligations including:

- (a) receiving payment from Roseway from the Blocked Account on account of the Fees and Expenses Allowance;
- (b) to make disbursements to third parties for and on behalf of the Fund, including payment of the GW Expenses. The GW Expenses relate to the Fund's ongoing ordinary course expenses and the Annual Fee payable to Roseway;
- (c) receiving, from and after the time that the Roseway debt is repaid in full, all proceeds of disposition from the sale of any remaining Portfolio Securities for payment by the Monitor of the Legal Expenses and Transaction Expenses, the Annual Fee, the GW Expenses, the Additional Fee (being the 15% of the aggregate proceeds of disposition of the remaining Portfolio Securities) with the balance, if any, to be held by the Monitor on behalf of the Fund. It is anticipated that any such remaining balance will be distributed to unsecured creditors and shareholders of the Fund in accordance with their relative priorities.

35. The Monitor is granted normal course CCAA powers pursuant to the Amended and Restated Initial Order. However, to the extent that the Amended and Restated Initial Order does not authorize the Monitor to conduct its duties and obligations as contemplated in the Investment Advisor Agreement, including taking certain actions on behalf of the Fund pursuant to the terms thereof, the Monitor recommends that the Court approve the Order enhancing the powers of the Monitor. The terms of the Order enhancing the powers of the Monitor is supported by Roseway.

## **TRANSITIONAL SERVICES**

36. Pursuant to the Amended and Restated Initial Order, the Former Manager was designated as critical suppliers in connection with the provision of transitional services to the Fund pursuant to the Management Agreement.

37. As more fully described in the Second Report of the Monitor dated October 28, 2013, the scope of the transitional services to be provided by the Former Manager as well as the methodology for calculating the costs of such transitional services were agreed to in a Critical Services Transition Agreement entered into between the Applicant and the Former Manager on October 25, 2013 (the "CTSA").

38. Pursuant to the CTSA, the Former Manager is required to provide and has provided transitional services to the Fund. The Monitor has paid all invoices submitted by the Former Manager and that were approved by the Fund.

39. The Former Manager has provided certain services since the last invoices received by the Fund, and several invoices issued by the Former Manager remain unpaid and are subject to dispute. Accordingly a provision has been made in the cash flow forecast for payment of valid and approved invoices submitted before and after the date hereof by the Former Manager

40. On April 3, 2014, the Monitor requested from the Former Manager a quote for the provision of certain ongoing transition services but, as of the date hereof, the Former Manager has not responded to the Monitor's request. The Fund is continuing to explore all of its options with respect to any ongoing transition services that may be required.

**ACTUAL RECEIPTS AND DISBURSEMENTS OF THE FUND FOR THE PERIOD  
FROM APRIL 26, 2014 TO MAY 9, 2014**

41. The Fund’s actual net cash flow for the period from April 26, 2014 to May 9, 2014 (the “**Current Period**”) together with an explanation of key variances as compared to the April 26 Forecast is set out below. Actual net cash flows for the Current Period were approximately \$384,000 less than forecast, summarized as follows:

<b>\$000</b>	<b>Forecast</b>	<b>Actual</b>	<b>\$ Variance</b>
Cash Inflow			
Venture Exits and/or Interest Payments	\$ -	\$ -	\$ -
<b>Total Cash Inflow</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
Cash Outflow			
Follow on Funding	\$ -	\$ -	\$ -
CEO Fees & Expenses	\$ 22	\$ 25	\$ 3
Board Fees	\$ 81	\$ 70	\$ (10)
Insurance Fees	\$ -	\$ -	\$ -
Legal & Financial Advisor Fees	\$ 68	\$ 32	\$ (36)
Audit and Other Expenses	\$ -	\$ -	\$ -
<b>Total Cash Outflow</b>	<b>\$ 171</b>	<b>\$ 127</b>	<b>\$ (44)</b>
Restructuring Costs			
Monitor's Legal and Professional Fees	\$ 101	\$ 84	\$ (17)
Fund Legal Fees	\$ 123	\$ 567	\$ 445
<b>Total Restructuring Fees</b>	<b>\$ 224</b>	<b>\$ 651</b>	<b>\$ 428</b>
<b>Net Cash Flow</b>	<b>\$ (395)</b>	<b>\$ (779)</b>	<b>\$ (384)</b>
Opening Cash Balance	\$ 2,627	\$ 2,627	\$ -
Net Cash Flow	\$ (395)	\$ (779)	\$ (384)
Repayment of Obligation to Roseway	\$ -	\$ -	\$ -
Unrealized FX Gain/Loss	\$ -	\$ (4)	\$ (4)
<b>Ending Cash Balance</b>	<b>\$ 2,232</b>	<b>\$ 1,844</b>	<b>\$ (388)</b>

Note 1: The cash balance is denominated in USD and has been translated to CAD based on foreign exchange rates from the Bank of Canada. The Unrealized Gain/Loss balance is subject to change and will fluctuate with the USD/CAD exchange rate.

42. The variance in actual receipts and disbursements is comprised primarily of a variance of approximately \$390,000 in Legal, Financial Advisor and Restructuring Professional Fees. This variance is made up of:

- (i) a negative variance of approximately \$430,000 in Fund Legal Fees that is permanent in nature and the result of bills paid for services provided during the period of January to March 2014. The estimates for services incurred for the period of January to March 2014 had not been included in the forecast; and
- (ii) a positive variance of approximately \$40,000 relating to Financial Advisor, Monitor and Monitor's counsel fees. The variance is temporary in nature and is due to timing differences between receipt of bills and payment thereof.

#### **THE FUND'S CASH FLOW FORECAST**

43. The Fund has prepared a revised draft cash flow forecast for the period May 10, 2014 to November 30, 2014 (the "**May 10 Forecast**"). A copy of the draft May 10 Forecast is attached as Appendix "B". The draft May 10 Forecast shows a negative net cash flow of approximately \$1.7 million, and is summarized below:



\$000	CAD
Cash Inflow	
Venture Exits and/or Distributions	\$ -
<b>Total Cash Inflow</b>	<b>\$ -</b>
Cash Outflow	
Follow on Funding	\$ 150
CEO Fees & Expenses	\$ 22
Payroll & Benefits	\$ 78
Insurance Fees	\$ -
Legal & Financial Advisor Fees	\$ 342
Board Fees	\$ 183
Rent, Communications & Utilities	\$ 7
Audit & Other Fees	\$ 251
<b>Total Cash Outflow</b>	<b>\$ 1,034</b>
Restructuring Costs	
Financial Advisor Fees	\$ 368
<b>Total Restructuring Fees</b>	<b>\$ 368</b>
<b>IAA Fees &amp; Expenses</b>	<b>\$ 285</b>
<b>Net Cash Out Flow</b>	<b>\$ (1,686)</b>
Opening Cash Balance	\$ 1,844
Net Cash Flow	\$ (1,686)
<b>Ending Cash Balance</b>	<b>\$ 158</b>

44. The draft May 10 Forecast is based on the budgeted expenses pursuant to the Investment Advisor Agreement and is subject to amendments to be agreed by Roseway, the Fund and the Monitor. This budget does not include realization from investment exits as the timing and quantum of such realizations are subject to decisions to be made by the Investment Advisor, once appointed. It is anticipated that throughout the May 10 Forecast period the Fund's projected liquidity requirements will be met from cash currently on hand and future investment exits.

#### **DISTRIBUTIONS TO ROSEWAY**

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

46. Pursuant to the Distribution Order and since the date of the filing of the Sixth Report, the Fund, with the consent of the Monitor, has made distributions to Roseway. There has been no change in total distributions made to date since the Monitor's Eighth Report. Please refer to a detailed table below for total distributions made to date:

<b>Date of Payment</b>	<b>USD</b>	<b>CAD</b>
March 7, 2014	\$ 1,978,603	\$ 3,659,412
March 24, 2014	\$ 212,701	
April 1, 2014	\$ 613,157	
April 4, 2014	\$ 500,000	\$ 1,400,000
April 21, 2014	\$ 999,980	
<b>Total</b>	<b>\$ 4,304,440</b>	<b>\$ 5,059,412</b>

#### **STAY EXTENSION**

47. The stay period currently expires on May 16, 2014 (the "**Stay Period**") and the Fund is seeking a long term extension of the Stay of Proceedings to and including November 30, 2014.

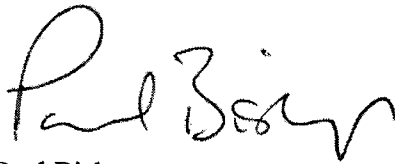
48. The Monitor is supportive of the long term stay extension of the Fund in order for the Fund to preserve and maximize, through the management of the Portfolio by Roseway, the value of the Fund's assets in order to repay the indebtedness owing to Roseway and, from and after such time as Roseway is paid in full, for the benefit of the Fund's stakeholders.

49. The Monitor is of the belief that stakeholders and creditors of the Fund would not be materially prejudiced by the long term extension of the Stay Period. The Monitor is also of the belief that the Fund has acted, and is acting, in good faith and with due diligence and that circumstances exist that warrant an extension of the stay to November 30, 2014.

The Monitor respectfully submits to the Court this Tenth Report.  
Dated this 12th day of May, 2014.

FTI Consulting Canada Inc.

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



Paul Bishop  
Senior Managing Director



Jodi B. Porepa  
Managing Director

## APPENDIX "A"

Court File No.: CV-13-10279-OOCL

**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

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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

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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

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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://cfcanafticonsulting.com/gcfl>.

#### **GENERAL**

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

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

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

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

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

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

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

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## APPENDIX "B"



Business Weeks Ending on the Following Dates															
	Week 1 05-16	Week 2 05-23	Week 3 05-30	Week 4 06-06	Week 5 06-13	Week 6 06-20	Week 7 06-27	Week 8 07-04	Week 9 07-11	Week 10 07-18	Week 11 07-25	Week 12 08-01	Week 13 08-08	Week 14 08-15	Week 15 08-22
<b>Venture Exits and/or Distributions</b>															
<i>Cash Outflow</i>															
Follow Ons	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
CEO Fees & Expenses	-	6	6	11	-	-	50	-	-	-	-	-	-	-	-
Payroll & Benefits	-	3	3	3	3	3	3	2	2	2	2	2	3	3	3
Insurance Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Legal & Financial Advisor Fees	-	-	151	152	2	2	7	1	1	1	1	1	2	2	2
Board Fees	-	-	88	88	-	-	-	2	-	-	-	-	2	-	-
Rent, Communications & Utilities	-	-	1	1	-	-	-	1	-	-	-	-	-	1	-
Audit & Other Expenses	-	5	5	3	3	3	68	102	2	2	2	2	3	3	3
<b>Cash Out Flows</b>	-	14	253	258	7	7	127	108	6	6	6	6	10	7	7
<i>Restructuring Costs</i>															
Advisor Fees	-	-	53	68	15	15	15	15	7	7	7	7	7	9	9
<b>Total Restructuring Fees</b>	-	-	53	68	15	15	15	15	7	7	7	7	7	9	9
IAA Fees & Expenses	-	88	-	-	-	-	16	-	-	-	-	-	-	-	88
IAA Additional Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Outflows</b>	-	101	305	326	22	22	159	115	13	13	13	13	18	16	103
Opening Cash	1,844	1,844	1,743	1,438	1,113	1,090	1,068	909	794	781	768	756	743	725	709
Cash Outflows	-	(101)	(305)	(326)	(22)	(22)	(159)	(115)	(13)	(13)	(13)	(13)	(18)	(16)	(103)
<b>Closing Cash</b>	<b>1,844</b>	<b>1,743</b>	<b>1,438</b>	<b>1,113</b>	<b>1,090</b>	<b>1,068</b>	<b>909</b>	<b>794</b>	<b>781</b>	<b>768</b>	<b>756</b>	<b>743</b>	<b>725</b>	<b>709</b>	<b>606</b>

1. The purpose of this Cash Flow Forecast is to determine the liquidity requirements for Growthworks Canadian Fund Ltd. during the CCAA Proceedings.
2. This budget does not include realizations from investment exits as the timing and quantum of such is subject to decisions to be made by the Investment Advisor, once appointed.
3. Follow on Funding is based on management's estimate of possible requirements as well as the provisions of the Investment Advisor Agreement.
4. Operating expenses are forecast based on historical analysis and estimates from services providers.
5. Estimated Restructuring costs are based on projected costs associated with legal and professional fees relating to the CCAA Proceedings.
6. Investment Advisor Fees are estimated pursuant to the Investment Advisor Agreement.
7. This Cash Flow Forecast is in DRAFT and is still subject to amendments to be agreed by Roseway, the Fund and the Monitor.

	Week 16 08-29	Week 17 09-05	Week 18 09-12	Week 19 09-19	Week 20 09-26	Week 21 10-03	Week 22 10-10	Week 23 10-17	Week 24 10-24	Week 25 10-31	Week 26 11-07	Week 27 11-14	Week 28 11-21	Week 29 11-28	Total
<b>Business Weeks Ending on the Following Dates</b>															
Venture Exits and/or Distributions	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash Outflow	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Follow On's	-	100	-	-	-	-	-	-	-	-	-	-	-	-	100
CEO Fees & Expenses	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Payroll & Benefits	3	2	2	2	2	2	3	3	3	3	3	3	3	3	150
Insurance Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	22
Legal & Financial Advisor Fees	2	1	1	1	1	1	2	2	2	2	2	2	2	2	78
Board Fees	-	2	-	-	-	-	-	-	-	-	-	-	-	-	342
Rent, Communications & Utilities	-	1	-	-	-	-	1	-	-	-	1	-	-	-	183
Audit & Other Expenses	3	2	2	2	2	17	3	3	3	3	3	3	3	3	7
<b>Cash Out Flows</b>	<b>7</b>	<b>108</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>21</b>	<b>10</b>	<b>7</b>	<b>7</b>	<b>7</b>	<b>10</b>	<b>7</b>	<b>7</b>	<b>7</b>	<b>1,034</b>
Restructuring Costs	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Advisor Fees	9	7	7	7	7	7	9	9	9	9	2	2	2	2	368
<b>Total Restructuring Fees</b>	<b>9</b>	<b>7</b>	<b>7</b>	<b>7</b>	<b>7</b>	<b>7</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>368</b>
IAA Fees & Expenses	-	-	-	-	-	6	-	-	-	-	-	-	-	-	285
IAA Additional Fee	-	-	-	-	-	-	-	-	-	-	-	-	88	-	-
<b>Total Outflows</b>	<b>16</b>	<b>115</b>	<b>13</b>	<b>13</b>	<b>13</b>	<b>34</b>	<b>18</b>	<b>16</b>	<b>16</b>	<b>16</b>	<b>12</b>	<b>9</b>	<b>148</b>	<b>9</b>	<b>1,686</b>
Opening Cash	606	590	475	462	449	437	403	384	368	352	336	324	315	167	1,844
Cash Outflows	(16)	(115)	(13)	(13)	(13)	(34)	(18)	(16)	(16)	(16)	(12)	(9)	(148)	(9)	(1,686)
<b>Closing Cash</b>	<b>590</b>	<b>475</b>	<b>462</b>	<b>449</b>	<b>437</b>	<b>403</b>	<b>384</b>	<b>368</b>	<b>352</b>	<b>336</b>	<b>324</b>	<b>315</b>	<b>167</b>	<b>158</b>	<b>158</b>

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

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

Marc Wasserman (LSUC#44066M)  
Tel: (416) 862-4908  
Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

Caitlin Fell (LSUC #60091H)  
Tel: (416) 862-6690  
Email: [cfell@osler.com](mailto:cfell@osler.com)

Solicitors for the Monitor  
F. 1145565