

## CROSS-BORDER INSOLVENCY PROTOCOL

This cross-border insolvency protocol (the "Cross-Border Protocol") shall govern the conduct of all parties-in-interest in the Insolvency Proceedings (as defined below). The Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the "Guidelines") attached hereto as Schedule A, shall be incorporated by reference and form part of this Cross-Border Protocol. Where there is any discrepancy between this Cross-Border Protocol and the Guidelines, this Cross-Border Protocol shall prevail.

### A. Background

1. Graceway Canada Company (the "Canadian Debtor") has filed an application in the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") seeking the appointment of a receiver to oversee the sale of certain assets of the Canadian Debtor (the "Canadian Proceeding") pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "CJA"). The Canadian Court has issued an order (the "Receivership Order") pursuant to which it, *inter alia*, appointed [ ] as the receiver (the "Receiver") in the Canadian Proceeding, imposed a stay of all proceedings against the Canadian Debtor and its property in Canada, created certain liens, and set forth certain other limitations and procedures for all parties-in-interest in the Canadian Proceeding. The Honourable Justice [ ] presides over the Canadian Proceeding.

2. Graceway Pharma Holding Corp., the ultimate parent company of the Canadian Debtor, and its subsidiaries and affiliates<sup>1</sup> (collectively, but excluding the Canadian Debtor, the "U.S. Debtors") have commenced reorganization cases (collectively, the "U.S. Proceedings") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United

States Bankruptcy Court for the District of Delaware ("**U.S. Court**"), and such cases have been consolidated for procedural purposes only under Case No. [11-\_\_\_\_\_]. The Honourable Judge [\_\_\_\_\_] presides over the U.S. Proceedings. The U.S. Debtors continue to operate and maintain their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. None of the U.S. Debtors or the Canadian Debtor is an applicant in both the U.S. Proceedings and the Canadian Proceeding.

3. For convenience, (a) the U.S. Debtors and the Canadian Debtor shall collectively be referred to herein as the "**Debtors**," (b) the U.S. Proceedings and the Canadian Proceeding shall collectively be referred to herein as the "**Insolvency Proceedings**," (c) the U.S. Court and the Canadian Court shall collectively be referred to herein as the "**Courts**," (d) the official committee of unsecured creditors appointed in the U.S. Proceedings, if any, shall be referred to herein as the "**Committee**," (e) any estate representative appointed in the U.S. Proceedings, including the Committee and any examiner or trustee appointed pursuant to Section 1104 of the Bankruptcy Code shall collectively be referred to herein as the "**U.S. Representatives**," (f) the Receiver and its respective officers, directors, employees, counsel and agents, wherever located, shall be collectively referred to herein as the "**Receiver Parties**," (g) the Receiver Parties and any other estate representatives appointed in the Canadian Proceeding shall collectively be referred to herein as the "**Canadian Representatives**," and (h) the U.S. Representatives and the Canadian Representatives shall collectively be referred to herein as the "**Representatives**."

**B. Purpose and Goals**

4. While the Insolvency Proceedings are pending in the United States and Canada, the implementation of basic administrative procedures is necessary to coordinate certain

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<sup>1</sup> Namely, Graceway Holdings, LLC; Graceway Pharmaceuticals, LLC; Chester Valley Holdings, LLC;

activities therein, to effectuate an orderly and efficient administration of the Insolvency Proceedings, and to best maintain the Courts' respective independent jurisdiction and to give effect to the doctrine of comity. The Debtors have drafted this Cross-Border Protocol to promote the following mutually desirable goals and objectives in the Insolvency Proceedings:

- (a) harmonize and coordinate activities between the Courts in the Insolvency Proceedings;
- (b) promote and facilitate the fair, open, orderly, and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of same, reduce the costs associated therewith, and avoid the duplication of efforts, for the benefit of all of the Debtors' creditors, their estates, and other interested parties, wherever located;
- (c) honor the respective independence and integrity of the Courts and all other courts and tribunals of the United States and Canada;
- (d) promote international cooperation and respect for comity among the Courts, the Debtors, the Representatives, and all creditors and other interested parties in the Insolvency Proceedings; and
- (e) implement a framework of general principles to address certain issues arising out of the cross-border nature of the Insolvency Proceedings.

**C. Comity and Independence of the Courts**

5. The approval and implementation of this Cross-Border Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's respective independent jurisdiction over the subject matter of the U.S. Proceedings and the Canadian Proceeding, respectively. By approving and implementing this Cross-Border Protocol, neither the U.S. Court, the Canadian Court, the Debtors, the Representatives, nor any creditor of the Debtors or other interested party in the Insolvency Proceedings, shall be deemed to have approved or engaged in any infringement on the sovereignty of either the United States or Canada.

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Chester Valley Pharmaceuticals, LLC; Graceway Canada Holdings, Inc.; and Graceway International, Inc.

6. The U.S. Court shall have sole and exclusive jurisdiction and power over all aspects of the U.S. Proceedings. The Canadian Court shall have sole and exclusive jurisdiction and power over all aspects of the Canadian Proceeding. In accordance with the principles of comity and judicial independence, nothing contained herein shall be construed to:

- (a) increase, decrease, or otherwise modify the independence, sovereignty, or jurisdiction of the U.S. Court, the Canadian Court, or any other court or tribunal in the United States or Canada, including, but not limited to, the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or "limited notice" basis;
- (b) require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;
- (c) require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;
- (d) require the Debtors or the Representatives to take any action or refrain from taking any action that would result in a breach of any duty imposed on such parties by any applicable law;
- (e) authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CJA after appropriate notice and hearing (except to the extent that such action is specifically described in this Cross-Border Protocol); or
- (f) preclude the Debtors, the Representatives, the Office of the United States Trustee (the "U.S. Trustee"), any creditor, or any other party-in-interest from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other jurisdiction including, without limitation, the rights of interested parties or affected persons to appeal from the decisions taken by one or both of the Courts.

7. The Debtors, the Representatives, and their respective employees, members, agents, and professionals shall respect and comply with the independent, non-delegable duties imposed upon them by the Bankruptcy Code, the CJA, and other applicable laws.

8. Notwithstanding the foregoing, subject to the provisions of the U.S. Bankruptcy Code, the officers and directors of the U.S. Debtors shall have the primary responsibility for

developing, confirming and implementing any plan of reorganization or any plan of liquidation for the U.S. Debtors and the overall restructuring strategy or sale strategy for all of the Debtors.

**D. Cooperation**

9. To assist in the efficient and orderly administration of the Insolvency Proceedings, and in recognition of the fact that any of the Debtors may be creditors of any of the other Debtors' estates, the Debtors shall, where appropriate, (i) cooperate with each other in connection with any actions they may take in the U.S. Court and the Canadian Court and (ii) take any other appropriate steps to coordinate the administration of the Insolvency Proceedings for the benefit of the Debtors' respective estates and stakeholders.

10. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court. In addition:

- (a) the U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any procedural or substantive matter relating to the Insolvency Proceedings;
- (b) if the issue of the proper jurisdiction or Court to determine an issue is raised by any interested party in either the Canadian Proceeding or the U.S. Proceedings with respect to a motion or application that has been filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which to determine the issue of jurisdiction. Such process shall be subject to submissions by the Debtors, the U.S. Trustee, the Representatives, and any interested party prior to any determination on the issue of jurisdiction being made by either Court;
- (c) the Courts may, but are not obligated to, coordinate activities in the Insolvency Proceedings such that the subject matter of any particular action, suit, request, application, contested matter, or other proceeding can be determined in a single Court; and
- (d) the Courts may, but are not required to, conduct joint hearings (each, a "**Joint Hearing**") with respect to any cross-border matter in which both Courts consider such a Joint Hearing to be necessary or advisable and, in particular, to facilitate or coordinate proper and efficient conduct of the Insolvency Proceedings. With

respect to any such Joint Hearing, unless otherwise ordered by both Courts, the following procedures will be followed:

- (i) a telephone or video link shall be established so that each Court will be able to simultaneously hear the proceedings in the other Court;
- (ii) submissions, motions, or applications (collectively, the "Pleadings") by any party that are or become the subject of a Joint Hearing shall be initially filed only with the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any Joint Hearing, the party submitting such Pleading to one Court shall file courtesy copies with the other Court. In any event, Pleadings seeking relief from both Courts shall be filed with both Courts;
- (iii) any party intending to rely on written evidentiary materials (collectively, the "Evidentiary Materials") in support of a submission to either Court in connection with any Joint Hearing shall submit such Evidentiary Materials in identical form to each Court. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be consistent with the procedural and evidentiary rules and requirements of each Court;
- (iv) if a party has not previously appeared in or submitted to the jurisdiction of either Court, it shall be entitled to submit Pleadings or Evidentiary Materials in connection with the Joint Hearings without, by the act of such filing alone, being deemed to have submitted to the jurisdiction of such Court, so long as such party does not request any affirmative relief from such Court;
- (v) the Judge of the U.S. Court and Justice of the Canadian Court who will hear the Joint Hearing may communicate with each other in advance of such Joint Hearing, with or without counsel being present, to: (1) establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and any other papers, and for the rendering of decisions; and (2) address any related procedural, administrative or preliminary matters; and
- (vi) the Judge of the U.S. Court and Justice of the Canadian Court who will hear the Joint Hearing may communicate with each other after such Joint Hearing, with or without counsel being present, for the purposes of:
  - (1) determining whether consistent rulings can be made by both Courts;
  - (2) coordinating the terms of the Courts' respective rulings; and
  - (3) addressing any related procedural or administrative matters.

11. Notwithstanding the terms of paragraphs 9 and 10 above, this Cross-Border Protocol recognizes that the U.S. Court and Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good

faith to the greatest extent possible, either of the Courts may at any time exercise its independent jurisdiction and authority with respect to: (i) the matters presented to and properly before such Court and (ii) the conduct of the parties appearing in such matters.

12. If one Court has jurisdiction over a matter the determination of which requires the application of the law of the jurisdiction of the other Court, such Court may, without limitation, hear expert evidence on such law or seek the written advice of the other Court, which written advice will be made available to all parties-in-interest.

**E. Recognition of Stays of Proceedings**

13. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against the U.S. Debtors and their property under Section 362 of the Bankruptcy Code (the "U.S. Stay"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding: (i) the interpretation and application of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay; and (ii) the enforcement of the U.S. Stay in Canada.

14. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against the Canadian Debtor and its property under the CJA and the Receivership Order (the "Canadian Stay"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding: (i) the interpretation and applicability of the Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay; and (ii) the enforcement of the Canadian Stay in the United States.

15. Nothing contained herein shall affect or limit the Debtors' or other parties' rights to assert the applicability or non-applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

**F. The Right to Appear and Be Heard**

16. The Debtors, their creditors, the Representatives, and other interested parties in the Insolvency Proceedings, including, without limitation, the U.S. Trustee, any other committee that may be appointed by the U.S. Trustee, and the professionals and advisors for each of the foregoing, shall have the right and standing: (i) to appear and to be heard in either the U.S. Court or Canadian Court in the U.S. Proceedings or the Canadian Proceeding, respectively, to the same extent as creditors and other interested parties domiciled in the forum country, subject to any local rules or regulations generally applicable to all parties appearing in the forum; and (ii) to file notices of appearance or other papers with the clerk of the U.S. Court or the Canadian Court in respect of the U.S. Proceedings or the Canadian Proceeding, respectively; provided, however, that any appearance or filing may subject a creditor or interested party to the jurisdiction of the Court in which the appearance or filing occurs; provided further, that an appearance by the Committee in the Canadian Proceeding shall not form a basis for personal jurisdiction in Canada over the members of the Committee. Notwithstanding the foregoing, and in accordance with the policies set forth above, including, *inter alia*, paragraph 10 above: (i) the Canadian Court shall have jurisdiction over the U.S. Representatives solely with respect to the particular matters as to which the U.S. Representatives appear before the Canadian Court; and (ii) the U.S. Court shall have jurisdiction over the Canadian Representatives solely with respect to the particular matters as to which the Canadian Representatives appear before the U.S. Court.

**G. Retention and Compensation of Representatives and Professionals**

17. The Canadian Representatives shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters including: (i) such Canadian Representatives' tenure in office; (ii) the retention and compensation of such Canadian Representatives; (iii) such Canadian Representatives' liability, if any, to any person or entity,



including the Canadian Debtor and any third parties, in connection with the Insolvency Proceedings; and (iv) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Proceeding under the CJA or other applicable Canadian law. The Canadian Representatives, their Canadian and U.S. counsel and any other professionals retained therefor shall not be required to seek approval of their retention in the U.S. Court. Additionally, the Canadian Representatives, their counsel and such other Canadian professionals: (a) shall be compensated for their services solely in accordance with the CJA, the Receivership Order and other applicable laws of Canada or orders of the Canadian Court; and (b) shall not be required to seek approval of their compensation in the U.S. Court.

18. The Receiver Parties shall be entitled to the same protections and immunities in the United States as those granted to them under the Receivership Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceeding, the Receiver Parties shall incur no liability or obligations as a result of the Receivership Order, the appointment of the Receiver, the carrying out of its duties or the provisions of the Receivership Order by the Receiver Parties, except any such liability arising from actions of the Receiver Party constituting gross negligence or wilful misconduct.

19. Any U.S. Representatives shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (i) such U.S. Representative's appointment and tenure in office; (ii) the compensation and reimbursement of out-of-pocket costs of such U.S. Representative; (iii) such U.S. Representative's liability, if any, to any person or entity, including the Debtors and any third parties, in connection with the Insolvency Proceedings; and (iv) the hearing and determination of any other matters relating to the U.S. Representatives arising in the U.S. Proceedings under the Bankruptcy Code or other applicable laws of the United States. The

U.S. Representatives, their counsel and any other professionals retained therefor shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives, their counsel and such other professionals: (i) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court; and (ii) shall not be required to seek approval of their compensation in the Canadian Court.

20. Any Canadian professionals, including, without limitation, the Canadian counsel retained by the Debtors (collectively, the "**Canadian Professionals**"), shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals: (i) shall be subject to the procedures and standards for the retention, compensation and reimbursement of out-of-pocket costs of professionals that are applicable in the Canadian Court under the CJA, the Receivership Order and any other applicable Canadian law or orders of the Canadian Court; and (ii) shall not be required to seek approval of their retention, compensation, or reimbursement of out-of-pocket costs in the U.S. Court.

21. Any U.S. professionals, including, without limitation, counsel and financial advisors retained by the Debtors in the United States (collectively, the "**U.S. Professionals**") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals: (i) shall be subject to the procedures and standards for the retention, compensation and reimbursement of out-of-pocket costs of professionals that are applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court; and (ii) shall not be required to seek approval of their retention, compensation, or reimbursement of out-of-pocket costs in the Canadian Court.

**H. Notice Procedures**

22. Notice of any motion, application or other pleading or paper filed in one or both of the Insolvency Proceedings involving or relating to matters addressed by this Cross-Border Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, facsimile, e-mail or other electronic forms of communication) to the following: (i) all creditors and other interested parties, including the Committee, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (ii) to the extent not otherwise entitled to receive notice under clause (i) of this paragraph 22, counsel to the Debtors, the U.S. Trustee, the Receiver, Bank of America, N.A. (in its capacity as administrative agent for the lenders under the Debtors' prepetition first lien credit facility), Galderma S.A. for so long as it remains the stalking horse bidder or the successful bidder in the auction process, and such other parties as may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the U.S. Debtors or the Canadian Debtor shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of all or any orders, decisions, opinions or similar papers issued by the other Court in the Insolvency Proceedings. When any cross-border issues or matters addressed by this Cross-Border Protocol are to be addressed before a Court, notice shall be provided in the manner and to the parties referred to herein.

**I. Effectiveness; Modification**

23. This Cross-Border Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

24. This Cross-Border Protocol may not be supplemented, modified, terminated or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceedings to supplement, modify, terminate or replace this Cross-Border Protocol shall be given in accordance with paragraph 22 above.

**J. Procedures for Resolving Disputes under this Cross-Border Protocol**

25. Disputes relating to the terms, intent, or application of this Cross-Border Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice in accordance with paragraph 22 above. In rendering a determination in any such dispute, the Court to which the issue is addressed: (i) shall consult with the other Court; and (ii) may, in its sole and exclusive discretion, either: (a) render a binding decision after such consultation; (b) defer to the determination of the other Court by transferring the matter, in whole or in part, to such other Court; or (c) seek a Joint Hearing of both Courts in accordance with paragraph 10 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity, and inherent jurisdiction of the other Court established under existing law.

26. In implementing the terms of this Cross-Border Protocol, the U.S. Court and the Canadian Court may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

- (a) the U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;
- (b) the Court issuing such advice or guidance shall provide it to the other Court in writing;
- (c) copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 22 above;
- (d) the Courts may jointly decide to invite the Debtors, the Committee, the Representatives, the U.S. Trustee and any other interested party to make

submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court; and

- (e) the provisions of this paragraph 26 shall not be construed to restrict the ability of either Court to confer with the other Court as provided in paragraph 10 above whenever it deems it appropriate to do so.

**K. Preservation of Rights**

27. Except as specifically provided herein, neither the terms of this Cross-Border Protocol nor any actions taken under this Cross-Border Protocol shall: (i) prejudice or affect the powers, rights, claims and, defenses of the Debtors and their respective estates, the Representatives, the U.S. Trustee or any of the Debtors' creditors under applicable law, including the Bankruptcy Code, the CJA and the orders of the Courts; or (ii) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.