

AGREEMENT OF PURCHASE AND SALE

This Agreement is made this 3rd day of July, 2009,

BETWEEN:

2210961 ONTARIO LIMITED,
a corporation incorporated 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, the Vendors and Comerica Bank, among other parties, at the Closing Time wherein the Vendors assign the Contracts to the Purchaser and the Purchaser agrees to assume the Assumed Obligations and the Assumed Debt;
- (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, 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 lists, customer information and account records, sales records, computer files, data processing records, 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) **“DIP Lender’s Charge”** has the meaning set out in the Initial Order;
- (u) **“Directors’ Charge”** has the meaning set out in the Initial Order;
- (v) **“ETA”** means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;
- (w) **“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;
- (x) **“Final Offer(s)”** has the meaning set out in Section 5.9 hereof;
- (y) **“Final Offer Deadline”** has the meaning set out in Section 5.9 hereof;
- (z) **“GST”** means all goods and service taxes payable under the ETA;
- (aa) **“Initial Order”** has the meaning set out in the recitals hereto;
- (bb) **“Leased Premises”** means the premises leased and occupied by either of the Vendors listed on **Schedule “B”** hereto;

- (cc) “**Monitor**” has the meaning set out in the recitals hereto;
- (dd) “**Overbid Amount**” has the meaning set out in Section 1.1(jj) hereof;
- (ee) “**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;
- (ff) “**Purchase Price**” has the meaning set out in Section 2.8 hereof;
- (gg) “**Vendors**” has the meaning set out above the recitals hereto;
- (hh) “**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;
- (ii) “**Stalking Horse Bid**” has the meaning set out in Section 5.9 hereof;
- (jj) “**Superior Bid(s)**” shall mean an offer by any Person other than the Purchaser 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 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;

- (kk) **“Transaction”** means the transaction of purchase and sale contemplated by this Agreement;
- (ll) **“Vendors”** has the meaning set out in the recitals hereto;
- (mm) **“Vesting Order”** means an order by the Court vesting in the Purchaser all the right, title and interest of the Vendors in and to the Assets free and clear of all Liens, other than the security interests securing the Comerica Debt and any other security interests that relate to the Assumed Debt, in form and substance acceptable to the parties hereto, acting reasonably;
- (nn) **“Winning Bid”** has the meaning set out in Section 5.9 hereof; and
- (oo) **“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 those employees of the Vendors who the Purchaser does not elect to offer employment to or who have not accepted such offer. The Purchaser shall advise the Vendors at least seventy-two (72) hours prior to the Closing Time of those employees that the Purchaser does not wish to offer employment to or whom have not accepted an offer of employment.

2.5 **Assumed Obligations**

In addition to the Assumed Debt, 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 and the Assumed Debt, the Purchaser shall not assume and shall not be liable for any debts, liabilities or other obligations of the Vendors. Any obligations which are not otherwise assumed hereunder and which constitute obligations which would be protected by one of the charges created by the Initial Order will either be: (a) assumed in accordance with the Assignment and Assumption Agreement; or (b) satisfied in full in cash on Closing.

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 equal to the Assumed Debt.

2.9 **Payment of Purchase Price**

At Closing, the Purchaser shall pay and satisfy the Purchase Price by assumption of the Assumed Debt.

2.10 **Allocation of Purchase Price**

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

2.11 **Taxes**

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

Alternatively, at Purchaser's option, Purchaser and the Vendors shall jointly make the election provided for under:

- (a) subsection 167(1.1) of the ETA such that no GST will be payable in respect of the Transaction; and
- (b) 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 the Vendors hereby irrevocably appoint the Purchaser (or its authorized representative) as its agent to file the said election form.

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 not 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, other than the need to fulfill the delivery requirement set out in Section 5.3(b) hereof, 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, 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; and
- (c) the procurement of those consents that the Purchaser deems necessary, in its reasonable discretion, which shall be identified by the Purchaser to the Vendors by no later than Closing.

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, other than the need to fulfill the delivery requirement set out in Section 5.2(a) hereof, 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, 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, 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 Aird & Berlis LLP, Brookfield Place, 181 Bay Street, Toronto, Ontario, M5J 2T9, or as otherwise determined by mutual agreement of the parties in writing, but, in any event, shall take place prior to August 15, 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 Assignment and Assumption Agreement;
- (b) payment or evidence of payment of GST and Ontario retail sales tax, or alternatively, appropriate exemption certificates, as required by Section 2.11;
- (c) a document specifying the Purchase Price allocation provided for in Section 2.10;
- (d) 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;
- (e) 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
- (f) 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 Vendors' Certificate, as referred to in the Vesting Order;
- (d) 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;
- (e) 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
- (f) 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. 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; and
- (b) 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,

- (c) all the obligations of both the Vendors and Purchaser pursuant to this Agreement shall be at an end; and
- (d) 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 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 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(jj) 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 five (5) 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 Purchaser 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 Purchaser 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.

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:

2210961 Ontario Limited
105 Adelaide Street West, Suite 1000
Toronto, Ontario M5H 1P9

Attention: Graham McBride
Telephone No.: (416) 628-9244
Fax No.: (416) 971-6519
E-mail: gmcbride@vgpartners.com

with a copy to:

Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Attention: Steven L. Graff
Telephone No.: (416) 865-7726
Fax No.: (416) 863-1515
E-mail: sgraff@airdberlis.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 3rd day of July, 2009, is irrevocable and shall remain open for acceptance by execution of this Agreement by the Vendors on or before 5:00 p.m. (Toronto time) on the 6th day of July, 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.

2210961 ONTARIO LIMITED

By: _____

Name: _____

Title: _____

I have authority to bind the Corporation.

ACCEPTED this ____ day of July, 2009 by:

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

By: _____

Name: _____

Title: _____

I have 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

By: _____

Name: _____

Title: _____

I have authority to bind the Corporation.

Schedule "A"

Excluded Assets

To be provided.

Schedule "B"

Leased Premises

See attached.

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