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

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

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

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

# MOTION RECORD
**(returnable November 4, 2015)**

October 2, 2015


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TO: THE SERVICE LIST

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# TAB 1

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

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
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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 PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO GROWTHWORKS CANADIAN FUND LTD.**

**NOTICE OF MOTION**
**(returnable November 4, 2015)**

ROSEWAY CAPITAL S.À.R.L. will make a motion to a judge presiding over the Commercial List on Wednesday, November 4, 2015, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** the motion is to be heard orally.

**THE MOTION IS FOR:**

(a) an Order that GrowthWorks Canadian Fund Ltd. (**GrowthWorks**) promptly pay to Roseway Capital s.à.r.l. (**Roseway**) the Additional Fee as defined in and earned under the Investment Advisor Agreement dated May 9, 2014 (the **IAA**) in respect of the PerspecSys Transaction (defined below) in the amount of U.S. $381,000 (plus 15% of the proceeds to be received by GrowthWorks in the future in respect of the PerspecSys Transaction);

(b) costs of this motion; and

(c) such further and other relief as counsel for Roseway may advise and as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:**

(a) in the context of these CCAA proceedings, the IAA was approved by this Court on May 14, 2014;

(b) Roseway, the only secured creditor of GrowthWorks, was appointed as "Investment Advisor" to GrowthWorks (and to FTI Consulting Canada Inc. in its capacity as court-appointed monitor (the **Monitor**)) pursuant to the IAA;

(c) about one year later, on May 22, 2015, Roseway and GrowthWorks entered into a settlement agreement (the **Settlement Agreement**) to resolve various disputes that had arisen between them prior to and during the course of these CCAA proceedings;

(d) the Settlement Agreement was approved by this Court on June 8, 2015;

(e) pursuant to section 2.04 of the Settlement Agreement, GrowthWorks was required to pay to Roseway the Investment Advisor Debt, as defined in the IAA, as soon as reasonably practicable (provided that the Monitor consented to such payment);

(f) pursuant to section 7.3 of the IAA, from and after such time as the Investment Advisor Debt has been paid in full, Roseway is entitled to the Additional Fee being a fee equal to 15% of the aggregate proceeds of disposition by GrowthWorks of certain securities;

(g) as at July 28, 2015, GrowthWorks had more than sufficient funds to pay the Investment Advisor Debt in full, and receipt of an additional significant stream of proceeds from pending transactions was imminent;

(h) at or about that time:

  (i) it was reasonably practicable for GrowthWorks to pay the Investment Advisor Debt in full;

  (ii) Roseway requested that the Monitor make such payment on behalf of GrowthWorks; and

  (iii) the Monitor consented to such a payment;

(i) however, GrowthWorks objected, thereby preventing payment of the Investment Advisor Debt;

(j) the effect of GrowthWorks' refusal to allow payment of the Investment Advisor Debt was to avoid liability for payment of the Additional Fee pursuant to the IAA in respect of a significant pending transaction, in that:

  (i) as at July 28, 2015, the disposition of GrowthWorks' interest in PerspecSys Inc. (the **PerspecSys Transaction**) was imminent – the deal had been signed and was expected to close within three days;

  (ii) the PerspecSys Transaction was expected to result in proceeds accruing to GrowthWorks in the approximate amount of U.S. $2.5 million (and thereafter additional proceeds over time); and

(iii) if the Investment Advisor Debt had been paid in full prior to closing of the PerspecSys Transaction, Roseway would have been paid the Additional Fee in respect of the proceeds accruing to GrowthWorks in the approximate amount of U.S. $2.5 million; but

(iv) if the Investment Advisor Debt had not been paid in full prior to closing of the PerspecSys Transaction, the Additional Fee would not be payable in respect of the proceeds accruing to GrowthWorks in the approximate amount of U.S. $2.5 million;

(k) GrowthWorks did not have any reasonable basis or authority under the IAA, the Settlement Agreement, or otherwise, to prevent payment of the Investment Advisor Debt until after the PerspecSys Transaction had closed;

(l) Roseway earned the Additional Fee in respect of the PerspecSys Transaction and is owed the Additional Fee in respect of the PerspecSys Transaction pursuant to section 7.3 of the IAA in the amount of U.S. $381,000 (plus 15% of all future proceeds);

(m) all amounts owing under the IAA are post-filing obligations of GrowthWorks for services provided post-filing;

(n) under the terms of the IAA and the Order approving it, Roseway is entitled to seek directions from this Court with respect to the IAA;

(o) the CCAA and the inherent and equitable jurisdiction of this Court; and

(p) such further and other grounds as counsel for Roseway may advise and this Honourable Court may permit.

**THE FOLLOWING EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

(a) the affidavit of Michael Forer, sworn October 1, 2015;

(b) the affidavit of Donna Parr, sworn September 30, 2015; and

(c) such further and other evidence as counsel for Roseway may advise and this Honourable Court may permit.

October 2, 2015

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**TO:** THE SERVICE LIST

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

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

Proceeding commenced at Toronto

**NOTICE OF MOTION**


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DOCSTOR: 5299209

# TAB 2

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

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

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

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

**AFFIDAVIT OF MICHAEL FORER**
**(sworn October 1, 2015)**

I, Michael Forer, of the Municipality of Blonay, Switzerland, MAKE OATH AND SAY:

1 I am a director of Roseway Capital s.à.r.l (**Roseway**), and I have been involved in administering the relationship between Roseway and GrowthWorks Canadian Fund Ltd. (**GrowthWorks**) since May 2010. As such, I have knowledge of the facts set out herein. To the extent that I do not have direct knowledge of such facts, I have stated the source of my knowledge, and believe such facts to be true.

2 I swore an affidavit in respect of these proceedings on August 28, 2015. While I do not disavow that affidavit, I do not rely on it for the purpose of the pending motion by Roseway.

**Overview**

3 Pursuant to an Investment Advisor Agreement between GrowthWorks and Roseway dated May 9, 2014 (the **IAA**), GrowthWorks was required to pay Roseway the Investment Advisor Debt, as defined in the IAA, in the amount of $955,404.

4 Pursuant to section 2.04 of a settlement agreement entered into by Roseway and GrowthWorks on May 22, 2015 (the **Settlement Agreement**), upon consent of FTI Consulting Canada Inc. in its capacity as court-appointed monitor (the **Monitor**), GrowthWorks was required to pay the Investment Advisor Debt "as soon as reasonably practicable".

5 Pursuant to section 7.3 of the IAA, after payment of the Investment Advisor Debt in full, Roseway became entitled to an Additional Fee, as defined in the IAA, being a fee equal to 15% of the aggregate proceeds of disposition by GrowthWorks of certain securities, including its interest in PerspecSys Inc. (**PerspecSys**).

6 As at July 28, 2015, GrowthWorks had more than sufficient funds to pay the Investment Advisor Debt in full and receipt of additional significant proceeds from the pending disposition of its interest in PerspecSys (the **PerspecSys Transaction**) was imminent.

7 Since it was reasonably practicable to pay the Investment Advisor Debt in full, Roseway requested that the Monitor make this payment on behalf of GrowthWorks and the Monitor provided its consent.

8 However, notwithstanding the Monitor's consent, and notwithstanding that it was reasonably practicable to make the payment, GrowthWorks objected, thereby preventing payment of the Investment Advisor Debt on July 28, 2015.

9 It was not until after the PerspecSys Transaction had closed that GrowthWorks authorized payment of the Investment Advisor Debt. At that point, Roseway refused to accept payment of the Investment Advisor Debt because it wanted to have the issue of its entitlement to the Additional Fee adjudicated first.

10 GrowthWorks brought a motion to compel Roseway to accept payment of the Investment Advisor Debt and Roseway brought a cross-motion to compel payment of the Additional Fee, both returnable on September 4, 2015.

11 I am advised by Tony Reyes of Norton Rose Fulbright Canada LLP (**Norton Rose Fulbright**), counsel to Roseway, that when the lawyers for the parties attended at court on September 4, 2015, Justice Newbould was not prepared to consider the cross-motion, apparently because he believed that cross-examinations would be necessary given certain allegations by Roseway.

12 I am advised by Mr. Reyes that, in light of Justice Newbould's decision, he did not oppose the relief sought by GrowthWorks on its motion, provided that the amount of the Additional Fee in dispute was segregated and held by the Monitor. The Monitor's counsel agreed to this condition and advised the Court accordingly.

13 Following the parties' attendance in chambers on September 4, 2015, the Investment Advisor Debt was paid in full.

14 The effect of GrowthWorks' refusal to allow the Investment Advisor Debt to be paid until after closing of the PerspecSys Transaction was to avoid liability for payment to Roseway of the Additional Fee in respect of the PerspecSys Transaction in the amount of $381,000.

**Background**

15 These CCAA proceedings were commenced by GrowthWorks on October 1, 2013. The filing by GrowthWorks under the CCAA was necessary at that time because GrowthWorks was insolvent and had, among other things, defaulted on payments due to Roseway – its only secured creditor.

16 GrowthWorks is a labour-sponsored venture capital fund, with a portfolio of investments in small and medium-sized Canadian businesses. Its investment portfolio (the **Portfolio**) has consisted largely of securities of start-up private companies, many of which were developing bio-medical, information and agricultural technology products that might or might not realize commercial success. I refer to these as "Venture Capital Companies" or "VC Companies".

17 Roseway has significant experience and expertise in the VC Companies sector (that is, investing in VC Companies and helping them to develop), and indeed Roseway's interest in that sector was a factor that motivated Roseway to provide financing to GrowthWorks in May 2010 in the amount of $20,000,000 (the **Investment**).

**GrowthWorks Seeks and Obtains Court Protection**

18 By late 2012, it became clear to Roseway that GrowthWorks had liquidity issues and a decreasing net asset value. Although GrowthWorks was required to repay Roseway the full principal amount of the Investment by May 28, 2013, it was unable to do so.

19 Between April and September 2013, Roseway granted GrowthWorks six forbearance / extension periods. In September 2013, Roseway advised GrowthWorks that it was in the process of preparing materials to seek a Court-appointed receiver and manager, and would do so promptly after the expiry of the latest forbearance period at the end of that month.

20 GrowthWorks responded by advising that it would seek protection from the Ontario Superior Court of Justice on October 1, 2013 under the CCAA.

21 GrowthWorks stressed that it was committed to addressing certain fundamental problems by way of management changes and that it would be subject to independent oversight by virtue of the appointment of a monitor. GrowthWorks also agreed that it would move promptly to consummate a transaction that would result in Roseway being repaid in full.

22 On October 1, 2013, with the consent of Roseway, the initial Order was made in the CCAA proceedings (the **Initial Order**) and the Monitor was appointed.

23 In November 2013, GrowthWorks and Roseway took steps on a cooperative basis to advance the CCAA proceedings and to establish their respective rights.

24 GrowthWorks sought and obtained the approval of a Sales and Investment Solicitation Process (the **SISP**).

25 Roseway sought and obtained an Order on November 28, 2013 to recognize its secured claim and to authorize distributions to Roseway from time to time as funds became available, whether from the ordinary-course liquidation from the Portfolio over time, or as a result of a successful sale of the Portfolio (the **Distribution Order**). A copy of the Distribution Order is attached as **Exhibit "A"**.

**GrowthWorks is Unable to Sell its Portfolio Quickly**

26 GrowthWorks solicited expressions of interest to sell the Portfolio in November and December 2013 in accordance with the SISP. However, despite a comprehensive process, GrowthWorks was unable to locate an investor or buyer for the Portfolio on satisfactory terms.

27 Since an investor or buyer for the Portfolio could not be located quickly, it was necessary to ensure that the Portfolio was managed appropriately until such time as it could be sold. However, GrowthWorks had terminated its previous manager one day before it obtained the Initial Order and had not replaced that former manager.

28 Roseway took the view (shared by the Monitor and, I believe, GrowthWorks itself) that GrowthWorks, as managed by its board of directors and an acting interim chief executive officer, did not have sufficient expertise to manage the Portfolio.

29 In the context of the unsuccessful SISP process, Roseway, GrowthWorks, and the Monitor all recognized that the most prudent course of action was to retain a manager for the Portfolio and to 'manage out' the Portfolio with a view to maximizing realizations over time.

**The Investment Advisor Agreement**

30 GrowthWorks and Roseway entered into negotiations which eventually resulted in the execution of the IAA on May 9, 2014. Pursuant to the IAA, Roseway was appointed Investment Advisor to manage the Portfolio. The IAA was approved by an Order of the Court dated May 14, 2014 (the **IAA Approval Order**). A copy of the IAA is attached as **Exhibit "B"** and a copy of the IAA Approval Order is attached as **Exhibit "C"**.

31 The parties also entered into an agreement on October 6, 2014 regarding establishment of a bank account to deal with proceeds of dispositions of securities in the Portfolio. A copy of that agreement is attached as **Exhibit "D"**.

32 Roseway was selected to manage the Portfolio for a number of reasons: (i) it was still owed approximately $21 million as at December 2013, (ii) recovery of this

indebtedness was uncertain and prospects were doubtful at that time, (iii) it had the most to gain from good management (and the most to lose from bad management) of the Portfolio, and (iv) it had expertise in the VC Companies business sector.

**Realizations from the Portfolio**

33 The affairs of many of the companies in the Portfolio (and certainly GrowthWorks' involvement with them) were in disarray under the former manager, and prior to the appointment of Roseway as Investment Advisor. However, due largely to the efforts of Roseway and Donna Parr of Crimson Capital Inc. (**Crimson Capital**), Roseway's "Sub-Contractor" under the IAA, realizations from the Portfolio have been better than anticipated.

34 For example, with respect to the sale from the Portfolio of approximately one million shares of Ambit Biosciences Corporation (**Ambit**, and the sale of the shares being the **Ambit Transaction**), Roseway and Crimson Capital advised that the shares of Ambit should be held, rather than sold. These shares were trading at approximately U.S. $6.30 at the date of the IAA and at that time could potentially have been sold for approximately U.S. $6 million.

35 The insight and patience to hold rather than sell was based on the investment judgement and expertise of both Roseway and Crimson Capital, and it was rewarded when a takeover bid was made for Ambit in September 2014 at a price of U.S. $15.00 per share, plus additional contingent rights. Holding these shares over this relatively short period of time greatly increased GrowthWorks' return – GrowthWorks received U.S. $17.8 million as a result of the Ambit Transaction.

36 Ms. Parr and Crimson Capital were also instrumental in the settlement of an eight-year lawsuit by Allen-Vanguard Corporation against GrowthWorks and others. Neither the former manager nor GrowthWorks had been able to settle this claim. Ms. Parr's efforts resulted in the settlement of this lawsuit and freed GrowthWorks of a claim in the amount of $650 million. In addition, GrowthWorks recovered its legal fees of approximately $1 million and received a distribution of an additional $2.38 million.

37 Crimson Capital also advanced two transactions relating to PerspecSys to a successful conclusion. Firstly, in 2014, Roseway completed a 'follow-on' financing of PerspecSys under the terms of the IAA. Since GrowthWorks' investment in PerspecSys had 'pay to play' provisions (where investors are required from time to time to advance further funds or, in the alternative, lose some of the favourable characteristics of their prior investment), this follow-on financing by Roseway protected GrowthWorks from having its preferred shares in PerspecSys converted to common shares, and resulted in Growthworks receiving a better return from PerspecSys on a more timely basis.

38 Secondly, in 2015, Crimson Capital helped to complete the PerspecSys Transaction – the sale of GrowthWorks' interest in PerspecSys to a multi-national buyer, which resulted in divestment proceeds of an additional U.S. $2.54 million to GrowthWorks (with additional proceeds to be paid over time). Had Roseway not completed the 'follow-on' financing that I mentioned above, GrowthWorks would only have received approximately U.S. $171,000 in respect of the PerspecSys Transaction. It was this higher amount of proceeds generated by Roseway that later put GrowthWorks in a more comfortable cash flow position to pay the Investment Advisor Debt.

39 Crimson Capital has also worked hard to preserve value in some of the businesses which remain in the Portfolio but which have had significant challenges. Ms. Parr is active on the boards of five VC Companies and has actively managed several VC Companies in the Portfolio who were cash constrained, helping them to avoid distressed situations that would have led to a loss of GrowthWorks' investment, or a reduction of that investment through further dilutive financings.

40 As a result of her efforts, Ms. Parr's company, Crimson Capital, would receive a percentage of the Additional Fee.

**State of Affairs by July 2015**

41 As it became apparent that there might be sufficient funds to repay the Investment Advisor Debt (which had remained unpredictable previously), GrowthWorks and Roseway entered into discussions in order to settle certain disputes that have arisen prior to and during the course of these CCAA proceedings.

42 These discussions and negotiations took many months but resulted in a Settlement Agreement dated May 22, 2015. The Settlement Agreement was approved by an Order of the Court made on June 8, 2015 (the **Settlement Approval Order**). A copy of the Settlement Agreement is attached as **Exhibit "E"**. A copy of the Settlement Approval Order is attached as **Exhibit "F"**.

43 Section 6.02 of the Settlement Agreement provides that the IAA continues in full force and effect in accordance with its term, except as amended or modified by the terms of the Settlement Agreement.

44 After the Settlement Agreement had been approved by the Court, on June 10, 2015, payment of $1,000,000 was made to Roseway on account of the Investment Advisor Debt, leaving a balance owing to Roseway of $955,404.

45 Section 2.04(c) of the Settlement Agreement sets out when the Investment Advisor Debt must be paid in full:

> with the consent of the Monitor, [GrowthWorks] will pay the Outstanding IAD [the Investment Advisor Debt] **as soon as reasonably practicable**, taking into account [GrowthWorks'] commercially reasonable estimate of the actual **and projected** (i) liquidity and capital resources of [GrowthWorks], and (ii) expenditures of [GrowthWorks] [emphasis added]

46 On July 28, 2015, the Monitor informed James Cade of Norton Rose Fulbright that there was a balance of more than $1.35 million in GrowthWorks' bank accounts.

47 Payment of the remainder of the Investment Advisor Debt would leave GrowthWorks with a balance of approximately $400,000. Moreover, there were two pending payments that would result in significant additional funds accruing to GrowthWorks. Specifically:

(a) the PerspecSys Transaction was expected to close within three days, and was expected to yield approximately U.S. $2.5 million; and

(b) a further payment from a prior divestment that included a future contingent amount was expected to close before the end of August, and was expected to yield approximately U.S. $1.2 million.

48 As such, it was Roseway's view that it was reasonably practicable for GrowthWorks to pay the balance of the Investment Advisor Debt on July 28, 2015.

Roseway came to this view in light of the above, relying on the expertise and advice of Ms. Parr, and specifically on Ms. Parr's confirmation that the PerspecSys Transaction was definitely going to close and that it was going to close in only a few days.

49 On July 28, 2015, Paul Bishop, a representative of the Monitor, sent an e-mail to Mr. Cade which set out the Monitor's position:

> Payment of the remaining IAD would leave us with $387,282 in available funds. I require the Fund's approval to pay out the balance of the IAD and have advised the Fund that this amount, combined with the funds from Perspscys, should be more than sufficient to fund activities through the current extension period and beyond, and that accordingly I would consent to such payment.

A copy of this e-mail is attached as **Exhibit "G".**

50 On July 28, 2015, Mr. Cade of Norton Rose Fulbright requested on behalf of Roseway that GrowthWorks consent to payment of the Investment Advisor Debt, while noting that GrowthWorks' consent was not technically necessary. An e-mail from Mr. Cade to Jonathan Grant of McCarthy Tétrault LLP, counsel for GrowthWorks, setting out Roseway's request and position in this regard is attached as **Exhibit "H"**.

**GrowthWorks Improperly Blocks Repayment of the Investment Advisor Debt**

51 On July 29, 2015, Mr. Grant responded to Mr. Cade by e-mail, copying the Monitor, to object to repayment of the Investment Advisor Debt on behalf of GrowthWorks. A copy of Mr. Grant's e-mail is attached as **Exhibit "I"**.

52 As described above, it is clear that GrowthWorks had more than "very limited and unreliable sources of capital", as asserted by Mr. Grant. Notably, GrowthWorks did

not have the need to maintain any significant amount of cash on hand for unforeseen needs – it has no ongoing operations.

53 In this regard, I believe that GrowthWorks' unpaid post-filing payables were owed largely to directors, who have not had any role in the management of GrowthWorks since Roseway became Investment Advisor under the IAA, and to GrowthWorks' lawyers.

54 Moreover, and in any event, receipt of approximately U.S. $2.5 million in additional funds was imminent. The timing of the closing of the PerspecSys Transaction was far from uncertain, as asserted by Mr. Grant. As at July 28, 2015, the agreement had been signed – the question surrounding closing was not "if", but "when".

55 Mr. Grant is a lawyer whose practice focuses largely on mergers and acquisitions. Unlike Ms. Parr, he is not an experienced investment advisor. I do not believe that Mr. Grant had any expertise to determine (or even have a view as to) when the PerspecSys Transaction would close.

56 Likewise, Mr. Ross is not an experienced investment advisor. In fact, as stated above, it was necessary for GrowthWorks to retain Roseway to manage the Portfolio because Mr. Ross and GrowthWorks' board of directors did not have the ability to do it effectively themselves. I do not believe that Mr. Ross had any expertise to determine (or even have a view as to) when the PerspecSys Transaction would close.

57 Nor did either Mr. Grant or Mr. Ross request any information from Roseway or, according to Ms. Parr, from Crimson Capital, to assist them in coming to an informed view in this regard.

58 Roseway and Crimson Capital did all of the work in respect of the PerspecSys Transaction. They had all of the information required to inform themselves as to when the transaction would close. As at July 28, 2015, Roseway (relying on Ms. Parr's expertise) believed that the transaction would close within three days.

59 As expected, the PerspecSys Transaction closed on July 31, 2015, only two days after Mr. Grant sent his e-mail asserting uncertainty. On closing, proceeds in the amount of U.S. $2.54 million were paid into GrowthWorks' account.

**GrowthWorks' Position Wrongly Deprives Roseway of the Additional Fee**

60 The IAA provides for two types of fees payable to Roseway to compensate it for the significant effort and expertise involved in managing the Portfolio.

61 The first of these fees is the "Annual Fee", payable to Roseway from the beginning of its appointment as Investment Advisor pursuant to section 7.1 of the IAA. This Annual Fee of $350,000 is modest by industry standards, and not reflective of market rates for the services provided by Roseway. It is a mere fraction of the more than $4 million that GrowthWorks had been paying its former manager annually, prior to the CCAA proceedings.

62 The second of these fees is the "Additional Fee", payable to Roseway pursuant to section 7.3.1 of the IAA. Section 7.3.1 provides for payment of the Additional Fee once the Investment Advisor Debt had been repaid.

63 Section 7.3.1 of the IAA provides as follows:

> 7.3.1 From and after such time as the Investment Advisor Debt has been paid in full, the Investment Advisor shall be entitled to a fee equal to 15% of the aggregate proceeds of disposition of the remaining Portfolio

> Securities (other than the collection of undisputed escrowed proceeds by GW CDN to the extent such proceeds relate to dispositions of assets made by GW CDN prior to the date of this Agreement) (the **"Additional Fee"**) payable upon the disposition of any Portfolio Securities.

64 Roseway has earned the Additional Fee with respect to the PerspecSys Transaction. The PerspecSys Transaction was completed after much effort on the part of Roseway and Crimson Capital.

65 On July 16, 2015, Mr. Ross received a breakdown from Ms. Parr that showed (i) the anticipated proceeds from the PerspecSys Transaction and (ii) payment of the Additional Fee. Ms. Parr provided me with a copy of this breakdown, which is attached as **Exhibit "J"**.

66 I am advised by Ms. Parr that Mr. Ross left her a voicemail on July 21, 2015 indicating that he did not believe that Roseway was entitled to the Additional Fee. GrowthWorks' position on the Additional Fee came as a surprise to me.

67 Since the Additional Fee is only payable "from and after such time as the Investment Advisor Debt has been paid in full", GrowthWorks' stance of preventing repayment of the Investment Advisor Debt until after the PerspecSys Transaction had closed would have the effect of making the Additional Fee not payable in respect of the initial proceeds received from that significant transaction, even though it was reasonably practicable to repay the Investment Advisor Debt before closing of that transaction.

68 The PerspecSys Transaction resulted in payment of U.S. $2.54 million to GrowthWorks. The Additional Fee which I believe Roseway has earned with respect to that transaction is 15% of that amount (plus 15% of the proceeds to be received in the future). The effect of GrowthWorks' refusal to allow the Investment Advisor Debt to be

paid until after closing of the PerspecSys Transaction was to deny payment to Roseway of the Additional Fee in respect of the PerspecSys Transaction in the amount of $381,000.

**Events Following Closing of the PerspecSys Transaction**

69 GrowthWorks did not confirm in writing its position that no Additional Fee was payable on the PerspecSys Transaction until August 6, 2015. I do not believe that GrowthWorks wanted to commit its view in writing until after the PerspecSys Transaction had closed.

70 On August 7, 2015, Mr. Reyes wrote to the Monitor to formally request payment of the Additional Fee. On August 10, 2015, the Monitor responded that GrowthWorks "has informed the Monitor that, in its view, Roseway is not entitled to the Additional Fee, and will not approve payment of such." A copy of that e-mail exchange is attached as **Exhibit "K"**.

71 After closing of the PerspecSys Transaction, Roseway refused to accept payment of the Investment Advisor Debt because it wanted to have the issue of its entitlement to the Additional Fee adjudicated first.

72 GrowthWorks brought a motion to compel Roseway to accept payment and Roseway brought a cross-motion to compel payment of the Additional Fee, both returnable before Justice Newbould on September 4, 2015.

73 I am advised by Mr. Reyes that when the lawyers for the parties attended at court on September 4, 2015, Justice Newbould informed them that he was not prepared to consider the cross-motion, apparently because he believed that cross-examinations would be necessary given certain allegations by Roseway.

74 I am advised by Mr. Reyes that, in light of Justice Newbould's decision, he did not oppose the relief sought by GrowthWorks on its motion, provided that the amount of the Additional Fee in dispute was segregated and held by the Monitor. The Monitor's counsel agreed to this condition and so advised the Court.

75 Following the parties attendance on September 4, 2015, the Investment Advisor Debt was paid in full and the parties agreed to have Roseway's cross-motion (now simply a motion) heard with cross-examinations to occur during the hearing.

| **SWORN BEFORE ME** at the City of Lausanne, Switzerland, this 1st day of October 2015.<br><br>Notary Public | **Michael Forer** |
|---|---|

# Tab A

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

*ONTARIO*
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

| | | |
|---|---|---|
| THE HONOURABLE | ) | THURSDAY, THE 28TH |
| | ) | |
| MADAM JUSTICE MESBUR | ) | DAY OF NOVEMBER, 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.

## ORDER AUTHORIZING DISTRIBUTIONS

THIS MOTION, made by Roseway Capital S.a.r.l. ("Roseway") for an order:

(a) that the security agreement granted by GrowthWorks Canadian Fund Ltd. ("GrowthWorks") to Roseway Capital LP and subsequently assigned by Roseway Capital LP to Roseway (the "Security Agreement") creates a valid security interest in the Collateral (as defined in the Security Agreement; herein the "Collateral") perfected in accordance with the *Personal Property Security Act* (Ontario)(the "PPSA"); and

(b) that GrowthWorks, with the consent of FTI Consulting Canada Inc., in its role as court-appointed Monitor to Growthworks (the "Monitor"), may make distributions of the Collateral or the proceeds from the Collateral from time to time to Roseway, without further Order of this Court, subject to certain conditions as set out in the draft Order,

was heard this day at 393 University Avenue, Toronto, Ontario.

This is Exhibit A referred to in the affidavit of [illegible]
sworn before me, this 1
day of October 20 15

A COMMISSIONER FOR TAKING AFFIDAVITS

DOCSTOR: 2859164\3

ON READING the Motion Record of Roseway, including the affidavit of Michael Forer sworn November 22, 2013, and the Fourth Report of the Monitor dated November 27, 2013, and on hearing the submissions of counsel for Roseway, GrowthWorks and the Monitor, no one else appearing although properly served as appears from the affidavit of service of Marna McGeorge sworn on November 22, 2013, filed,

1. THIS COURT ORDERS AND DECLARES that the Security Agreement creates a valid security interest in the Collateral perfected in accordance with the PPSA.

2. THIS COURT ORDER THAT GrowthWorks, with the consent of the Monitor, may (a) make distributions of the Collateral or the proceeds from the Collateral from time to time to Roseway, and (b) repay Roseway from proceeds of the Sale and Investor Solicitation Process approved by this Court by Order dated November 18, 2013, in each case without further Order of this Court, provided however that prior to making such distributions or payment the Monitor shall be satisfied, acting reasonably, that the Priority Payables (as defined below) are being paid when due and that the funds remaining in the hands of GrowthWorks and the Monitor after any such distribution to Roseway are sufficient to pay Priority Payables accrued to the date of any such distribution.

3. THIS COURT ORDERS that for the purposes of this Order, the term "Priority Payables" shall mean:

(a) amounts secured by the Administration Charge (as defined in the Initial Order herein dated October 1, 2013, as amended and restated by further Order herein dated October 29, 2013 (the "Initial Order")), to the maximum amount of $500,000,

(b) amounts secured by the Directors' Charge (as defined in the Initial Order), to the maximum amount of $1,000,000,

(c) amounts secured by the Critical Supplier's Charge (as defined in the Initial Order), to the maximum amount of $50,000,

(d) amounts due to the Government of Canada or a Province (each, a "Governmental Entity") which, by virtue of a statutory deemed trust or lien in

favour of such Governmental Entity, are payable in priority to the secured claim of Roseway at the time of any proposed distribution to Roseway, and

(e) amounts due to employees or former employees of GrowthWorks which are payable in priority to the secured claim of Roseway at the time of any proposed distribution to Roseway.

4. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the *Companies' Creditors Arrangement Act* or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of the making of any distribution to Roseway in accordance with this Order, save and except for any gross negligence or wilful misconduct on its part.

[illegible] TORONTO
ON [illegible]
LE / DANS LE REGISTRE NO.:

NOV 2 0 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")

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

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

Proceeding commenced at Toronto

ORDER
(AUTHORIZING DISTRIBUTIONS)

**Norton Rose Fulbright Canada LLP**
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Tony Reyes LS#: 28218V

Email: Tony.Reyes@nortonrosefulbright.com
Tel: 416.216.4825
Fax: 416.216.3930

Lawyers for Roseway Capital S.à.r.l.



DOCSTOR: 2866173\2

# Tab B

INVESTMENT ADVISOR AGREEMENT

**THIS AGREEMENT** is made as of the 9th day of May, 2014.

**BETWEEN:**

ROSEWAY CAPITAL S.A.R.L. (the "**Investment Advisor**"), a corporation incorporated under the laws of Luxembourg, with its principal address at 412F, route d'Esch, L-1030 Luxembourg

\- and -

GROWTHWORKS CANADIAN FUND LTD. ("**GW CDN**"), a corporation incorporated under the laws of Canada, with its registered address at 66 Wellington Street West, Suite 5300, Toronto-Dominion Bank Tower, Toronto, Ontario, M5K 1E6

**RECITALS:**

**WHEREAS** GW CDN is the owner of a portfolio of securities of the companies listed in Schedule A;

**AND WHEREAS** GW CDN wishes to retain the Investment Advisor to provide investment management and other services as described hereunder;

**AND WHEREAS** the Investment Advisor is willing to provide such investment management and other services as described hereunder;

**NOW THEREFORE** in consideration of the premises, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1. INTERPRETATION

### 1.1 Definitions

In this Agreement, the following terms have the following meanings:

"**Accountant**" shall have the meaning set out in Section 5.2.4;

"**Additional Fee**" shall have the meaning set out in Section 7.3;

"**Additional Term**" shall have the meaning set out in Section 9.1;

"**Affiliate**" means with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, such specified Person;

"**Agreement**" means this Investment Advisor Agreement between the Investment Advisor and GW CDN, as amended, supplemented or restated from time to time;

"**Annual Fee**" shall have the meaning set out in Section 7.1;

*This is Exhibit* ......6...... *referred to in the affidavit of* ......Michael Foster...... *sworn before me, this* ......1...... *day of* ......October...... 20..15

A COMMISSIONER FOR TAKING AFFIDAVITS

"**Applicable Law**" means any applicable domestic or foreign law, including any statute, subordinate legislation or treaty, including the CCAA and the *Securities Act* (Ontario), and any applicable guideline, directive, rule, standard, requirement, policy, order (including an order of the Court in connection with the CCAA Proceedings or otherwise) judgment, injunction, award or decree of a Governmental Authority having the force of law;

"**Approval Order**" means an Order *inter alia* approving this Agreement on terms satisfactory to the Investment Advisor, GW CDN and the Monitor;

"**associate**" has the meaning ascribed to such term in the *Securities Act* (Ontario);

"**Blocked Account**" shall have the meaning set out in Section 7.5.1;

"**Board Rights**" shall have the meaning set out in Section 4.1.1.6;

"**Budget**" means the budget of GW CDN for 2014 and 2015 as may be mutually agreed by the Parties;

"**Budget Agreed Amount**" shall have the meaning set out in Section 7.4.2;

"**Business Day**" means any day, other than a Saturday, Sunday or statutory or civic holiday, on which banks are open for business in Toronto, Ontario;

"**CCAA**" means *Companies' Creditors Arrangement Act* (Canada);

"**CCAA Proceedings**" means the proceedings under the CCAA relating to the restructuring of GW CDN;

"**Confidential Information**" means all data and information of a confidential nature, in any form (written, oral, electronic or any other form or media) and of any nature whatsoever, relating to the Portfolio, any Portfolio Company or GW CDN, investment strategies and techniques, financial or accounting data or activities provided or disclosed by GW CDN, the Monitor or any of their respective Representatives to the Investment Advisor or any of its Representatives, but does not include information that has otherwise been made available to the public other than by a breach of this Agreement;

"**Conflicted Opportunity**" shall have the meaning set out in Section 5.1.7;

"**control**" means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or any other means;

"**Court**" means the Ontario Superior Court of Justice, Commercial List (Toronto), presiding over the CCAA Proceedings;

"**Departing Directors**" shall have the meaning set out in Section 3.3;

"**Dispute Notice**" shall have the meaning set out in Section 5.2.4;

"**Dispute Period**" shall have the meaning set out in Section 5.2.4;

"**D&O Insurance Premiums**" means any directors and officer insurance premiums paid by the Investment Advisor in connection with the provision of the services hereunder;

"**Effective Date**" shall mean the date this Agreement is approved by the Court;

"**Fees and Expenses Allowance**" shall have the meaning set out in Section 7.4.2;

"**Follow-on Financing**" shall have the meaning set out in Section 5.2.1;

"**Follow-on Financing Notice**" shall have the meaning set out in Section 5.2.1;

"**Follow-on Payment**" shall have the meaning set out in Section 5.2.2.

"**Governmental Authority**" means any domestic or foreign legislative, executive, judicial or administrative body or person having or purporting to have jurisdiction in the relevant circumstances and includes, without limitation, the Court;

"**GW CDN**" shall have the meaning set out in the preamble;

"**GW Expenses**" shall have the meaning set out in Section 7.4.1;

"**Investment Advisor**" shall have the meaning set out in the preamble;

"**Investment Advisor Debt**" means the amount owing by GW CDN to the Investment Advisor pursuant to the Participation Agreement and/or Security Agreement plus any accrued interest thereon, which as of May 9, 2014 includes principal and interest of $18,924,319, as such amount may be increased or decreased by a Resolution as determined in accordance with Section 3.5;

"**Investor Agreements**" shall have the meaning set out in Section 4.1.1.5;

"**Knowledge**" means the actual knowledge of C. Ian Ross;

"**Legal Expenses**" shall have the meaning set out in Section 7.2.2;

"**Losses**" shall have the meaning set out in Section 8.1;

"**Monitor**" means FTI Consulting Canada Inc. or its successors in its capacity as Court-appointed monitor to GW CDN in the CCAA Proceedings;

"**Net Divestment Proceeds**" means the aggregate of (A) any dividends, interest or other distributions received, directly or indirectly, by the Investment Advisor in respect of the securities acquired pursuant to the exercise of any Follow-on Financing rights, and (B) any cash or securities received, directly or indirectly, by the Investment Advisor from any full or partial divestment of any such securities so acquired, less (C) the amount invested by the Investment Advisor in such Follow-on Financing, and less (D) any taxes payable by the Investment Advisor with respect to such Follow-on Financing;

"**Net Divestment Proceeds Statement**" shall have the meaning set out in Section 5.2.3;

"**Old Money Warrant Claim**" shall have the meaning set out in Section 3.5.

"**Order**" means an order of the Court;

"**Other Clients**" shall mean clients other than GW CDN to which the Investment Advisor or one of its Affiliates provides investment management or advisory services;

"**Participation Agreement**" means the participation agreement between the Investment Advisor (as successor to Roseway Capital L.P.) and GW CDN dated as of May 28, 2010, as amended,

supplemented or restated from time to time;

"**Parties**" shall mean the Investment Advisor and GW CDN, collectively, and "**Party**" shall mean either one of them;

"**Person**" includes any individual, partnership, joint venture, limited liability company, unlimited liability company, association, trust, trustee, executor, administrator, legal personal representative, body corporate, corporation or unincorporated association or organization, whether or not having legal status;

"**Plan of Compromise or Arrangement**" means a plan of compromise or plan of arrangement filed in the CCAA Proceedings;

"**Portfolio**" shall mean the portfolio of Portfolio Securities;

"**Portfolio Companies**" means each of the companies listed on Schedule A;

"**Portfolio Securities**" means the securities of the Portfolio Companies held by GW CDN from time to time, including those securities listed on Schedule A and securities acquired by GW CDN pursuant to Follow-on Financings, and securities acquired pursuant to stock divisions, stock consolidations or other reorganisations of Portfolio Companies;

"**Related Party**" means (i) any Affiliate of the Investment Advisor; (ii) any Affiliate of any Person referred to in clause (i) of this definition; (iii) a director, officer, employee, consultant, Sub-Contractor or general or limited partner of the Investment Advisor or any Person referred to in clause (i) or (ii) of this definition; or (iv) any associate of any Person referred to in any other clause of this definition;

"**Representatives**" means, in respect of either Party, the directors, officers, employees, general or limited partners, agents and advisors (including financial advisors and legal counsel) of that Party and the directors, officers and employees of any such limited partner, agent or advisor and (i) in the case of GW CDN, includes the Monitor and its officers, directors, limited partners, employees, agents and advisors, and (ii) in the case of the Investment Advisor, includes any Sub-Contractor and its directors, officers and employees;

"**Resolution**" shall have the meaning set out in Section 3.5;

"**Security Agreement**" means the security agreement between the Investment Advisor (as successor to Roseway Capital L.P.) and GW CDN dated as of May 28, 2010;

"**Sub-Contractor**" shall have the meaning set out in Section 5.3.1;

"**Term**" shall have the meaning set out in Section 9.1;

"**Transaction Expenses**" shall have the meaning set out in Section 7.2.1; and

### 1.2 Headings

In this Agreement, headings are for convenience of reference only, do not form a part of this Agreement and are not to be considered in the interpretation of this Agreement.

### 1.3 Interpretation

In this Agreement,

1.3.1 Words importing the masculine gender include the feminine and neuter genders and words in the singular include the plural, and vice versa, wherever the context requires;

1.3.2 All references to designated Articles, Sections and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement;

1.3.3 All accounting terms not otherwise defined will have the meanings assigned to them by, and all computations to be made will be made in accordance with, generally accepted accounting principles in Canada from time to time consistently applied;

1.3.4 Any reference to a law or statute will include and will be deemed to include a reference to the rules and regulations made pursuant to it, and any reference to a law or statute or regulation shall be deemed to include all amendments made to the law, statute or regulations in force from time to time, and to any law, statute or regulation that may be passed which has the effect of supplementing or superseding the law or statute referred to or the relevant regulation;

1.3.5 Any reference to a Person will include and will be deemed to be a reference to any Person that is a successor to that Person; and

1.3.6 "hereof, 'hereto", "herein", and "hereunder" mean and refer to this Agreement and not to any particular Article, Section or other subdivision. The term "including" means "including without limiting the generality of the foregoing".

1.3.7 References in this Agreement to the Monitor will be applicable only to the extent that GW CDN remains, at the relevant time, subject to the CCAA Proceedings. From and after the date, if any, on which GW CDN ceases to be subject to the CCAA Proceedings, all references herein to the Monitor will be deemed to be a reference to GW CDN.

### 1.4 Currency

All references to currency herein are references to lawful money of Canada.

## 2. APPOINTMENT OF INVESTMENT ADVISOR

### 2.1 Appointment

Upon and subject to the terms and conditions hereof and subject to obtaining the Approval Order, GW CDN hereby appoints the Investment Advisor as investment advisor to GW CDN with full authority and responsibility to provide or cause to be provided to GW CDN the investment management and administrative services hereinafter set forth in respect of the Portfolio and the Investment Advisor hereby accepts such appointment and agrees to act in such capacity and to provide or cause to be provided such investment management and administrative services.

## 3. CCAA PROCEEDINGS AND CORPORATE GOVERNANCE

### 3.1 CCAA Proceedings

GW CDN shall comply with all Orders made in the CCAA Proceedings and apply in good faith for extensions of the stay of proceedings in the CCAA Proceedings. GW CDN will not seek to disclaim this Agreement, nor will it seek to adversely affect this Agreement in any Plan of Compromise or Arrangement filed in the CCAA Proceedings without the consent of the Investment Advisor.

### 3.2 Direction from Court

Upon not less than three Business Days prior written notice to the Parties and the Monitor, as applicable, the Investment Advisor or the Monitor may seek direction from the Court with respect to this Agreement.

### 3.3 Corporate Governance

Subject to Applicable Law or the articles and by-laws of GW CDN, (i) GW CDN will use commercially reasonable efforts to obtain the resignations of seven (the "**Departing Directors**") members of the board of directors of GW CDN serving in such capacity on the Effective Date within 10 Business Days of GW CDN obtaining the Approval Order; (ii) the board of directors of GW CDN will not fill any vacancy left by the resignation of the Departing Directors, provided that any vacancy arising from the resignation, death or removal of any of the three remaining members of the board of directors of GW CDN may be filled by the remaining directors; and (iii) the remuneration paid by GW CDN to the directors of GW CDN after the Effective Date will be an annual retainer of $30,000 for the chair of the board of directors and an annual retainer of $20,000 for each of the other two directors, plus a fee of $500 to be paid to each directors per meeting of the board of directors that such director attends. The provisions of this Section 3.3 will cease to apply and have no further force or effect at such time as the Investment Advisor Debt has been repaid in full.

### 3.4 Budget Approval

GW CDN covenants that it will not in any month make any payments materially in excess of the aggregate amount for that month as set out in the Budget, unless it obtains the prior approval of the Monitor. Budgets for 2016 and subsequent years shall be as agreed to by GW CDN, the Investment Advisor and approved by the Monitor. The covenants contained in this Section 3.4 shall expire upon the payment in full of the Investment Advisor Debt. The parties acknowledge and agree that the Budget includes certain estimated amounts to be paid to third party service providers retained by GW CDN upon the consent of the Monitor. As such third party service provider has not yet been retained, such amounts are estimates only. GW CDN will provide the Investment Advisor with notice of the final amount proposed to be paid to each such third party. If the Investment Advisor disputes any such amount and the parties do not resolve such dispute within five Business Days of receipt by the Investment Advisor of such notice, the matter will be referred to the Monitor for determination, which determination will be final and binding on the parties.

### 3.5 Resolution of Dispute

The parties acknowledge that a dispute exists between them with respect to a claim (the "**Old Money Warrant Claim**") by the Investment Advisor relating to the proceeds received by GW CDN upon the sale of certain shares of common stock of OPKO Health, Inc. received by GW CDN in connection with the exercise of certain Class D warrants of Cytochroma Canada Inc. previously held by GW CDN. The parties each acknowledge that they have deferred seeking a Resolution until such time as it is clearer as to whether the costs of seeking a Resolution are merited. Each party agrees that it will not seek a Resolution until such time as the Monitor has advised the parties that the Monitor is of the view that GW CDN will have sufficient cash resources to merit the parties pursuing a Resolution. For the purposes of this Section, a "**Resolution**" means either a written settlement agreement between GW CDN and the Investment Advisor, as approved by the Monitor and the Court, in respect of the Old Money Warrant Claim, or an award or judgement resolving the Old Money Warrant Claim by a court or other body with competent jurisdiction, which award or judgement has not been appealed within any applicable appeal periods.

# 4. REPRESENTATIONS AND WARRANTIES OF GW CDN AND THE INVESTMENT ADVISOR

## 4.1 Representations and Warranties of GW CDN

4.1.1 GW CDN represents and warrants that:

4.1.1.1 it is a corporation incorporated under the laws of Canada and is validly subsisting under such laws;

4.1.1.2 subject to the Orders granted in the CCAA Proceedings, it has the corporate capacity and authority to perform its obligations under this Agreement and such obligations do not and will not conflict with or breach or result in a breach of any of its constating documents, by-laws or any agreements by which it is bound or any laws to which it is subject;

4.1.1.3 subject to the Orders granted in the CCAA Proceedings, it has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid, binding and enforceable obligation of it;

4.1.1.4 to the Knowledge of GW CDN, GW CDN is the registered and beneficial owner of the Portfolio Securities, with good and valid title thereto;

4.1.1.5 to the Knowledge of GW CDN, Schedule B lists all of the shareholders' agreements, investor rights agreements, registration rights agreements and similar agreements affecting the interest of GW CDN in the Portfolio Securities and a complete and up-to-date electronic copy of all such agreements that are in the possession of GW CDN on the date hereof has been delivered to the Investment Advisor (the "**Investor Agreements**");

4.1.1.6 to the Knowledge of GW CDN, Schedule C sets out a true and complete list of the representation rights of GW CDN on the board of directors (or equivalent governing body) of each of the Portfolio Companies resulting from the ownership of the Portfolio Securities including the ability to appoint an observer or to attend at meetings of such board of directors (or equivalent governing body) (the "**Board Rights**"); and

4.1.1.7 to the Knowledge of GW CDN, the Portfolio Securities listed in Schedule A represent all the securities owned by GW CDN.

## 4.2 Representations and Warranties of the Investment Advisor

4.2.1 The Investment Advisor represents and warrants that:

4.2.1.1 it has the capacity and authority to perform its obligations under this Agreement and such obligations do not and will not conflict with or breach or result in a breach of any agreement by which it is bound or any laws to which it is subject;

4.2.1.2 it has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid, binding and enforceable obligation of the Investment Advisor; and

4.2.1.3 it holds all necessary licenses, registrations and permits to fulfil its obligations under this Agreement and covenants to maintain all necessary licenses,

registrations and permits to fulfil such obligations throughout the term of this Agreement.

## 5. DUTIES AND RESPONSIBILITIES OF THE INVESTMENT ADVISOR

### 5.1 Duties Related to Portfolio

The Investment Advisor shall serve as investment advisor to GW CDN on a full discretionary basis and make investment and divestment decisions in respect of the Portfolio for and on behalf of GW CDN, in each case in accordance with, and subject to the terms of this Agreement, the Investor Agreements and Applicable Law. Without limiting the generality of the foregoing, the Investment Advisor shall:

5.1.1 make all appropriate arrangements to implement the sale of the Portfolio Securities in the ordinary course and otherwise in accordance with the CCAA , including Sections 11.3, 32 and 36 thereof;

5.1.2 issue appropriate instructions to the custodian (or the sub-custodian) of GW CDN to facilitate delivery and settlement of Portfolio transactions;

5.1.3 monitor and enforce all of the rights of GW CDN under the Investor Agreements;

5.1.4 prepare and deliver to GW CDN and the Monitor quarterly written reports, in a form agreed to by the Parties, with respect to any disposition transactions and the status of the Portfolio, including the liquidity of each Portfolio Company, significant corporate developments involving the Portfolio Companies, the Investment Advisor's estimation on when a divestment opportunity will proceed and anticipated conditions to a divestment occurring (without any obligation to prepare a formal valuation of any Portfolio Security);

5.1.5 maintain or cause to be maintained at all times reasonably complete and accurate records relating to Portfolio transactions occurring during the term of this Agreement, which records will be accessible for inspection by one or more Representatives of GW CDN and the Monitor at any time during ordinary business hours, upon reasonable notice;

5.1.6 permit one or more designated Representatives of GW CDN and the Monitor access to view any records kept by the Investment Advisor and used for the preparation of the reports referenced in Section 5.1.4;

5.1.7 present to the Monitor for its review and written approval, after consultation with GW CDN, any investment or divestment opportunity (each, a **"Conflicted Opportunity"**) which involves a conflict of interest between the Investment Advisor and (i) GW CDN; (ii) any Related Party; or (iii) any Other Client, which approval must, in each case, be obtained from the Monitor prior to the consummation of any Conflicted Opportunity. For the purposes of this Section 5.1.7, a conflict of interest will be deemed to include, but not be limited to, any proposed transaction involving the purchase, directly or indirectly, of any asset of GW CDN, including any Portfolio Securities, by the Investment Advisor, any Related Party or any Other Client. With respect to any Conflicted Opportunity for which approval by the Monitor is withheld, GW CDN with the oversight of the Monitor shall determine the appropriate course of action of any such investment or divestment opportunity;

5.1.8 deliver to GW CDN and the Monitor (i) all information with respect to such opportunities referred to in Section 5.1.7; and (ii) the Investment Advisor's recommendations with

respect to such opportunities referred to in Section 5.1.7;

5.1.9 be responsible for monitoring and ensuring compliance with all Applicable Laws directly relating to the management, investment or divestment of Portfolio Securities. For greater certainty, the Investment Advisor shall not be responsible for any compliance by GW CDN with Applicable Laws directly relating to GW CDN's status as a reporting issuer under applicable securities laws; and

5.1.10 carry out such other actions ancillary to its role as investment advisor to GW CDN as agreed to between the Parties, including providing GW CDN and the Monitor with such information related to the services provided under this Agreement as may be reasonably requested from time to time.

**5.2 Follow-On Investments**

5.2.1 Except with respect to an investment by GW CDN of up to $150,000 in Ascentify Learning Media Inc., following the Effective Date, if GW CDN is invited to complete a financing in a Portfolio Company or if the Investment Advisor determines that there is a follow-on investment opportunity in a Portfolio Company (each, a "**Follow-on Financing**"), the Investment Advisor shall, as soon as reasonably practicable, provide GW CDN and the Monitor written notice of such Follow-on Financing (the "**Follow-on Financing Notice**"). The Follow-on Financing Notice will include: (a) a copy of any notice and related term sheet or similar document received by the Investment Advisor from the applicable Portfolio Company in respect of such Follow-on Financing; (b) an indication as to whether the Investment Advisor plans on participating in such Follow-on Financing; and (c) any other material terms and conditions of the proposed Follow-on Financing known to the Investment Advisor that would be considered necessary by a reasonable investor to make an investment decision. The Investment Advisor shall update the Follow-on Financing Notice if any of the terms of the Follow-on Financing change. Notwithstanding anything else herein, a Follow-on Financing assigned to the Investment Advisor pursuant to section 5.2.2 will constitute a Conflicted Opportunity and must be approved by the Monitor in accordance with subsection 5.1.6.

5.2.2 Prior to the repayment in full of the Investment Advisor Debt, GW CDN shall, if the Investment Advisor participates in the Follow-on Financing, assign to the Investment Advisor GW CDN's right to participate in the Follow-on Financing (which right may not be further assigned by the Investment Advisor to any other Person), provided that (i) the prior written consent of the Portfolio Company is obtained and such Portfolio Company has agreed, in a written binding agreement in favour of GW CDN, and in form and substance satisfactory to GW CDN, acting reasonably, that any participation by the Investment Advisor in such Follow-on Financing will be deemed to be participation by GW CDN therein for all purposes (including any current or future reduction in any rights, or increase in the obligations, of, GW CDN); and (ii) in consideration of such assignment the Investment Advisor shall pay to GW CDN an amount (a "**Follow-on Payment**") equal to 5% of Net Divestment Proceeds. Until repayment of the Investment Advisor Debt, each Follow-on Payment so payable to GW CDN will instead be paid to the Investment Advisor and applied by the Investment Advisor to reduce the Investment Advisor Debt on a dollar-for-dollar basis. Any rights assigned by GW CDN pursuant to this Section 5.2.2 shall be in addition to any rights of the Investment Advisor pursuant to the terms and conditions of the Participation Agreement. The securities obtained by the Investment Advisor pursuant to any Follow-on Financing prior to full repayment of the Investment Advisor Debt shall not form part of the Portfolio and, except for any Follow-on Payment owing to GW CDN, any proceeds derived from their disposition shall be solely for the Investment Advisor's account and shall not be used to pay down the Investment Advisor

Debt. The Net Divestment Proceeds shall be deposited in the Blocked Account.

5.2.3 Within 10 Business Days of the receipt of such Net Divestment Proceeds by the Investment Advisor or any Person acting on its behalf, the Investment Advisor will give written notice to GW CDN and the Monitor of the receipt of any Net Divestment Proceeds and will prepare and deliver to GW CDN and the Monitor a statement (the "**Net Divestment Proceeds Statement**") setting out in reasonable detail the computation of the Net Divestment Proceeds and a copy of the financial information used in making such computation. If requested by GW CDN or the Monitor, the Investment Advisor will permit the Monitor or GW CDN and its auditors or other Representatives, as applicable, to review the working papers and other documentation used or prepared in connection with the preparation of, or which otherwise form the basis of, the Net Divestment Proceeds Statement.

5.2.4 Upon receipt of the Net Divestment Proceeds Statement, GW CDN, after consultation with the Monitor, shall have 10 Business Days (the "**Dispute Period**") to dispute the amount of Net Divestment Proceeds by providing written notice (the "**Dispute Notice**") to the Investment Advisor. If the Parties cannot reach agreement on the amount of Net Divestment Proceeds within 10 Business Days after such Dispute Notice is given, the dispute will be referred by the Investment Advisor for determination by a senior audit partner (the "**Accountant**") at the Toronto office of an audit firm independent of each of the Investment Advisor and GW CDN, such senior audit partner to be chosen by the managing partner of such office . Each of GW CDN and the Investment Advisor will co-operate with the Accountant with respect to the preparation of the respective reports of the Accountant and will provide to the Accountant such documentation within its custody or control as the Accountant may reasonably request. The determinations by the Accountant will be final and binding on both Parties. The costs of the Accountant will be borne by the Party losing the majority of the amount at issue in the dispute.

5.2.5 Payment of: (i) the Net Divestment Proceeds, less any Follow-on Payments owing, to the Investment Advisor for its own account; (ii) any Follow-on Payment to the Investment Advisor for application to the Investment Advisor Debt; or (iii) any Follow-on Payment to the Monitor, as the case may be, shall be made in immediately available Canadian dollars and occur within two Business Days of the earlier of (X) the date on which GW CDN gives notice to the Investment Advisor that GW CDN does not dispute the Net Divestment Proceeds Statement; (Y) the expiry of the Dispute Period if no Dispute Notice is given during the Dispute Period; and (Z) the date of determination of the Net Divestment Proceeds by the Accountant pursuant to Section 5.2.4.

5.2.6 Upon the full repayment of the Investment Advisor Debt, GW CDN shall review the terms of any Follow-on Financing Notice and the recommendation provided by the Investment Advisor and shall determine, in its sole discretion with the consent of the Monitor, whether GW CDN shall participate in any such Follow-on Financing and shall have no obligation to assign any such right to participate in any such Follow-on Financing to the Investment Advisor.

**5.3 Delegation by the Investment Advisor**

5.3.1 In carrying out its obligations hereunder, the Investment Advisor may retain one or more agents, advisors or other Persons (a "**Sub-Contractor**") to perform the services or execute the functions required hereunder, provided that (i) the Investment Advisor provides written notice to GW CDN and the Monitor prior to retaining any such Sub-Contractor; and (ii) the Investment Advisor acknowledges and agrees that any such delegation will in no way diminish the obligations of the Investment Advisor under this Agreement. The costs of any such Sub-Contractor shall be part of, and not in addition to,

the Annual Fee.

5.3.2 In connection with its obligations hereunder, the Investment Advisor may, at its own expense, periodically engage consultants with particular expertise in certain technology related to the investment and divestment opportunities referred to above which consultants may be employees of Affiliates of the Investment Advisor.

**5.4 Standard of Care**

5.4.1 The Investment Advisor covenants that it shall exercise its powers and discharge its duties and responsibilities hereunder, diligently, honestly and in good faith, and in the best interests of GW CDN and, in connection therewith, shall exercise the degree of care, diligence and skill that a reasonably prudent, qualified and informed professional with a specialty and experience as an investment advisor would exercise in the same circumstances.

5.4.2 The Investment Advisor agrees to comply, and to ensure that all Sub-Contractors comply, with all Applicable Laws insofar as such relate to the Investment Advisor's position as the Investment advisor to GW CDN or its obligations hereunder.

**5.5 Other Activities**

Nothing in this Agreement, subject to the confidentiality obligations set out in Article 10 and the conflict of interest provisions set out in Section 5.6, shall prevent or restrict the Investment Advisor or any of its Affiliates from providing similar services to other Persons, including Other Clients, or from engaging in any other activities nor shall it require any such person to account to the Investment Advisor for any profit or benefit arising from any such activity.

**5.6 Conflicts of Interest**

GW CDN acknowledges that actual or potential conflicts of interest can be expected to arise from time to time between the interests of Other Clients and the interests of GW CDN. The Parties hereby agree that such conflicts shall, except as set forth in Section 5.1.7 and Section 5.2, respectively, be resolved through the exercise of the Investment Advisor's best judgment, acting in good faith and in a manner consistent with, and subject to, the terms of this Agreement.

**6. DUTIES RELATED TO GW CDN**

6.1.1 GW CDN shall maintain or cause to be maintained at all times reasonably complete and accurate books of account and records relating to the Portfolio, which books of account and records shall be accessible for inspection by a designated representative of the Investment Advisor at any time, upon reasonable notice, during ordinary business hours.

6.1.2 GW CDN shall make available or cause to be made available on a timely basis all personnel familiar with the Portfolio Companies and Portfolio Securities as reasonably required from time to time in order to allow the Investment Advisor to provide the services and to perform its duties and obligations pursuant to this Agreement.

6.1.3 GW CDN shall make available to the Investment Advisor, on a timely basis, all notices sent or received to or from Portfolio Companies.

6.1.4 GW CDN shall inform in writing each Portfolio Company of Crimson Capital Inc.'s appointment as the Investment Advisor's representative pursuant to this Agreement within 10 Business Days of the execution of this Agreement. To the extent possible under the Investor Agreements and subject to the Board Rights listed in Schedule B, GW CDN

shall take all reasonable steps in order to cause one of the Investment Advisor's representatives to be appointed as GW CDN's nominee on the board of directors and/or as an observer to the board of directors of each Portfolio Company and any person who is proposed by the Investment Advisor in substitution for any such board member or observer of each Portfolio Company.

6.1.5 GW CDN shall be responsible for all corporate, accounting and auditing, administration, shareholder, and regulatory matters.

# 7. COMPENSATION AND DISPOSITION OF PROCEEDS

## 7.1 Annual Fee

As compensation for its services under this Agreement and the services of any Sub-Contractors during the term of this Agreement, the Investment Advisor will be paid by the Monitor, on behalf of GW CDN, an annual fee (the "**Annual Fee**") of $350,000, quarterly in advance beginning on the date that is three Business Days following the date on which the Approval Order is obtained. The initial payment of the Annual Fee will be pro-rated to cover the period from the Effective Date through June 30, 2014.

## 7.2 Transaction Fees

7.2.1 In addition to the Annual Fee, the Monitor, on behalf of GW CDN will reimburse the Investment Advisor for all lawful, proper, reasonable and necessary out-of-pocket expenses, including travel expenses to meet with Portfolio Companies and D&O Insurance Premiums (collectively the "**Transaction Expenses**"), incurred by the Investment Advisor or any Sub-Contractor in the course of dispositions of the Portfolio Securities up to a maximum amount of $25,000 per annum for travel expenses plus up to a maximum of $10,000 per annum for D&O Insurance Premiums, in each case, plus applicable harmonized sales, or similar taxes. The above amounts will initially be pro-rated to cover the period from the Effective Date to December 31, 2014. The Transaction Expenses will be reimbursed upon submission of such proper receipts and other documentation reasonably satisfactory to GW CDN and the Monitor; provided however that the Investment Advisor will first seek reimbursement for any Transaction Expenses from the applicable Portfolio Company and the Investment Advisor shall not be reimbursed for any Transaction Expenses that have otherwise been paid by or on behalf of a Portfolio Company to the Investment Advisor or any Sub-Contractor. Transaction Expenses shall be reimbursed by the Monitor, on behalf of GW CDN in accordance with Sections 7.5.1.1 or 7.5.2.1, as the case may be.

7.2.2 In carrying out its obligations hereunder, the Investment Advisor or a Sub-Contractor may retain legal counsel to perform services related to the liquidation of the Portfolio Securities. The reasonable costs of any such legal counsel (the "**Legal Expenses**") shall not be part of, but in addition to, the Annual Fee and shall be reimbursed by the Monitor, on behalf of GW CDN in accordance with Sections 7.5.1.1 or 7.5.2.1, as the case may be.

## 7.3 Additional Fees

7.3.1 From and after such time as the Investment Advisor Debt has been paid in full, the Investment Advisor shall be entitled to a fee equal to 15% of the aggregate proceeds of disposition of the remaining Portfolio Securities (other than the collection of undisputed escrowed proceeds by GW CDN to the extent such proceeds relate to dispositions of assets made by GW CDN prior to the date of this Agreement) (the "**Additional Fee**") payable upon the disposition of any Portfolio Securities.

7.3.2 All fees paid in cash or options to purchase securities issued by the Portfolio Companies to board members who are nominees of the Investment Advisor under the Board Rights and charged by the Investment Advisor to Portfolio Companies may be retained by the Investment Advisor.

7.4 **Expenses Borne by GW CDN**

7.4.1 The Monitor, on behalf of GW CDN shall pay all expenses relating to the performance of GW CDN's obligations pursuant to Article 6 as well as ordinary course expenses and fees as set out in the Budget (the "**GW Expenses**").

7.4.2 Until such time as the Investment Advisor Debt is paid in full, the Monitor, on behalf of GW CDN shall be permitted to retain up to an amount agreed by the Parties and the Monitor (the '**Budget Agreed Amount**") in order to pay the Investment Advisor the Annual Fee as well as the GW Expenses, as they come due. Upon dispositions of Portfolio Securities, payment will be made from the Blocked Account to the Monitor in an amount representing the difference between the Budget Agreed Amount and the amount then held by the Monitor on behalf of GW CDN in respect thereof (the "**Fees and Expenses Allowance**") in accordance with Section 7.5.

7.5 **Proceeds of Disposition**

7.5.1 Until such time as the Investment Advisor Debt is paid in full, the Investment Advisor will ensure that all of the proceeds received from the disposition of any Portfolio Securities are directed to a newly created blocked account (the "**Blocked Account**") in the name of GW CDN which account shall require the signature of a representative of the Investment Advisor for all disbursements. GW CDN and the Monitor will have "read-only" access to the Blocked Account at all times. Upon notice provided to GW CDN and the Monitor, the proceeds will be distributed from the Blocked Account in the following priority:

7.5.1.1 payment of any Legal Expenses and Transaction Expenses;

7.5.1.2 payment to the Monitor of the Fees and Expenses Allowance; and

7.5.1.3 payment of the Investment Advisor Debt, with effect on the date such proceeds are received by or on behalf of the Investment Advisor.

7.5.2 From and after such time as the Investment Advisor Debt is paid in full, all proceeds from the disposition of any Portfolio Securities will no longer be directed to the Blocked Account but rather to the Monitor in immediately available funds within three Business Days of receipt by or on behalf of the Investment Advisor, such proceeds to be paid by the Monitor in accordance with the following priority:

7.5.2.1 payment of any Legal Expenses and Transaction Expenses;

7.5.2.2 payment of the Annual Fee;

7.5.2.3 payment of GW Expenses;

7.5.2.4 payment of the Additional Fee; and

7.5.2.5 the balance, if any, to be held by the Monitor on behalf of GW CDN.

# 8. INDEMNITY

## 8.1 Liability of the Investment Advisor

Neither the Investment Advisor nor any of its directors, officers, employees or Sub-Contractors shall be liable for any error of judgment or for any losses, claims, damages or liabilities ("Losses") suffered by the Portfolio in connection with the matters to which this Agreement relates, except to the extent that any such Losses result from (i) the fraud, bad faith, wilful misconduct or negligence of the Investment Advisor or any of its Representatives; (ii) the breach by the Investment Advisor or any of its Representatives of the standard of care set out in Section 5.4; or (iii) the material breach by the Investment Advisor of any of the Investment Advisor's obligations and duties hereunder.

## 8.2 Indemnity of GW CDN

GW CDN shall indemnify and hold harmless the Investment Advisor and its directors, officers, employees and Sub-Contractors from and against all Losses incurred by such Persons related to or arising out of (i) acts or omissions of the Investment Advisor directly related to the performance of its obligations hereunder other than those performed or omitted fraudulently, in bad faith or attributable to the negligence, dishonesty or wilful misconduct of the Investment Advisor or any of its Representatives; or (ii) acts or omissions of GW CDN directly related to the performance of its obligations hereunder which are omitted fraudulently, in bad faith or attributable to the negligence or wilful misconduct of GW CDN. Nothing herein shall be deemed to protect the Investment Advisor against any liability to GW CDN, its directors, officers, employees and shareholders where the Investment Advisor has failed to fulfil its obligations as set forth in this Agreement. For greater certainty, GW CDN and its directors, officers and employees shall not be liable to, and shall not be required to, indemnify the Investment Advisor or any of its directors, officers, employees or Sub-Contractors for any Losses as a result of any default, failure or defect in any rights assigned to the Investment Advisor, or of any securities and financial instruments acquired in connection with any assignment of GW CDN's rights, pursuant to Section 5.2.2 or for any loss or diminution in value resulting from any investment made pursuant to any such assignment.

## 8.3 Indemnity of the Investment Advisor

The Investment Advisor shall indemnify and hold harmless GW CDN and its directors, officers and employees from and against any Losses incurred by such Persons related to or arising out of (i) acts or omissions of the Investment Advisor or any Sub-Contractor performed or omitted fraudulently, in bad faith or attributable to the negligence or wilful misconduct of the Investment Advisor; or (ii) a material breach by the Investment Advisor of an obligation or duty hereunder. For greater certainty, the Investment Advisor and its directors, officers, employees and Sub-Contractors shall not be liable to, and shall not be required to, indemnify GW CDN for any Losses as a result of any default, failure or defect in any of the securities and financial instruments comprising the Portfolio or for any loss or diminution in value resulting from any investment made pursuant to any Follow-on Financing.

# 9. TERM AND TERMINATION

## 9.1 Term

Unless terminated as provided herein, this Agreement shall continue in full force and effect from the Effective Date and shall terminate on the earlier of: (i) the date that is four years from the date hereof; and (ii) the day following the disposition of all or substantially all of the remaining Portfolio Securities (the "Term").

## 9.2 Termination by Investment Advisor

The Investment Advisor may terminate this Agreement effective on the fourth anniversary of the Effective Date of this Agreement by providing 90 days' written notice to GW CDN and the Monitor. The

Investment Advisor may terminate this Agreement at any time after the fourth anniversary of the Effective Date by providing 10 days' written notice. The Investment Advisor may terminate this Agreement upon the material breach of any representation, warranty, covenant, obligation or other provision of this Agreement by GW CDN and such breach has not been waived or cured within 30 days following the date on which the Investment Advisor notifies GW CDN and the Monitor in writing of such breach.

### 9.3 Termination by GW CDN

GW CDN with the consent of the Monitor may terminate this Agreement (i) at any time, upon 90 days' prior written notice provided that any Investment Advisor Debt then outstanding is paid in full on or before such termination; or (ii) upon the material breach of any representation, warranty, covenant, obligation or other provision of this Agreement by the Investment Advisor and such breach has not been waived or cured within 30 days following the date on which GW CDN notifies the Investment Advisor in writing of such breach.

### 9.4 Termination by Either Party

Either Party may terminate this Agreement upon written notice to the other Party if the Approval Order has not been obtained on or prior to May 31, 2014.

### 9.5 Action upon Termination

9.5.1 From and after the effective date of termination of this Agreement, the Investment Advisor shall not be entitled to any fees or any other payment or amount under this Agreement except, in the case of a termination of this Agreement pursuant to Section 9.2 or 9.3 only: (i) Annual Fees and Additional Fees which have accrued to the date of such termination and remain unpaid as at such date; (ii) the reimbursement of all accrued and unpaid Legal Expenses and Transaction Expenses; and (iii) provided that the Investment Advisor Debt is repaid in full and this Agreement has not been terminated by GW CDN as a result of the material breach of any representation, warranty, covenant or other provision of this Agreement, 15% of the aggregate proceeds of disposition of Portfolio Securities (other than the collection of undisputed escrowed proceeds by GW CDN to the extent such proceeds relate to dispositions of assets made by GW CDN prior to the date of this Agreement) provided that, in each case, such disposition is completed within six (6) months following the effective date of termination of this Agreement.

9.5.2 The Investment Advisor, its Affiliates and Sub-Contractor, as applicable, shall forthwith, upon termination of this Agreement deliver to GW CDN all property and documents of, or relating to, the Portfolio, including financial and accounting records which are in the possession or control of the Investment Advisor, any of its Affiliates or any of its Sub-Contractors.

9.5.3 In the event that a new investment advisor is retained by GW CDN, the Investment Advisor will do all things and take all steps necessary or advisable to promptly and effectively transfer the management of the Portfolio and the Portfolio Securities as well as the books, records and accounts to the new portfolio investment advisor or as instructed by the GW CDN in writing. The Investment Advisor shall execute and deliver all documents and instruments necessary or advisable to effect and facilitate such transfer.

### 9.6 Survival

The provisions of Section 5.2, Article 8, Section 9.5, Article 10 and Article 11 shall survive the termination of this Agreement.

## 10. CONFIDENTIALITY

10.1.1 The Investment Advisor shall refrain, for any reason whatsoever, from using and disclosing any Confidential Information without the prior written consent of GW CDN.

10.1.2 Notwithstanding the foregoing and within the limits established by this Agreement, the Investment Advisor may disclose the Confidential Information to its Representatives and Affiliates involved in the performance of this Agreement for whom knowledge of the Confidential Information is necessary for the performance of the Investment Advisor's obligations under this Agreement, provided that the Investment Advisor causes such third party to be bound by confidentiality obligations, the terms of which shall be no less restrictive than those contained in this Article 10. The Investment Advisor will be responsible for any breach of the provisions of this Article 10 by any Representative or Affiliate of the Investment Advisor.

10.1.3 The Investment Advisor undertakes to protect the Confidential Information of GW CDN by using the same precautions implemented for the protection of the Investment Advisor's own confidential information and evidencing a reasonable level of prudence.

10.1.4 Upon termination of this Agreement, the Investment Advisor immediately will stop using the Confidential Information in its custody, possession or control and, at the option of GW CDN, shall promptly return or destroy all Confidential Information in its custody, possession or control. The Investment Advisor will promptly deliver to the other Party a certificate executed by an authorized officer of the Investment Advisor certifying as to such return or destruction.

10.1.5 If the Investment Advisor is requested pursuant to, or required by, Applicable Law or legal process to disclose any Confidential Information, the Investment Advisor may make such disclosure but must first provide GW CDN with prompt notice of such request or requirement, unless notice is prohibited by Applicable Law, in order to enable GW CDN to seek an appropriate protective order or other remedy or to waive compliance with the terms of this Agreement or both. The Investment Advisor will not oppose any action by GW CDN to seek such a protective order or other remedy. If, failing the obtaining of a protective order or other remedy by GW CDN, such disclosure is required, the Investment Advisor will use reasonable efforts to ensure that the disclosure will be afforded confidential treatment.

## 11. MONITOR'S CAPACITY

Each of GW CDN and the Investment Advisor acknowledges and agrees that the Monitor, acting in its capacity as the Monitor of GW CDN in the CCAA Proceedings and not in its personal or corporate capacity, will have no liability whatsoever in connection with this Agreement or the obligations of the Monitor provided herein in its capacity as Monitor, in its personal or corporate capacity or otherwise.

## 12. GENERAL

### 12.1 Notice

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows;

12.1.1 To the Investment advisor

Roseway Capital S.a.r.l.
412F, route d'Esch
L-1030 Luxembourg

Attention: Carla Alves Silva
Fax: (+352) 47 11 01
E-Mail: carla.alvessilva@sgg.lu

with a copy to:

Rosetta Capital Limited
New Broad Street House, 35 New Broad Street
London, EC2M1NH, United Kingdom

Attention: Michael Forer
Fax: 44 (0) 207 194 8080
E-Mail: mf@rosettacapital.com

12.1.2 To GW CDN:

GrowthWorks Canadian Fund Ltd.
c/o McCarthy Tétrault LLP
66 Wellington Street West
Suite 5300
Toronto-Dominion Bank Tower
Toronto, Ontario M5K 1E6

Attention: C. Ian Ross, Chairman
Fax: (416) 619-9118
Email: lanross@bell.net

with a copy to:

McCarthy Tétrault LLP
Toronto Dominion Bank Tower
Suite 5300, Box 48
Toronto, Ontario M5K 1E6

Attention: Jonathan Grant
Fax: (416) 868-0673
E-Mail: jgrant@mccarthy.ca

12.1.3 To the Monitor:

FTI Consulting Canada Inc.
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Paul Bishop
Fax: (416) 649-8053

Email: pbishop@fticonsulting.com

or to such other Person's attention or at such other address as the Party to whom such notice is to be given shall have last notified the other Party hereto in the manner provided in this Section 12.1. Any notice delivered to the Party to whom it is addressed as hereinbefore provided shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day, then the notice shall be deemed to have been given and received on the Business Day next following such day. Any notice mailed as aforesaid shall be deemed to have been given and received on the twelfth Business Day next following the date of its mailing provided no postal strike is then in effect or comes into effect within two (2) Business Days after such mailing. Any notice transmitted by telecopier or other form of electronic communication shall be deemed given and received on the day of its transmission if such day is a Business Day and the notice is transmitted during business hours and if not on the next following Business Day.

In the event of any disruption, strike or interruption in the postal service after mailing and before receipt or deemed receipt of a document, it will be deemed to have been received on the sixth Business Day following full resumption of the postal service.

**12.2 Entire Agreement**

This Agreement (including the Schedules hereto) and the agreements contemplated herein constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and there are no warranties, representations, conditions or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

**12.3 Severability**

If any of the provisions of this Agreement shall be held or made invalid, in whole or in part, the other provisions hereof shall remain in full force and effect. Invalid provisions shall, in accordance with the intent and purpose of this Agreement, be replaced by such valid provisions which in their economic effect come as close as legally possible to such invalid provisions.

**12.4 Assignment**

This Agreement may not be assigned by any Party without the prior written consent of the other Party.

**12.5 Amendment**

Any amendment to this Agreement shall be in writing and shall be executed by both Parties.

**12.6 Time of the Essence**

Time is of the essence of this Agreement.

**12.7 Successors and Assigns**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

**12.8 No Third Party Beneficiaries**

Except as provided in Sections 8.2 and 8.3, this Agreement is solely for the benefit of :

(a) the Investment Advisor, and its successors and permitted assigns, with respect to the obligations of GW CDN under this Agreement, and

(b) GW CDN, and its successors and permitted assigns, with respect to the obligations of the Investment Advisor under this Agreement;

and this Agreement will not be deemed to confer upon or give to any other Person any claim or other right or remedy. The Investment Advisor appoints GW CDN as the trustee for the directors, officers and employees of GW CDN of the covenants of indemnification of the Investment Advisor of the specified in Section 8.3 and GW CDN accepts such appointment. GW CDN appoints the Investment Advisor as the trustee for the directors, officers and employees of GW CDN of the Investment Advisor of the covenants of indemnification of GW CDN specified in Section 8.2 and the Investment Advisor accepts such appointment.

**12.9 Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**12.10 Attornment**

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Parties hereby attorn to the jurisdiction of the courts in the Province of Ontario.

**12.11 Counterparts**

This Agreement may be executed in one or more counterparts, all of which, irrespective of the time of execution, shall be considered as one and the same agreement.

*[Signature Page Follows.]*

IN WITNESS WHEREOF the Parties have executed this Agreement.

GROWTHWORKS CANADIAN FUND LTD.

By: ______________________
Authorized Signatory

ROSEWAY CAPITAL S.A.R.L.

By: ______________________
Authorized Signatory

By: ______________________
Authorized Signatory

DOCSTOR: 2557491\15

## SCHEDULE A

### PORTFOLIO COMPANIES AND SECURITIES HELD

Schedule A shall be provided by GW CDN by May 13, 2014.

## SCHEDULE B

### INVESTOR AGREEMENTS

Schedule B shall be provided by GW CDN by May 13, 2014.

## SCHEDULE C

### BOARD RIGHTS

Schedule C shall be provided by GW CDN by May 13, 2014.

# Tab C

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

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

| | | |
|---|---|---|
| THE HONOURABLE MR. | ) | WEDNESDAY, THE 14TH |
| | ) | |
| JUSTICE D.M. BROWN | ) | DAY OF MAY, 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.

## STAY EXTENSION AND APPROVAL ORDER

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the "**Applicant**") for an order extending the stay period defined in paragraph 14 of the initial order of the Honourable Justice Newbould made October 1, 2013 in these proceedings, as amended and restated on October 29, 2013 (the "**Stay Period**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record, including the Notice of Motion and the affidavit of C. Ian Ross sworn on May 9, 2014 (the "**Motion Record**"), the Tenth Report (the "**Tenth 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, Allen-Vanguard Corporation, the Offeree Shareholders (as defined in the Seventh Report) and Roseway Capital S.a.r.l. ("**Roseway**"), 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 Motion Record and the Tenth Report is hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service thereof.

This is Exhibit C referred to in the affidavit of Michael Frear sworn before me, this 15 day of October 20 15

A COMMISSIONER FOR TAKING AFFIDAVITS

## STAY EXTENSION

2. THIS COURT ORDERS that the Stay Period is hereby extended until and including November 30, 2014.

## APPROVAL OF INVESTMENT ADVISOR AGREEMENT

3. THIS COURT ORDERS that the Investment Advisor Agreement attached Exhibit "A" to the affidavit of C. Ian Ross sworn on the 9th of May, 2014 and filed in these proceedings (the "Agreement") is hereby approved, and that the Applicant is authorized and directed to enter into the Agreement and to perform its obligations thereunder.

4. THIS COURT ORDERS that (i) the Agreement cannot be disclaimed by the Applicant or by any representative of the Applicant or having control of the Applicant's business or property, including any interim receiver, receiver, or trustee that may be appointed in respect to the Applicant's business or property, and (ii) the Agreement shall not be affected by any plan of arrangement or compromise filed in these proceedings or by any step taken in any other proceeding, including any receivership or bankruptcy in respect of the Applicant's business or property.

5. THIS COURT ORDERS that Roseway shall be entitled to (i) seek directions from this Court in accordance with section 3.2 of the Agreement, and (ii) receive all payments and reimbursements as set out in the Agreement in full and without discount or compromise, including all fees and expenses provided for therein, and that such payments and reimbursements shall not be compromised, reduced or affected by any plan of arrangement or compromise filed in these proceedings or by any step taken in any other proceeding, including any receivership or bankruptcy in respect of the Applicant's business or property.

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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 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

**STAY EXTENSION AND APPROVAL ORDER**


McCARTHY TÉTRAULT LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

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Lawyers for the Applicant


#13430748

# Tab D

October 6, 2014

Roseway Capital S.a.r.l.
412F, route d'Esch
L-1030 Luxembourg

- and –

GrowthWorks Canadian Fund Ltd.
c/o McCarthy Tétrault LLP
Suite 5300, Toronto-Dominion Bank Tower
66 Wellington Street West
Toronto, Ontario M5K 1E6
Canada

This is Exhibit ...D... referred to in the affidavit of ...Michael Forer... sworn before me, this ...1... day of ...October... 20...15...

A COMMISSIONER FOR TAKING AFFIDAVITS

**Re: Blocked Accounts**

As you are aware, on October 1, 2013 FTI Consulting Canada Inc. (the "**Monitor**", "**us**" or "**we**") was appointed as the Monitor in the *Companies' Creditors Arrangement Act* (Canada) proceedings (the "**CCAA Proceedings**") relating to GrowthWorks Canadian Fund Ltd. ("**GW Cdn**"). GW Cdn and Roseway Capital S.a.r.l (the "**Investment Advisor**") are parties to a certain investment advisor agreement (the "**Investment Advisor Agreement**") dated May 9, 2014, as approved by the Ontario Superior Court of Justice pursuant to an Order dated May 14, 2014.

Pursuant to Section 7.5 of the Investment Advisor Agreement, the parties thereto agreed to create a new blocked account in the name of GW Cdn, which would require the signature of one of your representatives for all disbursements. We and GW Cdn were to have "read-only" access to such blocked account. The procedural obstacles of the banks have made the opening of the blocked account not possible at this time.

Further to our discussions with your counsel we have opened new accounts (a Canadian $ account and a U.S. $ account) in our name (the "**Accounts**"), in our capacity as monitor of GW Cdn, with The Bank of Nova Scotia to replace the blocked account as contemplated in the Investment Advisor Agreement. The Investment Advisor will ensure that all proceeds received from the disposition of Portfolio Securities (as defined in the Investment Advisor Agreement) will be deposited to the Accounts until such time as the Investment Advisor Debt (as defined in the Investment Advisor Agreement) is paid in full.

Disbursements from the Accounts will require the approval of one of your representatives; such approval may be provided to us by email. We understand that your current representatives authorized to approve disbursements from the Accounts are Donna Parr and Jim Cade.

In order to authorize the disbursement of funds from the Accounts, one of the Investment Advisor's representatives shall complete the authorization form attached as Schedule A and send it via pdf to our attention. Disbursement instructions should be sent to the following representatives of the Monitor:

- Paul Bishop at paul.bishop@fticonsulting.com
- Jodi Porepa at jodi.porepa@fticonsulting.com
- Linda Kelly at linda.kelly@fticonsulting.com

With a copy sent to the following representative of GW Cdn:

- Ian Ross at ianross@bell.net

Until the Investment Advisor Debt is repaid in full, we will not disburse any amounts from the Accounts without the written authorization of one of the two above-mentioned persons or such other person as may be added to your authorized representatives list as specifically instructed by the Investment Advisor in writing. We will provide you and GW Cdn with monthly reports chronicling the account activity.

Further, the proceeds received from the disposition of Portfolio Securities will be prioritized and handled in accordance with Section 7.5 of the Investment Advisor Agreement. This Section contemplates the payment to us, on behalf of GW Cdn, from the Accounts, of the Fees and Expenses Allowance in order to pay the GW Expenses and the Annual Fee (each as defined in the Investment Advisor Agreement).

Finally, the Accounts may be closed, at our discretion, upon payment in full of the Investment Advisor Debt.

The Monitor is entering into this letter agreement solely in its capacity as monitor of GW Cdn and not in its personal or any other capacity and the Monitor and its agents, officers, directors and employees will have no personal or corporate liability under or as a result of this letter agreement, or otherwise in connection herewith.

This letter agreement is made pursuant to and will be construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The parties consent to the jurisdiction and venue of the courts of Ontario and the Court supervising the CCAA Proceedings for the resolution of any disputes arising under this letter agreement

This letter agreement may be executed in any number of counterparts, each of which will be an original and all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this agreement by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart of this agreement.

***[Signature Page Follows.]***

Please indicate your agreement to the terms and conditions of this Agreement by signing the enclosed copy of this Agreement and returning the same to us.

Sincerely,

**FTI CONSULTING CANADA INC.**

Per: ______________________________

Name: Paul Bishop
Title: Senior Managing Director

Accepted and agreed this ______ day of October, 2014.

**ROSEWAY CAPITAL S.A.R.L.**

Per: ______________________________

Name:
Title:

Per: ______________________________

Name:
Title:

Accepted and agreed this _____ day of October, 2014.

**GROWTHWORKS CANADIAN FUND LTD.**

Per: ______________________________

Name: C. Ian Ross
Title: Interim Chief Executive Officer

*[Signature Page to Letter Agreement]*

Please indicate your agreement to the terms and conditions of this Agreement by signing the enclosed copy of this Agreement and returning the same to us.

Sincerely,

FTI CONSULTING CANADA INC.

Per: ______________________________

Name: Paul Bishop
Title:

Accepted and agreed this 7 day of October, 2014.

ROSEWAY CAPITAL S.A.R.L.

Per: ______________________________

Name: [illegible]
Title: Manager A

Per: ______________________________

Name: Michel denoir
Title: Manager B

Accepted and agreed this _____ day of October, 2014.

GROWTHWORKS CANADIAN FUND LTD.

Per: ______________________________

Name: C. Ian Ross
Title: Interim Chief Executive Officer

*[Signature Page to Letter Agreement]*

**DIRECTION**

| | |
|---|---|
| **TO:** | **FTI Consulting Canada Inc.** |
| **FROM:** | **[●], as representative to Roseway Capital S.a.r.l.** |
| **RE:** | **Letter Agreement dated [●] between FTI Consulting Canada Inc., Roseway Capital S.a.r.l. and GrowthWorks Canadian Fund Ltd. concerning the opening of the blocked accounts** |

---

The undersigned irrevocably authorizes and directs FTI Consulting Canada Inc., in its capacity as Monitor to GrowthWorks Canadian Fund Ltd. to pay the amount of Cdn. $ [●] by **[bank draft] [wire transfer of immediately available funds]** payable in the amounts and to the persons indicated below:

(a) Cdn. $[●] to [●];

(b) the balance of Cdn. $[●] to [●],

and this shall be your good, sufficient and irrevocable authority for so doing.

Wire instructions for wire transfer of funds are as follows:

**[specify wiring instructions]**

DATED this [●] day of [●], [●].

*[Signature Page to Letter Agreement]*

# Tab E

# SETTLEMENT AGREEMENT

**THIS AGREEMENT** is made as of May 22, 2015 between **ROSEWAY CAPITAL S.A.R.L.** ("**Roseway**"), a *société à responsabilité limitée* incorporated and existing under the laws of Luxembourg, and **GROWTHWORKS CANADIAN FUND LTD.** ("**GW Cdn**"), a corporation incorporated under the laws of Canada.

WHEREAS:

A. on October 1, 2013 GW Cdn obtained protection from its creditors and certain other relief pursuant to an initial order made by the Ontario Superior Court of Justice, Commercial List (Toronto) (the "**Court**"), which order was amended and restated on October 29, 2013 (as such order may be further amended and restated from time to time, the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**");

B. FTI Consulting Canada Inc. has been appointed as the Court-appointed monitor of GW Cdn (the "**Monitor**") pursuant to the Initial Order in respect of the CCAA Proceedings;

C. Roseway Capital L.P. and GW Cdn entered into (i) a participation agreement dated as of May 28, 2010 (as amended, restated, modified or supplemented from time to time, the "**Participation Agreement**"); and (ii) a security agreement dated as of May 28, 2010 (as amended, restated, modified or supplemented from time to time, the "**Security Agreement**") made by GW Cdn in favour of Roseway Capital L.P.;

D. Roseway Capital L.P. subsequently assigned to Roseway all of Roseway Capital L.P.'s rights to, and Roseway assumed all of Roseway Capital L.P.'s obligations under, the Participation Agreement and the Security Agreement, respectively;

This is Exhibit E referred to in the affidavit of Michael Ford sworn before me, this ... day of October 2015

A COMMISSIONER FOR TAKING AFFIDAVITS

E. Roseway and GW Cdn (collectively, the "**Parties**") are party to an investment advisor agreement dated as of May 9, 2014 (as amended, restated, modified or supplemented from time to time, the "**IAA**");

F. a dispute exists between the Parties with respect to the Old Money Warrant Claim;

G. the Parties wish to acknowledge and agree on certain matters in connection with the PerspecSys Follow-on Financing; and

H. the Parties wish to determine the amount of the Investment Advisor Debt and enter into a full and final settlement of all Claims between the Parties upon, and subject to, the terms and conditions of this Agreement;

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1 - INTERPRETATION

### 1.01 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith, capitalized terms used, but not otherwise defined, in this Agreement have the meanings given to them in the IAA and:

"**Acknowledgement and Receipt**" means the undated acknowledgement and receipt executed by GW Cdn and Roseway Capital in relation to Cytochroma Canada Inc.

"**Agreement**" means this agreement, including its recitals and schedules, as amended from time to time.

"**Applicable Documents**" means, collectively, the Participation Agreement, the Security Agreement and the Acknowledgement and Receipt.

"**Approval Order**" has the meaning set out in Section 4.01(1).

"**Business Day**" means a day other than a Saturday, Sunday or statutory holiday in Toronto, Ontario.

"**Claim**" means any actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, claim, action, cause of action, demand, suit, investigation, audit, notice of violation, or proceeding and any claim or demand resulting therefrom or any other claim or demand of whatever nature or kind.

"**Expenses Reimbursement Amount**" has the meaning set out in Section 2.03(a).

"**GW Cdn OTYC Shares**" means the 8,221,955 Class D preference shares in the capital of OTYC Holdings Inc. held by GW Cdn on the date hereof.

"**GW Cdn Release**" has the meaning set out in Section 5.03.

"**Initial OPKO Milestone Payment**" has the meaning set out in Section 2.05.

"**Losses**" means all damages, fines, penalties, deficiencies, losses, liabilities (whether accrued, actual, contingent, latent or otherwise), costs, fees and expenses (including interest, court costs and reasonable fees and expenses of lawyers, accountants and other experts and professionals).

"**OMW Amount**" has the meaning set out in Section 2.01(a).

"**OPKO Milestone Payment**" has the meaning set out in Section 2.01(c).

"**OPKO Purchase Agreement**" means the share purchase agreement dated January 8, 2013 by and among Cytochroma Inc., Cytochroma Holdings ULC, Cytochroma Canada Inc., Cytochroma Development Inc., Proventiv Therapeutic, LLC, Cytochroma Cayman Islands, Ltd., OPKO Health, Inc. and OPKO IP Holdings, Inc.

"**Outstanding IAD**" has the meaning set out in Section 2.04(1)(a).

"**PerspecSys**" means PerspecSys Inc.

"**PerspecSys Confirmation Agreement**" means the Acknowledgement, Agreement and Confirmation dated as of May 21, 2015 between PerspecSys Inc., PerspecSys USA Inc., PerspecSys Corp., Roseway and GW Cdn.

"**PerspecSys Follow-on Financing**" has the meaning set out in Section 2.02(1).

"**Roseway OMP Entitlement**" has the meaning set out in Section 2.01(c).

"**Roseway Final Release**" has the meaning set out in Section 5.02(2).

1.02 Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Recitals, Articles, Sections and Schedules are to Recitals, Articles and Sections of and Schedules to this Agreement.

1.03 Extended Meanings

In this Agreement words importing the singular number only include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and governmental authorities. The term "including" means "including without limiting the generality of the foregoing" and the term "third party" means any person other than the Parties.

1.04 Statutory References

In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any statute is to that statute as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

1.05 **Currency**

All references to currency herein are to lawful money of Canada.

1.06 **Schedules**

The following are the Schedules to this Agreement:

Schedule 4.01(1) - Form of Approval Order;

Schedule 5.02(2) - Form of Roseway Release; and

Schedule 5.03 Form of GW Cdn Release.

## ARTICLE 2 – SETTLEMENT

2.01 **Old Money Warrant Claim**

The Parties acknowledge and agree that:

(a) $1,045,462 (the "**OMW Amount**") is added to the Investment Advisor Debt as of February 1, 2015 in full and final settlement of the Old Money Warrant Claim (other than the Roseway OMP Entitlement);

(b) The OMW Amount constitutes Investment Advisor Debt for purposes of the IAA, as of the date hereof;

(c) Roseway will be entitled to receive, and GW Cdn will pay or transfer, as applicable and subject to any restrictions on transfer of securities under applicable securities laws, to Roseway, 24% (the "**Roseway OMP Entitlement**") of any additional earn-out consideration (any such consideration being referred to herein as an "**OPKO Milestone Payment**") received by GW Cdn after the date of this Agreement by way of a distribution on the GW Cdn OTYC Shares, in each case pursuant to the OPKO Purchase Agreement. Immediately upon receipt of any OPKO Milestone Payment until such payment or transfer to Roseway, the portion of such OPKO Milestone Payment to which Roseway is entitled pursuant to this

Section 2.01(c) will be held in trust by GW Cdn solely for the benefit of Roseway;

(d) Roseway acknowledges that GrowthWorks Commercialization Fund Ltd. holds for the benefit of GW Cdn shares of OTYC Holdings Inc. and agrees that (i) such shares will not be taken into account for purposes of determining any payment by GW Cdn to Roseway pursuant to Section 2.01(c) or otherwise, (ii) GW Cdn will be entitled to 100% of any distribution received by GW Cdn in respect of such shares and Roseway has, and will have, no Claim in relation to any such distribution, and (iii) notwithstanding any other provision hereof, including, Section 2.01(e), GW Cdn will not be restricted in dealing with any such shares in any manner.

(e) GW Cdn agrees that it will not intentionally transfer or reduce its entitlement to receive OPKO Milestone Payments in respect of the GW Cdn OTYC Shares, unless, in the case of a transfer or assignment of any such entitlement, the transferee or assignee, as applicable, enters into a written agreement in favour of Roseway to be bound, to the extent of GW Cdn's entitlement so transferred or assigned, by the provisions of Section 2.01(c) in all respects and to the same extent as GW Cdn is bound. GW Cdn confirms that it is not entitled to receive OPKO Milestone Payments indirectly through any other person, other than OTYC Holdings Inc. and GrowthWorks Commercialization Fund Ltd.; and

(f) this Agreement, upon approval hereof by the Court, will constitute a "Resolution" for the purposes of Section 3.5 of the IAA.

2.02 PerspecSys Follow-on Financing

(1) Roseway represents and warrants that it has delivered to GW Cdn a complete and accurate description of the Follow-on Financing completed by Roseway in respect of securities of PerspecSys (the "**PerspecSys Follow-on Financing**") pursuant to Section 5.2 of the IAA.

(2) Roseway acknowledges and agrees that:

(a) pursuant to Section 5.2.2(i) of the IAA, Roseway has obtained from PerspecSys and delivered to GW Cdn a duly executed copy of the PerspecSys Confirmation Agreement; and

(b) GW Cdn is entitled to receive, and Roseway will pay to GW Cdn, an amount equal to 5% of Net Divestment Proceeds in connection with the PerspecSys Follow-on Financing.

(3) GW Cdn acknowledges and agrees that the form of the PerspecSys Confirmation Agreement is in form and substance satisfactory to GW Cdn.

2.03 Satisfaction of Fees, Costs and Expenses

The Parties acknowledge and agree that:

(a) the aggregate amount owing by GW Cdn to Roseway on account of all Claims by Roseway for fees, costs and expenses is $500,000 (the "**Expenses Reimbursement Amount**") and such fees, costs and expenses were incurred pursuant to Section 8.19 of the Security Agreement and in connection with the CCAA Proceedings;

(b) other than the Expenses Reimbursement Amount, no other amount is owing or will be payable by GW Cdn to Roseway on account of fees, costs or expenses pursuant to any Applicable Document or in connection with the CCAA Proceedings or otherwise, including any Claim pursuant to Section 6.16 of the Security Agreement;

(c) the Expenses Reimbursement Amount is added to the Investment Advisor Debt as of February 1, 2015; and

(d) the Expenses Reimbursement Amount constitutes Investment Advisor Debt for purposes of the IAA, as of the date hereof.

2.04 Satisfaction of the Investment Advisor Debt

(1) The Parties acknowledge and agree that, notwithstanding any provision of any Applicable Document:

(a) from and after the date of this Agreement, the amount of the Investment Advisor Debt is hereby fixed at $2,185,742, including the OMW Amount and the Expenses Reimbursement Amount and net of applicable withholding taxes of $793,719 on amounts paid by GW Cdn to Roseway prior to the date hereof (the "**Outstanding IAD**");

(b) payment in full of the Outstanding IAD will constitute repayment in full of the Investment Advisor Debt for all purposes of the IAA;

(c) with the consent of the Monitor, GW Cdn will pay the Outstanding IAD as soon as reasonably practicable, taking into account GW Cdn's commercially reasonable estimate of the actual and projected (i) liquidity and capital resources of GW Cdn, and (ii) expenditures of GW Cdn; and

(d) after the date of this Agreement, no interest will accrue on the Outstanding IAD.

(2) Roseway hereby (i) irrevocably waives Section 5.4 of the Security Agreement in respect of all Investment Advisor Debt from and after January 31, 2015; (ii) acknowledges and agrees that, except as set forth herein, no amount will be added to the Investment Advisor Debt from and after January 31, 2015; and (iii) represents and warrants to GW Cdn that Roseway has incurred fees and disbursements of Canadian counsel to Roseway in excess of $500,000 and such fees and expenses were incurred pursuant to Section 8.19 of the Security Agreement and in connection with the CCAA Proceedings.

2.05 Order of Priority of Payments to Roseway

The Parties acknowledge and agree that payments by GW Cdn to Roseway pursuant to the Participation Agreement and the Security Agreement have been made, and payments of Outstanding IAD pursuant to this Agreement will be made, in the following order:

(i) payment of $20,000,000 (the "**Principal**");

(ii) payment of default interest on the Principal in the manner set forth in the Participation Agreement and the Security Agreement, respectively;

(iii) payment of $401,317.44, being 24% of the initial earn-out consideration received by the Monitor on or about October 6, 2014 in connection with the OPKO Purchase Agreement (the "**Initial OKPO Milestone Payment**", plus default interest on such participating interest to January 31, 2015);

(iv) payment of participating interest in the amount of $5,700,000 (the "**Participating Interest Payment**");

(v) payment of any OPKO Milestone Payment (other than the Initial OPKO Milestone Payment);

(vi) payment of default interest on the Participating Interest Payment in the manner set forth in the Security Agreement;

(vii) payment of the OMW Amount; and

(viii) payment of the Expenses Reimbursement Amount.

and the Parties agree that this Section 2.05 will not apply to or affect any payments made to Roseway on account of the Annual Fee, the Additional Fee, Transaction Expenses, Legal Expenses, or pursuant to Section 9.5.1 of the IAA.

2.06 <u>**Amendment of the Security Agreement**</u>

(1) The Security Agreement is hereby amended by deleting in its entirety the definition of "Obligations" in Section 1.2 of the Security Agreement and substituting therefor the following:

""**Obligations**" means the respective obligations of GW Cdn under Section 2.01(c) and Section 2.04(1)(c) of the Settlement Agreement dated as of May 22, 2015 (as amended, restated,

modified or supplemented from time to time, the "**Settlement Agreement**") between Roseway Capital S.a.r.l. and GW Cdn."

(2) Effective upon the repayment in full of the Outstanding IAD, the Security Agreement will be amended, without any further act or formality by GW Cdn, Roseway or any other person, as follows:

(a) by deleting in its entirety Section 1.1 of the Security Agreement and substituting therefor the following:

"1.1 Security Interest

As general and continuing security for the payment and performance of the Obligations (as hereinafter defined) owing by GW Cdn to Roseway, GW Cdn, **IN CONSIDERATION OF THE OBLIGATIONS** and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, bargains, assigns and transfers to Roseway a continuing security interest in, and a security interest is taken in, the Roseway OMP Entitlement (as such term is defined in the Settlement Agreement (as hereinafter defined)), hereinafter acquired by or on behalf of GW Cdn, wherever located, including, without limitation, all divestment proceeds of any Roseway OMP Entitlement in the form of non-cash consideration (the "**Collateral**")"; and

(b) by deleting in its entirety Section 5.1 of the Security Agreement and substituting therefor the following:

"5.1 Default

Without in any way limiting the nature of the Obligations or any of them, the Obligations secured hereby shall become immediately due and payable and the security interests granted to Roseway herein shall become enforceable in each and every of the following events (herein called a "**Default**");

(i) if GW Cdn fails to make any payment of any of the Obligations when due in accordance with the Settlement Agreement and, such failure shall

continue for a period of seven Business Days after a notice in writing has been given by Roseway to GW Cdn and the Monitor (as defined in the Settlement Agreement);

(ii) if GW Cdn grants or becomes subject to any security interest, lien, charge, mortgage, hypothec or encumbrance over any of the Collateral that ranks or purports to rank in priority to or pari passu with the security interests granted to Roseway herein;

(iii) if any order is made or an effective resolution passed for the winding up, liquidation or dissolution of GW Cdn;

(iv) except for any admission, acknowledgement, declarations, assignment, proposal or appointment made in connection with the CCAA Proceedings (as defined in the Settlement Agreement), if GW Cdn admits in writing its inability to pay its debts generally as they become due or makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency or is declared bankrupt or makes an authorized assignment or a proposal to its creditors under any bankruptcy or insolvency legislation or if an administrator, trustee, receiver or any other officer with similar powers is appointed in respect of GW Cdn or of the property of GW Cdn or any substantial part thereof under any bankruptcy or insolvency legislation; provided, however, that GW Cdn suspending redemptions of Class A Shares shall not, in and of itself, constitute a Default; or

(v) if a proceeding is instituted for the liquidation of GW Cdn or a petition in bankruptcy is presented against GW Cdn under applicable bankruptcy or insolvency legislation and if, in either case, such proceeding or petition shall not have been dismissed or withdrawn by the earlier to occur of the day that is 45 days from the initiation thereof or, if GW Cdn is making good faith efforts to contest such proceedings, 90 days."

2.07 Defeasance

(1) If GW Cdn repays in full the Outstanding IAD, then the covenants of GW Cdn granted under Sections 3.2 through 3.7, inclusive, of the Security Agreement will cease and become null and void.

(2) If GW Cdn (i) repays in full the Outstanding IAD, (ii) pays in full any Roseway OMP Entitlement or GW Cdn's entitlement to any further OPKO Milestone Payment has, in accordance with the terms of the OPKO Purchase Agreement, ceased, and (iii) pays in full any Annual Fee, Additional Fee, Transaction Expenses or Legal Expenses (each as defined in the IAA) that may become payable by GW Cdn pursuant to the IAA, or any amounts that may become payable by GW Cdn pursuant to Section 9.5.1 of the IAA, or Roseway's entitlement to any such payments has, in accordance with the terms of the IAA, ceased, then the assignments, mortgages, pledges, charges and other security interests and charges granted by the Security Agreement will cease and become null and void, and GW Cdn will be released from any further obligation whatsoever under the Security Agreement.

2.08 Termination of Applicable Documents

Each of the Participation Agreement and the Acknowledgement and Receipt is hereby terminated and of no further force or effect.

## ARTICLE 3- REPRESENTATIONS AND WARRANTIES

3.01 Roseway Representations and Warranties

Roseway represents and warrants to GW Cdn that:

(1) it is a corporation incorporated under the laws of Luxembourg and is subsisting under such laws;

(2) it has the capacity and authority to perform its obligations under this Agreement and such obligations do not and will not conflict with or breach or result in a breach of any of its constating documents, by-laws or any agreement by which it is bound or any laws to which it is subject;

(3) it has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid, binding and enforceable obligation of Roseway; and

(4) it is, and has not been, in default or in breach of the IAA and there exists no condition, event or act that, with the giving of notice or lapse of time or both, would constitute such a default or breach, in each case save and except in respect of outstanding issues related to the PerspecSys Follow-on Financing pursuant to Section 5.2 of the IAA, which outstanding issues are now resolved pursuant to this Agreement and the PerspecSys Confirmation Agreement.

3.02 GW Cdn Representations and Warranties

GW Cdn represents and warrants to Roseway that:

(1) it is a corporation incorporated under the laws of Canada and is subsisting under such laws;

(2) subject to the Approval Order and any orders of the Court granted in the CCAA Proceedings, it has the corporate capacity and authority to perform its obligations under this Agreement and such obligations do not and will not conflict with or breach or result in a breach of any of its constating documents, by-laws or any agreement by which it is bound or any laws to which it is subject;

(3) it has duly executed and delivered this Agreement and, subject to the Approval Order and any orders granted in the CCAA Proceedings, this Agreement constitutes a legal, valid, binding and enforceable obligation of GW Cdn; and

(4) it is not aware of any default or breach of the IAA by Roseway or any condition, event or act that, with the giving of notice or lapse of time or both, would constitute such a default or breach, in each case save and except in respect of outstanding issues related to the PerspecSys Follow-on Financing pursuant to Section 5.2 of the IAA, which outstanding issues are now resolved pursuant to this Agreement and the PespecSys Confirmation Agreement.

## ARTICLE 4 – COVENANTS

### 4.01 Approval Order

(1) GW Cdn will within fifteen (15) days of the execution of this Agreement serve on the service list in the CCAA Proceedings, as supplemented with such additional parties as Roseway may reasonably request, and file with the Court one or more motion records seeking an order approving the terms of this Agreement, in the form attached as Schedule 4.01(1) (with only such changes as the Parties and the Monitor approve in their reasonable discretion), and use commercially reasonable efforts to obtain such order of the Court (as granted, the "**Approval Order**").

(2) The Parties will cooperate in obtaining entry of the Approval Order, and GW Cdn will deliver, or will request the Monitor to deliver, as applicable, to Roseway prior to service and filing, and as early in advance as is practicable to permit adequate and reasonable time for Roseway and its counsel to review and comment, copies of all proposed pleadings, motions, notices, statements, schedules, applications, reports and other material papers to be filed by GW Cdn or the Monitor, as applicable, in connection with such motions and relief requested therein and any objections thereto.

(3) Roseway will, at its own expense, promptly provide to GW Cdn and the Monitor all such information within its possession or under its control as GW Cdn or the Monitor may reasonably require to obtain the Approval Order.

## ARTICLE 5 – CONDITIONS

### 5.01 Mutual Condition to Effectiveness

This Agreement will not be effective until the Approval Order has been entered in substantially the form of Schedule 4.01(1) in accordance with Section 4.01(1), which condition is for the benefit of each of the Parties.

5.02 **Conditions to Effectiveness for the Benefit of GW Cdn**

This Agreement will not be effective until the following conditions have been fulfilled, which conditions are for the benefit of GW Cdn:

(1) GW Cdn will have received a duly executed copy of the PerspecSys Confirmation Agreement;

(2) Roseway will have delivered to GW Cdn a duly executed release (the "**Roseway Release**") in the form of Schedule 5.02(2); and

(3) the Monitor will have consented to the terms of this Agreement.

5.03 **Conditions to Effectiveness for the Benefit of Roseway**

This Agreement will not be effective until GW Cdn will have delivered to Roseway a duly executed release (the "**GW Cdn Release**") in the form of Schedule 5.03, which condition is for the benefit of Roseway.

5.04 **Waiver of Condition**

Roseway, in the case of a condition set out in Section 5.01 or Section 5.03, and GW Cdn, in the case of a condition set out in Section 5.01 or Section 5.02, will have the exclusive right to waive the performance or compliance of such condition in whole or in part and on such terms as may be agreed upon without prejudice to any of its rights in the event of non-performance of or non-compliance with any other condition in whole or in part. Any such waiver will not constitute a waiver of any other conditions in favour of the waiving party.

## ARTICLE 6 - GENERAL

6.01 **Withholding Taxes**

Roseway acknowledges and agrees that GW Cdn will be entitled to withhold from any payment by GW Cdn to Roseway pursuant to the terms of this Agreement the amount that GW Cdn may be required to withhold and/or remit pursuant to any applicable tax law, including

with respect to any amounts previously paid by GW Cdn to Roseway where the required withholding was not made.

6.02 **Continued effectiveness of the IAA and the Security Agreement**

Except as amended or modified by the terms of this Agreement, each of the IAA and the Security Agreement continue, and, in the case of the Security Agreement, will continue, in full force and effect in accordance with its term. Roseway confirms that it has consented to GW Cdn engaging in discussions with Crimson Capital Inc. regarding the possibility of GW Cdn retaining Crimson Capital Inc. directly as an investment advisor to GW Cdn.

6.03 **Further Assurances**

Each of the Parties will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may, either before or after the date hereof, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

6.04 **Time of the Essence**

Time is of the essence of this Agreement.

6.05 **Public Announcements**

Except as required by applicable law, no public announcement or press release in respect of this Agreement may be made by GW Cdn or Roseway without the prior consent and joint approval of GW Cdn and Roseway; provided that GW Cdn may make such disclosure to the Monitor or to the Court and the Monitor may make such disclosure to the Court, each without the consent of Roseway.

6.06 **Monitor's Capacity**

Roseway acknowledges and agrees that the Monitor, acting in its capacity as the Monitor of GW Cdn in the CCAA Proceedings, will have no liability in connection with this Agreement whatsoever in its capacity as Monitor, in its personal capacity or otherwise.

6.07 **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

6.08 **Entire Agreement**

This Agreement, the Roseway Release, the GW Cdn Release, the Security Agreement, the PerspecSys Confirmation Agreement and the IAA constitute the entire agreement between the Parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Parties other than as expressly set forth in this Agreement, the Roseway Release, the GW Cdn Release, the Security Agreement, the PerspecSys Confirmation Agreement or the IAA.

6.09 **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by the Parties. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

6.10 **Assignment**

This Agreement may not be assigned by GW Cdn or Roseway without the consent of (i) in the case of an assignment by GW Cdn, Roseway, and (ii) in the case of an assignment by Roseway, GW Cdn.

6.11 **Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows:

To GW Cdn:

GrowthWorks Canadian Fund Ltd.
c/o McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Fax: (416) 868-0673
Attention: C. Ian Ross, Interim Chief Executive Officer

with a copy to (which will not constitute notice):

McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6

Fax: (416) 868-0673
Attention: Jonathan Grant

To the Monitor:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Fax: 416-649-8101
Attention: Paul Bishop and Jodi Porepa

With a copy to (which will not constitute notice):

Osler, Hoskin & Harcourt LLP
1 First Canadian Place
Toronto, ON M5X 1C1

Fax: (416) 862-6666
Attention: Marc Wasserman and Caitlin Fell

To Roseway:

Roseway Capital S.a.r.l.
412F, route d'Esch
L-1030 Luxembourg

Fax: (+352) 47 11 01
Attention: Carla Alves Silva

with a copy to:

Rosetta Capital Limited
New Broad Street House, 35 New Broad Street
London, EC2M1NH, United Kingdom

Fax: 44 (0) 207 194 8080
Attention: Michael Forer

with a copy to (which will not constitute notice):

Norton Rose Fulbright Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, ON M5J 2Z4

Fax: (416) 216-3930
Attention: Tony Reyes

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either Party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the fifth Business Day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If the Party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication may not be mailed but must be given by personal delivery or by electronic communication.

6.12 <u>Remedies Cumulative</u>

The right and remedies of the Parties under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

6.13 <u>No Third Party Beneficiaries</u>

Except as provided in Section 6.07, this Agreement is solely for the benefit of:

(a) GW Cdn, and its successors and permitted assigns, with respect to the obligations of Roseway under this Agreement; and

(b) Roseway, and its successors and permitted assigns, with respect to the obligations of GW Cdn under this Agreement;

and this Agreement will not be deemed to confer upon or give to any other person any Claim or other right or remedy.

6.14 Governing Law

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

6.15 Attornment

For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. Each of the Parties attorns to the jurisdiction of the courts of the Province of Ontario.

6.16 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

6.17 Electronic Execution

Delivery of an executed signature page to this Agreement by any Party by electronic transmission will be as effective as delivery of a manually executed copy of this Agreement by such Party.

6.18 Severability

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either of the Parties.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF the Parties have executed this Agreement.

**GROWTHWORKS CANADIAN FUND LTD.**

Per: ______________________

Name: C. Ian Ross

Title: Interim Chief Executive Officer

ROSEWAY CAPITAL S.A.R.L.

Per: ______________________

Name:

Title:

Per: ______________________

Name:

Title:

IN WITNESS WHEREOF the Parties have executed this Agreement.

GROWTHWORKS CANADIAN FUND LTD.

Per: ____________________

Name: C. Ian Ross
Title: Interim Chief Executive Officer

ROSEWAY CAPITAL S.A.R.L.

Per: ____________________

Name: Michael Ford
Title: A Manager

Per: ____________________

Name: Flavio Marzona
Title: B Manager

The undersigned hereby consents to the terms of this Agreement.

**FTI CONSULTING CANADA INC.,**
**in its capacity as court-appointed Monitor**
**of GrowthWorks Canadian Fund Ltd., and**
**not in its personal or corporate capacity**

Per: [signature]

Name: PAUL BISHOP
Title: SENIOR MANAGING DIRECTOR

Per: ____________________

Name:
Title:

# SCHEDULE 4.01(1)

## Approval Order

Attached as Appendix A to this Schedule

Appendix A to Schedule 4.01(1)

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

*ONTARIO*
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

| THE HONOURABLE | ) | , THE |
|---|---|---|
| | ) | |
| JUSTICE | ) | DAY OF , 2015 |

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.

**ORDER APPROVING SETTLEMENT**

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the "**Fund**") for an order approving an agreement settling claims between Roseway Capital S.a.r.l. ("**Roseway**") and the Fund, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Fund, including the Affidavit of C. Ian Ross sworn May 21, 2015, the Fourteenth report of FTI Consulting Canada, Inc. (the "**Monitor**"), and on hearing the submissions of counsel for the Fund, Roseway, and the Monitor, no one else appearing although properly served as appears from the Affidavit of Service of C. Ian Ross, sworn May 21, 2015:

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

2. THIS COURT ORDERS AND DECLARES that the settlement agreement settling the respective claims of Roseway and the Fund, made between Roseway and the Fund and with the consent of the Monitor, dated as of May 22, 2015 (the "**Settlement Agreement**"), is hereby

approved in substantially the same form attached as Exhibit "C" of the Affidavit of C. Ian Ross sworn May 21, 2015.

3. THIS COURT ORDERS that the Fund is authorized to execute and deliver the Settlement Agreement and shall perform its obligations thereunder, including but not limited to:

a. adding $1,045,462 to the Investment Advisor Debt (as defined in the Settlement Agreement);

b. adding to the Investment Advisor Debt the amount of $500,000 on account of fees, costs and expenses owing by the Fund to Roseway pursuant to Section 8.19 of the Security Agreement (as defined in the Settlement Agreement) and in connection with the Fund's proceedings under the *Companies' Creditors Arrangement Act*;

c. payment to Roseway of 24% of any additional earn-in consideration received by the Fund after the date of the Settlement Agreement by way of a distribution on the GW Cdn OTYC Shares (as defined in the Settlement Agreement), pursuant to the OPKO Purchase Agreement (as defined in the Settlement Agreement); and

d. payment to Roseway of the Outstanding IAD (as defined in the Settlement Agreement) as soon as reasonably practicable, taking into account the Fund's commercially reasonable estimate of the actual and projected (i) liquidity and capital resources of the Fund, and (ii) expenditures of the Fund.

4. THIS COURT ORDERS that notwithstanding:

a. the pendency of these proceedings;

b. any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Fund and any bankruptcy order issued pursuant to any such applications; and

c. any assignment in bankruptcy made in respect of the Fund;

the Fund's performance of its obligations under the Settlement Agreement shall be binding on any trustee in bankruptcy that may be appointed in respect of the Fund and shall not be void or voidable by creditors of the Fund, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

ORDER APPROVING
ROSEWAY SETTLEMENT

McCARTHY TÉTRAULT LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Sharon Kour LSUC#: 58328D
Tel: (416) 601-8305
Fax: (416) 868-0673
skour@mccarthy.ca

Kevin P. McElcheran Professional Corporation

Kevin McElcheran LSUC#: 22119H
Tel: (416) 855-0444
kevin@mcelcheranadr.com

Lawyers for GrowthWorks Canadian Fund Ltd.
14294877

MT DOCS 14240360

# SCHEDULE 5.02(2)

## Roseway Release

Attached as Appendix A to this Schedule

Appendix A to Schedule 5.02(2)

**ROSEWAY FULL AND FINAL RELEASE**

WHEREAS:

A. Roseway Capital S.a.r.l. ("**Roseway**") and GrowthWorks Canadian Fund Ltd. ("**GW Cdn**") have entered into a settlement agreement dated as of May 22, 2015 (the "**Settlement Agreement**");

B. as a condition to the effectiveness of the Settlement Agreement, Roseway has agreed to release GW Cdn from all Claims against GW Cdn;

NOW THEREFORE THIS RELEASE WITNESSES that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the undersigned:

1. releases and forever discharges GW Cdn and its officers, directors, employees, agents, consultants, advisors (including, without limitation, legal, financial and accounting advisors) (collectively, the "**Releasees**"), from any and all Claims and Losses which the undersigned as a shareholder, securityholder or creditor of, or advisor to, GW Cdn or otherwise ever had, now has or may hereafter have, whether known at the present time or discovered in the future, for or by reason of or in any way arising out of any cause, matter or thing whatsoever existing up to the present time, including, without limitation, for or by reason of or in any way arising out of any claim or demand for money advanced, interest, bonus, costs, fees, expenses, participating interest, participation in revenues, proceeds of disposition, profits, earnings or other amounts whether authorized or provided for by by-laws, resolution, contract (including, without limitation, (i) the Participation Agreement; (ii) the Security Agreement; and (iii) the IAA), agreement, understanding or otherwise; and

2. agrees that neither of the undersigned will make any Claim or take any proceedings with respect to any matter released and discharged in Section 1 of this Release which may result in any Claim arising against any of the Releasees for contribution or indemnity or

other relief.

NOTWITHSTANDING THE FOREGOING, this Release will not apply (i) to any Claims or Losses which either of the undersigned ever had, now has or may hereafter have, whether known at the present time or discovered in the future, for or by reason of or in any way arising out of the Settlement Agreement, (ii) to Claims by Roseway for any unpaid Annual Fee, Additional Fee, Transaction Expenses or Legal Expenses (each as defined in the IAA) payable by GW Cdn pursuant to the IAA, or any amounts payable by GW Cdn pursuant to Section 9.5.1 of the IAA, or (iii) to release the security interests created in the Security Agreement with respect to any of such amounts.

CAPITALIZED TERMS USED, but not otherwise defined, herein have the meanings given to them in the Settlement Agreement.

THIS RELEASE will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. For the purpose of all legal proceedings, this Release will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Release. Each of the undersigned attorns to the jurisdiction of the courts of the Province of Ontario.

THIS RELEASE will enure to the benefit of the heirs, executors, administrators, legal personal representatives, successors and assigns of the Releasees and will be binding upon the respective successors and assigns of Roseway and Roseway Capital L.P.

IN WITNESS WHEREOF the undersigned has executed this Release this 22nd day of May, 2015.

**ROSEWAY CAPITAL S.a.r.l.**

Per: Name:
Title:
I have authority to bind Roseway Capital S.a.r.l.

Per: Name:
Title:
I have authority to bind Roseway Capital S.a.r.l.

**ROSEWAY CAPITAL L.P. by its general partner ROSEWAY CAPITAL GP LIMITED**

Per: Name:
Title:
I have authority to bind Roseway Capital LP

Per: Name:
Title:
I have authority to bind Roseway Capital LP

# SCHEDULE 5.03

## GW Cdn Release

Attached as Appendix A to this Schedule

**Appendix A to Schedule 5.03**

## GW CDN FULL AND FINAL RELEASE

WHEREAS:

A. Roseway Capital S.a.r.l. ("**Roseway**") and GrowthWorks Canadian Fund Ltd. ("**GW Cdn**") have entered into a settlement agreement dated as of May 22, 2015 (the "**Settlement Agreement**");

B. as a condition to the effectiveness of the Settlement Agreement, GW Cdn has agreed to release Roseway from all Claims against Roseway;

NOW THEREFORE THIS RELEASE WITNESSES that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned:

1. releases and forever discharges Roseway and its officers, directors, employees, agents, consultants, advisors (including, without limitation, legal, financial and accounting advisors and the Sub-Contractor (as defined in the IAA)) (collectively, the "**Releasees**"), from any and all Claims and Losses which the undersigned as a shareholder, securityholder or creditor of, or advisor to, Roseway or otherwise ever had, now has or may hereafter have, whether known at the present time or discovered in the future, for or by reason of or in any way arising out of any cause, matter or thing whatsoever existing up to the present time, including, without limitation, for or by reason of or in any way arising out of any claim or demand for money advanced, interest, bonus, costs, fees, expenses, participating interest, participation in revenues, proceeds of disposition, profits, earnings or other amounts whether authorized or provided for by by-laws, resolution, contract (including, without limitation, (i) the Participation Agreement; (ii) the Security Agreement; and (iii) the IAA), agreement, understanding or otherwise; and

2. agrees that the undersigned will not make any Claim or take any proceedings with respect to any matter released and discharged in Section 1 of this Release which may result in any Claim arising against any of the Releasees for contribution or indemnity or other relief.

NOTWITHSTANDING THE FOREGOING, this Release will not apply to any Claims or Losses which the undersigned ever had, now has or may hereafter have, whether known at the present time or discovered in the future, for or by reason of or in any way arising out of the Settlement Agreement.

CAPITALIZED TERMS USED, but not otherwise defined, herein have the meanings given to them in the Settlement Agreement.

THIS RELEASE will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. For the purpose of all legal proceedings, this Release will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Release. The undersigned attorns to the jurisdiction of the courts of the Province of Ontario.

THIS RELEASE will enure to the benefit of the heirs, executors, administrators, legal personal representatives, successors and assigns of the Releasees and will be binding upon the successors and assigns of GW Cdn.

IN WITNESS WHEREOF the undersigned has executed this Release this 22nd day of May, 2015.

**GROWTHWORKS CANADIAN FUND LTD.**

Per: ______________________________
Name:
Title:
I have authority to bind GW Cdn

# Tab F

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

*ONTARIO*
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

| THE HONOURABLE | ) | MONDAY, THE 8TH |
| --- | --- | --- |
| | ) | |
| JUSTICE NEWBOULD | ) | DAY OF JUNE, 2015 |

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.

**ORDER APPROVING SETTLEMENT**

THIS MOTION, made by GrowthWorks Canadian Fund Ltd. (the "**Fund**") for an order approving an agreement settling claims between Roseway Capital S.a.r.l. ("**Roseway**") and the Fund, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Fund, including the Affidavits of C. Ian Ross sworn May 21, 2015 and June 4, 2015, the Fourteenth Report of FTI Consulting Canada, Inc. (the "**Monitor**"), and on hearing the submissions of counsel for the Fund, Roseway, Mr. Fields on behalf of Cornerstone Securities Canada Inc. and the Monitor and being advised that GrowthWorks WV Management Ltd. does not oppose this Motion, no one else appearing although properly served as appears from the Affidavits of Service of Swee-Teen Yeoh, sworn May 22, 2015 and June 5, 2015:

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

2. THIS COURT ORDERS AND DECLARES that the settlement agreement settling the

This is Exhibit ...E... referred to in the affidavit of ...Michael Forr... sworn before me, this ...1... day of ...October... 2015

A COMMISSIONER FOR TAKING AFFIDAVITS

with further service thereof.

2. THIS COURT ORDERS AND DECLARES that the settlement agreement settling the respective claims of Roseway and the Fund, made between Roseway and the Fund and with the consent of the Monitor, dated as of May 22, 2015 (the "**Settlement Agreement**"), is hereby approved in substantially the same form attached hereto as Appendix "A".

3. THIS COURT ORDERS that the Fund is authorized to execute and deliver the Settlement Agreement and shall perform its obligations thereunder, including but not limited to:

a. adding $1,045,462 to the Investment Advisor Debt (as defined in the Settlement Agreement);

b. adding to the Investment Advisor Debt the amount of $500,000 on account of fees, costs and expenses owing by the Fund to Roseway pursuant to Section 8.19 of the Security Agreement (as defined in the Settlement Agreement) and in connection with the Fund's proceedings under the *Companies' Creditors Arrangement Act*;

c. payment to Roseway of 24% of any additional earn-in consideration received by the Fund after the date of the Settlement Agreement by way of a distribution on the GW Cdn OTYC Shares (as defined in the Settlement Agreement), pursuant to the OPKO Purchase Agreement (as defined in the Settlement Agreement); and

d. payment to Roseway of the Outstanding IAD (as defined in the Settlement Agreement) as soon as reasonably practicable, taking into account the Fund's commercially reasonable estimate of the actual and projected (i) liquidity and capital resources of the Fund, and (ii) expenditures of the Fund.

4. THIS COURT ORDERS that notwithstanding:

a. the pendency of these proceedings;

b. any applications for a bankruptcy order now or hereafter issued pursuant to the

*Bankruptcy and Insolvency Act* (Canada) in respect of the Fund and any bankruptcy order issued pursuant to any such applications; and

c. any assignment in bankruptcy made in respect of the Fund;

the Fund's performance of its obligations under the Settlement Agreement shall be binding on any trustee in bankruptcy that may be appointed in respect of the Fund and shall not be void or voidable by creditors of the Fund, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

JUN - 8 2015

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

**ORDER APPROVING ROSEWAY SETTLEMENT**

McCARTHY TÉTRAULT LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K IE6

Sharon Kour LSUC#: 58328D
Tel: (416) 601-8305
Fax: (416) 868-0673
skour@mccarthy.ca

Kevin P. McElcheran Professional Corporation

Kevin McElcheran LSUC#: 22119H
Tel: (416) 855-0444
kevin@mcelcheranadr.com

Lawyers for GrowthWorks Canadian Fund Ltd.

14294877

# Tab G

This is Exhibit ......G...... referred to in the affidavit of ....[illegible].... sworn before me, this ....1.... day of ....[illegible].... 20..15..

A COMMISSIONER FOR TAKING AFFIDAVITS

**From:** Bishop, Paul
**Sent:** Tuesday, July 28, 2015 9:35 AM
**To:** Cade, James
**Cc:** Wasserman, Marc
**Subject:** GW

Jim

Further to our call and your recent emails I have informed the fund of your request that the fund repay the balance of the IAD, and of your agreement to hold funds in trust against the possibility that the Perspecsys funds, for whatever reason, are not received after payment is confirmed, and that in such an event funds would be returned to the Monitor. As you are aware the settlement agreement provides that;

with the consent of the Monitor, GW Cdn will pay the Outstanding IAD as soon

as reasonably practicable, taking into account GW Cdn's commercially

reasonable estimate of the actual and projected (i) liquidity and capital resources

of GW Cdn, and (ii) expenditures of GW Cdn

At this point we have in the GW bank accounts the following amounts;

Roseway Account $1,230,248

GW Expense accounts $122,438

Payment of the remaining IAD would leave us with $387,282 in available funds. I require the Fund's approval to pay out the balance of the IAD and have advised the Fund that this amount, combined with the funds from Perspscys, should be more than sufficient to fund activities through the current extension period and beyond, and that accordingly I would consent to such payment.

I would suggest that timing of the IAD repayment be discussed directly with the Fund

Regards

Paul

FTI Consulting Canada Inc.

79 Wellington Street West

Suite 2010

Toronto, Ontario

M5K 1G8

# Tab H

**Reyes, Tony**

| | |
|---|---|
| **From:** | Cade, James <james.cade@nortonrosefulbright.com> |
| **Sent:** | July-28-15 5:50 PM |
| **To:** | Grant, Jonathan R. |
| **Cc:** | Paul Bishop (paul.bishop@fticonsulting.com); Reyes, Tony |
| **Subject:** | Repayment of Balance of Investment Advisor Debt |

Hi Jonathan, trust you are well.

I am writing to request that GW authorize the repayment of the remaining Investment Advisor Debt ("IAD") to Roseway.

You will no doubt recall that the Investment Advisor Agreement (in Section 7.5) provides that, until payment of the Investment Advisor Debt in full, the Investment Advisor would cause disbursements to be made from the Blocked Account (as defined) to be made in accordance with the priority set out in Section 7.5.1.

We have communicated with Paul, in his capacity as Monitor, and he advises that at this point the Monitor has in the Blocked Account and the GW expense account the following amounts;

Roseway Blocked Account $1,230,248
GW Expense accounts $122,438

Payment of the remaining IAD would leave the Monitor with $387,282 in available funds. I understand that Paul has advised the Fund that this amount, combined with the funds from PerspecSys, should be more than sufficient to fund activities through the current extension period and beyond, and that accordingly he is prepared to consent to payment of the remaining IAD at this time. In addition, of course, the OPKO royalty payment should arrive in the not too distant future (OPKO milestone achieved, see today's press release - http://investor.opko.com/releasedetail.cfm?ReleaseID=924237)

Accordingly, the Investment Advisor believes that payment of the remaining IAD should take place without delay.

You will also recall that due to difficulties in opening a Blocked Account in GW CDN's name but under the control of the Investment Advisor (as contemplated by the Investment Advisor Agreement), an account was eventually opened by the Monitor, with Donna Parr and me as signing officers. Donna and I agree that the remaining IAD should now be paid, particularly in view of the recent Settlement Agreement, wherein Roseway agreed to forego the ongoing accumulation of interest in exchange for prompt payment of the remaining IAD.

Due to the fact that the Blocked Account is in the Monitor's name, it has requested out of an abundance of caution that GW CDN also authorize the payment of the outstanding IAD. While we don't think this is technically necessary, we have agreed that we would also convey the Investment Advisor's request that GW CDN authorize the Monitor to repay the outstanding IAD, in order to remove any issues. We are making this request without prejudice to our view that GW CDN's authorization is not required.

Under the Settlement Agreement and the Order approving the Settlement Agreement, GW CDN has the obligation to pay the IAD "as soon as reasonably practicable". We believe that that time is now, and accordingly would appreciate GW CDN promptly advising the Monitor that it is agreeable to the payment of the remaining IAD.

Thanks and best regards.

Jim

**James Cade**
Senior Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4 Canada

This is Exhibit H referred to in the affidavit of .................... sworn before me, this .................... day of .................... 20....

COMMISSIONER FOR TAKING AFFIDAVITS

# Tab I

Reyes, Tony

From: Grant, Jonathan R. <JGRANT@MCCARTHY.CA>
Sent: July-29-15 12:43 PM
To: Cade, James
Cc: Paul Bishop (paul.bishop@fticonsulting.com); Reyes, Tony
Subject: RE: Repayment of Balance of Investment Advisor Debt

This is Exhibit "I" referred to in the affidavit of Michael Frei sworn before me, this ... day of October 2015

A COMMISSIONER FOR TAKING AFFIDAVITS

Jim,

I am writing in response to your email below.

The Fund's obligation to pay the Outstanding IAD is set out in Section 2.04(c) of the recently signed Settlement Agreement between the Fund and Roseway, an agreement that was heavily negotiated over many months and subsequently approved by the Court. It is important to view the provisions of Section 2.04(c) in their entirety. That section provides that "with the consent of the Monitor, GW Cdn will pay the Outstanding IAD as soon as reasonably practicable, taking into account GW Cdn's commercially reasonable estimate of the actual and projected (i) liquidity and capital resources of GW Cdn, and (ii) expenditures of GW Cdn". The decision of when the payment of the Outstanding IAD should be made rests with the Fund subject to the consent of the Monitor. The Investment Advisor has no role in the Fund's decision as to the timing of payment of amounts owing to Roseway as its mandate as investment advisor to the Fund does not extend to such matters. Of course, Roseway as the Fund's investment advisor has no role in the decision as to when payments should be made to Roseway in its capacity as the secured creditor of the Fund. If that were the case, Roseway's conflict of interest would have been untenable and the Settlement Agreement and Investment Advisor Agreement were expressly negotiated to avoid that conflict.

As Roseway knows, the Fund has very limited and unreliable sources of capital, relying entirely on the proceeds from the sale of portfolio investments. For that reason, the Fund has paid amounts owing to Roseway from time to time as it received cash and then only after carefully considering its actual and projected cash resources and expenditures. Those expenditures are material and the Fund must continue to be prudent with its limited resources. Prudence requires that the Fund not incur or expend cash until the Monitor has confirmed that it is in receipt of sufficient cash to reasonably meet the Fund's existing and projected cash outflows. Roseway has acknowledged the Fund's right to act in this manner on previous occasions. As recently as a month ago when the Fund elected to make a further payment against the Outstanding IAD, with knowledge of Roseway, the Fund retained cash for its outstanding and projected operating expenses. At that time, as now, the cash retained was more than the amount necessary to pay all of the remaining Outstanding IAD.

To the Fund's knowledge, the timing of the closing of the PerspecSys transaction remains uncertain as the parties seek to satisfy closing conditions. Of course, this is not uncommon in private sale transactions. However, until the transaction actually closes and unrestricted funds are paid to the Monitor on the Fund's behalf, it is not reasonably practicable for the Fund to make any further payments of the Outstanding IAD pending confirmation that it has sufficient funds to do so. It is of assistance to the Fund to know that Roseway is prepared to permit the payment of the Outstanding IAD from the Fund's blocked account should the Fund elect to do so.

With respect to the Fund's blocked account maintained by the Monitor, it is important for you and your client to keep in mind that that is an account that exists for the benefit of, and belongs to, the Fund and not Roseway or any of its representatives. We find it surprising that you would suggest that you and Donna Parr have the unilateral authority to authorize or make disbursements from that account without the prior written consent of the Fund. If that were the case, the requirements of Section 2.04(c) that payment of the Outstanding IAD be made by the Fund only in the circumstances stated in that section would be entirely pointless. As signing officers of the blocked account, you and Donna have personal responsibilities to the Fund to act in its interests

in the handling of its money. The Fund similarly cautions your client and your firm with respect to any role they may have in any disbursement of money belonging to the Fund without its express authorization. The blocked account belongs to the Fund and not to Roseway. Further, your personal views as to whether amounts should be paid from that account in these circumstances are not relevant.

If it was correct to assert that the Fund's authorization to make payments from the blocked was not necessary, then presumably Roseway would have long ago gone ahead and paid itself the amounts owing by the Fund to Roseway. This, of course, has not occurred for the simple reason that such authorization is necessary.

After consideration of the request and in light of the Fund's actual and projected expenditures and its limited and uncertain funding sources, the Fund has concluded that unless and until unrestricted cash proceeds of at least US $2,500,000 are actually received by the Monitor on behalf of the Fund from the proposed PerspecSys sale transaction, it is not reasonably practicable to pay the Outstanding IAD at this time.

Let me know if you wish to discuss any of this further.

Regards,

Jonathan

---

**From:** Cade, James [mailto:james.cade@nortonrosefulbright.com]
**Sent:** Tuesday, July 28, 2015 5:50 PM
**To:** Grant, Jonathan R.
**Cc:** Paul Bishop (paul.bishop@fticonsulting.com); Reyes, Tony
**Subject:** Repayment of Balance of Investment Advisor Debt

Hi Jonathan, trust you are well.

I am writing to request that GW authorize the repayment of the remaining Investment Advisor Debt ("IAD") to Roseway.

You will no doubt recall that the Investment Advisor Agreement (in Section 7.5) provides that, until payment of the Investment Advisor Debt in full, the Investment Advisor would cause disbursements to be made from the Blocked Account (as defined) to be made in accordance with the priority set out in Section 7.5.1.

We have communicated with Paul, in his capacity as Monitor, and he advises that at this point the Monitor has in the Blocked Account and the GW expense account the following amounts;

Roseway Blocked Account $1,230,248
GW Expense accounts $122,438

Payment of the remaining IAD would leave the Monitor with $387,282 in available funds. I understand that Paul has advised the Fund that this amount, combined with the funds from PerspecSys, should be more than sufficient to fund activities through the current extension period and beyond, and that accordingly he is prepared to consent to payment of the remaining IAD at this time. In addition, of course, the OPKO royalty payment should arrive in the not too distant future (OPKO milestone achieved, see today's press release - http://investor.opko.com/releasedetail.cfm?ReleaseID=924237)

Accordingly, the Investment Advisor believes that payment of the remaining IAD should take place without delay.

You will also recall that due to difficulties in opening a Blocked Account in GW CDN's name but under the control of the Investment Advisor (as contemplated by the Investment Advisor Agreement), an account was eventually opened by the Monitor, with Donna Parr and me as signing officers. Donna and I agree that the remaining IAD should now be paid, particularly in view of the recent Settlement Agreement, wherein Roseway agreed to forego the ongoing accumulation of interest in exchange for prompt payment of the remaining IAD.

Due to the fact that the Blocked Account is in the Monitor's name, it has requested out of an abundance of caution that GW CDN also authorize the payment of the outstanding IAD. While we don't think this is technically necessary, we have agreed that we would also convey the Investment Advisor's request that GW CDN authorize the Monitor to repay the outstanding IAD, in order to remove any issues. We are making this request without prejudice to our view that GW CDN's authorization is not required.

Under the Settlement Agreement and the Order approving the Settlement Agreement, GW CDN has the obligation to pay the IAD "as soon as reasonably practicable". We believe that that time is now, and accordingly would appreciate GW CDN promptly advising the Monitor that it is agreeable to the payment of the remaining IAD.

Thanks and best regards.

Jim

**James Cade**
Senior Partner

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# Tab J

This is Exhibit ......J...... referred to in the affidavit of ...Michael Forer... sworn before me, this ...1... day of ...October... 20.15.

A COMMISSIONER FOR TAKING AFFIDAVITS

**From:** Donna Parr <parrdonna@gmail.com>
**Sent:** Thursday, July 16, 2015 1:08 PM
**To:** Ian Ross; Bishop, Paul
**Subject:** Fwd: Proton - Merger Agreement CONFIDENTIAL

Ian and Paul

Attached is the word chart that summarizes payments to be made regarding PerspecSys. I am also including the spreadsheet which is extremely temperamental so you may want to stick to the word document. Here is the deal which has changed from before to put the holdback in the second payment so GW gets a bigger payment at close:

**Plan to close asap** - targeting tomorrow but will be next week since some points are still being negotiated:

**Payment at close - US$30M at close net of Working Capital position** - currently a small deficit but may increase it by $200+ more because buyer wants some cash in the company so these payments may move somewhat. At this point, next week GW gets **US$2.57M** which is close to **C$3.3M** at today's FX rates. This is prior to the Roseway 15% Additional Fee which is calculated in the chart (GW net payment is approx. **C$2.8M** (using $1.27 FX rate which is lower than today's). I also deducted 5% from the Roseway capital gain on the Follow-on financing but this will be adjusted down since it is to be paid net of taxes and I don't have that information yet.

**Guaranteed payout US$15M at 6 months from close** - US$5.5M (10% purchase price) taken off the holdback. Gross payment to GW is approx. C$573k (net C$487k) using a $1.20 FX rate.

**Holdback release at 12 months from close** - Gross payment to GW is approx. C$326k (net C$277k) using a $1.20 FX rate.

**Additional Earnout** - $10M within 2 months after 12 months of close - was supposed to be an in-the-bag metric like employee retention but has now moved to payment on revenues or bookings - TBD still (hence not closing tomorrow) - This is in the buyer's hands but apparently Bluecoat has paid them on past acquisitions. If paid, anticipated is gross payment to GW is approx. C$571k (net C$486k) using a $1.20 FX rate.

**Total anticipated payments to GW with the Additional Earnout - Gross - US$3.79MM or C$4.7M (net C$4.0M) and without US$3.3M or C$4.2M (net C$3.5M).**

The big issue for us is that the Board and key shareholders have decided to waive accrued dividends and interest on the Convertible Debt since management did not see any payment until the Additional Earnout net of the broker fee. One could argue that payment is entirely in their hands but the Board wanted them to get something earlier and bigger. Since inception $27.7M has been invested and accrued dividends add $11.6M and interest on Conv Debt adds $341k. The amount lost for GW is US$1.4M on accrued dividends (primarily the Pref A) although it is not apples to apples because there is more on the payments being received now by GW on an as-converted basis than if the dividends came off first.

I asked NortonRose whether we have some grounds to block the loss of accrued dividends as GW is 31% of the Pref As since we are clearly outvoted on all other fronts given GW's minimal ownership of the Bs. It appears one needs 2/3rds to carry any type of class vote. We can not expect Common Shareholders to support us since they lost their dividends by not participating in the last round. The conclusion is there is minimal course except to improve the potential recourse on indemnities to a maximum 10% of our payments for which I will now rabble-rouse. I have attached Michael Wahl's comments.

Please let me know if you have any questions or issues. I am being asked if McCarthys or the Monitor's counsel need to be included this time round (comparing to the re-org) and I said no. Please correct me ASAP if you beg to differ.

Thanks
Donna

---------- Forwarded message ----------
From: **Wahl, Michael** <Michael.Wahl@nortonrosefulbright.com>
Date: Wed, Jul 15, 2015 at 4:47 PM
Subject: RE: Proton - Merger Agreement CONFIDENTIAL
To: Donna Parr <parrdonna@gmail.com>
Cc: "Cade, James" <James.Cade@nortonrosefulbright.com>

Donna,

As discussed, after reviewing the merger agreement, below are the key issues that remain:

1. **Forfeit of Accrued Dividends.** The dividends accruing on the Class A and Class B Preferred Shares held by Growthworks Canadian Fund have been forfeited. As you had indicated, the

vote by the board and common shareholders effected the cancelation of the amounts owing in respect of this accrued dividends and interest.

2. **Voting Agreement.** Section 2 of the Shareholder Voting Agreement states that in the event that the board and 50% of the Class A Preferred Shares and common shareholders approve a sale then the parties to the voting agreement are bound to vote and do all other things in favour of the transaction.

This is supported by the inclusion in the purchase agreement of the rep in Section 2.4 that the company only needs a majority of the voting power of the outstanding shares voting as a single class under the voting agreement.

There appears to be one way out of this. Section 2.3 of the voting agreement is a list of exceptions to the rule. Essentially, it is a list of deal requirements where if the proposed deal doesn't comply then the parties are not bound by the drag-along provisions. The company seems to be complying with all of the requirements, except for one, which is that each shareholder's liability will be limited to a pro rata share of an escrow not to exceed 10% in the aggregate of the consideration payable. There are no carve-outs here nor is the liability cap limited to reps and warranties, as is the case in the indemnification section of the purchase agreement.

I have not yet assessed what the corporate law requirements are under Delaware law in the event that you do not have to vote along with transaction.

3. **Inclusion of 280G.** As I had discussed with you earlier, the inclusion by purchaser's counsel of the 280G language likely means that the aggregate compensation of management in respect of retention bonus, accelerated payments due on the closing of the transaction, RSUs, base salary with purchaser, etc. is likely 3x that of their current base salary.

4. **Reps and Warranties.** While the majority of the reps and warranties favour the purchaser slightly, the IP reps are overwhelmingly against the company's interest in that they are either too broad, unlimited in time, or not qualified by knowledge or by materiality. This may make them susceptible to breach and claims under the indemnity.

5. **Indemnity.** The indemnification section contains provisions that are quite purchaser friendly, such as: (i) pro-sandbagging provisions; (ii) inclusion of incidental and consequential damages; (iii) the indemnity not being the exclusive remedy; and (iv) other remedies available if the deal does not close. In addition, clarity needs to be added surrounding the liability of the Class A Preferred Shareholders.

6. **One-Year Earnout.** Clarification needs to be sought surrounding the metrics of the one-year earnout and the discretion of Parent in pursuing the metrics.

Regards,

**Michael Wahl**
Associate

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<Schedule of Payments for PerspecSys - July 16, 2015.docx>

<Copy of Perspecsys -- Waterfall GW Cdn F + RW.xlsx>

# Tab K

Reyes, Tony

**From:** Bishop, Paul <Paul.Bishop@fticonsulting.com>
**Sent:** August-10-15 3:33 PM
**To:** Reyes, Tony
**Cc:** Wasserman, Marc; Fell, Caitlin (CFell@osler.com) (CFell@osler.com); Cade, James
**Subject:** RE: GrowthWorks and Roseway

Tony,

The Fund has informed the Monitor that, in its view, Roseway is not entitled to the Additional fee, and will not approve payment of such. Accordingly we are not able to make payment #6 referenced below. The Fund has approved payment of items 3 and 4. Payment of these items will require that the Monitor transfer funds from the Blocked accounts for which we require written authorisation from Jim Cade or Donna Parr as the previous authorisation was cancelled. Please let me know if such authorisation will be provided.

We note your comments re the additional 15% fee and the dispute concerning Roseway's entitlement to such, and remain willing to assist in resolving the matter

*This is Exhibit* K *referred to in the affidavit of* Michael Forde *sworn before me, this* 1 *day of* October *20*15

Regards

Paul

A COMMISSIONER FOR TAKING AFFIDAVITS

---

**From:** Reyes, Tony [mailto:Tony.Reyes@nortonrosefulbright.com]
**Sent:** Friday, August 07, 2015 10:48 AM
**To:** Bishop, Paul
**Cc:** Wasserman, Marc; Fell, Caitlin (CFell@osler.com) (CFell@osler.com); Cade, James
**Subject:** GrowthWorks and Roseway

Paul,

GrowthWorks has now confirmed in writing that it objects to payment of the 15% Additional Fee that is provided for in Section 7.3 of the Investment Advisor Agreement (the "IAA"). Roseway and Donna Parr are both very upset by this, and regard this as bad faith on the part of GrowthWorks, particularly in view of how hard Donna has worked to put together the various deals that have resulted in solid realizations for GrowthWorks. As you will recall, Donna brought the Allen Vanguard settlement discussions to a successful conclusion, and has helped to conclude transactions involving Advanced Glazing, OPKO and PerspecSys. These transactions have resulted in significant funds being in the Blocked Account and in the Monitor's account for "GW Expenses" as defined in the IAA. As you know, even prior to the closing of the PerspecSys transaction, there were sufficient funds to repay the balance of the Investment Advisor Debt, as requested by Roseway, but GrowthWorks objected to payment of that amount at that time.

We think these objections by GrowthWorks are without merit and are simply tactical. Accordingly, Roseway has every intention of challenging them if GrowthWorks persists in its views and this results in the non-payment of the amounts due under the IAA.

We are writing at this time to request that the Monitor make the payments that are due under Section 7.5 of the IAA, all as enumerated there, being payment of:

1. Legal Expenses and Transaction Expenses (there are some relatively minor amounts outstanding; we will provide details and invoices);

2. the Fees and Expenses Allowance (we don't believe that there is any amount due here);
3. the balance of the Investment Advisor Debt;
4. the Annual Fee (the last quarterly invoice was rendered in July);
5. GW Expenses (we understand that there is a significant positive balance in the Monitor's GW Expenses account); and
6. the Additional Fee (details have been provided by Donna to GrowthWorks and the Monitor).

As per the IAA, the balance is to be held by the Monitor on behalf of GrowthWorks.

We would appreciate the Monitor's response to this payment request as soon as possible, so that these matters can be resolved.

Thanks,

Tony Reyes

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

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

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF MICHAEL FORER**
**(sworn October 1, 2015)**


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Lawyers for Roseway Capital S.à.r.l.




DOCSTOR: 5299219

# TAB 3

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

*ONTARIO*
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

**AFFIDAVIT OF DONNA PARR**
**(sworn September 30, 2015)**

I, Donna Parr, of the City of Toronto, Ontario, MAKE OATH AND SAY:

1 I am the President of Crimson Capital Inc. (**Crimson Capital**), the "Sub-Contractor" for Roseway Capital s.à.r.l (**Roseway**) under the Investment Advisor Agreement dated May 9, 2014 (the **IAA**) between Roseway and GrowthWorks Canadian Fund Ltd. (**GrowthWorks**). As such, I have knowledge of the facts set out herein. To the extent that I do not have direct knowledge of such facts, I have stated the source of my knowledge, and believe such facts to be true.

**My Background**

2 I have over 30 years of experience in venture and private equity, investing and fund raising, and corporate finance working with, among others, Canadian Medical Discoveries Fund, Canada Pension Plan, TD Capital, Ontario Municipal Employees Retirement System (**OMERS**), Canadian Corporate Funding Ltd., Trivest Insurance Network and Continental Illinois Bank.

3 Over the course of my twelve years making direct private equity, venture capital, and private debt investments with OMERS, I was the leader of its private equity and venture group for four years.

4 I am the President and principal of Crimson Capital. In that role, I have worked with a number of technology and growth companies to build their businesses and have been involved in numerous equity capital raises.

5 I have served on 29 boards of private companies on behalf of institutional investors.

**Realizations from GrowthWorks' Portfolio**

6 Crimson Capital is Roseway's sub-contractor under the IAA. In this capacity, Crimson Capital assists Roseway with the management of GrowthWorks' portfolio of investments (the **Portfolio**). Crimson Capital has been Roseway's sub-contractor since Roseway became "Investment Advisor" to GrowthWorks (and FTI Consulting Canada Inc. in its capacity as court-appointed monitor (the **Monitor**)) under the IAA.

7 I am currently serving on the board of directors of five of the venture capital companies in the Portfolio. I have also actively managed several of the companies in the Portfolio which were cash constrained, helping them to avoid distressed situations that would have led to a loss of GrowthWorks' investment, or a reduction in the value of that investment.

8 Several of the companies in the Portfolio had significant issues that had been neglected and required significant work. GrowthWorks' involvement with a number of the companies in the Portfolio was messy before Roseway (and Crimson Capital as its sub-contractor) began to manage the Portfolio.

9 Roseway relies on me to a great extent to provide advice and expertise when it comes to managing the Portfolio. Due to the efforts of Roseway and Crimson Capital, realizations from the Portfolio have been better and earlier than anticipated.

10 For example, Roseway and Crimson Capital advised that approximately one million shares of Ambit Biosciences Corporation (**Ambit**) should be held, rather than sold. We had particular insights into Ambit because I had several years before been a director of Ambit. When Roseway took over management of the Portfolio, these shares were liquid and valued in the public markets at U.S. $6 million. We used my familiarity as part of the decision-making process to hold these shares, which ultimately saw GrowthWorks receive U.S. $17.8 million for its shares.

11 Crimson Capital was also instrumental in the settlement of an eight-year lawsuit against GrowthWorks and others. My efforts resulted in the settlement of this lawsuit and freed GrowthWorks of a claim in the amount of $650 million (while seeing GrowthWorks recover its legal fees of approximately $1 million and a distribution of an additional $2.38 million).

12 Crimson Capital also advanced two transactions relating to PerspecSys Inc. (**PerspecSys**) to a successful conclusion.

13 First, in 2014, Roseway completed a 'follow-on' financing of PerspecSys under the terms of the IAA. Since GrowthWorks' investment in PerspecSys had 'pay to play' provisions (where investors are required from time to time to advance further funds or, in the alternative, lose some of the favourable characteristics of their prior investment), this follow-on financing by Roseway protected GrowthWorks from having its preferred shares in PerspecSys converted to common shares, and resulted in Growthworks receiving a better return from PerspecSys on a more timely basis.

14 Second, in 2015, Crimson Capital helped to complete the sale of GrowthWorks' interest in PerspecSys to a multi-national buyer (the **PerspecSys Transaction**), which resulted in divestment proceeds of an additional U.S. $2.54 million to GrowthWorks (with additional proceeds to be paid over time). Had Roseway not completed the 'follow-on' financing that I mentioned above, GrowthWorks would only have received approximately US $171,000 in respect of the PerspecSys Transaction. It was this higher amount of proceeds generated by Roseway that later put GrowthWorks in a more comfortable cash flow position to pay the Investment Advisor Debt.

15 I am currently in negotiations with GrowthWorks, which has proposed to retain Crimson Capital as an investment advisor. I believe this demonstrates that GrowthWorks is very aware of the good work that Crimson Capital and I have done as Roseway's sub-contractor.

**Timing of the PerspecSys Transaction**

16 In early June 2015, I began to discuss the possibility of an acquisition of PerspecSys by Blue Coat Systems, Inc. (**Blue Coat**) with Ian Ross, the CEO of GrowthWorks, and Paul Bishop, a representative of the Monitor.

17 By the end of June, it was very likely that an acquisition agreement would be reached (the **Agreement**). On June 29, 2015, I received an e-mail from David Canellos, the CEO of PerspecSys, indicating that Blue Coat would be sending PerspecSys a draft of the "definitive agreement" within 48 hours. A copy of this e-mail is attached as **Exhibit "A"**.

18 In early to mid-July, I had several telephone discussions with Philip Eliot, a member of the board of directors of PerspecSys, regarding the final points being negotiated and the likelihood that the transaction would close in short order.

19 On July 16, 2015, I sent Mr. Ross and Mr. Bishop an e-mail to inform them that:

(a) the PerspecSys Transaction would likely close the next week because some points were still being negotiated;

(b) GrowthWorks was expected to receive U.S. $2.7 million in proceeds from the sale of its interest in PerspecSys, but that this amount was subject to adjustment;

(c) the amount of expected proceeds was calculated prior to deduction of Roseway's Additional Fee (as defined in the IAA); and

(d) the precise amount of the Additional Fee could not be calculated until after the amount of proceeds was final.

A copy of this e-mail is attached as **Exhibit "B"**.

20 Neither Mr. Ross nor Mr. Bishop requested any sort of detailed update regarding the finer points of the transaction being negotiated, other than with respect to indemnities that would impact GrowthWorks.

21 On July 17, 2015, Mr. Eliot sent me an e-mail to say that if some points could be resolved that day, the lawyers would aim to close in one week. A copy of this e-mail is attached as **Exhibit "C"**.

22 On July 21, 2015, I received an e-mail which (i) set out the three remaining key issues that needed to be addressed before the Agreement could be signed, and (ii) attached a "close to final draft" of the Agreement. A copy of this e-mail is attached as **Exhibit "D"**.

23 On the same day, in response to my e-mail of July 16, 2015, Mr. Ross left me a voicemail indicating that his understanding of a settlement agreement entered into by Roseway and GrowthWorks on May 22, 2015 (the **Settlement Agreement**) was that the Additional Fee was not payable in respect of the PerspecSys Transaction.

24 I was surprised by his position because, once the PerspecSys Transaction was poised to close, GrowthWorks would be in a position to repay Roseway the Investment Advisor Debt (as defined in the IAA) with no cash flow risk, if it wasn't already in a position to do so.

25 The Additional Fee was payable in respect of certain proceeds received by GrowthWorks, including the proceeds from the PerspecSys Transaction, received after the Investment Advisor Debt had been paid.

26 On July 22, 2015, I received a detailed update from Mr. Eliot regarding some of the matters being negotiated and resolved. I did not provide these particulars to Mr. Ross or Mr. Bishop. Instead, I provided Mr. Ross with a summary of these matters and asked why he did not believe that the Additional Fee would be payable. I never received a reply to this question.

27 On July 24, 2015, I received confirmation that the Agreement had received board approval and that it had been signed. I immediately informed Mr. Ross and Mr. Bishop by e-mail that the Agreement had been signed. At this point, closing was

virtually certain, and was likely to occur the following week. Copies of these e-mails are attached as **Exhibit "E"**. Closing was also imperative because PerspecSys had little remaining cash; the deal had to close.

**Closing of the PerspecSys Transaction becomes Imminent**

28 On July 27, 2015, I received confirmation that the requisite percentage of voting shareholders had approved the transaction. As at this date, closing was imminent. With board approval, a signed agreement, and shareholder approval, the question was no longer "if" (although it had been very likely that the transaction would close for more than a month), but "when".

29 On the same day, I sent Mr. Ross and Mr. Bishop a document by e-mail setting out the summary and agenda for a meeting between us scheduled for July 29, 2015, at which I would update them on the Portfolio. A copy of the e-mail and summary are attached as **Exhibit "F"**.

30 Notably, the section of the summary setting out Portfolio activities for the next 90 days does not include anything relating to the PerspecSys Transaction. It was a done deal. Moreover, the summary indicates clearly that the Additional Fee was payable if the Investment Advisory Debt had been repaid.

31 Portfolio review meetings such as these were held quarterly so that I could keep Mr. Ross and Mr. Bishop informed as to GrowthWorks' activities, prospects and financial position. Roseway and Crimson Capital did all of the work managing the Portfolio (including in respect of the PerspecSys Transaction). I had all of the information required to inform myself as to the state of the Portfolio and therefore as to

the state of GrowthWorks – since it had no ongoing operations and management of its Portfolio was its only business.

32 As at July 27, 2015, there was no question in my mind that the transaction would close. In my experience, it would be unreasonable to take any other view in the circumstances. Given that closing was imminent and, accordingly, that GrowthWorks was on the verge of receiving U.S. $2.54 million, in my view, it was reasonably practicable for GrowthWorks to pay the Investment Advisor Debt in full on July 27, 2015.

33 Mr. Ross was not in any position to determine (or even have a view as to) whether or when the PerspecSys Transaction would close. He had not participated in my ongoing discussions with the transaction lawyers, a director of PerspecSys or that company's CEO. Mr. Ross relied on me and Roseway entirely as regards GrowthWorks' activities, prospects and financial position. Almost all of his information came from me and he did not ask for any information beyond what was provided to him (with the exception of some information regarding indemnities that would affect GrowthWorks). In fact, I understand that Roseway – an external company – was asked to manage the Portfolio out of necessity.

34 On July 28, 2015, I exchanged e-mails with Mr. Bishop. During this exchange, Mr. Bishop asked me about timing. I told him that it was possible that the transaction would close the following day, but that it was more likely that it would close at the end of the week, on July 31, 2015. I also indicated to him the final amount to be paid to GrowthWorks. A copy of this e-mail exchange is attached as **Exhibit "G"**.

35 Later that day, I sent Mr. Ross and Mr. Bishop notice that a payment milestone had been reached in regard to another investment in the Portfolio, and that another

approximately U.S. $1.2 million would be paid to GrowthWorks on or about August 27, 2015.

**Timing of Closing**

36 On July 29, 2015, I forwarded Mr. Bishop an e-mail indicating that the transaction was anticipated to close the following day. The e-mail also set out the means by which payment would be received by GrowthWorks. A copy of this e-mail is attached as **Exhibit "H"**.

37 Later that day, I met with Mr. Ross and Mr. Bishop, as planned. During the meeting, I explained to Mr. Ross and Mr. Bishop the means and timing of payment: Blue Coat would be wiring the money to their payment facilitator the following day, July 30, 2015, and the payment facilitator would be able to send funds to GrowthWorks that same day or the following day, July 31, 2015.

38 Just before our meeting began, I forwarded Mr. Bishop and Mr. Ross an e-mail confirming this information, which is attached as **Exhibit "I"**.

39 On July 30, 2015, as expected, Blue Coat wired the funds. Mr. Bishop set up an account with Blue Coat's payment facilitator (a task with which I assisted) so that the funds could be received. On July 31, 2015, as expected, the funds were received by GrowthWorks.

40 The PerspecSys Transaction resulted in payment of U.S. $2.54 million to GrowthWorks. The Additional Fee which I believe Roseway has earned with respect to that transaction is 15% of that amount, or U.S. $381,000 (plus 15% of the future proceeds to be received by GrowthWorks in respect of the PerspecSys Transaction).

| **SWORN BEFORE ME** at the City of Toronto, Ontario, this 30th day of September, 2015. | |
|---|---|
| Notary Public | Donna Parr |

# Tab A

This is Exhibit ....A.... referred to in the affidavit of ....Donna Parr....
sworn before me, this ....30....
day of ....September.... 20.15.

A COMMISSIONER FOR TAKING AFFIDAVITS

From: "David Canellos" <david.canellos@perspecsys.com>
Date: Jun 29, 2015 8:47 PM
Subject: Legal representation for your firm
To: "Tim Lee" <Tim.Lee@growthworks.ca>, "Philip Eliot" <peliot@paladincapgroup.com>, "Matt Fates" <mfates@ascentvp.com>, "Donna Parr" <parrdonna@gmail.com>
Cc: "Kilgour, Alex" <alex.kilgour@dentons.com>, "Brian Lenihan" <blenihan@choate.com>, "Tracy Wainman" <tracy.wainman@perspecsys.com>, "JC Raby" <jcr@bostonmeridian.com>

We had a call with Blue Coat's legal and corporate development teams today and they are expecting to send us a draft of the definitive agreement within the next 48 hours. Alex and Brian will be managing the drafting process on behalf of the Company and would like to know who should they be interfacing with as counsel on behalf of your firm.

Please advise Alex directly.

Best

David

# Tab B

This is Exhibit B referred to in the affidavit of Donna Parr sworn before me, this 30 day of September 2015

A COMMISSIONER FOR TAKING AFFIDAVITS

From: Donna Parr <parrdonna@gmail.com>
Sent: Thursday, July 16, 2015 1:08 PM
To: Ian Ross; Bishop, Paul
Subject: Fwd: Proton - Merger Agreement CONFIDENTIAL

Ian and Paul

Attached is the word chart that summarizes payments to be made regarding PerspecSys. I am also including the spreadsheet which is extremely temperamental so you may want to stick to the word document. Here is the deal which has changed from before to put the holdback in the second payment so GW gets a bigger payment at close;

Plan to close asap - targeting tomorrow but will be next week since some points are still being negotiated:

**Payment at close - US$30M at close net of Working Capital position** - currently a small deficit but may increase it by $200+ more because buyer wants some cash in the company so these payments may move somewhat. At this point, next week GW gets **US$2.57M** which is close to **C$3.3M** at today's FX rates. This is prior to the Roseway 15% Additional Fee which is calculated in the chart (GW net payment is approx. **C$2.8M** (using $1.27 FX rate which is lower than today's). I also deducted 5% from the Roseway capital gain on the Follow-on financing but this will be adjusted down since it is to be paid net of taxes and I don't have that information yet.

**Guaranteed payout US$15M at 6 months from close** - US$5.5M (10% purchase price) taken off the holdback. Gross payment to GW is approx. C$573k (net C$487k) using a $1.20 FX rate.

**Holdback release at 12 months from close** - Gross payment to GW is approx. C$326k (net C$277k) using a $1.20 FX rate.

**Additional Earnout** - $10M within 2 months after 12 months of close - was supposed to be an in-the-bag metric like employee retention but has now moved to payment on revenues or bookings - TBD still (hence not closing tomorrow) - This is in the buyer's hands but apparently Bluecoat has paid them on past acquisitions. If paid, anticipated is gross payment to GW is approx. C$571k (net C$486k) using a $1.20 FX rate.

**Total anticipated payments to GW with the Additional Earnout - Gross - US$3.79MM or C$4.7M (net C$4.0M) and without US$3.3M or C$4.2M (net C$3.5M).**

The big issue for us is that the Board and key shareholders have decided to waive accrued dividends and interest on the Convertible Debt since management did not see any payment until the Additional Earnout net of the broker fee. One could argue that payment is entirely in their hands but the Board wanted them to get something earlier and bigger. Since inception $27.7M has been invested and accrued dividends add $11.6M and interest on Conv Debt adds $341k. The amount lost for GW is US$1.4M on accrued dividends (primarily the Pref A) although it is not apples to apples because there is more on the payments being received now by GW on an as-converted basis than if the dividends came off first.

I asked NortonRose whether we have some grounds to block the loss of accrued dividends as GW is 31% of the Pref As since we are clearly outvoted on all other fronts given GW's minimal ownership of the Bs. It appears one needs 2/3rds to carry any type of class vote. We can not expect Common Shareholders to support us since they lost their dividends by not participating in the last round. The conclusion is there is minimal course except to improve the potential recourse on indemnities to a maximum 10% of our payments for which I will now rabble-rouse. I have attached Michael Wahl's comments.

Please let me know if you have any questions or issues. I am being asked if McCarthys or the Monitor's counsel need to be included this time round (comparing to the re-org) and I said no. Please correct me ASAP if you beg to differ.

Thanks
Donna

---------- Forwarded message ----------
From: **Wahl, Michael** <Michael.Wahl@nortonrosefulbright.com>
Date: Wed, Jul 15, 2015 at 4:47 PM
Subject: RE: Proton - Merger Agreement CONFIDENTIAL
To: Donna Parr <parrdonna@gmail.com>
Cc: "Cade, James" <James.Cade@nortonrosefulbright.com>

Donna,

As discussed, after reviewing the merger agreement, below are the key issues that remain:

1. **Forfeit of Accrued Dividends.** The dividends accruing on the Class A and Class B Preferred Shares held by Growthworks Canadian Fund have been forfeited. As you had indicated, the

vote by the board and common shareholders effected the cancelation of the amounts owing in respect of this accrued dividends and interest.

2. **Voting Agreement.** Section 2 of the Shareholder Voting Agreement states that in the event that the board and 50% of the Class A Preferred Shares and common shareholders approve a sale then the parties to the voting agreement are bound to vote and do all other things in favour of the transaction.

This is supported by the inclusion in the purchase agreement of the rep in Section 2.4 that the company only needs a majority of the voting power of the outstanding shares voting as a single class under the voting agreement.

There appears to be one way out of this. Section 2.3 of the voting agreement is a list of exceptions to the rule. Essentially, it is a list of deal requirements where if the proposed deal doesn't comply then the parties are not bound by the drag-along provisions. The company seems to be complying with all of the requirements, except for one, which is that each shareholder's liability will be limited to a pro rata share of an escrow not to exceed 10% in the aggregate of the consideration payable. There are no carve-outs here nor is the liability cap limited to reps and warranties, as is the case in the indemnification section of the purchase agreement.

I have not yet assessed what the corporate law requirements are under Delaware law in the event that you do not have to vote along with transaction.

3. **Inclusion of 280G.** As I had discussed with you earlier, the inclusion by purchaser's counsel of the 280G language likely means that the aggregate compensation of management in respect of retention bonus, accelerated payments due on the closing of the transaction, RSUs, base salary with purchaser, etc. is likely 3x that of their current base salary.

4. **Reps and Warranties.** While the majority of the reps and warranties favour the purchaser slightly, the IP reps are overwhelmingly against the company's interest in that they are either too broad, unlimited in time, or not qualified by knowledge or by materiality. This may make them susceptible to breach and claims under the indemnity.

5. **Indemnity.** The indemnification section contains provisions that are quite purchaser friendly, such as: (i) pro-sandbagging provisions; (ii) inclusion of incidental and consequential damages; (iii) the indemnity not being the exclusive remedy; and (iv) other remedies available if the deal does not close. In addition, clarity needs to be added surrounding the liability of the Class A Preferred Shareholders.

6. **One-Year Earnout.** Clarification needs to be sought surrounding the metrics of the one-year earnout and the discretion of Parent in pursuing the metrics.

Regards,

**Michael Wahl**
Associate

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84, Toronto, ON M5J 2Z4, Canada
T: +1 416.216.2999 | F: +1 416.216.3930
Michael.Wahl@nortonrosefulbright.com

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<Schedule of Payments for PerspecSys - July 16, 2015.docx>
<Copy of Perspecsys -- Waterfall GW Cdn F + RW.xlsx>

# Tab C

This is Exhibit ......C...... referred to in the affidavit of ...Donna Parr... sworn before me, this ...30... day of ...September... 20..15..

A COMMISSIONER FOR TAKING AFFIDAVITS

From: **Philip Eliot** <peliot@paladincapgroup.com>
Date: Fri, Jul 17, 2015 at 11:16 AM
Subject: RE: update
To: Donna Parr <parrdonna@gmail.com>

Donna,

I expect David and Blue Coat to get to some agreement on the earnout by end of day today, but I don't have any new information on that since we spoke yesterday. If everything is resolved today, lawyers on both sides have agreed to target a week from today as closing.

Regards,

Philip

Philip G. Eliot

Paladin Capital Group

peliot@paladincapgroup.com

202.595.2986

# Tab D

*This is Exhibit* D *referred to in the affidavit of* Donna Parr *sworn before me, this* 30 *day of* September 20 15

A COMMISSIONER FOR TAKING AFFIDAVITS

From: **Kilgour, Alex** <alex.kilgour@dentons.com>
Date: Tue, Jul 21, 2015 at 6:51 AM
Subject: Proton - Merger Agreement and related Schedules
To: "Wahl, Michael" <Michael.Wahl@nortonrosefulbright.com>
Cc: "Donna Parr (parrdonna@gmail.com)" <parrdonna@gmail.com>, "Tim Lee (tim.lee@growthworks.ca)" <tim.lee@growthworks.ca>, "Barry Gekiere (bgekiere@marsdd.com)" <bgekiere@marsdd.com>

Michael,

Attached is a close to final draft of the Merger Agreement. The key issues that remain to be sorted out are:

1. Special Indemnity for Protegrity IP Claim – amount and duration.
2. Employee Retention/Non-compete agreements
3. Earn-out details.

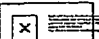
We're still hoping to sign and close simultaneously, but that is an open point. We have two third party consents to obtain: landlord and one customer.

Signing (and closing) on Friday is a real possibility but nothing is locked down at this point.

I will forward the Joinder Agreement and other documents for the stockholders today.

Thanks,

Alex



Alex Kilgour
Partner

D +1 613 783 9679
alex.kilgour@dentons.com
Bio | Website

Dentons Canada LLP
99 Bank Street, Suite 1420 Ottawa, ON K1P 1H4 Canada

# Tab E

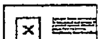
This is Exhibit E referred to in the affidavit of Donna Parr sworn before me, this 30 day of September 20 15

A COMMISSIONER FOR TAKING AFFIDAVITS

From: **Kilgour, Alex** <alex.kilgour@dentons.com>
Date: Fri, Jul 24, 2015 at 12:02 PM
Subject: RE: Perspecsys Stockholder Consent
To: Donna Parr <parrdonna@gmail.com>
Cc: "Barry Gekiere (bgekiere@marsdd.com)" <bgekiere@marsdd.com>, "Tim Lee (tim.lee@growthworks.ca)" <tim.lee@growthworks.ca>, "Wahl, Michael" <Michael.Wahl@nortonrosefulbright.com>, "Tracy E. Wainman (tracy.wainman@perspecsys.com)" <tracy.wainman@perspecsys.com>

Thanks Donna. Signing today. Closing in a few days. Board approval has been obtained. If you could get the signatures to us today, it would be great. I apologize for the fire drill, but the agreement has come together fairly quickly in the last 24 hours.

Alex



Alex Kilgour
Partner

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alex.kilgour@dentons.com
Bio | Website

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Salans FMC SNR Denton

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**From:** Donna Parr [mailto:parrdonna@gmail.com]
**Sent:** 24-Jul-15 11:43 AM
**To:** Kilgour, Alex
**Cc:** Barry Gekiere (bgekiere@marsdd.com); Tim Lee (tim.lee@growthworks.ca); Wahl, Michael; Tracy E. Wainman (tracy.wainman@perspecsys.com)
**Subject:** Re: Perspecsys Stockholder Consent

Thanks Alex

Just trying to juggle holiday schedules. Could you please give me the updated view on timing of signing and closing?

Appreciate it,

Donna

On Fri, Jul 24, 2015 at 11:38 AM, Kilgour, Alex <alex.kilgour@dentons.com> wrote:

All,

Please find attached the stockholder consent to approve the transactions contemplated under the Merger Agreement (including amending the charter to remove the accrued dividends).

**Please sign and scan the Stockholder Consent back to me as soon as possible**. The Merger Agreement will likely be signed today and then we'll have 24 hours to provide the stockholder consent.

We are collecting US stockholder signatures at the same time with a view to signing the agreement today.

Attached is a clean and blackline of the Merger Agreement as it now stands.

Please let me know if you have any questions.

Thanks,

Alex

Alex Kilgour

Partner

D +1 613 783 9679
alex.kilgour@dentons.com
Bio | Website

Dentons Canada LLP
99 Bank Street, Suite 1420 Ottawa, ON K1P 1H4 Canada

Salans FMC SNR Denton

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---

From: **Kilgour, Alex** <alex.kilgour@dentons.com>
Date: Fri, Jul 24, 2015 at 4:56 PM
Subject: RE: Perspecsys Stockholder Consent
To: "Barry Gekiere (bgekiere@marsdd.com)" <bgekiere@marsdd.com>, "Tim Lee (tim.lee@growthworks.ca)" <tim.lee@growthworks.ca>, "Donna Parr (parrdonna@gmail.com)" <parrdonna@gmail.com>
Cc: "Wahl, Michael" <Michael.Wahl@nortonrosefulbright.com>

Hello all,

The Merger Agreement was signed this afternoon and the parties are starting to work to closing. Best case is closing mid-week, but it may take a few more days to get Joinder Agreements from all optionholders and stockholders.

Best regards,

Alex

Alex Kilgour
Partner

D +1 613 783 9679
alex.kilgour@dentons.com
Bio | Website

Dentons Canada LLP
99 Bank Street, Suite 1420 Ottawa, ON K1P 1H4 Canada

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**From:** Kilgour, Alex
**Sent:** 24-Jul-15 11:39 AM
**To:** Barry Gekiere (bgekiere@marsdd.com); Tim Lee (tim.lee@growthworks.ca); Donna Parr (parrdonna@gmail.com)
**Cc:** 'Wahl, Michael'; Tracy E. Wainman (tracy.wainman@perspecsys.com)
**Subject:** Perspecsys Stockholder Consent
**Importance:** High

All,

Please find attached the stockholder consent to approve the transactions contemplated under the Merger Agreement (including amending the charter to remove the accrued dividends).

**Please sign and scan the Stockholder Consent back to me as soon as possible**. The Merger Agreement will likely be signed today and then we'll have 24 hours to provide the stockholder consent.

We are collecting US stockholder signatures at the same time with a view to signing the agreement today.

Attached is a clean and blackline of the Merger Agreement as it now stands.

Please let me know if you have any questions.

Thanks,

Alex

Alex Kilgour
Partner

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alex.kilgour@dentons.com
Bio | Website

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# Tab F

This is Exhibit F referred to in the affidavit of Donna Parr sworn before me, this 30 day of September 2015

A COMMISSIONER FOR TAKING AFFIDAVITS

From: **Donna Parr** <parrdonna@gmail.com>
Date: Mon, Jul 27, 2015 at 4:43 PM
Subject: GrowthWorks Canadian Fund July Overview
To: Ian Ross <ianross@bell.net>, "Bishop, Paul" <Paul.Bishop@fticonsulting.com>

Ian and Paul
Please find attached the July Overview of the GrowthWorks Canadian Fund. I look forward to bringing you up to date on the portfolio at CCCs offices on Wednesday July 29th at 2pm.

Best regards
Donna

CRIMSON CAPITAL

CONFIDENTIAL

# GROWTHWORKS CANADIAN FUND

## Portfolio Review

July 29th, 2015

# Agenda

- Update
- Portfolio Overview
- Exit Timeline
- Activities Next 90-Days
- Company Summaries

# Activities Next 90-Days

- Monitor financing activities on Bluestream, Librestream, OSI, and Natrix. AGM at Librestream in August.
- Monitor Morega and Aizan on bi-weekly basis. May decide to trim back Aizan and sell as an IVR company. Continue active follow-up with Ascentify on ibi loan. Morega strategic session in August and want to push incentive package for CEO.
- Pursue sale of tax losses and OPKO milestone stream.
- Work on business development activities for ViOptix.
- Monitor follow-on needs for portfolio companies.
- Continue follow-up on escrow payments.
- Look at progress on Ambit program.

# Perspecys

Initial Invt: 2011
Location: Mississauga ON – Delaware Corp

| GW %/Company Valuation | 5.9%FD US$29M RW is 1.68% | CC Company Valuation | US$45M-$55M |
|---|---|---|---|
| **GW NAV (8/31/13)** | $2.3M (US$0.1293/sh) | **Crimson Est. NAV today** | Below |
| CCC NAV (2/25/14) | $2.3M | Crimson Est. Exit Date | sold |
| **Other Investors:** Intel Capital 24%, Paladin Capital 18.6%, Ascent Capital 16.3%, GW Comm Fund 9.9% | | **Competition:** Ciperhcloud, SkyHigh, Vaultive, Voltage, Alephcloud, Netskope, nCrypted | |

**Business Description:** The PerspecSys Cloud Data Protection Gateway provides a flexible data encryption and tokenization platform.

**Activity since last report:** PerspecSys board accepted the offer from BlueCoat Systems, turning down 2 offers to fund from VCs: one that was at a slightly higher valuation and one a downround. BlueCoat spent one month in subsequent due diligence. Offer is for US$55M in 3 tranches: $30M upfront, $15M 6 months later (guaranteed), and $10M at 12 months after the merger based on Revenue targets (50% if hit $7.1M sales, 100% if hit $8.8M sales and sliding scale in between). There is also a 10% holdback taken in the 2nd payment that will be released 12 months after close. It is a minimum of $4.5M or 10% of total expected proceeds (ie up to US$5.5M) All accrued dividends were extinguished to provide management with incentive comp. No legal remedies as Pref A holder. *# updated at closing pending final w.c.*

| Milestone | Close | Mandatory Earnout | Holdback | Additional Earnout | Total with Additional Earnout | Total without Additional Earnout |
|---|---|---|---|---|---|---|
| **Time of Payment (US$000s)** | | 6 mos 1/24/16 | 12 mos 7/24/16 | 12 +2 mos. 9/24/16 | | |
| GrowthWorks Cdn Fnd | $2,561.8 | $468.2 | $265.8 | $466.4 | **$3,762.2** | **$3,295.8** |
| 5% on Roseway CD* | 4.2 | 9.8 | 5.5 | 9.7 | **$ 29.3** | **$ 19.6** |
| Total US$ | $2,566.0 | $478.0 | $271.3 | $476.1 | **$3,791.5** | **$3,315.4** |
| Roseway - Conv Debt | $ 630.8 | $185.6 | $105.4 | $184.9 | **$1,106.6** | **$921.7** |
| Total US$ | $3,196.9 | $663.6 | $376.7 | $661.0 | **$4,898.1** | **$4,237.1** |

- Not finalized for tax deductions

GrowthWorks portion gross of 15% Investment Advisory Fee payable in the event that the Investment Advisory Debt has been repaid

# Tab G

This is Exhibit ...E... referred to in the
affidavit of ...Donna Parr...
sworn before me, this ...30...
day of ...September... 20.15.

...
A COMMISSIONER FOR TAKING AFFIDAVITS

From: **Donna Parr** <parrdonna@gmail.com>
Date: Tue, Jul 28, 2015 at 2:15 PM
Subject: Re: Perspecsys
To: Paul Bishop <Paul.Bishop@fticonsulting.com>

He said tomorrow was theoretically possible but Friday more probable.

On Jul 28, 2015 11:30 AM, "Bishop, Paul" <Paul.Bishop@fticonsulting.com> wrote:

Donna

Do you know how much GW will get and when the funds are likely to be sent?

Regards

Paul.

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# Tab H

This is Exhibit H referred to in the affidavit of Donna Parr sworn before me, this 30 day of September 2015

A COMMISSIONER FOR TAKING AFFIDAVITS

From: **Donna Parr** <parrdonna@gmail.com>
Date: Wed, Jul 29, 2015 at 10:50 AM
Subject: Fwd: RE: Closing update whenever possible
To: Paul Bishop <Paul.Bishop@fticonsulting.com>

Paul
Mechanics for payment by PerspecSys.

---------- Forwarded message ----------
From: "Gusella, David A." <dgusella@choate.com>
Date: Jul 28, 2015 7:44 PM
Subject: RE: Closing update whenever possible
To: "Kilgour, Alex" <alex.kilgour@dentons.com>
Cc: "Donna Parr (parrdonna@gmail.com)" <parrdonna@gmail.com>, "Gusella, David A." <dgusella@choate.com>

Donna,

We are currently anticipating a Thursday closing.

The payment will come via an online payment portal called Acqioum Clearinghouse (http://www.srsacquiom.com/services/payment-solutions/acquiomclearinghouse/)

You will be receiving an email for Growthworks (and Carla Alves Silva will be receiving an email for Roseway) regarding registration and inputting payment transfer information into the online portal.

Thanks,

Dave

David A. Gusella

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f 617.502.4749

dgusella@choate.com

www.choate.com

**From:** Kilgour, Alex [mailto:alex.kilgour@dentons.com]
**Sent:** Tuesday, July 28, 2015 4:40 PM
**To:** Gusella, David A.
**Cc:** Donna Parr (parrdonna@gmail.com)
**Subject:** FW: Closing update whenever possible

Hi Dave,

I've copied Donna Parr on this email. Would you clarify the payment mechanics for us. Let's assume a Thursday close. Roseway needs to give advance notice internally.

Thanks,

Alex

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# Tab I

This is Exhibit ....I.... referred to in the affidavit of ....Donna Parr.... sworn before me, this ....30.... day of ....September.... 20..15..

A COMMISSIONER FOR TAKING AFFIDAVITS

From: **Donna Parr** <parrdonna@gmail.com>
Date: Wed, Jul 29, 2015 at 2:00 PM
Subject: Fwd: RE: Payment timing
To: Paul Bishop <Paul.Bishop@fticonsulting.com>

---------- Forwarded message ----------
From: "Gusella, David A." <dgusella@choate.com>
Date: Jul 29, 2015 1:51 PM
Subject: RE: Payment timing
To: "Donna Parr" <parrdonna@gmail.com>
Cc: "Kilgour, Alex (alex.kilgour@dentons.com)" <alex.kilgour@dentons.com>, "Gusella, David A." <dgusella@choate.com>

Donna,

The payment will not be until at least Friday. I would reach out to Acquiom with the contact information they or the Company provided you to see how quick of a turnaround they get.

Blue Coat will be wiring the Acquiom tomorrow, and I believe they require at least one business day to turn around and send funds to stockholders, but they will need to confirm the exact timing as I believe it depends on how you get paid (whether wire transfer, ACH, or check).

Thanks,

Dave

David A. Gusella ,

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dgusella@choate.com

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**From:** Donna Parr [mailto:parrdonna@gmail.com]
**Sent:** Wednesday, July 29, 2015 11:58 AM
**To:** Gusella, David A.
**Subject:** Payment timing

David

I received the payment instructions from Acquioum. (thanks!!) I have to pass to the GW Monitor to receive payment. When is the cash actually available?

Thanks

Donna

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

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

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF DONNA PARR**
**(sworn September 30, 2015)**

**NORTON ROSE FULBRIGHT CANADA LLP**
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Lawyers for Roseway Capital S.à.r.l.

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

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

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

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

Proceeding commenced at Toronto

**MOTION RECORD**
**(returnable November 4, 2015)**


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