

**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

**MOTION RECORD
(Re: Sale Approval and Vesting Order)
[Returnable August 19, 2009]**

August 13, 2009

OGILVY RENAULT LLP
Suite 3800, Box 84
Royal Bank Plaza, South Tower
200 Bay Street
Toronto, Ontario M5J 2Z4

Mario Forte LSUC#: 27293F
Tel: (416) 216-4870
Evan Cobb LSUC#: 55787N
Tel: (416) 216-1929
Fax: (416) 216-3930

Lawyers for the Monitor
RSM Richter Inc.

TO: ATTACHED SERVICE LIST

**NEXIENT
EMAIL SERVICE LIST**

OGILVY RENAULT LLP Royal Bank Plaza South Tower Suite 3800, 200 Bay Street Toronto, ON M5J 2Z4 <i>Lawyers for RSM Richter Inc.</i>	Mario J. Forte Tel: 416.216.4870 Email: mforte@ogilvyrenault.com Lynne O'Brien Tel: 416.216-3923 Fax: 416.216.3930 Email: lobrien@ogilvyrenault.com
McMILLAN LLP Brookfield Place Suite 4400 181 Bay Street Toronto, ON M5J 2T3 <i>Lawyers for Comerica Bank</i>	Adam Maerov Tel.: 416.865.7285 Email: adam.maerov@mcmillan.ca Brett Harrison Tel: 416.865.7932 Fax: 416.865.7048 Email: brett.harrison@mcmillan.ca
GOODMANS LLP Suite 2400 250 Yonge Street Toronto, ON M5B 2M6 <i>Lawyers for Fund 321 Limited Partnership c.o.b. as Wellington Financial Fund II and Clairvest Group Inc.</i>	Neill I. May Tel: 416.597.4187 Email: nmay@goodmans.ca Fred Myers Tel: 416.597.5923 Fax: 416.979.1234 Email: fmyers@goodmans.ca
AIRD & BERLIS LLP BCE Place Suite 1800, P.O. Box 754 181 Bay Street Toronto, ON M5L 1B9 <i>Lawyers for The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management</i>	Steven L. Graff Tel: 416.865.7726 Email: sgraff@airdberlis.com Ian Aversa Tel: 416.865.3082 Fax: 416.863.1515 Email: iaversa@airdberlis.com
McLEAN & KERR LLP Suite 2800 130 Adelaide Street West Toronto, ON M5H 3P5 <i>Lawyers for Oxford Properties Group Inc.</i>	Walter R. Stevenson Tel: 416.369.6602 Fax: 416.366.8571 Email: wstevenson@mcleankerr.com
RSM RICHTER INC. 200 King Street West, Suite 1100 Toronto, ON <i>Monitor</i>	Robert Kofman Tel: 416.932.6228 Email: BKofman@rsmrichter.com Andrew Schaefer Tel: 416.932.6244 Fax: 416.932.6200 Email: aschaefer@rsmrichter.com

CHAITONS LLP 185 Sheppard Avenue West Toronto, ON M2N 1M9 <i>Lawyers for the Applicant</i>	Harvey G. Chaiton Tel: 416.222.8888 Fax: 416.222.8402 Email: harvey@chaitons.com
BOUGHTON LAW CORPORATION Suite 700, 595 Burrard Street P.O. Box 49290 Vancouver, BC V7X 1S8 <i>Lawyers for BTC Properties II Ltd. and The Great-West Life Assurance Company, owners of Bentall Centre</i>	R. Hoops Harrison Tel: 604.647.6433 Fax: 604.683.5317 Email: hharrison@boughton.ca
BLANEY McMURTRY LLP 1500 – 2 Queen Street East Toronto, ON M5C 3G5 <i>Lawyers for Canada Property (Trustee) No. 1 by its agent Paradigm Properties Inc.</i>	Domenico Magisano Tel: 416.593.2996 Fax: 416.593.5437 Email: dmagisano@blaney.com
CANADIAN COMMERCIAL WORKERS INDUSTRY PENSION PLAN 83 Campbell Avenue East Campbellville, ON L0P 1B0	Rian Sharpe Email: Rian_Sharpe@propco100.ca
FALLBROOK HOLDINGS LIMITED 22 St. Clair Avenue East, Suite 1010 Toronto, ON M4T 2S3	S. Schipper Email: sschipper@fallbrookholdings.com
QT Inc. 2200 Yonge Street, Suite 610 Toronto, ON M4S 2C5	Harvey S. Email: harveys@qtemail.com
John Krediet Office of G. John Krediet CF Capital Corp. Bankplein 1, 2585 EV Den Haag The Haag NETHERLANDS	Chris Krediet Email: ckrediet@cfcapitalcorp.com
COLLIERS INTERNATIONAL 1110 – 1175 Douglas Street Victoria, BC V8W 2E1	Nancy Talbot Email: nancy.talbot@colliers.com Paul Cremin Email: paul.cremin@colliers.com
WESTCORP PROPERTIES INC. 200 College Plaza 8215 – 112 St NW Edmonton, AB T6G 2C8	J. Molina Email: jmolina@westcorp.net J. Kilkenny Email: Jkilkenny@westcorp.net

HALIFAX DEVELOPMENTS owned and operated by CROMBIE REIT HDL Admin Office 1210 – 2000 Barrington Street Halifax, NS B3J 3K1	Barry Stockall Email: barry.stockall@crombie.ca Michael Ewald Email: michael.ewald@crombie.ca
CRESWIN PROPERTIES LTD. 590 Canwest Place 201 Portage Avenue Winnipeg, MB R3B 3K6	Terry Orsulak Email: torsulak@creswin.ca Erin Statkewich Email: estatkewich@creswin.ca
POLARIS REALTY (CANADA) LIMITED 800 Boul. Rene-Levesque Ouest Montreal, QC H3B 1X9	A. Cassis Email: acassis@polarisimmobilier.com Wayne Martin Email: wmartin@polarisrealty.com
REALEX PROPERTIES (ONTARIO) INC. 40 Weber Street East Lobby Level Kitchener, ON N2H 6R3	Greg Wettlaufer Email: gwettlaufer@realex.org
BENTALL REAL ESTATE Suite 1800, Four Bentall Centre 1055 Dunsmuir Street Vancouver, BC V7X 1B1	Carissa Hunter Email: chunter@bentall.com Lynn Szto Email: lsztobentall.com
COLONNADE DEVELOPMENTS 16 Concourse Gate, Suite 200 Ottawa, ON K2E 7S8	John Thomas Email: jthomas@colonnade.ca Colleen Brown Email: cbrown@colonnade.ca
LUSTIG & DOO GROUP OF COMPANIES 30 Eglinton Avenue West, Suite 601 Mississauga, ON L5R 3E7	Mona Kung Email: mona@lustigdoo.com
ATLANTIC PROPRETY MANAGEMENT Crosbie Road St. John's, NL	Greg Dinn Email: gdinn@crosbiegroup.com
DARR (CAPE BRETON) LIMITED – SUBSIDIARY OF ENTERPRISE CAPE BRETON CORPORATION 70 Crescent Street P.O. Box 1750 Sydney, NS B1S 2Z7	Wendy Somerton Email: wendy.somerton@ecbc-secb.gc.ca
ENTERPRISE CAPE BRETON CORPORATION 70 Crescent Street P.O. Box 1750 Sydney, NS B1S 2Z7	Archie Gallagher Email: archie.gallagher@ecbc-secb.gc.ca

ATLANTIC CANADA OPPORTUNITIES AGENCY c/o 70 Crescent Street P.O. Box 1750 Sydney, NS B1S 2Z7	Archie Gallagher Email: archie.gallagher@ecbc-secb.gc.ca
OLD OAK PROPERTIES INC. 148 Fullarton St., Suite 200 London, ON N6A 5P3	Keith McAlister Email: kmcalister@oldoakproperties.com
ASPEN PROPERTIES LTD. Scotia Centre # 2310 – 700-2 nd Street SW Calgary, AB T2P 2W2	Email: apl@aspennpropertiesltd.com
MACDONALD SAGER MANIS LLP 150 York Street, Suite 800 Toronto, ON M5H 3S5	Howard F. Manis Tel: 416.364.5289 Fax: 416.364.1453 Email: hmanis@msmlaw.net
MINISTRY OF FINANCE Legal Services Branch 33 King Street West P.O. Box 627 Oshawa, ON L1H 8H5	Kevin O'Hara Tel.: 905.433.6934 Fax: 905.436.4510 Email: kevin.ohara@ontario.ca
DEPARTMENT OF JUSTICE Ontario Regional Office The Exchange Tower 130 King Street West, Suite 3400 Toronto, ON M5X 1K6	Diane Winters Tel.: 416.973.3172 Fax: 416.973.0810 Email: diane.winters@justice.gc.ca
NATIONAL LEASING GROUP INC. 1558 Wilson Place Winnipeg, MB R3T 0Y4	Tel: 1.800.665.1326 Fax: 1.866.408.0729 Email: Manitoba@nationalleasing.com

**NEXIENT
FAX SERVICE LIST**

DELL FINANCIAL SERVICES CANADA LIMITED 155 Gordon Baker Road, Suite 501 Toronto, Ontario M2H 3N5	Tel: 416.758.2190 Fax: 416.758.2305
GOULD LEASING LTD. 1220 Yonge Street, Suite 201 Toronto, Ontario M4T 1W1	Tel: 416.925.6777 Fax: 416.925.7095
IBM CANADA LIMITED PPSA Administrator 3600 Steeles Avenue East, F4 Markham, Ontario L3R 9Z7	Tel: 905.316.5000 Fax: 905.316.2535
XEROX CANADA LTD. 33 Bloor Street East, 3 rd Floor Toronto, Ontario M4W 3H1	Tel: 416.229.3769 Fax: 416.229.2159
MCAP LEASING INC. 5575 North Service Road, Suite 300 Burlington, Ontario L7L 6M1	Tel: 905.639.3995 / 1.800.263.5137 Fax: 905.639.5902
USM CAPITAL (formerly MFP FINANCIAL SERVICES INC.) 2281 North Sheridan Way Mississauga, Ontario L5K 2S3	Tel: 1.800.433.5553 Fax: 905.403.6666
SUN LIFE ASSURANCE COMPANY OF CANADA 227 King Street South Waterloo, Ontario N2J 4C5	Tel: 519.888.2290 Fax: 519.888.3722
SUN LIFE CANADA, COMPAGNIE D'ASSURANCE – VIE 227 King Street South Waterloo, Ontario N2J 4C5	Tel: 519.888.2290 Fax: 519.888.3722
MARK W. MITCHELL 1204-1755 West 14 th Avenue Vancouver, British Columbia V6J 2J6	Fax: 604.648.8576
2037025 ONTARIO CORPORATION 161 Bay Street, Suite 2520 P.O. Box 225 Toronto, Ontario M5J 2S1 22 St. Clair Avenue East, Suite 1700 Toronto, Ontario M4T 2S3	

GP 4312 LIMITED PARTNERSHIP

161 Bay Street, Suite 2520

P.O. Box 225

Toronto, Ontario M5J 2S1

22 St. Clair Avenue East, Suite 1700

Toronto, Ontario M4T 2S3

**ONTARIO
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**IN THE MATTER OF THE *COMPANIES' CREDITORS
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Applicants

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**ONTARIO
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**IN THE MATTER OF THE *COMPANIES' CREDITORS
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**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) 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
- (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");
- (d) On July 28, 2009, this Court ordered that the stay be extended to August 31, 2009;

The Sale Process

- (e) 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;
- (f) The Sale Process contemplated a bid deadline of 4:00 p.m. (ET) on August 4, 2009 ("Bid Deadline");
- (g) 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;

- (h) 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;
- (i) The Monitor reviewed all Qualified Bids and determined in its reasonable business judgment that the Sale Agreement was the Winning Bid;
- (j) The purchase price payable under the Sale Agreement exceeds the purchase price under the Stalking Horse Offer and the liquidation value of the Assets;
- (k) 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;
- (l) In light of the process conducted as described above, the Monitor believes that maximum value has been achieved for the Assets;

Miscellaneous

- (m) The provisions of the CCAA; and
- (n) 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; and
- (c) such further and other material as counsel may advise and this Honourable Court may permit.

August 13, 2009

OGILVY RENAULT LLP
Suite 3800, Box 84
Royal Bank Plaza, South Tower
200 Bay Street
Toronto, Ontario M5J 2Z4

Mario Forte LSUC#: 27293F
Tel: (416) 216-4870
Evan Cobb LSUC#: 55787N
Tel: (416) 216-1929
Fax: (416) 216-3930

Lawyers for the Monitor
RSM Richter Inc.

TO: ATTACHED SERVICE LIST

RSM Richter

Third Report of RSM Richter Inc. as CCAA Monitor of Nexient Learning Inc. and Nexient Learning Canada Inc.

RSM Richter Inc.
Toronto, August 10, 2009

RSM Richter is an independent member firm of RSM International,
an affiliation of independent accounting and consulting firms.

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- Appendix “B” Sale Process Overview
- Appendix “C” Sale Process Order of the *Ontario* Superior Court of Justice dated July 8, 2009

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

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

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

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

**THIRD REPORT OF RSM RICHTER INC.
AS CCAA MONITOR OF
NEXIENT LEARNING INC. AND
NEXIENT LEARNING CANADA INC.**

August 10, 2009

1. INTRODUCTION

On June 29, 2009, the *Ontario* Superior Court of Justice (the "Court") issued an order (the "Initial Order") granting Nexient Learning Inc. ("Nexient") and Nexient Learning Canada Inc. ("Nexient Canada") (jointly, the "Company") protection pursuant to the *Companies' Creditors Arrangement Act* ("CCAA"). Pursuant to the Initial Order, RSM Richter Inc. ("Richter") was appointed the Company's monitor ("Monitor"). A copy of the Amended and Restated Initial Order is attached as Appendix "A".

The primary purpose of these restructuring proceedings is to allow the Monitor the opportunity to conduct a stalking horse sale process (the "Sale Process") in order to maximize the value of the Company's business and assets.

1.1 Purposes of this Report

The purposes of this report (“Report”) are to:

- a) Provide background information concerning the Company and these restructuring proceedings; and
- b) Summarize issues requiring an extension of the deadline to complete a sale transaction from August 15, 2009 to August 21, 2009.

2. BACKGROUND

The Company carries on business across Canada - it is the largest provider of corporate training and consulting in Canada, specializing in the areas of information technology, leadership, business solutions and business process improvement.

Nexient is a public company, the common shares of which are listed on the NEX, a separate board of the TSX Venture Exchange. Nexient Canada is a wholly-owned subsidiary of Nexient. The Company’s head office is located in Toronto, Ontario. The Company operates from 13 leased facilities across Canada, from which it serves over 3,000 corporate and public sector clients, as well as individual learners.

3. SALE PROCESS TIMELINE¹

The Sale Process approved by Order of Justice Cumming dated July 8, 2009 (the “Sale Process Order”) involves a stalking horse bid and specified bidding procedures. The stalking horse bid was submitted by 2210961 Ontario Limited² (the “Stalking Horse”) to purchase substantially all of the Company’s assets, property and undertaking (the “Stalking Horse

¹ Capitalized terms in this section of the Report have the meanings ascribed to them in the Sale Process Order and/or the Sale Process Overview.

² An entity incorporated by The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management, the Company’s subordinate secured creditor and DIP lender in these proceedings.

Offer”). The terms of the Sale Process (the “Sale Process Overview”) and a copy of the Sale Process Order are attached as Appendices “B” and “C”, respectively.

The Sale Process contemplates the following timeline:

- August 4, 2009 – Offers were required to be submitted to the Monitor (the “Offer Deadline”);
- August 5, 2009 – In the event that one or more parties submitted a Qualified Bid, the Qualified Bidder(s) and the Stalking Horse were to be invited to submit a Final Offer by 5:00 p.m. on August 5, 2009 (the “Final Offer Deadline”); and
- August 15, 2009 – Closing date of a transaction.

The Monitor has the right to amend the Sale Process as it considers appropriate.

On or prior to the Offer Deadline, one or more parties submitted a Qualified Bid and, accordingly, bidders were required to submit a Final Offer by the Final Offer Deadline.

On August 6, 2009, in accordance with the Sale Process Order, the Monitor selected an offer as the Winning Bid.

The Monitor is working with the Purchaser to finalize certain business issues and agreements related to its offer and is drafting materials to seek court approval of the transaction with the Purchaser (“Transaction”). The Monitor anticipates that a sale approval motion will be heard on or around August 18, 2009 and that subject to the approval of this Honourable Court the Transaction will be completed on or prior to August 21, 2009.

Further details regarding the Sale Process and the Transaction will be provided in the Monitor’s report to be filed in connection with a sale approval motion.

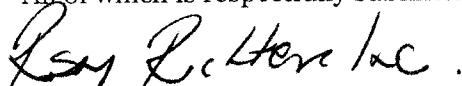
3.1 Extension

The Monitor has extended the deadline to complete a transaction under the Sale Process for the following reasons:

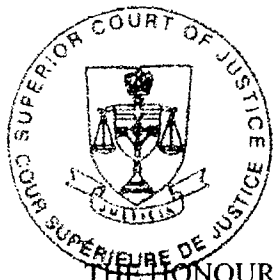
- The Transaction maximizes value and preserves the Company's business;
- The Monitor and the Purchaser require a brief extension to finalize all of the agreements and documents in connection with the Transaction;
- The Monitor requires time to complete its report to Court recommending the Transaction;
- The Purchaser consents to the extension;
- The extension will provide the Monitor with the opportunity to provide appropriate notice of the sale approval motion;
- The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management, the DIP lender and a secured lender of the Company, and Comerica Bank, the Company's operating lender, consent to the extension; and
- No stakeholder is prejudiced by the extension as there is sufficient funding for the Company to continue to operate through to August 21, 2009.

* * *

All of which is respectfully submitted,



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



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

WEDNESDAY, THE 8TH

)

JUSTICE CUMMING

)

DAY OF JULY, 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. (the "Applicants")**

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Donna de Winter sworn June 26, 2009 and the Exhibits thereto, the Affidavit of Donna de Winter sworn July 2, 2009 and the Exhibits thereto and the First Report and the Supplement to the First Report of RSM Richter Inc. in its capacity as court-appointed monitor of the Applicants (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, Comerica Bank, The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management, Fund 321 Limited Partnership, c.o.b. as Wellington Financial Fund II ("**Wellington**") and Clairvest Group Inc. ("**Clairvest**"), and on reading the consent of RSM Richter Inc. to act as the Monitor,

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that each of the Applicants is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, the Applicants and one or more classes of their secured and/or unsecured creditors, as the Applicants deem appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in

each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any

nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. THIS COURT ORDERS that, until such time as the Applicants deliver a notice in writing to repudiate a real property lease in accordance with paragraph 10(c) of this Order (a “**Notice of Repudiation**”), the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the Applicants shall pay all Rent due for the notice period stipulated in paragraph 10(c) of this Order, to the extent that Rent for such period has not already been paid.

9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. THIS COURT ORDERS that the Applicants shall, subject to any covenants contained in the Definitive Documents (as defined below), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$500,000 in the aggregate, subject to paragraph (c), if applicable;

- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) in accordance with paragraphs 11 and 12, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicants and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (d) repudiate such of their arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicants deem appropriate on such terms as may be agreed upon between the Applicants and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan.

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

11. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants repudiate the lease governing such leased premises in accordance with paragraph 10(c) of this Order and vacates such leased premises, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph 10(c) of this Order), and the repudiation of the lease shall be without prejudice to the Applicants’ claim to the fixtures in dispute.

12. THIS COURT ORDERS that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected

leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

13. THIS COURT ORDERS that, subject to the rights of a trustee in bankruptcy, (i) subject to paragraphs 8, 10, 11 and 12 of this Order, or except as expressly permitted by the terms of all of the real property leases (collectively, the "**Leases**"), none of the Leases shall be amended or varied, or deemed to be amended or varied, in any way without obtaining the prior written consent of the applicable landlords (collectively, the "**Landlords**"); and (ii) where any Leases are not, in accordance with their terms, transferable or assignable to a purchaser without first obtaining the consent of the applicable Landlord, none of the Leases shall, absent further Order of the Court, be transferred, conveyed, assigned or vested in a purchaser by operation of this Order, save and except to the extent that respective consents have been, or are in the future, obtained from the respective Landlords.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. THIS COURT ORDERS that until and including July 29, 2009, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be

agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicants shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, both before and after the date hereof, to make payments of the nature referred to in subparagraphs 5(a), 7(a), 7(b) and 7(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for the indemnity

provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that RSM Richter Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in the dissemination to the DIP Lender and its counsel on a periodic basis financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed

with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, as agreed to by the DIP Lender;

- (e) have full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. THIS COURT ORDERS that that the Monitor shall provide Wellington, Clairvest, Comerica Bank and the DIP Lender (as defined below) with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$325,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order

in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

DIP FINANCING

32. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a \$1,000,000 credit facility from The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management (the "**DIP Lender**") in order to finance the Applicants' working capital requirements provided that borrowings under such credit facility shall not exceed \$850,000 unless consented to by Comerica Bank or permitted by further Order of this Court.

33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender dated June 26, 2009 (the "**Commitment Letter**"), filed.

34. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents, as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof (collectively, the "**Definitive Documents**"), and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which charge shall not exceed the aggregate amount owed to the DIP Lender under the Definitive Documents. The DIP Lender's Charge shall have the priority set out in paragraphs 39 and 41 hereof.

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 5 days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property (save that any such rights and remedies relating to Leases shall be subject to the terms of the applicable Leases and to applicable laws) under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the Definitive Documents, the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to the DIP Lender in accordance with the Definitive Documents and the DIP Lender's Charge, but subject to the priorities as set out in paragraphs 33 and 35 of this Order; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

37. THIS COURT ORDERS AND DECLARES that the DIP Lender and Comerica Bank shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$325,000);

Second – Directors' Charge (to the maximum amount of \$1,000,000); and

Third – DIP Lender's Charge.

39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge, the DIP Lender's Charge or the Comerica Bank indebtedness, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender, Comerica Bank and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of

any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over Leases shall only be a Charge in the Applicants' interest in such Leases.

SERVICE AND NOTICE

44. THIS COURT ORDERS that the Applicants shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to their known creditors, other than employees and creditors to which the Applicants owes less than \$1,000, at their addresses as they appear on the Applicants' records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

45. THIS COURT ORDERS that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

46. THIS COURT ORDERS that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website.

GENERAL

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

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

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

50. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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

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

53. THIS COURT ORDERS that this Order shall supersede the Order of Madam Justice Pepall dated June 29, 2009 made in this proceeding.

July 8, 2009 Peter A. Cumming J.

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

JUL 08 2009

PER / PAR:

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

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

Proceedings commenced at Toronto

**AMENDED AND RESTATED
INITIAL CCAA ORDER**

CHAITONS LLP

Barristers and Solicitors
185 Sheppard Avenue West
Toronto, ON M2N 1M9

Harvey Chaiton

LSUC registration no. 21592F
Tel: (416) 218-1129
fax: (416) 218-1829

Lawyers for the Applicants

SALE PROCESS OVERVIEW

A summary of the proposed sale process ("Sale Process") is as follows:

1. Subject to Court approval, the Asset Purchase Agreement (the "Stalking Horse APA") among Nexient Learning Inc., Nexient Learning Canada Inc. (collectively, the "Company") and 2210961 Ontario Limited (the "Stalking Horse") would be a stalking horse offer in the Sale Process detailed herein.
2. The Stalking Horse APA contemplates that the Stalking Horse will acquire substantially all of the Company's business and assets (the "Assets").
3. The Monitor's corporate finance group was engaged prior to these proceedings to assist the Company with a sale process. The Monitor's corporate finance group, in consultation with the Company, has prepared a list of prospective purchasers which it believes could have an interest in acquiring the Company's Assets. The Monitor will contact all parties identified as well as any additional parties that come to its attention. Certain of the prospective purchasers have commenced diligence and continue to evaluate the opportunity.
4. An interest solicitation letter providing an overview of the Company's business, the transaction contemplated by the Stalking Horse APA and the acquisition opportunity will be distributed to all prospective purchasers identified by the Monitor.
5. Upon execution of a confidentiality agreement, the Monitor will provide prospective purchasers with a confidential information memorandum and access to an electronic data room which will include financial and other Company information.
6. The Monitor will facilitate diligence by prospective purchasers, including arranging meetings with the Company's management and key employees, as appropriate. All such meetings will be held in the presence of a representative of the Monitor.
7. Prospective purchasers will be provided with an electronic version of the Stalking Horse APA so that they can submit a form of offer in the form of the Stalking Horse APA.
8. Prospective purchasers will be entitled to submit offers for the assets of the Company on an individual basis or *en bloc*. Preference will be given to *en bloc* offers. Offers for portions of the business will still be required to meet the definition of a Qualified Bid, as defined in paragraph 10 below. The Monitor shall also have the right to combine offers submitted on piece-meal basis.
9. Offers will be required to be submitted to the Monitor by 10:00 am (Toronto time) on August 4, 2009 (the "Offer Deadline"), being four weeks from the contemplated making of the Sale Process order, if so made.

10. For a party to be a qualified bidder, the bidder's offer will have to be:

- substantially in the form of the Stalking Horse APA, with any changes to the offer blacklined against the Stalking Horse APA;
- at least \$100,000 greater than the purchase price in the Stalking Horse APA;
- submitted with a deposit of at least 15% of the Purchase Price;
- no more conditional or burdensome than the Stalking Horse APA;
- supported, in the sole discretion of the Monitor, by evidence of financing sufficient to close a transaction within the timelines detailed in these procedures;
- irrevocable until August 15, 2009 and specify that the closing shall take place prior to August 15, 2009; and
- for greater certainty, an offer shall not be considered a Qualified Bid unless it provides for cash consideration to satisfy the Comerica Debt in full, or, to the extent that Comerica consents, in its discretion, the assumption of the Comerica Debt.

The party submitting an offer that meets the above criteria would be a "Qualified Bidder" and any such offer would be a "Qualified Bid".

11. In the event that one or more parties submits a Qualified Bid, the Qualified Bidder or Qualified Bidders and the Stalking Horse will be invited to submit a final offer (each a "Final Offer" and collectively, the "Final Offers") by 5 pm on August 5, 2009 (the "Final Offer Deadline"). The Monitor, exercising its reasonable business judgement, will select the best of the Final Offers (the "Winning Bid") and will seek Court approval of the Winning Bid and a vesting order in connection with the transaction contemplated by the Winning Bid within five (5) business days following the Final Offer Deadline. Each of the Final Offers shall be irrevocable until August 15, 2009.
12. If no Qualified Bids are received by the Offer Deadline, the Monitor shall bring a motion for an approval and vesting order in connection with the transaction contemplated by the Stalking Horse APA by no later than August 11, 2009.
13. In executing the Sale Process, the Monitor will have the right to amend the Sale Process as it considers appropriate including, without limitation, extending the Offer Deadline and the Final Offer Deadline on notice to the Stalking Horse and all other prospective purchasers.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

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WEDNESDAY
MONDAY, THE 8TH

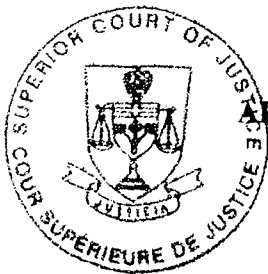
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JUSTICE CUMMING

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DAY OF JULY, 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. (THE "APPLICANTS")**

ORDER

(Approval of Stalking Horse Offer and Sale Process)

THIS MOTION, made by the Applicants, for an order (*inter alia*) approving the activities of RSM Richter Inc. in its capacity as court-appointed monitor of the Applicants (the "**Monitor**") as 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 (collectively, the "**First Report**"), approving the execution of an agreement of purchase and sale (the "**Stalking Horse Offer**") between the Applicants and 2210961 Ontario Limited (the "**Purchaser**") dated July 3, 2009, and approving the Sale Process (as that term is defined in the First Report), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Donna De Winter sworn July 2, 2009 and the First Report, and on hearing the submissions by counsel for the Applicants, Comerica Bank, The

Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management, Fund 321 Limited Partnership, c.o.b. as Wellington Financial Fund II,

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 the First Report and the activities of the Monitor described therein are hereby approved.
3. THIS COURT ORDERS that the Monitor on behalf of the Applicants is hereby authorized and directed to execute the Stalking Horse Offer.
4. THIS COURT ORDERS that the Sale Process (as that term is defined in the First Report) is hereby approved, and the Monitor is hereby authorized and directed to proceed immediately with the Sale Process.
5. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Monitor shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Applicants' assets (the "Assets") and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Assets (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Monitor, or

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in the alternative destroy all such information. The purchaser of any Assets shall be entitled to continue to use the personal information provided to it, and related to the Assets purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed.

July 8, 2009 Pat A. Cumming J.

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ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 08 2009

PER / PAR:

[Signature]

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

Proceedings commenced at TORONTO

**ORDER
(Approval of Stalking Horse Offer
and Sale Process)**

CHAITONS LLP
Barristers and Solicitors
185 Sheppard Avenue West
Toronto, ON M2N 1M9

Harvey Chaiton
LSUC Registration No. 21592F
Tel: (416) 218-1129
Fax: (416) 218-1849

George Benchetrit
LSUC Registration No. 34163H
Tel: (416) 218-1141
Fax: (416) 218-1841

Lawyers for the Applicants

RSM Richter

**Fourth Report of RSM Richter Inc.
as CCAA Monitor of
Nexient Learning Inc. and
Nexient Learning Canada Inc.**

RSM Richter Inc.
Toronto, August 13, 2009

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Appendix “B”	Monitor’s First Report to Court dated July 3, 2009 (without appendices)
Appendix “C”	Sale Process Overview
Appendix “D”	Monitor’s Third Report to Court dated August 10, 2009 (without appendices)
Appendix “E”	Asset Purchase Agreement dated August 5, 2009 between the Company and Global Knowledge Network (Canada) Inc. (redacted version)
Confidential Appendix “1”	Summary of Offers, the Transaction and Recoveries in these Proceedings
Confidential Appendix “2”	Asset Purchase Agreement dated August 5, 2009 between the Company and Global Knowledge Network (Canada) Inc. (unredacted version)

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

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

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

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

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

August 13, 2009

1. INTRODUCTION

On June 29, 2009, the *Ontario* Superior Court of Justice (the "Court") issued an order (the "Initial Order") granting Nexient Learning Inc. ("Nexient") and Nexient Learning Canada Inc. ("Nexient Canada") (jointly, the "Company") protection pursuant to the *Companies' Creditors Arrangement Act* ("CCAA"). Pursuant to the Initial Order, RSM Richter Inc. ("Richter") was appointed the Company's monitor ("Monitor"). A copy of the Amended and Restated Initial Order is attached as Appendix "A".

The primary purpose of these restructuring proceedings is to allow the Monitor the opportunity to conduct a stalking horse sale process ("Sale Process") for the Company's business and assets.

1.1 Purposes of this Report

The purposes of this report ("Report") are to:

- a) Provide background information concerning the Company and its restructuring proceedings;
- b) Summarize the results of the Sale Process carried out by the Monitor in accordance with an order issued by this Honourable Court on July 8, 2009 (the "Sale Process Order");
- c) Summarize a proposed transaction with Global Knowledge Network (Canada) Inc. (the "Purchaser") for the sale of substantially all of the Company's business and assets (the "Purchased Assets") pursuant to an asset purchase agreement dated August 5, 2009 (the "APA") (the "Transaction");
- d) Summarize the terms of an agreement contemplated to be entered into between the Company and the Purchaser entitled the *Transition and Occupation Services Agreement* (the "TOA");
- e) Set out the reasons that the Monitor recommends the Transaction;
- f) Provide an overview of the Monitor's activities since July 28, 2009, the date on which its activities were previously approved; and
- g) Recommend that this Honourable Court issue an order:
 - i. Approving the APA, the TOA and the Transaction;
 - ii. Vesting the Company's right, title and interest to the Purchased Assets in the Purchaser upon the filing by the Monitor of a certificate (the "First Monitor's Certificate") with this Honourable Court;
 - iii. Vesting the Company's right, title and interest to the contracts assigned in accordance with the TOA in the Purchaser upon the filing by the Monitor of a second certificate (the "Second Monitor's Certificate") with this Honourable Court;
 - iv. Approving the Monitor's execution of the APA, on the Company's behalf, and authorizing the Monitor to execute, on the Company's behalf, all other documents and agreements required to complete the Transaction;
 - v. Sealing the confidential appendices to this Report pending further order of this Honourable Court; and
 - vi. Approving the Monitor's activities, as described in this Report.

2. BACKGROUND

The Company carries on business across Canada - it is the largest provider of corporate training and consulting in Canada, specializing in the areas of information technology, leadership, business solutions and business process improvement.

Nexient is a public company, the common shares of which are listed on the NEX, a separate board of the TSX Venture Exchange. Nexient Canada is a wholly-owned subsidiary of Nexient. The Company's head office is located in Toronto, Ontario. The Company operates from 13 leased facilities across Canada from which it serves over 3,000 corporate and public sector clients as well as individual learners. The Company employs approximately 212 individuals. The Company's workforce is not unionized. The majority of the Company's instructors are independent contractors.

Further information concerning the Company is included in the Monitor's first report to Court dated July 3, 2009 ("First Report"), a copy of which is attached as Appendix "B", without appendices.

2.1 Secured Creditors

In addition to the claims under the Court approved charges under the Initial Order, being the Administration Charge (up to \$325,000), Directors' Charge (up to \$1 million) and the DIP Lender's Charge in favour of The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management ("Vengrowth") (up to \$1 million), the Company's secured creditors include the following:

Secured Lender ¹	Description	(\$000s) Amount
Comerica Bank ("Comerica")	Operating loan	4,700
Vengrowth	2 nd and 3 rd Debentures	9,253
Fund 321 Limited Partnership c.o.b. as Wellington Financial Fund II ("Wellington")	2 nd and 3 rd Debentures	9,399
Clairvest Group Inc. ("Clairvest")	3 rd Debentures and Mezzanine Debentures	1,634
Canadian Commercial Workers Industry Pension Plan ("CCWI")	3 rd Debentures and Mezzanine Debentures	1,078
Fallbrook Holdings Limited ("Fallbrook")	3 rd Debentures and Mezzanine Debentures	269
QT Inc. ("QT")	3 rd Debentures and Mezzanine Debentures	269
Mark Mitchell ("Mitchell")	3 rd Debentures and Mezzanine Debentures	269
John Krediet ("Krediet")	3 rd Debentures and Mezzanine Debentures	856
Enterprise Cape Breton Corporation ("ECBC")	Secured loan	450
Atlantic Canada Opportunities Agency ("ACOA")	Secured loan	250
Canada Revenue Agency	GST obligation	135
Total		28,562

The Company also has obligations totalling approximately \$286,000 arising from various capital leases.

¹ For the purposes of this Report, Clairvest, CCWI, Fallbrook, QT, Mitchell and Krediet are collectively referred to as the "Other Debenture Holders". This is relevant for Confidential Appendix "1".

3. SALE PROCESS

3.1 Overview

Pursuant to the Sale Process Order, the Sale Process involves a stalking horse bid and specified bidding procedures. The stalking horse bid was submitted by 2210961 Ontario Limited (the “Stalking Horse”), an entity incorporated by Vengrowth to purchase substantially all of the Company’s assets, property and undertaking (the “Stalking Horse Offer”). Vengrowth and Comerica were to provide capitalization to the Stalking Horse. The Stalking Horse Offer and the Sale Process were described in the First Report. The terms of the Sale Process (the “Sale Process Overview”) are set out in an appendix to the Monitor’s supplement to the First Report dated July 7, 2009. A copy of the Sale Process Overview is attached as Appendix “C”.

Pursuant to the Sale Process Order, the Monitor was authorized to carry out the Sale Process. The Sale Process conducted by the Monitor is summarized as follows:

- The Monitor prepared an interest solicitation letter that was circulated to approximately 280 acquisition “targets”, including targets identified by the Company and those identified by the corporate finance group of the Monitor’s offices. Attached to the solicitation letter was a confidentiality agreement (“CA”) that interested parties were required to sign in order to obtain a copy of a confidential information memorandum (“CIM”) prepared by the Monitor. In total, 23 prospective going-concern purchasers executed the CA and received a CIM;
- The Monitor assembled information in a virtual data room. The data room contained a copy of the Stalking Horse Offer, financial information and other documents and agreements relating to the Company. The Monitor facilitated due diligence requests from interested parties, including updating the data room with current financial and other information;
- The Monitor arranged for potential purchasers to meet with management. The Monitor was present at each of these meetings; and

- The Sale Process contemplated that a transaction would be completed with the Stalking Horse or an alternative bidder by August 15, 2009. Pursuant to the Sale Process Order, the Monitor has the right to amend the Sale Process as it considers appropriate. In this regard, the Monitor extended the deadline to complete a transaction under the Sale Process for the reasons noted in its third report to Court dated August 10, 2009, a copy of which is attached as Appendix "D" (without appendices).

Given the involvement of the Company's management, Vengrowth and Comerica with the Stalking Horse bid, the Sale Process was conducted exclusively by the Monitor.

3.2 Sale Process Results²

The bidding procedures approved by this Honourable Court required that if the Monitor received one or more Qualified Bids, the Qualified Bidders would be required to submit a Final Offer by 5 p.m. on August 5, 2009.

Prior to the Offer Deadline, one or more parties submitted a Qualified Bid and as such, Final Offers were submitted to the Monitor on August 5, 2009. The Monitor reviewed the Final Offers and determined the Winning Bidder. The Monitor advised the Purchaser on August 6, 2009 that its offer had been accepted and that it would recommend it for Court approval.

A summary of the offers submitted is provided in Confidential Appendix "1".

The Monitor is of the view that the information provided in Confidential Appendix "1" should be filed with the Court on a confidential basis so that the terms and values of the offers are not made publicly available, particularly if the Transaction does not close for any reason.

² Capitalized terms in this section of the Report have the meanings ascribed to them in the Sale Process Overview.

4. TRANSACTION

The Purchaser is a US-based entity and is not related to the Company. A summary of the Transaction is as follows:

- The Purchased Assets are comprised of all of the Company's tangible and intangible assets, including cash (although immediately prior to closing all cash on hand is expected to be applied to reduce the Company's secured obligations).
- The Purchaser has paid a deposit to the Monitor equivalent to 15% of the purchase price. (For the reasons noted in Section 3.2 above, the Monitor recommends that the purchase price remains confidential pending the completion of the Transaction.)
- In order to provide for a seamless transition of the Company's business to the Purchaser, the APA contemplates that the Purchaser and the Company will enter into the TOA for up to a 90-day period following closing (the "Transition Period"). During the Transition Period:
 - The Company will continue to employ those employees who are not hired by the Purchaser at closing. The Purchaser is assuming all employee obligations, including vacation pay, for those employees who accept employment with the Purchaser. The Purchaser is to advise the Monitor to which employees it intends to offer employment;
 - The Company will not terminate any of the Contracts (as defined in the APA) and will appoint the Purchaser as its agent in respect of such Contracts during the Transition Period, until such time as consents to the Contracts are obtained, as and if required. No later than seven business days prior to the end of the Transition Period, the Purchaser is to provide the Company with a list of the Contracts of which it elects to take an assignment;
 - The Purchaser will have use of the Company's 13 leased premises for a period of up to 90 days after the Closing Date, until the requisite landlord consents are obtained by the Purchaser or seven days after the Purchaser informs the Company that it wishes to vacate a particular leased premises; and

- During the Transition Period, the Purchaser will reimburse the Company for costs incurred by the Company in connection with the TOA, including employee costs, amounts payable under any Contracts and rent. The Purchaser is to provide a deposit equal to the Monitor's estimate of 15 days of such expenses. The Purchaser is also to indemnify the Monitor and the Company for all expenses and liabilities of the Monitor and/or the Company resulting from the Purchaser's actions and/or omissions (or the like) during the Transition Period.
- The APA provides the Monitor with continued access to the Company's books and records, which are to be retained by the Purchaser.
- The Transaction is to close no later than August 21, 2009.
- The only material condition to the APA is Court approval.

A copy of the redacted APA is attached as Appendix "E". A copy of the unredacted version of the APA is filed as Confidential Appendix "2".

As at the date of this Report, the Monitor and the Purchaser are finalizing the terms of the TOA. Once finalized, the Monitor intends to file the executed version of the TOA with this Honourable Court and serve the TOA on the Service List.

5. PROJECTED RECOVERIES IN THESE PROCEEDINGS

The Monitor has prepared a schedule of the projected recoveries to the secured creditors having an economic interest in these proceedings. As the information in that schedule would provide prospective purchasers or other parties with sufficient information to calculate the purchase price, or an estimate thereof, this schedule has been included as part of Confidential Appendix "1".

The Monitor has instructed its legal counsel, Ogilvy Renault LLP, to perform a review of the validity and enforceability of the security held by the secured creditors having an economic interest in the proceeds of realization in these proceedings. The Monitor expects to bring a

distribution motion as soon as possible. Until then, the sale proceeds will remain on deposit in a trust account maintained by the Monitor.

6. RECOMMENDATION

The Monitor recommends that this Honourable Court issue an order approving the Transaction for the following reasons:

- The Sale Process was executed on a basis consistent with the orders issued by this Honourable Court in these proceedings, including the Sale Process Order;
- The Purchaser's offer maximizes the recoveries in these proceedings. The Purchaser's offer was the highest generated through the Sale Process and the liquidation value of the Company's assets (largely intangibles) is immaterial;
- The Transaction will see the Company's business continue without disruption, thus providing benefits for employees, suppliers, landlords, customers and instructors;
- Vengrowth, as DIP lender³, consents to the Transaction;
- Comerica, the Company's operating lender, will be repaid in full from the proceeds of the Transaction;
- Those secured creditors having the vast majority of the interest in the balance of the recoveries in these proceedings have consented to the Transaction; and
- The Monitor is not aware of any opposition to the Transaction.

The Monitor respectfully recommends that this Honourable Court approve the execution of the APA by the Monitor, on behalf of the Company, and authorize and direct it to complete the Transaction, including the execution of any ancillary documents necessary to give effect to the Transaction.

³ As at the date of this Report, \$500,000 has been advanced under the DIP facility.

Subject to the granting of the Approval and Vesting Order, the closing of the Transaction and the execution of the TOA, a stay extension will be sought by the Company or the Monitor before August 31, 2009 (the date the current stay expires) to provide for an extension of the stay period through to the end of the Transition Period under the TOA.

7. OVERVIEW OF THE MONITOR'S ACTIVITIES

In addition to the activities described in this Report, the Monitor's activities have included:

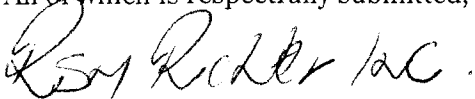
- Corresponding extensively with legal counsel to the Company and the Monitor in connection with these proceedings;
- Carrying out the Sale Process;
- Analyzing the offers submitted in the Sale Process;
- Negotiating and finalizing the APA, the TOA and other documents in connection with the Transaction and this sale approval motion;
- Assisting the Company to deal with numerous post-filing issues, including supplier, landlord and customer issues;
- Assisting the Company to deal with cash management issues on a daily basis;
- Posting on its website materials filed in these proceedings, including materials filed with this Honourable Court;
- Monitoring all receipts and reviewing all disbursements in accordance with the Initial Order and the DIP facility;
- Dealing with Comerica, Vengrowth and Wellington, including their legal counsel;
- Drafting the Monitor's third report to Court dated August 10, 2009; and
- Other matters pertaining to the administration of this mandate.

8. CONCLUSION AND RECOMMENDATION

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 of this Report.

* * *

All of which is respectfully submitted,

A handwritten signature in black ink, appearing to read "RSM Richter Inc.", is written over the typed name.

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



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

WEDNESDAY, THE 8TH

)

JUSTICE CUMMING

)

DAY OF JULY, 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. (the "Applicants")**

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Donna de Winter sworn June 26, 2009 and the Exhibits thereto, the Affidavit of Donna de Winter sworn July 2, 2009 and the Exhibits thereto and the First Report and the Supplement to the First Report of RSM Richter Inc. in its capacity as court-appointed monitor of the Applicants (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, Comerica Bank, The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management, Fund 321 Limited Partnership, c.o.b. as Wellington Financial Fund II ("**Wellington**") and Clairvest Group Inc. ("**Clairvest**"), and on reading the consent of RSM Richter Inc. to act as the Monitor,

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that each of the Applicants is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, the Applicants and one or more classes of their secured and/or unsecured creditors, as the Applicants deem appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in

each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any

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nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. THIS COURT ORDERS that, until such time as the Applicants deliver a notice in writing to repudiate a real property lease in accordance with paragraph 10(c) of this Order (a **"Notice of Repudiation"**), the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time (**"Rent"**), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the Applicants shall pay all Rent due for the notice period stipulated in paragraph 10(c) of this Order, to the extent that Rent for such period has not already been paid.

9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. THIS COURT ORDERS that the Applicants shall, subject to any covenants contained in the Definitive Documents (as defined below), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$500,000 in the aggregate, subject to paragraph (c), if applicable;

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- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) in accordance with paragraphs 11 and 12, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicants and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (d) repudiate such of their arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicants deem appropriate on such terms as may be agreed upon between the Applicants and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan.

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

11. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants repudiate the lease governing such leased premises in accordance with paragraph 10(c) of this Order and vacates such leased premises, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph 10(c) of this Order), and the repudiation of the lease shall be without prejudice to the Applicants’ claim to the fixtures in dispute.

12. THIS COURT ORDERS that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected

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leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

13. THIS COURT ORDERS that, subject to the rights of a trustee in bankruptcy, (i) subject to paragraphs 8, 10, 11 and 12 of this Order, or except as expressly permitted by the terms of all of the real property leases (collectively, the "**Leases**"), none of the Leases shall be amended or varied, or deemed to be amended or varied, in any way without obtaining the prior written consent of the applicable landlords (collectively, the "**Landlords**"); and (ii) where any Leases are not, in accordance with their terms, transferable or assignable to a purchaser without first obtaining the consent of the applicable Landlord, none of the Leases shall, absent further Order of the Court, be transferred, conveyed, assigned or vested in a purchaser by operation of this Order, save and except to the extent that respective consents have been, or are in the future, obtained from the respective Landlords.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. THIS COURT ORDERS that until and including July 29, 2009, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be

agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicants shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, both before and after the date hereof, to make payments of the nature referred to in subparagraphs 5(a), 7(a), 7(b) and 7(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for the indemnity

provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

23. THIS COURT ORDERS that RSM Richter Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in the dissemination to the DIP Lender and its counsel on a periodic basis financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed

with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, as agreed to by the DIP Lender;

- (e) have full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. THIS COURT ORDERS that that the Monitor shall provide Wellington, Clairvest, Comerica Bank and the DIP Lender (as defined below) with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$325,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order

in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

DIP FINANCING

32. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a \$1,000,000 credit facility from The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management (the "**DIP Lender**") in order to finance the Applicants' working capital requirements provided that borrowings under such credit facility shall not exceed \$850,000 unless consented to by Comerica Bank or permitted by further Order of this Court.

33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender dated June 26, 2009 (the "**Commitment Letter**"), filed.

34. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents, as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof (collectively, the "**Definitive Documents**"), and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which charge shall not exceed the aggregate amount owed to the DIP Lender under the Definitive Documents. The DIP Lender's Charge shall have the priority set out in paragraphs 39 and 41 hereof.

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 5 days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property (save that any such rights and remedies relating to Leases shall be subject to the terms of the applicable Leases and to applicable laws) under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the Definitive Documents, the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to the DIP Lender in accordance with the Definitive Documents and the DIP Lender's Charge, but subject to the priorities as set out in paragraphs 33 and 35 of this Order; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

37. THIS COURT ORDERS AND DECLARES that the DIP Lender and Comerica Bank shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$325,000);

Second – Directors' Charge (to the maximum amount of \$1,000,000); and

Third – DIP Lender's Charge.

39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

41. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge, the DIP Lender's Charge or the Comerica Bank indebtedness, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender, Comerica Bank and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

42. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of

any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

43. THIS COURT ORDERS that any Charge created by this Order over Leases shall only be a Charge in the Applicants' interest in such Leases.

SERVICE AND NOTICE

44. THIS COURT ORDERS that the Applicants shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to their known creditors, other than employees and creditors to which the Applicants owes less than \$1,000, at their addresses as they appear on the Applicants' records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

45. THIS COURT ORDERS that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

46. THIS COURT ORDERS that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website.

GENERAL

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

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

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

50. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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

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

53. THIS COURT ORDERS that this Order shall supersede the Order of Madam Justice Pepall dated June 29, 2009 made in this proceeding.

July 8, 2009 Peter A. Cumming J.

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

JUL 08 2009

PER / PAR:

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

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

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

Proceedings commenced at Toronto

**AMENDED AND RESTATED
INITIAL CCAA ORDER**

CHAITONS LLP

Barristers and Solicitors
185 Sheppard Avenue West
Toronto, ON M2N 1M9

Harvey Chaiton

LSUC registration no. 21592F

Tel: (416) 218-1129

fax: (416) 218-1829

Lawyers for the Applicants

RSM Richter

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**Report of RSM Richter Inc.
as CCAA Monitor of
Nexient Learning Inc. and
Nexient Learning Canada Inc.**

RSM Richter Inc.
Toronto, July 3, 2009

RSM Richter is an independent member firm of RSM International,
an affiliation of independent accounting and consulting firms.

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

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

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

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

**REPORT OF RSM RICHTER INC.
AS CCAA MONITOR OF
NEXIENT LEARNING INC. AND
NEXIENT LEARNING CANADA INC.**

July 3, 2009

1. INTRODUCTION

Pursuant to an order of the Ontario Superior Court of Justice (the "Court") made on June 29, 2009 (the "Initial Order"), Nexient Learning Inc. ("Nexient") and Nexient Learning Canada Inc. ("Nexient Canada") (jointly, the "Company") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") and RSM Richter Inc. ("Richter") was appointed the Monitor (the "Monitor"). A copy of the Initial Order is attached as Appendix "A".

This report ("Report") is filed by Richter in its capacity as Monitor.

The primary purpose of these restructuring proceedings is to allow the Company the opportunity to attempt to restructure its business and operations, including pursuant to a Court supervised sale process.

1.1 Purposes of this Report

The purposes of this Report are to:

- a) Provide background information about the Company;
- b) Summarize the “stalking horse” offer submitted by 2210961 Ontario Limited, an entity (“Newco”) incorporated by The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management, the Company’s subordinate secured creditor and debtor-in-possession (“DIP”) lender in these proceedings, to purchase substantially all of the Company’s assets, property and undertaking (the “Stalking Horse Offer”);
- c) Summarize the proposed sale process pursuant to which the business and assets of the Company would be marketed for sale (“Sale Process”);
- d) Summarize the reasons for proposed increases in the Directors’ Charge from \$500,000 to \$1 million and in the Administration Charge from \$250,000 to \$500,000 (the Directors’ Charge and the Administration Charge are referred to as the “Charges”); and
- e) Recommend that this Honourable Court make an order:
 - Approving the Stalking Horse Offer;
 - Approving the Sale Process and authorizing and directing the Monitor to conduct the Sale Process on the basis detailed herein; and
 - Approving the increases noted in (d) above to the Charges.

1.2 Currency

Unless otherwise noted, all currency references in this Report are to Canadian dollars.

2. BACKGROUND

The Company carries on business across Canada - it is the largest provider of corporate training in Canada, specializing in the areas of information technology, leadership and business solutions and business process improvement.

Nexient is a public company, the common shares of which are listed on the “NEX”, a separate board of the TSX Venture Exchange. Nexient Canada is a wholly-owned subsidiary of Nexient. The Company’s head office is located in Toronto, Ontario. The Company operates from 13 leased facilities across Canada, from which it serves over 3,000 corporate and public sector clients, as well as individual learners. The Company employs approximately 212 individuals. The Company’s workforce is not unionized. The majority of the Company’s instructors are independent contractors.

Comerica Bank (“Comerica”) provides the Company with a secured operating line facility on which Comerica is presently owed approximately \$4.6 million. There are various tranches of secured debt subordinate to Comerica, the next one being a \$5.25 million tranche held by The Vengrowth Traditional Industries Fund Inc., The Vengrowth II Investment Fund Inc. and Fund 321 Limited Partnership, carrying on business as Wellington Financial Fund II.

3. PRE-FILING MARKETING EFFORTS

Richter’s corporate finance group (the “CF Group”) was engaged in May, 2009 to assist the Company to advance a sale process which the Company had previously commenced. In the context of its mandate, the CF Group assisted the Company to work with a limited number of parties towards obtaining an offer to purchase. Due to the Company’s illiquidity, the Company filed for protection under the CCAA prior to being able to obtain such an offer. The Monitor understands that two of the interested parties continue to have an interest in the Company, one of which is at an advanced stage of diligence. Discussions continue among the Monitor, the Company and certain of these interested parties.

The CF Group has performed a review of the market to identify parties that may have an interest in acquiring the Company's business and assets. The CF Group has identified approximately 250 parties, including strategic and financial parties. In a distressed sale process such as this, it is common to undertake a wide marketing of the business.

4. THE STALKING HORSE OFFER

The Company intends to enter into an Asset Purchase Agreement with Newco (the "Stalking Horse APA"), pursuant to which:

- Newco would acquire substantially all of the Company's assets, property and undertaking;
- The purchase price would be equal to the amount outstanding under the DIP Facility plus amounts owing to Comerica plus any other obligations that rank in priority to the Comerica debt (the "Purchase Price"). The Purchase Price is estimated to be \$6.85 million¹, subject to the proposed increase in the Charges (as discussed in Section 6 of this Report), based on the Company's projected indebtedness as at August 17, 2009;
- Newco intends to assume various obligations, including certain real property leases; and
- Newco intends to offer employment to a large number of the Company's employees.

The Stalking Horse APA requires that a sale process be conducted substantially on the terms referenced in Section 5 below.

The terms of the Stalking Horse APA are consistent with Canadian insolvency transactions.

The Stalking Horse APA is subject to the approval of this Honourable Court and its only material condition is approval by this Honourable Court.

¹ Calculated as follows: Assumed Comerica debt (\$4.6 million) + Administration Charge (\$500,000) + Directors' Charge (\$1 million) + Projected DIP balance as at August 17, 2009 (\$745,000).

A copy of the Stalking Horse APA is attached to the Affidavit of Donna De Winter sworn July 2, 2009 and filed in connection with this motion.

5. SALE PROCESS

The terms of the proposed Sale Process are provided in Appendix "B".

5.1 Sale Process Recommendation

The Monitor believes that the proposed Sale Process is reasonable in the circumstances for the following reasons:

- A stalking horse process is commonly used to sell the business and assets of a distressed business. This process is being used more frequently in Canadian insolvency proceedings and the Monitor has successfully used this process on several prior occasions. This process is particularly effective at preserving the goodwill of a business because it messages to all stakeholders that the business should survive the restructuring process;
- With some assistance of the CF Group, the Company has previously marketed its business and assets for sale, albeit for a limited period of time and to a limited number of parties. Due to these efforts, it is the Monitor's view that it is not necessary that the process be longer than four weeks. The timeline is driven, principally, by the Company's cash flow projections;
- Based on the Company's cash flow projections, the Company may not have the financing in place to support a protracted sale process; however, the process planned is of sufficient length to allow interested parties to perform satisfactory diligence and to submit offers in the circumstances. Accordingly, the Sale Process provides an opportunity for a result superior to the transaction contemplated by the Stalking Horse APA;
- The Company's principal assets include intangibles that could have nominal realizable value if the business is discontinued. It is important that the Company's restructuring be completed expeditiously and that customers and instructors understand that the Company is to continue to operate as a going-concern. Customers may cease to book programs should these proceedings be protracted – this would impair the Company's viability; and

- The Monitor intends to consider offers for the business and assets on a piece-meal basis. As is commonly the case, preference is given to *en bloc* offers. It is the Monitor's experience that offers for portions of the business are typically for less than *en bloc* offers. The Monitor shall also have the right to combine offers submitted on a piece-meal basis.

6. INCREASES IN THE COURT ORDERED CHARGES

It was initially anticipated by the Company that the Directors' and Officers' Charge and the Administration Charge would total \$1 million and \$500,000, respectively. As a result of concerns raised by Comerica prior to these proceedings regarding the amounts of the Charges, an interim agreement was reached to reduce the Directors' Charge and the Administration Charge to \$500,000 and \$250,000, respectively, pending finalization of the Stalking Horse Offer. With the finalization of the Stalking Horse APA, the Company is seeking increases in the Charges to the amounts initially contemplated. The DIP Lender has consented to the increases in the Charges.

In an email dated July 2, 2009, counsel to Comerica advised that Comerica opposes the increases in the Charges.

6.1 Directors' Charge

An increase in the Directors' Charge to \$1 million in favour of the Company's Directors and Officers is being sought to protect them, if necessary, for any liabilities that they may incur from and after the commencement of the CCAA Proceedings, as well as for unpaid GST and vacation pay owing at the filing date. Both of these obligations rank in priority to the Company's secured lenders outside of bankruptcy.

The Director's and Officers' Charge has been estimated based on the following amounts:

	(\$000s)
Salaries, wages, benefits and other payroll costs for one pay period	450
Present vacation pay obligation	350
Present GST obligation	180
Total	<u>980</u>

Ms. De Winter is the sole remaining director. In the Monitor's opinion, her involvement will facilitate the operations of the Company in these proceedings and should preserve value for stakeholders. The information made available to the Monitor in advance of these proceedings is consistent with the estimates detailed in the table above. The Monitor has been advised that the Company is without insurance for the liabilities that would be covered by the Directors' Charge.

6.2 Administration Charge

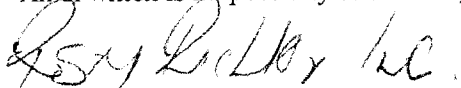
The Administration Charge may be called upon by certain of the professionals should their fees be unpaid at the time of distribution. The proposed increase is required as there is a risk that the professional fees could exceed those included in the cash flow and, accordingly the Administration Charge will protect the professionals for the balance owing, if any.

7. CONCLUSION AND RECOMMENDATION

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief sought by the Company.

* * *

All of which is respectfully submitted,

A handwritten signature in black ink, appearing to read "RSM Richter Inc.", is written over the typed name.

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

SALE PROCESS OVERVIEW

A summary of the proposed sale process ("Sale Process") is as follows:

1. Subject to Court approval, the Asset Purchase Agreement (the "Stalking Horse APA") among Nexient Learning Inc., Nexient Learning Canada Inc. (collectively, the "Company") and 2210961 Ontario Limited (the "Stalking Horse") would be a stalking horse offer in the Sale Process detailed herein.
2. The Stalking Horse APA contemplates that the Stalking Horse will acquire substantially all of the Company's business and assets (the "Assets").
3. The Monitor's corporate finance group was engaged prior to these proceedings to assist the Company with a sale process. The Monitor's corporate finance group, in consultation with the Company, has prepared a list of prospective purchasers which it believes could have an interest in acquiring the Company's Assets. The Monitor will contact all parties identified as well as any additional parties that come to its attention. Certain of the prospective purchasers have commenced diligence and continue to evaluate the opportunity.
4. An interest solicitation letter providing an overview of the Company's business, the transaction contemplated by the Stalking Horse APA and the acquisition opportunity will be distributed to all prospective purchasers identified by the Monitor.
5. Upon execution of a confidentiality agreement, the Monitor will provide prospective purchasers with a confidential information memorandum and access to an electronic data room which will include financial and other Company information.
6. The Monitor will facilitate diligence by prospective purchasers, including arranging meetings with the Company's management and key employees, as appropriate. All such meetings will be held in the presence of a representative of the Monitor.
7. Prospective purchasers will be provided with an electronic version of the Stalking Horse APA so that they can submit a form of offer in the form of the Stalking Horse APA.
8. Prospective purchasers will be entitled to submit offers for the assets of the Company on an individual basis or *en bloc*. Preference will be given to *en bloc* offers. Offers for portions of the business will still be required to meet the definition of a Qualified Bid, as defined in paragraph 10 below. The Monitor shall also have the right to combine offers submitted on piece-meal basis.
9. Offers will be required to be submitted to the Monitor by 10:00 am (Toronto time) on August 4, 2009 (the "Offer Deadline"), being four weeks from the contemplated making of the Sale Process order, if so made.

10. For a party to be a qualified bidder, the bidder's offer will have to be:

- substantially in the form of the Stalking Horse APA, with any changes to the offer blacklined against the Stalking Horse APA;
- at least \$100,000 greater than the purchase price in the Stalking Horse APA;
- submitted with a deposit of at least 15% of the Purchase Price;
- no more conditional or burdensome than the Stalking Horse APA;
- supported, in the sole discretion of the Monitor, by evidence of financing sufficient to close a transaction within the timelines detailed in these procedures;
- irrevocable until August 15, 2009 and specify that the closing shall take place prior to August 15, 2009; and
- for greater certainty, an offer shall not be considered a Qualified Bid unless it provides for cash consideration to satisfy the Comerica Debt in full, or, to the extent that Comerica consents, in its discretion, the assumption of the Comerica Debt.

The party submitting an offer that meets the above criteria would be a "Qualified Bidder" and any such offer would be a "Qualified Bid".

11. In the event that one or more parties submits a Qualified Bid, the Qualified Bidder or Qualified Bidders and the Stalking Horse will be invited to submit a final offer (each a "Final Offer" and collectively, the "Final Offers") by 5 pm on August 5, 2009 (the "Final Offer Deadline"). The Monitor, exercising its reasonable business judgement, will select the best of the Final Offers (the "Winning Bid") and will seek Court approval of the Winning Bid and a vesting order in connection with the transaction contemplated by the Winning Bid within five (5) business days following the Final Offer Deadline. Each of the Final Offers shall be irrevocable until August 15, 2009.
12. If no Qualified Bids are received by the Offer Deadline, the Monitor shall bring a motion for an approval and vesting order in connection with the transaction contemplated by the Stalking Horse APA by no later than August 11, 2009.
13. In executing the Sale Process, the Monitor will have the right to amend the Sale Process as it considers appropriate including, without limitation, extending the Offer Deadline and the Final Offer Deadline on notice to the Stalking Horse and all other prospective purchasers.

RSM Richter

**Third Report of RSM Richter Inc.
as CCAA Monitor of
Nexient Learning Inc. and
Nexient Learning Canada Inc.**

RSM Richter Inc.
Toronto, August 10, 2009

RSM Richter is an independent member firm of RSM International,
an affiliation of independent accounting and consulting firms.

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- Appendix "A" Amended and Restated Initial Order of the *Ontario* Superior Court of Justice dated July 8, 2009
- Appendix "B" Sale Process Overview
- Appendix "C" Sale Process Order of the *Ontario* Superior Court of Justice dated July 8, 2009

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

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

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

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

**THIRD REPORT OF RSM RICHTER INC.
AS CCAA MONITOR OF
NEXIENT LEARNING INC. AND
NEXIENT LEARNING CANADA INC.**

August 10, 2009

1. INTRODUCTION

On June 29, 2009, the *Ontario* Superior Court of Justice (the "Court") issued an order (the "Initial Order") granting Nexient Learning Inc. ("Nexient") and Nexient Learning Canada Inc. ("Nexient Canada") (jointly, the "Company") protection pursuant to the *Companies' Creditors Arrangement Act* ("CCAA"). Pursuant to the Initial Order, RSM Richter Inc. ("Richter") was appointed the Company's monitor ("Monitor"). A copy of the Amended and Restated Initial Order is attached as Appendix "A".

The primary purpose of these restructuring proceedings is to allow the Monitor the opportunity to conduct a stalking horse sale process (the "Sale Process") in order to maximize the value of the Company's business and assets.

1.1 Purposes of this Report

The purposes of this report (“Report”) are to:

- a) Provide background information concerning the Company and these restructuring proceedings; and
- b) Summarize issues requiring an extension of the deadline to complete a sale transaction from August 15, 2009 to August 21, 2009.

2. BACKGROUND

The Company carries on business across Canada - it is the largest provider of corporate training and consulting in Canada, specializing in the areas of information technology, leadership, business solutions and business process improvement.

Nexient is a public company, the common shares of which are listed on the NEX, a separate board of the TSX Venture Exchange. Nexient Canada is a wholly-owned subsidiary of Nexient. The Company’s head office is located in Toronto, Ontario. The Company operates from 13 leased facilities across Canada, from which it serves over 3,000 corporate and public sector clients, as well as individual learners.

3. SALE PROCESS TIMELINE¹

The Sale Process approved by Order of Justice Cumming dated July 8, 2009 (the “Sale Process Order”) involves a stalking horse bid and specified bidding procedures. The stalking horse bid was submitted by 2210961 Ontario Limited² (the “Stalking Horse”) to purchase substantially all of the Company’s assets, property and undertaking (the “Stalking Horse

¹ Capitalized terms in this section of the Report have the meanings ascribed to them in the Sale Process Order and/or the Sale Process Overview.

² An entity incorporated by The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management, the Company’s subordinate secured creditor and DIP lender in these proceedings.

Offer"). The terms of the Sale Process (the "Sale Process Overview") and a copy of the Sale Process Order are attached as Appendices "B" and "C", respectively.

The Sale Process contemplates the following timeline:

- August 4, 2009 – Offers were required to be submitted to the Monitor (the "Offer Deadline");
- August 5, 2009 – In the event that one or more parties submitted a Qualified Bid, the Qualified Bidder(s) and the Stalking Horse were to be invited to submit a Final Offer by 5:00 p.m. on August 5, 2009 (the "Final Offer Deadline"); and
- August 15, 2009 – Closing date of a transaction.

The Monitor has the right to amend the Sale Process as it considers appropriate.

On or prior to the Offer Deadline, one or more parties submitted a Qualified Bid and, accordingly, bidders were required to submit a Final Offer by the Final Offer Deadline.

On August 6, 2009, in accordance with the Sale Process Order, the Monitor selected an offer as the Winning Bid.

The Monitor is working with the Purchaser to finalize certain business issues and agreements related to its offer and is drafting materials to seek court approval of the transaction with the Purchaser ("Transaction"). The Monitor anticipates that a sale approval motion will be heard on or around August 18, 2009 and that subject to the approval of this Honourable Court the Transaction will be completed on or prior to August 21, 2009.

Further details regarding the Sale Process and the Transaction will be provided in the Monitor's report to be filed in connection with a sale approval motion.

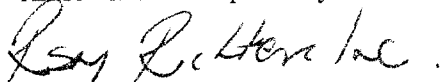
3.1 Extension

The Monitor has extended the deadline to complete a transaction under the Sale Process for the following reasons:

- The Transaction maximizes value and preserves the Company's business;
- The Monitor and the Purchaser require a brief extension to finalize all of the agreements and documents in connection with the Transaction;
- The Monitor requires time to complete its report to Court recommending the Transaction;
- The Purchaser consents to the extension;
- The extension will provide the Monitor with the opportunity to provide appropriate notice of the sale approval motion;
- The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management, the DIP lender and a secured lender of the Company, and Comerica Bank, the Company's operating lender, consent to the extension; and
- No stakeholder is prejudiced by the extension as there is sufficient funding for the Company to continue to operate through to August 21, 2009.

* * *

All of which is respectfully submitted,



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

AGREEMENT OF PURCHASE AND SALE

This Agreement is made this 5th day of August, 2009,

BETWEEN:

GLOBAL KNOWLEDGE NETWORK (CANADA) INC.,
a corporation amalgamated under the laws of Province of Ontario

(the "Purchaser")

AND:

NEXIENT LEARNING INC.,
a corporation incorporated under the laws of the Province of Nova Scotia,
by RSM Richter Inc., solely in its capacity as Court-appointed monitor, and not in its personal
capacity

AND:

NEXIENT LEARNING CANADA INC.,
a corporation incorporated under the laws of Canada,
by RSM Richter Inc., solely in its capacity as Court-appointed monitor, and not in its personal
capacity

RECITALS:

- A. By an Order of the Ontario Superior Court of Justice dated June 29, 2009, as may be amended from time to time (the "Initial Order"), Nexient Learning Inc. and Nexient Learning Canada Inc. (collectively, the "Vendors") were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA Proceedings");
- B. The Initial Order names RSM Richter Inc. as monitor ("Monitor") in the CCAA Proceedings;
- C. The Vendors have obtained or will obtain the Sales Process Order (as defined herein) to authorize the Vendors to enter into this Agreement of Purchase and Sale and authorize the Monitor to conduct a sales process with respect to the Assets (as defined herein).

FOR VALUE RECEIVED, the parties agree as follows:

SECTION 1 - INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) "Administration Charge" has the meaning set out in the Initial Order;

- (b) **"Agreement"** means the within agreement of purchase and sale between the Vendors and the Purchaser, which agreement shall become effective upon execution of this Agreement by the Vendors;
- (c) **"Assets"** means all of the Vendors' right, title and interest, in and to all of the tangible and intangible assets, properties, rights and Claims, wherever located, used, intended for use or arising in connection with the ownership, operation or conduct of the Business (but not including any Excluded Assets).
- (d) **"Assignment and Assumption Agreement"** means an agreement to be entered into between the Purchaser and the Vendors at the Closing Time wherein the Vendors assign the Contracts to the Purchaser and the Purchaser agrees to assume the Assumed Obligations;
- (e) **"Assumed Obligations"** has the meaning set out in Section 2.5 hereof;
- (f) **"Assumed Debt"** means, as at the Closing Time, the amount of the obligations secured by the Administration Charge, the Directors' Charge, the DIP Lender's Charge and the Comerica Debt and any other obligations of the Vendors that rank in priority to the Comerica Debt outside of a formal bankruptcy proceeding under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (g) **"Bid Deadline"** has the meaning set out in Schedule "A" to the Sales Process Order;
- (h) **"Bill of Sale"** means a bill of sale evidencing that the Assets have been conveyed by the Vendors to the Purchaser;
- (i) **"Books and Records"** means all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), including tax and accounting books and records, used or intended for use by the Vendors, as the case may be, in connection with the ownership, operation or conduct of the Business or the Assets, including the Contracts, customer and supplier lists, customer information and account records, sales records, computer files, data processing records, electronic information (including emails and web page content), employment and personnel records, sales literature, advertising and marketing data and records, credit records, records relating to suppliers and other data;
- (j) **"Business"** means the business now carried on by the Vendors comprising corporate training and consulting specializing in the areas of information technology, leadership and business solutions and business process improvement;
- (k) **"Business Day"** means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (l) **"CCAA Proceedings"** has the meaning set out above the recitals hereto;

- (m) **"Claims"** means any claim (including any cross-claim or counterclaim), demand, investigation, chose in or cause of action, suit, default, assessment, litigation, third party action, arbitral proceeding or proceeding by or before any Person;
- (n) **"Closing"** means the successful completion of the Transaction;
- (o) **"Closing Date"** means the Business Day following the date on which the Vesting Order is granted or such other date as agreed to in writing by the parties hereto;
- (p) **"Closing Time"** means 2:00 p.m. (Toronto time) on the Closing Date;
- (q) **"Comerica Debt"** means all amounts owing by the Vendors to Comerica Bank as at the Closing Time;
- (r) **"Contracts"** means all of the contracts and other written agreements to which the Vendors or each or them are parties, including without limitation any leases in respect of the Leased Premises;
- (s) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- (t) **"Deposit"** has the meaning ascribed to that term in Section 2.9;
- (u) **"DIP Lender's Charge"** has the meaning set out in the Initial Order;
- (v) **"Directors' Charge"** has the meaning set out in the Initial Order;
- (w) **"ETA"** means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;
- (x) **"Excluded Assets"** means any Assets that the Purchaser elects to exclude prior to Closing, in accordance with Section 2.7 hereof, which are listed on Schedule "A" hereto, including, without limitation, any Contracts so listed on Schedule "A", as it may be amended;
- (y) **"Final Offer(s)"** has the meaning set out in Section 5.9 hereof;
- (z) **"Final Offer Deadline"** has the meaning set out in Section 5.9 hereof;
- (aa) **"GST"** means all goods and service taxes payable under Part IX of the ETA;
- (bb) **"HST"** means harmonized sales taxes payable under the ETA;
- (cc) **"Initial Order"** has the meaning set out in the recitals hereto;
- (dd) **"Leased Premises"** means the premises leased and occupied by either of the Vendors listed on Schedule "B" hereto;
- (ee) **"Monitor"** has the meaning set out in the recitals hereto;
- (ff) **"Occupation Period"** has the meaning set out in section 5.12 hereof;

- (gg) **"Overbid Amount"** has the meaning set out in Section 1.1(pp) hereof;
- (hh) **"Person"** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, governmental authority or other entity however designated or constituted;
- (ii) **"Purchase Price"** has the meaning set out in Section 2.8 hereof;
- (ij) **"Purchase Price Balance"** is that amount by which the Purchase Price exceeds the aggregate amount of the Deposit;
- (kk) **"QST"** means Quebec sales taxes payable under the QSTA;
- (ll) **"QSTA"** means the *Act Respecting the Quebec Sales Tax*, R.S.Q., c. T-0.1, as amended;
- (mm) **"Vendors"** has the meaning set out above the recitals hereto;
- (nn) **"Sales Process Order"** means an Order or Orders to be made by the Court upon terms acceptable to the Parties, acting reasonably, that alone or in combination, among other things: (i) authorizes the Vendors to enter into this Agreement; and (ii) which shall set out the terms and conditions of and a timetable for a sales process to be conducted by the Monitor with respect to the Assets;
- (oo) **"Stalking Horse Bid"** has the meaning set out in Section 5.9 hereof;
- (pp) **"Superior Bid(s)"** shall mean an offer by any Person other than the purchaser identified in the Stalking Horse Bid or its affiliates to purchase all or any of the Assets, which has cash consideration at least \$100,000 higher than the Stalking Horse Bid as determined pursuant to the Sales Process Order (the **"Overbid Amount"**), provided that no offer shall qualify as a Superior Bid unless it meets, among other things, the following minimum criteria:
 - (a) the offer must be accompanied by a cash deposit which is at least equal to fifteen percent (15%) of the Purchase Price;
 - (b) the offer must be irrevocable until August 15, 2009 and specify that the closing shall take place prior to August 15, 2009;
 - (c) the offer must be on terms no less favourable and no more burdensome or conditional than the Stalking Horse Bid;
 - (d) the offer must be substantially in the form of the Stalking Horse Bid, with any changes to the offer blacklined against the Stalking Horse Bid; and
 - (e) the offer must be supported, in the sole discretion of the Monitor, by evidence of financing sufficient to close a transaction within the timelines detailed in the Sale Process Order;

For greater certainty, a Superior Bid shall provide cash consideration to satisfy the Comerica Debt in full or, to the extent that Comerica consents, in its discretion, the assumption of the Comerica Debt;

- (qq) **"Transaction"** means the transaction of purchase and sale contemplated by this Agreement;
- (rr) **"Transition and Occupation Services Agreement"** means the agreement to be entered between the parties with respect to a transition period regarding the employees of the Vendors, certain Contracts and leases for the Leased Premises and for an occupation period during which the Purchaser shall be entitled to occupy the Leased Premises and in form and substance acceptable to the parties hereto, acting reasonably;
- (ss) **"Transition Period"** has the meaning set out in Section 5.11;
- (tt) **"Transition Period Expenses"** has the meaning set out in Section 5.11;
- (uu) **"Vendors"** has the meaning set out in the recitals hereto;
- (vv) **"Vesting Order"** means an order by the Court:
 - (i) approving this Agreement and the Transaction,
 - (ii) approving the Transition and Occupation Services Agreement,
 - (iii) directing the Vendors to complete the Transaction and to execute this Agreement, and
 - (iv) vesting in the Purchaser all of the Vendors' right, title and interest in and to the Assets, free and clear of and from any and all Vesting Order Claims,in form and substance acceptable to the parties hereto, acting reasonably;
- (ww) **"Vesting Order Claims"** includes 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 including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Court; and (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;
- (xx) **"Winning Bid"** has the meaning set out in Section 5.9 hereof; and
- (yy) **"Winning Bidder"** has the meaning set out in Section 5.9 hereof.

1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof.

Where this Agreement requires the consent, agreement, signature or any other approval of either of the Vendors, the Vendors hereby irrevocably appoint and authorize the Monitor to provide such consent, agreement, signature and approval on their behalf.

1.3 Extended Meanings

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

1.4 Schedules

The following Schedules are incorporated in and form part of this Agreement:

Schedule "A" - Excluded Assets

Schedule "B" - Leased Premises

SECTION 2 - SALE AND PURCHASE AND ASSIGNMENT

2.1 Sale and Purchase of Assets

Subject to the terms and conditions hereof, at the Closing Time, the Vendors shall sell to the Purchaser and the Purchaser shall purchase from the Vendors the Assets. The Purchaser acknowledges that it is not purchasing any other property or assets of the Vendors other than the Assets.

2.2 Assignment and Assumption of Contracts

Subject to the conditions and terms hereof, at the Closing Time, the Vendors shall assign to the Purchaser all of the Vendors' rights, benefits and interests in and to the Contracts and the Purchaser shall assume the obligations and liabilities of the Vendors under the Contracts at the Closing Time.

Notwithstanding the foregoing, this Agreement and any document delivered under this Agreement shall not constitute an assignment or an attempted assignment of any Contract contemplated to be assigned to the Purchaser under this Agreement that is not assignable without the consent of a third party if such consent has not been obtained and such assignment or attempted assignment would constitute a breach of such Contract. Any Contract in respect of which the consent of a third party is required but has not been obtained by the Closing Time shall be held in trust by the Vendors for the benefit of the Purchaser until such time as the required consent is obtained.

2.3 "As is, Where is"

The Purchaser acknowledges that the Vendors are selling the Assets on an "*as is, where is*" basis as they shall exist at the Closing Time. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendors do not guarantee title to the Assets and that the Purchaser has conducted such inspections of the condition of and title to the Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Assets or the right of the Vendors to sell or assign same, save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, as amended, or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Assets contained in the Schedules hereto is for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendors concerning completeness or the accuracy of such descriptions.

2.4 Employees

The Purchaser in its sole discretion may offer employment to any of the employees employed by the Vendors. The Purchaser shall not assume any liability for any employee of the Vendors it has not elected to offer employment to or which offer was made but has been rejected by such employee, including liability for wages, vacation pay, benefits, pensions, severance pay or termination pay.

Before Closing, the Vendors shall terminate the employment of only those employees of the Vendors so identified by the Purchaser. The Vendors shall continue to employ all other employees pursuant to the terms of the Transition and Occupancy Services Agreement referred to in Section 5.11 hereof.

2.5 Assumed Obligations

The Purchaser shall assume the following obligations and liabilities of the Vendors (the "Assumed Obligations") on Closing:

- (a) all obligations to the employees of the Vendors that accept employment with the Purchaser on or after Closing, including their wages and vacation pay; and
- (b) all obligations and liabilities of the Vendors under the Contracts whether arising prior to or after Closing, unless listed as an Excluded Asset.

2.6 Excluded Obligations

Other than the Assumed Obligations, the Purchaser shall not assume and shall not be liable for any debts, liabilities or other obligations of the Vendors.

2.7 Purchaser's Right to Exclude

Notwithstanding anything to the contrary in this Agreement, the Purchaser may, at its option, exclude any of the Assets, including any Contracts, from the Transaction at any time prior to Closing upon written notice to the Vendors, whereupon such Assets shall be Excluded Assets, provided, however, that there shall be no reduction in the Purchase Price as a result of such exclusion. For greater certainty, the Purchaser may, at its option, submit further and/or revised lists of Excluded Assets at any time prior to Closing.

2.8 Purchase Price

The purchase price payable by the Purchaser to the Vendors for the Assets (the "Purchase Price") shall be **REDACTED**

2.9 Deposit and Payment of Purchase Price

The Purchaser shall pay to the Monitor in trust, the sum of **REDACTED** (the "Deposit") (being at least 15% of the Purchase Price), as a deposit in respect of the Purchase Price, the receipt of which is hereby acknowledged by the Vendor, and which Deposit shall be held by the Monitor in trust in a segregated interest-bearing trust account.

At Closing, the Purchaser shall pay and satisfy the Purchase Price to the Vendors as follows:

- (a) The amount of the Deposit, including any accrued interest thereon, shall be credited against the Purchase Price; and
- (b) The Purchase Price Balance shall be paid to the Vendors by certified cheque, bank draft or wire transfer of immediately available funds to an account specified by the Vendor.

2.10 Return of Deposit

If this Agreement is terminated and the Transaction contemplated herein is not completed, for any reason other than as a result of the conditions set out in Section 4.2 not being satisfied, then the Vendor will cause the Monitor to immediately return the Deposit and all accrued interest thereon, without set-off or deduction, to the Purchaser.

2.11 Allocation of Purchase Price

The Purchase Price shall be allocated among the Assets, as the Vendors and the Purchaser may agree, each acting reasonably.

2.12 Taxes

At the Closing Time, the Purchaser shall pay, in addition to the Purchase Price, all applicable federal and provincial taxes, excluding the Vendors' income taxes, exigible in connection with the purchase and sale of the Assets, including, without limitation, GST/HST and provincial retail sales taxes. Alternatively, where applicable, the Purchaser shall have the option to furnish the Vendors with appropriate exemption certificates.

Alternatively, at Purchaser's option, Purchaser and Nexient Learning Canada Inc. shall jointly make the elections provided for under:

- (a) subsection 167(1.1) of the ETA such that no GST/HST will be payable in respect of the Transaction;
- (b) section 75 of the QSTA such that no QST will be payable in respect of the Transaction; and
- (c) section 22 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended.

Purchaser and the Vendors shall jointly complete the election forms in respect of such elections and Nexient Learning Canada Inc. hereby irrevocably appoints the Purchaser (or its authorized representative) as its agent to file the said election forms.

The Purchaser agrees to indemnify and save the Vendors harmless from and against all claims and demands for payment of the above-mentioned taxes, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such taxes when due.

SECTION 3 - REPRESENTATIONS AND WARRANTIES

3.1 Purchaser's Representations

The Purchaser represents and warrants to the Vendors that:

- (a) the Purchaser is a corporation duly incorporated, organized and subsisting under the laws of the Province of Ontario;
- (b) the Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations hereunder, and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) the Purchaser is not a party to, bound or affected by, or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance by it of any of the terms contained herein;
- (d) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Purchaser's knowledge, threatened against or relating to the Purchaser or any judgment, decree, injunction, rule or order of any court, governmental authority, commission, agency, instrumentality or arbitrator that, in any case, might adversely affect the ability of the Purchaser to enter into this Agreement or to consummate the Transaction, and the Purchaser is not aware of any existing ground on which any action, suit or proceeding may be commenced with any reasonable likelihood of success;

- (e) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as at the Closing Time, duly and validly executed and delivered by the Purchaser and constitute or will, as at the Closing Time, constitute legal, valid and binding obligations of the Purchaser enforceable in accordance with the terms hereof or thereof;
- (f) the Purchaser is a non-Canadian person as defined in the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), as amended; and
- (g) the Purchaser is or will be prior to Closing Time registered under Part IX of the ETA.

3.2 Vendors' Representations

The Vendors, jointly and severally, represent and warrant to the Purchaser as follows:

- (a) Nexient Learning Inc. is a corporation duly incorporated, organized and subsisting under the laws of the Province of Nova Scotia;
- (b) Nexient Learning Canada Inc. is a corporation duly incorporated, organized and subsisting under the laws of Canada; and
- (c) each of the Vendors is not a non-Canadian person as defined in the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), as amended.

SECTION 4 - CONDITIONS

4.1 Conditions - Purchaser

The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed:

- (a) all representations and warranties of the Vendors contained in this Agreement shall be true as of the Closing Time with the same effect as though made on and as of that date; and
- (b) the Vendors shall have performed each of their obligations under this Agreement to the extent required to be performed at or before the Closing Time, including, without limitation, the obligations described in Section 5.3 hereof.

The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in this Section 4.1 may be waived by the Purchaser in whole or in part without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. If any condition set out in this Section 4.1 is not satisfied or performed on or prior to August 15, 2009, or August 21, 2009, in accordance with Section 5.1 below, the Purchaser may elect on written notice to the Vendors to terminate this Agreement.

4.2 Conditions - Vendors

The obligation of the Vendors to complete the Transaction is subject to the following conditions being fulfilled or performed:

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Time with the same effect as though made on and as of that date; and
- (b) the Purchaser shall have performed each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including, without limitation, the obligations described in Section 5.2 hereof.

The foregoing conditions are for the exclusive benefit of the Vendors. Any condition in this Section 4.2 may be waived by the Vendors in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendors only if made in writing. If any condition set out in this Section 4.2 is not satisfied or performed on or prior to August 15, 2009, or August 21, 2009, in accordance with Section 5.1 below, the Vendors may elect on written notice to the Purchaser to terminate this Agreement.

4.3 Conditions - Purchaser and Vendors

The obligations of the Vendors and the Purchaser to complete the Transaction are subject to the following conditions being fulfilled or performed:

- (a) the Sale Process Order shall have been obtained and shall not have been stayed, varied, vacated or appealed (or any such appeal shall have been dismissed with no further appeal therefrom);
- (b) the Vesting Order shall have been obtained and shall not have been stayed, varied, vacated or appealed (or any such appeal shall have been dismissed with no further appeal therefrom);
- (c) no order shall have been issued which restrains or prohibits the completion of the Transaction; and
- (d) no motion, action or proceedings shall be pending to restrain or prohibit the completion of the Transaction contemplated by this Agreement.

The parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendors and the Purchaser. If the conditions set out in this Section 4.3 are not satisfied or performed on or before August 15, 2009, or August 21, 2009, in accordance with Section 5.1 below, either party shall have the option to terminate this Agreement upon written notice to the other party.

SECTION 5 - CLOSING

5.1 Closing

The completion of the Transaction shall take place at the Closing Time at the offices of Miller Thomson LLP, Scotia Plaza, Suite 5800, 40 King Street West, Toronto, Ontario, M5H 3S1, or as otherwise determined by mutual agreement of the parties in writing, but, in any event, shall take place prior to August 15, 2009 or, at the option of the Vendors, on or before August 21, 2009, provided that notice thereof is provided by the Monitor to the Purchasers no later than 5:00 pm, on August 12, 2009.

5.2 Purchaser's Deliveries on Closing

At or before the Closing Time, the Purchaser shall execute and deliver to the Vendors the following, each of which shall be in form and substance satisfactory to the Vendors, acting reasonably:

- (a) The Purchase Price to be paid in accordance with Section 2.9;
- (b) the Assignment and Assumption Agreement;
- (c) the Transition and Occupation Services Agreement;
- (d) payment or evidence of payment of GST/HST and provincial retail sales taxes, or alternatively, appropriate exemption certificates, as required by Section 2.12;
- (e) a document specifying the Purchase Price allocation provided for in Section 2.11;
- (f) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing Time, with the same effect as though made at and as of the Closing Time;
- (g) an acknowledgement dated as of the Closing Date that each of the conditions precedent in Section 4.1 of this Agreement have been fulfilled, performed or waived as of the Closing Time; and
- (h) such further and other documentation as is referred to in this Agreement or as the Vendors may reasonably require to give effect to this Agreement.

5.3 Vendors' Deliveries on Closing

At or before the Closing Time, the Vendors shall execute and deliver to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) the Bill of Sale;
- (b) the Assignment and Assumption Agreement;
- (c) the Transition and Occupation Services Agreement;

- (d) the Vendors' Certificate, as referred to in the Vesting Order;
- (e) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Vendors contained in this Agreement are true as of the Closing Time, with the same effect as though made at and as of the Closing Time;
- (f) an acknowledgement dated as of the Closing Date that each of the conditions precedent in Section 4.2 of this Agreement have been fulfilled, performed or waived as of the Closing Time; and
- (g) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement, which shall be prepared by the Purchaser at its sole expense.

5.4 Possession of Assets

The Vendors shall remain in possession of the Assets until Closing. On Closing, the Purchaser shall take possession of the Assets where situate at Closing. Notwithstanding this Section 5.4, the Purchaser shall only take possession of the Books and Records relating to the Assets at such time as those Assets relating thereto have been purchased by the Purchaser. The Purchaser acknowledges that the Vendors have no obligation to deliver physical possession of the Assets to the Purchaser. In no event shall the Assets be sold, assigned, transferred or set over to the Purchaser until the conditions set out in the Vesting Order have been satisfied and the Purchaser has satisfied all delivery requirements outlined in Section 5.2. The Purchaser shall promptly notify the Vendors of any Excluded Assets which may come into the possession or control of the Purchaser, and shall promptly release such Excluded Assets to the Vendors, or to such other Person as the Vendors may direct in writing.

5.5 Access to Assets

The Purchaser may have reasonable access to the Assets during normal business hours prior to Closing for the purpose of enabling the Purchaser to conduct such inspections of the Assets as it deems appropriate. Such inspection shall only be conducted in the presence of a representative of the Vendors, if so required at the discretion of the Vendors. The Purchaser agrees to indemnify and save the Vendors harmless from and against all claims, demands, losses, actions and costs incurred or arising from or in any way directly related to the inspection of the Assets or the attendance of the Purchaser, its employees or agents at the Leased Premises.

5.6 Risk

The Assets shall be and remain at the risk of the Vendors to the extent of their interest until Closing and at the risk of the Purchaser from and after Closing. If, prior to Closing, the Assets shall be substantially damaged or destroyed by fire or other casualty, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within fifteen (15) days after notification to the Purchaser by the Vendors of the occurrence of damage or destruction (or prior to the Closing Date if such occurrence takes place within fifteen (15) days of the Closing Date) in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction. Where any

damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction provided that such damage or destruction is insured or, otherwise, to an agreed abatement. If any dispute arises under this section as to whether damage or destruction is substantial or with respect to the amount of any abatement, such dispute will be determined in accordance with Section 5.7 hereof.

5.7 Dispute Resolution

If any dispute arises: (a) under Section 5.6 as to whether any damage or destruction is substantial or with respect to the amount of any abatement; or (b) with respect to any other matter related to the Transaction or the interpretation or enforcement of this Agreement, such dispute will be determined by the Court, or by such other Person or in such other manner as the Court may direct.

5.8 Termination

If either the Vendors or the Purchaser validly terminates this Agreement pursuant to the provisions of Sections 4.3 or 5.6,

- (a) all the obligations of both the Vendors and Purchaser pursuant to this Agreement shall be at an end;
- (b) the Deposit and accrued interest thereon shall be immediately returned to the Purchaser in accordance with Section 2.10 hereof; and
- (c) neither party shall have any right to specific performance or other remedy against, or any right to recover damages or expenses from, the other.

If the Purchaser validly terminates this Agreement pursuant to the provisions of Section 4.1,

- (d) all the obligations of both the Vendors and Purchaser pursuant to this Agreement shall be at an end;
- (e) the Deposit and all accrued interest thereon shall be returned to the Purchaser in accordance with Section 2.10 hereof; and
- (f) the Purchaser shall be entitled to all rights and remedies available at law or in equity.

If the Vendors validly terminate this Agreement pursuant to the provisions of Section 4.2,

- (a) all the obligations of both the Vendors and Purchaser pursuant to this Agreement shall be at an end; and
- (b) the Vendors and Purchaser shall be entitled to all rights and remedies available at law or in equity.

5.9 Sale Process

The parties hereto acknowledge and agree that by no later than July 8, 2009, the Vendors shall obtain the Sales Process Order, which shall recognize this Agreement and shall be in form and substance acceptable to the Purchaser and the Vendors. The Sales Process Order shall recognize the "Purchase Price", as that term is defined in the Asset Purchase Agreement among the Vendors and 2210961 Ontario Limited, as a baseline or "stalking horse bid" (the "Stalking Horse Bid"), and shall also provide for a marketing process of the Assets by the Monitor with the potential for competitive bidding, to be administered by the Monitor. The Purchaser acknowledges and agrees that the aforementioned process is in contemplation of determining whether a Superior Bid can be obtained for the Assets.

In the event that one or more parties submits a Superior Bid on or before the Bid Deadline, the Monitor shall notify each of the bidders who submitted a Superior Bid and the Stalking Horse Bidder that one or more Superior Bids were received and shall invite each of them to submit a final offer which shall meet all of the bid criteria set out in Section 1.1(pp) hereof (each a "Final Offer" and, collectively, the "Final Offers") by 5:00 p.m. on August 5, 2009 (the "Final Offer Deadline").

The Monitor, exercising its reasonable business judgement, will select the best of the Final Offers (the "Winning Bid"). Upon acceptance of the Winning Bid, there shall be a binding agreement of purchase and sale between the successful winning bidder (the "Winning Bidder") and the Vendors. The Monitor shall make a motion to the Court, within ten (10) Business Days following the Final Offer Deadline, to obtain an order to approve the agreement reached with the Winning Bidder and to vest the Assets in the Winning Bidder and proceed with closing the transaction forthwith. Upon closing the transaction with the Winning Bidder, the Overbid Amount shall be first paid to the satisfaction of any and all professional fees and expenses incurred by the Stalking Horse Bidder in connection with the Stalking Horse Bid and the Transaction, which the parties agree shall be capped at \$50,000, exclusive of all applicable taxes.

If no Superior Bid(s) is received by the Bid Deadline, the Monitor shall bring a motion to the Court, on a date returnable no later than August 11, 2009, to obtain an order to vest the Assets in the Stalking Horse Bidder and proceed with closing the Transaction forthwith.

5.10 Change of Name

Immediately after Closing, each of the Vendors shall:

- (a) file articles of amendment which shall evidence the change of corporate name to a name which does not include any business name, trade name, brand name, slogan or trade-mark of Nexient; and
- (b) cancel all registrations of business names and trade names related to Nexient.

5.11 Transition Period

On the Closing Date, the Purchaser and the Vendors shall enter into a mutually acceptable Transition and Occupation Services Agreement under which:

(a) the Vendors will agree to:

- (i) continue to employ those employees of the Vendors who are not hired by the Purchaser at Closing or terminated prior to Closing and shall make its employees available to the Purchaser in connection with the operation of the business. The Vendors shall not terminate any such employees except for cause or with the consent of the Purchaser. The Vendors shall not have any responsibility to retain individuals who decide to seek alternative employment,
- (ii) not terminate any of the Contracts and appoint the Purchaser as its agent to operate such agreements (or any portion of them) during the Transition Period, and
- (iii) authorize the Purchaser to occupy the Leased Premises;

and

(b) the Purchaser will agree to:

- (i) reimburse the Vendors and the Monitor for the actual out of pocket expenses incurred by the Vendors and the Monitor for (x) the services rendered by such employees, (y) rent attributable to the Leased Premises so occupied (including the Base Rent and all Additional Rent as such terms are defined in the applicable leases) for the Occupation Period and (z) such other reasonable costs incurred by the Vendors or the Monitor as a result of providing to the Purchaser the services in section 5.11(a) above during the Transition Period (the "Transition Period Expenses"); provided, however that the Transition Period Expenses shall not include any cost for services rendered in respect of any period prior to the Closing and/or for any cost or obligation arising in connection with the termination or severance of any employee of the Vendors; and
- (ii) provide a deposit equal to the Monitor's estimate of one month of Transition Period Expenses which deposit may be used to pay such Transition Period Expenses during the Transition Period and which shall be replenished by the Purchaser from time to time at the Monitor's request;
- (iii) indemnify and hold harmless the Monitor and the Vendors for all Transition Period Expenses and any other liability of the Monitor or the Vendors resulting from the Purchaser's actions or omissions during the Transition Period.

The Transition and Occupation Services Agreement will commence at the Time of Closing and end on the date which is ninety (90) days after the Closing Date, or such earlier date which is specified in a written notice, given no later than seven (7) Business Days before any earlier specified end of the Transition Period, to the Monitor and the Vendors by the Purchaser (the "Transition Period").

Notwithstanding anything to the contrary contained in this Agreement, the Purchaser shall have the right to review the performance of and the terms and conditions of the employment agreement for each of the Vendors' employees, the Contracts and all the leases related to the Leased Premises that are not assigned at Closing.

No later than seven (7) Business Days prior to the end of the Transition Period, the Purchaser shall provide the Vendors and the Monitor with written notice, which notice shall contain (i) a list of the employees of the Vendors that have accepted employment with the Purchaser, (ii) a list of the Contracts and leases that the Purchaser desires to take an assignment of, and assume the obligations of, in accordance with the terms of the Assignment and Assumption Agreement. On the last day of the Transition Period, provided all required consents to the assignment of such Contracts have been obtained, the Vendors shall assign to the Purchaser the Vendors' right, title and interest in such Contracts and the Purchaser shall assume the obligations arising under such Contracts. The Vendors shall cause the cancellation and termination of any Contracts not listed in such notice or notices.

Unless the Purchaser waives in writing the obligation to obtain consent to the assignment and/or otherwise requests the assignment of a particular Contract without obtaining consent, the Purchaser shall not take an assignment of, nor assume, any Contract for which such consent has not been obtained and such Contract shall be considered to be "Excluded Assets" under this Agreement.

5.12 Occupation

The Purchaser and the Vendors agree that during the period beginning on the Closing Date and ending on the earlier of (a) the date on which a consent to an assignment of a Leased Premise is obtained from the landlord, (b) the date which is seven (7) days after which the Purchaser informs the Vendors and the Monitor that the Purchaser wishes to vacate a Leased Premise, and (c) the date which is ninety (90) days after the Closing (the "Occupation Period"), and in accordance with the Transition and Occupation Services Agreement, the Purchaser shall be entitled to occupy and use the Leased Premises (or any particular Leased Premise or Leased Premises) for the purposes of conducting its business activities (provided that the activities and use of the Leased Premises are consistent with the terms of such lease). No provision in this section 5.11 or section 5.12 shall be construed to in itself (i) act as an assignment to the Purchaser of any lease with respect to the Leased Premises or (ii) act as an agreement that the Purchaser is assuming any obligation due under such leases.

SECTION 6 - GENERAL

6.1 Access to Books and Records

The Vendors hereby acknowledge and agree that from and after Closing, the Purchasers shall, upon reasonable notice to the Vendors, have access to the Vendors' Books and Records related to the period prior to Closing and may make copies of the Vendors' Books and Records as it sees fit.

6.2 Further Assurances

After the Closing, each of the parties shall, at the request and expense of the other, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents and further assurances as may be reasonably necessary to give effect to this Agreement.

6.3 Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by fax or e-mail, addressed in the case of the Purchaser, as follows:

Global Knowledge Network (Canada) Inc.
c/o: Global Knowledge Network, Inc.
9000 Regency Parkway, Ste. 500
Cary, North Carolina 27512
USA

Attention: Brian Holland
Telephone No.: (919) 460-3219
Fax No.: (919) 463-1319
E-mail: brian.holland@globalknowledge.com

with a copy to:

Miller Thomson LLP
Scotia Plaza
40 King Street West, Suite 5800
Toronto, Ontario M5H 3S1

Attention: Beryl B. Green / Jason Rosen
Telephone No.: (416) 595-8627 / (416) 595-2644
Fax No.: (416) 595-8695
E-mail: bgreen@millerthomson.com
Email: jrosen@millerthomson.com

and in the case of the Vendors, as follows:

Nexient Learning Inc.
2 Bloor Street West, Suites 800 & 1200
Toronto, Ontario M4W 3E2

Attention: Donna de Winter
Telephone No.: (416) 964-8664
Fax No.: (416) 920-6856
E-mail: ddewinter@nexientlearning.com

Nexient Learning Canada Inc.
2 Bloor Street West, Suites 800 & 1200
Toronto, Ontario M4W 3E2

Attention: Donna de Winter
Telephone No.: (416) 964-8664
Fax No.: (416) 920-6856
E-mail: ddewinter@nexientlearning.com

with a copy to:

Chaitons LLP
185 Sheppard Ave. West
Toronto, Ontario M2N 1M9

Attention: Harvey Chaiton
Telephone No.: (416) 218-1129
Fax No.: (416) 218-1854
E-mail: Harvey@chaitons.com

and in the case of the Monitor, as follows:

RSM Richter Inc.
200 King Street West, Suite 1100
Toronto, Ontario M5H 3T4

Attention: Robert Kofman
Telephone No.: (416) 932-6228
Fax No.: (416) 932-6200
E-mail: rkofman@rsmrichter.com

with a copy to:

Ogilvy Renault LLP
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3800
Toronto, Ontario M5J 2Z4

Attention: Mario Forte
Telephone No.: (416) 216-4870
Fax No.: (416) 216-3930
E-mail: mforte@ogilvyrenault.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by fax or e-mail before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by fax or e-mail after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

6.4 Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendors and the Purchaser or by their respective solicitors.

6.5 Currency

Except where otherwise indicated, all references herein to money amounts are in Canadian currency.

6.6 Survival

The representations and warranties of the parties hereto contained in this Agreement shall merge on Closing.

6.7 Benefit of Agreement

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

6.8 Entire Agreement

This Agreement and the attached Schedules constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior negotiations and understandings. This Agreement may not be amended or modified in any respect except by written instrument executed by the parties.

6.9 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

6.10 Severability

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provisions validity or enforceability in any other jurisdiction.

6.11 Governing 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 and each of the parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

6.12 Commission

The Purchaser acknowledges that there are no agent or broker fees or other commissions payable by the Vendors on the Purchase Price or otherwise in connection with the Transaction, and the Purchaser agrees to indemnify the Vendors against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction.

6.13 Assignment by Purchaser

This Agreement may not be assigned by the Purchaser except with the prior written consent of the Vendors, which consent may be withheld in the Vendors' sole discretion.

6.14 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK]

THIS AGREEMENT, executed by the Purchaser as of the 5th day of August, 2009, is irrevocable and shall remain open for acceptance by execution of this Agreement by the Vendors on or before 11:59 p.m. (Toronto time) on the 21st day of August, 2009, unless extended by the Purchaser in writing, and may be accepted by the Vendors up to that time by notice given to the Purchaser in accordance with Section 6.3 herein, whereupon a binding agreement of purchase and sale will be constituted between the Vendors and the Purchaser as set forth above, and failing which this Agreement shall be null and void and not capable of acceptance by the Vendors.

**GLOBAL KNOWLEDGE NETWORK
(CANADA) INC.**

Per: _____

Name: Brian Holland

Title: President

I/We have the authority to bind the Corporation.

ACCEPTED this ____ day of August, 2009 by:

NEXIENT LEARNING INC., by RSM
Richter Inc., solely in its capacity as Court-
appointed monitor, and not in its personal
capacity

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation.

NEXIENT LEARNING CANADA INC.,
by RSM Richter Inc., solely in its capacity
as Court-appointed monitor, and not in its
personal capacity

Per: _____

Name:

Title:

I/We have the authority to bind the Corporation.

Schedule "A"
Excluded Assets

Schedule "B"
Leased Premises

REDACTED

CONFIDENTIAL APPENDIX “1”

CONFIDENTIAL APPENDIX “2”

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

**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) 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
- (vi) 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.

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.

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.

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.

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.

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.

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

12. **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.

13. **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.

14. **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 ●, 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 of a certificate confirming **[LANGUAGE CONSISTENT WITH THE TERMS OF THE TRANSITION AGREEMENT TO BE INSERTED]**.

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].**

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:

**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

OGILVY RENAULT LLP
Suite 3800, Box 84
Royal Bank Plaza, South Tower
200 Bay Street
Toronto, Ontario M5J 2Z4

Mario Forte LSUC#: 27293F
Tel: (416) 216-4870
Evan Cobb LSUC#: 55787N
Tel: (416) 216-3923
Fax: (416) 216-3930

Lawyers for the Monitor, RSM Richter Inc.

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD
(Re: Sale Approval and Vesting Order)
[Returnable August 19, 2009]

OGILVY RENAULT LLP
Suite 3800, Box 84
Royal Bank Plaza, South Tower
200 Bay Street
Toronto, Ontario M5J 2Z4

Mario Forte LSUC#: 27293F
Tel: (416) 216-4870
Evan Cobb LSUC#: 55787N
Tel: (416) 216-1929
Fax: (416) 216-3930

Lawyers for the Monitor, RSM Richter Inc.