

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

**THE HONOURABLE**

**MR. JUSTICE MORAWETZ**

) **MONDAY, THE 21<sup>ST</sup> DAY OF**  
)  
) **SEPTEMBER, 2009**



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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NEXIENT LEARNING INC. AND  
NEXIENT LEARNING CANADA INC.**

**Applicants**

**DISTRIBUTION ORDER**

**THIS MOTION** made by RSM Richter Inc., in its capacity as the Court-appointed monitor (the "**Monitor**") of Nexient Learning Inc. and Nexient Learning Canada Inc., for Orders:

- (a) approving a distribution to Canada Revenue Agency in respect of a property claim in the amount of approximately \$135,000 for unremitted GST for the pre-filing period (the "**CRA Distribution**");
- (b) approving a distribution to The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management ("**Vengrowth**"), in its capacity as DIP lender to the Applicants in these proceedings, in the amount of \$500,000 plus interest and fees;

- (c) approving a distribution to Comerica Bank of approximately \$4.7 million plus interest, fees and recoverable costs (the "**Bank Distribution**") from the remaining funds of the Applicants, which are currently held by the Monitor;
- (d) approving an aggregate distribution to the holders of the secured debentures (second senior) (the "**Second Senior Holders**") as listed in Schedule "A" hereto of approximately \$6.1 million (the "**Second Senior Distribution**") from the remaining funds of the Applicants, such Second Senior Distribution to be divided among the Second Senior Holders as indicated in Schedule "A" hereto;
- (e) approving an aggregate distribution to the holders of the secured debentures (third senior) (the "**Third Senior Holders**") as listed in Schedule "A" hereto of approximately \$1.05 million (the "**Third Senior Distribution**") from the remaining funds of the Applicants, such Third Senior Distribution to be divided on a *pro rata* basis among the Third Senior Holders based upon the values of the claims of such Third Senior Holders, all as indicated in Schedule "A" hereto;
- (f) authorizing the Monitor to retain a portion of the Applicants' remaining funds in an amount of approximately \$1.1 million or such lesser amount as the Monitor may determine in consultation with Comerica Bank (the "**Holdback**"), to satisfy amounts that may be payable under the Administration Charge, the Directors' Charge or any post-filing expenses, including potential claims under the Comerica Charge (as such capitalized terms are defined in the Second Amended and Restated Initial Order of this Court dated August 19, 2009) (the "**Holdback Expenses**"); and any additional amounts that may be owing under the DIP facility as defined in the Monitor's Fifth Report
- (g) approving a distribution to the Third Senior Holders of any amount of the Holdback that remains after all Holdback Expenses have been paid or otherwise provided for by the Monitor, such distribution to be made on a *pro rata* basis based upon the remaining amount of each Third Senior Holder's claim, in its capacity as such after accounting for the Third Senior Distribution (the "**Residual Distribution**"),

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion and the Fifth Report of the Monitor dated September 16, 2009 (the "**Monitor's Fifth Report**") and upon hearing the submissions of counsel for the Monitor, the Applicants, Comerica Bank, the Second Senior Holders, and the Third Senior Holders and other counsel appearing:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record herein and of the Monitor's Fifth Report be and it is hereby abridged so that this motion is properly returnable today and that further service on any interested party is hereby dispensed with.

**DISTRIBUTION AND PAYMENT**

2. **THIS COURT ORDERS** that the Bank Distribution, the Second Senior Distribution, the Third Senior Distribution, and any Residual Distribution are hereby approved and the Monitor is hereby authorized and directed to effect the Bank Distribution, the Second Senior Distribution, the Third Senior Distribution and any Residual Distribution, and to take any steps that it deems necessary or desirable for that purpose.

3. **THIS COURT ORDERS** that each of the Bank Distribution, the Second Senior Distribution, the Third Senior Distribution and the Residual Distribution shall be distributed as payment on account of the indebtedness owing by the Vendors to Comerica Bank and to each of the Second Senior Holders and the Third Senior Holders, in their capacities as such, and each of such payments is hereby approved.

4. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any assignment in bankruptcy by or on behalf of the Vendors or any one or more of them;
- (c) any application for a bankruptcy order hereafter issued pursuant the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3 ("**BIA**"), and any bankruptcy

order issued pursuant to any such application in respect of the Vendors or any one or more of them;

- (d) the appointment of any receiver and/or interim receiver over, or any other administrator of, the Vendors or any one or more of them or the assets of the Vendors or any one or more of them;
- (e) any rights of subrogation that may be asserted by either, or both, of the Vendors;  
or
- (f) the provisions of any federal or provincial statute,

the Bank Distribution, the Second Senior Distribution, the Third Senior Distribution and the Residual Distribution (and the payments and deliveries with respect thereto) shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Vendors or any one or more of them, shall not be void or voidable by creditors or claimants of the Vendors or any one or more of them, shall not constitute or be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances, or other reviewable transactions under the BIA or any other applicable federal or provincial legislation, shall not constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interest of any person pursuant to any applicable federal or provincial legislation, and shall, upon receipt thereof by Comerica Bank, the Second Senior Holders and the Third Senior Holders, respectively, be free of all claims, liens, security interests, charges or other encumbrances granted by or relating to any of the Vendors or the assets transferred pursuant to the Purchase Agreement, or any one or more of them.

### **HOLDBACKS**

5. **THIS COURT ORDERS** that, subject to further Order of this Court, the Holdback shall be held by the Monitor and the Monitor is hereby authorized and directed to pay out of such Holdback the amounts owing by the Vendors (or any of them) in respect of the Holdback Expenses.

6. **THIS COURT ORDERS** that, without affecting or varying its priority, the Director's Charge referred to at paragraph 21 of the Amended and Restated Initial Order has been reduced and shall not exceed an aggregate amount of \$500,000.

7. **THIS COURT REQUESTS** the aid and recognition of any Court or administrative, regulatory or governmental body in Canada and any other Court or administrative, regulatory or governmental body in any other province or territory of Canada, including the assistance of any Court in Canada pursuant to the *Companies' Creditors Arrangement Act* and/or the BIA and any Court or administrative, regulatory or governmental body in any jurisdiction, to act in aid or to be complementary in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to be "G. J. ...", is written over a horizontal line.

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

SEP 21 2009

PER / PAR:

Handwritten initials "TJ" in black ink.

# SCHEDULE "A"

## Proposed Distribution Schedule

Nexient Learning Inc. and Nexient Learning Canada Inc.

Proposed Distribution Schedule

\$C

September, 2009

Debenture Holder	Secured Obligation	Proposed Distribution
Canada Revenue Agency	135,178	135,178
Vengrowth (DIP lender)	542,616	542,616
Comerica Bank	4,756,955	4,756,955
2210961 Ontario Limited (Stalking Horse "break fee")	50,000	50,000
<u>2nd Debentures</u>		
Vengrowth	2,829,229	2,829,229
Wellington	3,304,170	3,304,170
	6,133,399	6,133,399
<u>3rd Debentures</u>		
Vengrowth	2,223,788	394,955
Wellington	2,194,136	389,689
Clairvest	562,261	99,860
CCWI	366,264	65,050
Krediet	290,857	51,658
Fallbrook	91,566	16,263
QT	91,566	16,263
Mitchell	91,566	16,263
	5,912,004	1,050,000
<b>Total</b>	<b>17,480,153</b>	<b>12,668,149</b>

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

Court File No: CV-09-8257-00 CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NEXIENT LEARNING INC. AND NEXIENT LEARNING CANADA INC.

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

Proceeding commenced at Toronto

**DISTRIBUTION ORDER**

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