

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

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

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

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

Applicants

NOTICE OF MOTION

RSM RICHTER INC., in its capacity as court-appointed Monitor of the Applicants (the "Monitor"), will make a motion before a Judge of the Commercial List on Wednesday, August 19, 2009 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 AN ORDER:

- (a) Abridging the time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;
- (b) Approving the sale transaction (the "Transaction") contemplated by the agreement of purchase and sale dated as of August 5, 2009 (the "Sale Agreement") among Global Knowledge Network (Canada) Inc., as buyer (the "Purchaser"), and the Applicants, Nexient Learning Inc. and Nexient Learning Canada Inc., in the form attached as Confidential Appendix "2" to the Fourth Report of the Monitor dated as of August 13, 2009 (the "Fourth Report");
- (c) Authorizing and approving the execution of the Sale Agreement by the Monitor on behalf of the Applicants and authorizing the Monitor to take such further steps

and execute all other documents and agreements as are necessary in order to complete the Transaction;

- (d) Vesting in the Purchaser the Applicants' right, title and interest in and to the Assets (as defined in the Sale Agreement) free and clear of any and all encumbrances effective:
 - (i) with respect to those Assets other than the Contracts (as defined in the Sale Agreement) (the "Closing Date Assets"), upon delivery by the Monitor of a First Monitor's Certificate to the Purchaser;
 - (ii) with respect to those Contracts (as defined in the Sale Agreement) that shall remain with, and are not otherwise cancelled at the request of the Purchaser by the Applicants during the Transition Period (as defined in the Sale Agreement) (the "Transition Period Contracts"), upon delivery by the Monitor to the Purchaser of a Second Monitor's Certificate at the end of the Transition Period (as defined in the Sale Agreement);
- (e) Approving the Transition and Occupation Services Agreement between the Purchaser and the Applicants in the form to be filed with the Court (the "Transition Agreement");
- (f) Authorizing and approving the execution of the Transition Agreement;
- (g) Sealing the confidential appendices to the Fourth Report and the unredacted version of the Transition Agreement pending further Order of the Court;
- (h) Extending the Stay Period (as hereinafter defined) to November 19, 2009, being the latest date on which the Transition Period (as defined in the Transition Agreement) could end pursuant to the Transition Agreement;
- (i) Amending and restating the Amended and Restated Initial Order (as defined below), in the form to be filed with the Court, to provide for an indemnity (the "Comerica Indemnity") by the Applicants to Comerica Bank from and against all liabilities, costs, claims and expenses which Comerica Bank may sustain or incur

in relation to the provision, maintenance or administration of all bank accounts and any related services provided by Comerica Bank to the Applicants, and to provide for a charge (the "Comerica Charge") over the property of the Applicants as security for such indemnity with such charge ranking behind the Administration Charge, the Directors' Charge and the DIP Lender's Charge (as such terms are defined in the Amended and Restated Initial Order);

- (i) ~~(h)~~ Approving the activities of the Monitor as set out in the Third Report of the Monitor dated as of August 10, 2009 (the "Third Report") and in the Fourth Report; and
- (k) ~~(i)~~ Such further and other relief as counsel may request and this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Pursuant to an Order of this Court made on June 29, 2009, the Applicants obtained protection pursuant to the *Companies' Creditors Arrangement Act* ("CCAA");
- (b) Under the Initial Order, RSM Richter Inc. was appointed as monitor in the CCAA proceedings;
- (c) On July 8, 2009, the Initial Order was amended by Order of Mr. Justice Cumming (the "Amended and Restated Initial Order");
- (a) The Amended and Restated Initial Order granted a 30 day stay of proceedings until July 29, 2009 (the "Stay Period");
- (b) On July 28, 2009, this Court ordered that the ~~stay~~Stay Period be extended to August 31, 2009;

The Sale Process

- (c) On July 8, 2009, this Court also granted an order (the "Sale Process Order");

- (i) approving the sale process described in the First Report of the Monitor dated July 3, 2009 and the Supplement to the First Report of the Monitor dated July 7, 2009 (the "Sale Process");
 - (ii) authorizing and directing the Monitor to immediately proceed with the Sale Process; and
 - (iii) authorizing and directing the Monitor, on behalf of the Applicants, to execute an agreement of purchase and sale (the "Stalking Horse Offer") between the Applicants and 2210961 Ontario Limited dated July 3, 2009;
- (d) The Sale Process contemplated a bid deadline of 4:00 p.m. (ET) on August 4, 2009 ("Bid Deadline");
- (e) By the Bid Deadline, the Monitor had received one or more bids which were subsequently acknowledged as "Qualified Bids" as contemplated by the Sale Process;
- (f) The parties that provided Qualified Bids, including the party that provided the Stalking Horse Offer, were invited to submit final offers by 5:00 pm on August 5, 2009;
- (g) The Monitor reviewed all Qualified Bids and determined in its reasonable business judgment that the Sale Agreement was the Winning Bid;
- (h) The purchase price payable under the Sale Agreement exceeds the purchase price under the Stalking Horse Offer and the liquidation value of the Assets;
- (i) The process conducted was in accordance with the Sale Process approved by the Court and amended by the Monitor to permit sufficient time for the Transaction to close and to provide sufficient notice of this motion to all stakeholders;
- (j) In light of the process conducted as described above, the Monitor believes that maximum value has been achieved for the Assets;

Stay Extension

- (k) An extension of the Stay Period through to the end of the Transition Period is required to facilitate the operation of the Transition Agreement free of any interference;
- (l) The Transition Agreement is an essential aspect of the Transaction and is expressly contemplated by the Sale Agreement;
- (m) The Applicants have acted, and continue to act in good faith and with due diligence;
- (n) No creditor will be materially prejudiced by the requested extension of the Stay Period;

Comerica Bank Indemnity and Charge

- (o) Comerica Bank has agreed to continue to provide certain banking and cash management services in respect of the Applicants' bank accounts during the Transition Period on existing terms;
- (p) The Purchaser may need to use these bank accounts temporarily as the Purchaser may require time to open new accounts and to direct customers to remit payment to those new accounts;
- (q) As a result of continuing to provide banking and cash management services in respect of the Applicants' bank accounts during the Transition Period, Comerica Bank may incur costs and Comerica Bank has consented to the continued use of the Applicants' bank accounts provided that it is granted the Comerica Indemnity and the Comerica Charge as security for such costs;

Miscellaneous

- (r) ~~(j)~~ The provisions of the CCAA; and
- (s) ~~(k)~~ Further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Third Report of the Monitor dated August 10, 2009;
- (b) the Fourth Report of the Monitor dated August 13, 2009;
- (a) the Supplement to the Fourth Report of the Monitor dated August 18, 2009; and
- (b) such further and other material as counsel may advise and this Honourable Court may permit.

August 13~~8~~, 2009

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Lawyers for the Monitor
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TO: ATTACHED SERVICE LIST

**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

NOTICE OF MOTION

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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in relation to the provision, maintenance or administration of all bank accounts and any related services provided by Comerica Bank to the Applicants, and to provide for a charge (the "Comerica Charge") over the property of the Applicants as security for such indemnity with such charge ranking behind the Administration Charge, the Directors' Charge and the DIP Lender's Charge (as such terms are defined in the Amended and Restated Initial Order);

- (j) Approving the activities of the Monitor as set out in the Third Report of the Monitor dated as of August 10, 2009 (the "Third Report") and in the Fourth Report; and
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- (i) The parties that provided Qualified Bids, including the party that provided the Stalking Horse Offer, were invited to submit final offers by 5:00 pm on August 5, 2009;
- (j) The Monitor reviewed all Qualified Bids and determined in its reasonable business judgment that the Sale Agreement was the Winning Bid;
- (k) The purchase price payable under the Sale Agreement exceeds the purchase price under the Stalking Horse Offer and the liquidation value of the Assets;
- (l) The process conducted was in accordance with the Sale Process approved by the Court and amended by the Monitor to permit sufficient time for the Transaction to close and to provide sufficient notice of this motion to all stakeholders;
- (m) In light of the process conducted as described above, the Monitor believes that maximum value has been achieved for the Assets;

Stay Extension

- (n) An extension of the Stay Period through to the end of the Transition Period is required to facilitate the operation of the Transition Agreement free of any interference;
- (o) The Transition Agreement is an essential aspect of the Transaction and is expressly contemplated by the Sale Agreement;
- (p) The Applicants have acted, and continue to act in good faith and with due diligence;
- (q) No creditor will be materially prejudiced by the requested extension of the Stay Period;

Comerica Bank Indemnity and Charge

- (r) Comerica Bank has agreed to continue to provide certain banking and cash management services in respect of the Applicants' bank accounts during the Transition Period on existing terms;
- (s) The Purchaser may need to use these bank accounts temporarily as the Purchaser may require time to open new accounts and to direct customers to remit payment to those new accounts;
- (t) As a result of continuing to provide banking and cash management services in respect of the Applicants' bank accounts during the Transition Period, Comerica Bank may incur costs and Comerica Bank has consented to the continued use of the Applicants' bank accounts provided that it is granted the Comerica Indemnity and the Comerica Charge as security for such costs;

Miscellaneous

- (u) The provisions of the CCAA; and
- (v) Further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Third Report of the Monitor dated August 10, 2009;
- (b) the Fourth Report of the Monitor dated August 13, 2009;
- (c) the Supplement to the Fourth Report of the Monitor dated August 18, 2009; and
- (d) such further and other material as counsel may advise and this Honourable Court may permit.

August 18, 2009

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**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
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Proceeding commenced at Toronto

NOTICE OF MOTION

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RSM! Richter

Supplement to the Fourth Report of RSM Richter Inc. as CCAA Monitor of Nexient Learning Inc. and Nexient Learning Canada Inc.

RSM Richter Inc.
Toronto, August 18, 2009

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

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

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

**SUPPLEMENT TO THE FOURTH REPORT OF RSM RICHTER INC.
AS CCAA MONITOR OF
NEXIENT LEARNING INC. AND
NEXIENT LEARNING CANADA INC.**

August 18, 2009

1. INTRODUCTION

This report ("Report") supplements the Monitor's fourth report dated August 13, 2009 (the "Fourth Report").

Unless otherwise stated, capitalized terms contained in this Report have the meanings ascribed to them in the Fourth Report.

1.1 Purposes of this Report

The purpose of this Report is to recommend that in order to facilitate the completion of the Transaction this Honourable Court make an Order:

- Extending the stay of proceedings from August 31, 2009 to November 19, 2009; and
- Amending the Initial Order to provide a charge in favour of Comerica (the "Comerica Charge"), ranking behind the Administration, Directors' and DIP Lenders' Charges, as security for an indemnity provided by the Company to Comerica for any obligations that it may incur resulting from the continued use of the Company's bank accounts at Comerica.

2. EXTENSION OF THE STAY OF PROCEEDINGS

The Purchaser has requested that the Company seek an extension of the stay of proceedings for the Transition Period. Pursuant to the TOA, the Transition Period is for up to 90 days following the Closing Date. The Company is of the view that an extension of the stay of proceedings is in the interest of its stakeholders as the Transaction maximizes value. The Monitor supports the request for an extension of the stay of proceedings for the following reasons:

- The Company is acting in good faith and with due diligence in its restructuring efforts;
- The Transaction maximizes value for stakeholders;
- The TOA is integral to the Transaction and the stay of proceedings will enable the Company to perform its obligations under the TOA; and
- The granting of the extension will not prejudice any employee or creditor as there will be sufficient funds on deposit from the proceeds of the Transaction to fund any post-filing services and supplies.

A cash flow projection has not been prepared for the stay extension period. The remaining costs in these proceedings (largely professional fees) are to be funded from the proceeds of the Transaction.

3. THE COMERICA CHARGE

The Monitor understands that for an interim period, not longer than the Transition Period, the Purchaser or the Company may wish to continue to use the Company's bank accounts at Comerica. The Purchaser may require time to open new accounts and to direct customers to remit payment to the new accounts – some customers pay to a lockbox. Comerica has consented to the use of the bank accounts and the provision of services related thereto on the same terms as are currently in place provided that it is granted a Court-ordered indemnity

and charge which it could look to should amounts owing to Comerica resulting from the Purchaser's or the Company's use of the bank accounts and related services remain unpaid. The Comerica Charge is to rank subordinate to each of the Charges created under the Initial Order. The Monitor is of the view that there is little risk associated with the use of these accounts and that it would be able to call on the deposit to be paid to it under the TOA in the event that any costs arise.

The Monitor is also of the view that the ranking of the Comerica Charge is appropriate and provides significant coverage for Comerica without impacting the priority of the other charges granted pursuant to the terms of the Initial Order.

4. CONCLUSION AND RECOMMENDATION

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed herein.

* * *

All of which is respectfully submitted,

RSM Richter Inc.

**RSM RICHTER INC.
IN ITS CAPACITY AS CCAA MONITOR OF
NEXIENT LEARNING INC. AND
NEXIENT LEARNING CANADA INC.
AND NOT IN ITS PERSONAL CAPACITY**

THE HONOURABLE) WEDNESDAY, THE 19TH DAY OF
)
JUSTICE) AUGUST, 2009

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

APPROVAL AND VESTING ORDER

- (i) approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Applicants and Global Knowledge Network (Canada) Inc. (the "Purchaser") made as of August 5, 2009 and attached as Confidential Appendix "●" to the Fourth Report of the Monitor dated August 13, 2009 (the "Fourth Report");
- (ii) authorizing and approving the execution of the Sale Agreement;
- (iii) vesting in the Purchaser the Applicants' right, title and interest in and to the assets described in the Sale Agreement (the "Assets");

- (iv) approving and authorizing the execution of the Transition and Occupation Services Agreement between the Purchaser and the Applicants in the form as filed with the Court (the "Transition Agreement");
- (v) Extending the Stay Period through to the end of the Transition Period (as defined in the Transition Services Agreement)
- (vi) approving the activities of the Monitor as described in the Third Report of the Monitor dated August 10, 2009 and in the Fourth Report; and
- (vii) sealing the confidential appendices to the Fourth Report pending further Order of the Court,

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

ON READING the reports of the Monitor and on hearing the submissions of counsel for the Monitor, the Applicants, the Purchaser and ●, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [●] sworn August ●, 2009 filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today, and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all defined terms not otherwise defined herein shall have the meaning ascribed to them in the Fourth Report.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved and is in the best interests of the Applicants and their stakeholders. The execution of the Sale Agreement by the Monitor on behalf of the Applicants is hereby authorized and approved, and the Monitor and the Applicants are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Assets to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that the Transition Agreement is hereby approved. The execution of the Transition Agreement is hereby authorized and approved.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a First Monitor's Certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "First Monitor's Certificate"), all of the Applicants' right, title and interest in and to the Assets, other than the Contracts, (the "Closing Date Assets") shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims of every nature or kind whatsoever, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order (as amended and restated); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "Encumbrances") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Closing Date Assets are hereby expunged and discharged as against the Closing Date Assets, provided however, that nothing herein shall affect the rights and remedies of the applicable landlord against the Purchaser that may exist or arise under or in respect of any real property lease that is assigned to the Purchaser in connection with the Transaction, except as may otherwise be agreed to by the landlord and the Purchaser.

6. **THIS COURT ORDERS** that upon the delivery of a Second Monitor's Certificate to the Purchaser substantially in the form attached as Schedule "B" hereto (the "Second Monitor's Certificate"), all of the Applicants' right, title and interest in and to those Contracts with respect to which the Purchaser elects during the Transition Period to receive an assignment (the "Transition Period Contracts") shall vest absolutely in the Purchaser, free and clear of and from any and all Claims and Encumbrances and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Transition Period Contracts are hereby expunged and discharged as against the Transition Period Contracts, provided however, that nothing herein

shall affect the rights and remedies of the applicable landlord against the Purchaser that may exist or arise under or in respect of any real property lease that is assigned to the Purchaser in connection with the Transaction, except as may otherwise be agreed to by the landlord and the Purchaser.

7. THIS COURT ORDERS that: (i) nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of a real property lease; (ii) where any real property lease is not, in accordance with its terms, transferable or assignable to the Purchaser without first obtaining the consent of the applicable landlord, such real property lease shall not be transferred, conveyed, assigned or vested in the Purchaser by operation of this Order, save and except to the extent that the respective consent has been, or is in the future, obtained from the respective landlord or further Court Order is obtained.

8. ~~7-~~**THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Closing Date Assets and from the Transition Period Contracts, shall stand in the place and stead of the Closing Date Assets and the Transition Period Contracts, and that (a) with respect to the Closing Date Assets, from and after the delivery of the First Monitor's Certificate, and (b) with respect to the Transition Period Contracts, from and after the delivery of the Second Monitor's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Closing Date Assets and Transition Period Contracts with the same priority as they had with respect to the Closing Date Assets and Transition Period Contracts immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. ~~8-~~**THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the First Monitor's Certificate and the Second Monitor's Certificate, forthwith after delivery thereof.

10. ~~9-~~**THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Monitor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the

Company's records pertaining to the Applicants' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicants.

11. ~~10.~~ **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 Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants;

the vesting of the Closing Date Assets and the Transition Period Contracts in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, 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.

12. ~~11.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from application of the *Bulk Sales Act* (Ontario).

13. ~~12.~~ **THIS COURT ORDERS** that the Stay Period set out in Paragraph 14 of the Amended and Restated Initial Order is hereby extended to November 19, 2009.

14. ~~13.~~ **THIS COURT ORDERS** that the confidential appendices to the Fourth Report and the unredacted version of the Transition Agreement shall be treated as confidential and shall be sealed and segregated from the public record, pending further order of this Court.

15. ~~14.~~ **THIS COURT ORDERS** that the activities of the Monitor as described in the Third Report of the Monitor dated August 10, 2009 and in the Fourth Report be and are hereby approved.

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

Schedule A – Form of First Monitor's Certificate

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

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

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

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

Applicants

FIRST MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Pepall of the Ontario Superior Court of Justice (the "Court") dated June 29, 2009 (as amended and restated), Nexient Learning Inc. and Nexient Learning Canada Inc. (collectively, the "Applicants") commenced proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) and RSM Richter Inc. was appointed as monitor (the "Monitor") in those proceedings.

B. Pursuant to an Order of the Court dated August 5, 2009, the Court approved an asset purchase agreement dated as of August 5, 2009 (the "Sale Agreement") among Global Knowledge Network (Canada) Inc. as buyer (the "Purchaser"), and the Applicants as vendors in respect of the sale of certain assets described in the Sale Agreement (the "Assets") and provided for the vesting in the Purchaser of the Applicants' right, title and interest in and to the Assets other than the Contracts free and clear of all Vesting Order Claims, which vesting is to be effective with respect to the Assets other than the Contracts upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in Section 4 of the Sale Agreement

have been satisfied or waived by the Applicants and the Purchaser; and (iii) the Applicants have advised the Monitor that the Transaction has been completed to the satisfaction of the Applicants.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Applicants have advised the Monitor that the Purchaser has paid and the Applicants have received the Purchase Price for the Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The Applicants have advised the Monitor that the conditions to Closing as set out in Section 4 of the Sale Agreement have been satisfied or waived by the Applicants and the Purchaser; and
3. The Applicants have advised the Monitor that the Transaction has been completed to the satisfaction of the Applicants.
4. This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

**RSM RICHTER INC., in its capacity as
monitor in the Applicants' CCAA
proceedings and not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Form of Second Monitor's Certificate

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

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

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

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

Applicants

SECOND MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Pepall of the Ontario Superior Court of Justice (the "Court") dated June 29, 2009 (as amended and restated), Nexient Learning Inc. and Nexient Learning Canada Inc. (collectively, the "Applicants") commenced proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) and RSM Richter Inc. was appointed as monitor (the "Monitor") in those proceedings.

B. Pursuant to an Order of the Court dated August 5, 2009 (the "Approval and Vesting Order"), the Court approved the agreement of purchase and sale made as of August 5, 2009 (the "Sale Agreement") among Global Knowledge Network (Canada) Inc. as buyer (the "Purchaser"), and the Applicants, as vendors, and provided for the vesting in the Purchaser of the Applicants' right, title and interest in and to certain Contracts, listed in Appendix "A" hereto (the "Transition Period Contracts") free and clear of all Vesting Order Claims, that shall remain with, and are not otherwise cancelled at the request of the Purchaser by the Applicants during the Transition Period, which vesting is to be effective upon the delivery by the Monitor to the Purchaser's filing of this certificate confirming ~~[LANGUAGE CONSISTENT WITH THE TERMS OF THE TRANSITION AGREEMENT TO BE INSERTED]~~ with the Court.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. ~~LANGUAGE CONSISTENT WITH THE TERMS OF THE TRANSITION AGREEMENT TO BE INSERTED~~ the Purchaser has advised that the consents or waivers required by such Excluded Contracts referred to in clause 14(ii) of the Transition and Occupation Services Agreement have been obtained to the satisfaction of the Purchaser.

This Certificate was delivered by the Monitor at _____ on _____.

**RSM RICHTER INC., in its capacity as
monitor in the Applicants' CCAA
proceedings and not in its personal capacity**

Per: _____

Name:

Title:

**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

APPROVAL AND VESTING ORDER

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Lawyers for the Monitor, RSM Richter Inc.

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

THE HONOURABLE) **WEDNESDAY, THE 19TH DAY OF**
)
JUSTICE) **AUGUST, 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

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Richter Inc. in its capacity as the court-appointed Monitor (the "Monitor") of the Applicants for an order:

- (i) approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Applicants and Global Knowledge Network (Canada) Inc. (the "Purchaser") made as of August 5, 2009 and attached as Confidential Appendix "●" to the Fourth Report of the Monitor dated August 13, 2009 (the "Fourth Report");
- (ii) authorizing and approving the execution of the Sale Agreement;
- (iii) vesting in the Purchaser the Applicants' right, title and interest in and to the assets described in the Sale Agreement (the "Assets");

- (iv) approving and authorizing the execution of the Transition and Occupation Services Agreement between the Purchaser and the Applicants in the form as filed with the Court (the "Transition Agreement");
- (v) Extending the Stay Period through to the end of the Transition Period (as defined in the Transition Services Agreement)
- (vi) approving the activities of the Monitor as described in the Third Report of the Monitor dated August 10, 2009 and in the Fourth Report; and
- (vii) sealing the confidential appendices to the Fourth Report pending further Order of the Court,

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

ON READING the reports of the Monitor and on hearing the submissions of counsel for the Monitor, the Applicants, the Purchaser and ●, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [●] sworn August ●, 2009 filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today, and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all defined terms not otherwise defined herein shall have the meaning ascribed to them in the Fourth Report.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved and is in the best interests of the Applicants and their stakeholders. The execution of the Sale Agreement by the Monitor on behalf of the Applicants is hereby authorized and approved, and the Monitor and the Applicants are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Assets to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that the Transition Agreement is hereby approved. The execution of the Transition Agreement is hereby authorized and approved.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a First Monitor's Certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "First Monitor's Certificate"), all of the Applicants' right, title and interest in and to the Assets, other than the Contracts, (the "Closing Date Assets") shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims of every nature or kind whatsoever, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order (as amended and restated); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "Encumbrances") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Closing Date Assets are hereby expunged and discharged as against the Closing Date Assets, provided however, that nothing herein shall affect the rights and remedies of the applicable landlord against the Purchaser that may exist or arise under or in respect of any real property lease that is assigned to the Purchaser in connection with the Transaction, except as may otherwise be agreed to by the landlord and the Purchaser.

6. **THIS COURT ORDERS** that upon the delivery of a Second Monitor's Certificate to the Purchaser substantially in the form attached as Schedule "B" hereto (the "Second Monitor's Certificate"), all of the Applicants' right, title and interest in and to those Contracts with respect to which the Purchaser elects during the Transition Period to receive an assignment (the "Transition Period Contracts") shall vest absolutely in the Purchaser, free and clear of and from any and all Claims and Encumbrances and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Transition Period Contracts are hereby expunged and discharged as against the Transition Period Contracts, provided however, that nothing herein

shall affect the rights and remedies of the applicable landlord against the Purchaser that may exist or arise under or in respect of any real property lease that is assigned to the Purchaser in connection with the Transaction, except as may otherwise be agreed to by the landlord and the Purchaser.

7. **THIS COURT ORDERS** that: (i) nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of a real property lease; (ii) where any real property lease is not, in accordance with its terms, transferable or assignable to the Purchaser without first obtaining the consent of the applicable landlord, such real property lease shall not be transferred, conveyed, assigned or vested in the Purchaser by operation of this Order, save and except to the extent that the respective consent has been, or is in the future, obtained from the respective landlord or further Court Order is obtained.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Closing Date Assets and from the Transition Period Contracts, shall stand in the place and stead of the Closing Date Assets and the Transition Period Contracts, and that (a) with respect to the Closing Date Assets, from and after the delivery of the First Monitor's Certificate, and (b) with respect to the Transition Period Contracts, from and after the delivery of the Second Monitor's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Closing Date Assets and Transition Period Contracts with the same priority as they had with respect to the Closing Date Assets and Transition Period Contracts immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the First Monitor's Certificate and the Second Monitor's Certificate, forthwith after delivery thereof.

10. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Monitor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the

Company's records pertaining to the Applicants' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicants.

11. **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 Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants;

the vesting of the Closing Date Assets and the Transition Period Contracts in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, 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.

12. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from application of the *Bulk Sales Act* (Ontario).

13. **THIS COURT ORDERS** that the Stay Period set out in Paragraph 14 of the Amended and Restated Initial Order is hereby extended to November 19, 2009.

14. **THIS COURT ORDERS** that the confidential appendices to the Fourth Report and the unredacted version of the Transition Agreement shall be treated as confidential and shall be sealed and segregated from the public record, pending further order of this Court.

15. **THIS COURT ORDERS** that the activities of the Monitor as described in the Third Report of the Monitor dated August 10, 2009 and in the Fourth Report be and are hereby approved.

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

Schedule A – Form of First Monitor's Certificate

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

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

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

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

Applicants

FIRST MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Pepall of the Ontario Superior Court of Justice (the "Court") dated June 29, 2009 (as amended and restated), Nexient Learning Inc. and Nexient Learning Canada Inc. (collectively, the "Applicants") commenced proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) and RSM Richter Inc. was appointed as monitor (the "Monitor") in those proceedings.

B. Pursuant to an Order of the Court dated August ●, 2009, the Court approved an asset purchase agreement dated as of August 5, 2009 (the "Sale Agreement") among Global Knowledge Network (Canada) Inc. as buyer (the "Purchaser"), and the Applicants as vendors in respect of the sale of certain assets described in the Sale Agreement (the "Assets") and provided for the vesting in the Purchaser of the Applicants' right, title and interest in and to the Assets other than the Contracts free and clear of all Vesting Order Claims, which vesting is to be effective with respect to the Assets other than the Contracts upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in Section 4 of the Sale Agreement

have been satisfied or waived by the Applicants and the Purchaser; and (iii) the Applicants have advised the Monitor that the Transaction has been completed to the satisfaction of the Applicants.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Applicants have advised the Monitor that the Purchaser has paid and the Applicants have received the Purchase Price for the Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The Applicants have advised the Monitor that the conditions to Closing as set out in Section 4 of the Sale Agreement have been satisfied or waived by the Applicants and the Purchaser; and
3. The Applicants have advised the Monitor that the Transaction has been completed to the satisfaction of the Applicants.
4. This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

**RSM RICHTER INC., in its capacity as
monitor in the Applicants' CCAA
proceedings and not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Form of Second Monitor's Certificate

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

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

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

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

Applicants

SECOND MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Pepall of the Ontario Superior Court of Justice (the "Court") dated June 29, 2009 (as amended and restated), Nexient Learning Inc. and Nexient Learning Canada Inc. (collectively, the "Applicants") commenced proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) and RSM Richter Inc. was appointed as monitor (the "Monitor") in those proceedings.

B. Pursuant to an Order of the Court dated August 5, 2009 (the "Approval and Vesting Order"), the Court approved the agreement of purchase and sale made as of August 5, 2009 (the "Sale Agreement") among Global Knowledge Network (Canada) Inc. as buyer (the "Purchaser"), and the Applicants, as vendors, and provided for the vesting in the Purchaser of the Applicants' right, title and interest in and to certain Contracts, listed in Appendix "A" hereto (the "Transition Period Contracts") free and clear of all Vesting Order Claims, that shall remain with, and are not otherwise cancelled at the request of the Purchaser by the Applicants during the Transition Period, which vesting is to be effective upon the Monitor's filing of this certificate with the Court.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. the Purchaser has advised that the consents or waivers required by such Excluded Contracts referred to in clause 14(ii) of the Transition and Occupation Services Agreement have been obtained to the satisfaction of the Purchaser.

This Certificate was delivered by the Monitor at _____ on _____.

**RSM RICHTER INC., in its capacity as
monitor in the Applicants' CCAA
proceedings and not in its personal capacity**

Per: _____
Name:
Title:

**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

APPROVAL AND VESTING ORDER

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