

**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.**

**MOTION RECORD
(Returnable November 19, 2009)**

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TO: The Service List

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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

NEXIENT LEARNING INC. AND NEXIENT LEARNING CANADA INC. (the “**Applicants**”), will make a motion before a Judge of the Commercial List on Thursday, November 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:

1. if necessary, abridging the time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;
2. extending the Transition Period (as defined in the Transition and Occupation Services Agreement dated August 17, 2009 between the Applicants and Global Knowledge Network (Canada) Inc. (the “**TOA**”)) from November 19, 2009 to January 11, 2010, solely as it relates to the landlord and contract provisions of the TOA
3. extending the Stay Period (as hereinafter defined) to January 11, 2010;
4. approving the activities of the Monitor as set out in the Sixth Report of the Monitor dated as of November 16, 2009 (the “**Sixth Report**”); and

5. such further and other relief as counsel may request and this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. Pursuant to an Order of this Court made on June 29, 2009, the Applicants obtained protection pursuant to the Companies' Creditors Arrangement Act ("**CCAA**").
2. Under the Initial Order, RSM Richter Inc. was appointed as monitor in the CCAA proceedings.
3. On July 8, 2009, the Initial Order was amended by Order of Mr. Justice Cumming (the "**Amended and Restated Initial Order**").
4. The Amended and Restated Initial Order granted a 30-day stay of proceedings until July 29, 2009 (the "**Stay Period**").
5. On July 28, 2009, this Court ordered that the Stay Period be extended to August 31, 2009.
6. On August 19, 2009, this Court approved the sale of substantially all of the Applicants' assets, property and undertakings to Global Knowledge Network (Canada) Inc. ("**Global Knowledge**") in accordance with the terms of an Asset Purchase Agreement (the "**APA**"). The sale transaction was completed on August 21, 2009.
7. In order to assist with the transition of the Applicants' business to Global Knowledge, the APA provided for the parties to, and the parties did, enter into the TOA for the 90-day period following closing, and the Stay Period was extended for the same period, to November 19, 2009.
8. Certain transition issues are still not completely resolved. An extension of the Transition Period is required to allow for a completion of the transition of the Applicants' business to Global Knowledge.

9. Also, the Applicants and Global Knowledge have brought motions seeking relief against ESI International, Inc. (“ESI”) arising from contracts between ESI and the Applicants which are assignable to Global Knowledge under the APA. An extension of the Stay Period is required pending a final determination of those motions.

10. The Applicants have acted and continue to act in good faith and with due diligence.

11. No creditor will be materially prejudiced by the requested extension of the Stay Period.

12. The Monitor supports the requested extension of the Transition Period and the Stay Period.

13. The provisions of the CCAA.

14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. the Sixth Report of the Monitor dated November 16, 2009;
2. such further and other material as counsel may advise and this Honourable Court may permit.

DATED: November 16, 2009

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

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

Proceedings Commenced at Toronto

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RSM Richter

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

RSM Richter Inc.
Toronto, November 16, 2009

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**ONTARIO
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NEXIENT LEARNING INC. AND
NEXIENT LEARNING CANADA INC.**

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

November 16, 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 was to allow the Monitor the opportunity to conduct a stalking horse sale process ("Sale Process") for the Company's business and assets. The Sale Process resulted in a transaction with Global Knowledge Network (Canada) Inc. (the "Purchaser") for the acquisition by the Purchaser of substantially all of the Company's business and assets pursuant to an asset purchase agreement dated August 5, 2009 (the "APA") (the "Transaction").

RSM Richter

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 reasons for the proposed extension of certain provisions of the *Transition and Occupation Services Agreement* dated August 17, 2009 between the Company and the Purchaser (the “TOA”);
- c) Summarize the reasons that the Company is seeking an extension of the stay of proceedings from November 19, 2009, the date the stay presently expires, to January 11, 2010;
- d) Summarize the status of a dispute between the Company and ESI International, Inc. (“ESI”), a customer with which the Company is a party to a Distribution and License Agreement dated February 4, 2006 covering business analysis programs (the “BA Agreement”) and an agreement dated March 29, 2004, as amended, concerning program management contracts (the “PM Agreement”);
- e) Provide an overview of the Monitor’s activities since September 21, 2009, the date on which its activities were previously approved; and
- f) Recommend that this Honourable Court issue an order:
 - i. Extending the Transition Period (as defined in the TOA) from November 19, 2009 to January 11, 2010, solely as it relates to the landlord and contract provisions of the TOA;
 - ii. Granting the Company’s request for an extension of its stay of proceedings from November 19, 2009 to January 11, 2010; and
 - iii. Approving the Monitor’s activities, as described in this Report.

2. BACKGROUND

The Company carried on business across Canada - it was 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 was 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 was located in Toronto, Ontario. The Company operated from 13 leased facilities across Canada from which it served over 3,000 corporate and public sector clients as well as individual learners. The Company employed approximately 200 individuals. The Company's workforce was not unionized. The majority of the Company's instructors were independent contractors.

2.1 Sale of Assets

The Monitor carried out the Sale Process in accordance with a Court order made on July 8, 2009. The Sale Process resulted in the Transaction, which was approved pursuant to a Court order made on August 19, 2009. The Transaction was completed on August 21, 2009.

Further details concerning the Transaction and these proceedings are detailed in the Monitor's fourth report to Court dated August 13, 2009 (the "Fourth Report"). A copy of the Fourth Report, without appendices, is attached as Appendix "B".

2.2 Distributions in these Proceedings

Pursuant to a Court order made on September 21, 2009 (the "Distribution Order"), the Monitor was authorized and directed to make distributions: (i) in respect of claims covered by Court ordered charges in these proceedings; and (ii) to certain of the Company's secured creditors. The following table reflects the distributions facilitated by the Monitor to-date in accordance with the Distribution Order, and the projected recoveries to the Company's secured creditors from the proceeds generated in these proceedings:

Secured Obligation	Secured Creditor	Distribution	
		(\$000s)	Expected Recovery
GST obligation	Canada Revenue Agency	135	Paid in full
DIP Facility	The Vengrowth Traditional Industries Fund Inc. and/or other funds under affiliated management ("Vengrowth")	542	Paid in full
Operating Loan	Comerica Bank ("Comerica")	4,757	Paid in full
2 nd Debentures	Vengrowth and Fund 321 Limited Partnership, c.b.a. Wellington ("Wellington")	6,133	Paid in full
3 rd Debentures	Vengrowth, Wellington and other debenture holders (collectively, the "Third Debenture Holders")	1,050	Projected to incur a shortfall
Total		12,617	

Pursuant to the Distribution Order, the Monitor was authorized and directed to make distributions to the Third Debenture Holders without further order of this Honourable Court, up to the Company's indebtedness to the Third Debenture Holders, which presently totals approximately \$4.9 million (net of the distributions made to-date). The Third Debenture Holders are projected to incur a substantial shortfall on their advances to the Company.

2.2.1 Further Distributions

As at the date of this Report, there is approximately \$930,000 in the Monitor's trust account. The cash on deposit is currently subject to a holdback for the Charges established by the Initial order, being the Administration Charge (\$325,000) and the Directors' Charge (\$500,000), as well as for unpaid post-filing expenses incurred by the Company up to the closing date of the Transaction.

The Monitor understands that the Directors are currently in discussions with Vengrowth and Wellington concerning the release of the Directors' Charge. Once the Directors' Charge is released or otherwise addressed by the relevant parties, the Monitor intends on distributing \$500,000 to the Third Debenture Holders in accordance with the Distribution Order.

3. TRANSITION AND OCCUPATION SERVICES AGREEMENT

In order to provide a seamless transition of the Company's business to the Purchaser, the APA contemplated that the Purchaser and the Company would enter into the TOA for up to a 90-day period following closing (the "Transition Period"). Pursuant to the TOA:

- The Company has continued to employ those employees who were not hired by the Purchaser at closing but were required on an interim basis after closing to assist with operational and wind-down issues. The Purchaser assumed all employee obligations for those employees who accepted employment with the Purchaser, including vacation pay;
- The Company has not terminated any of the Contracts (as defined in the APA) and has appointed the Purchaser as its agent in respect of such Contracts during the Transition Period, until such time as the Purchaser obtains consents to the Contracts, 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 has continued to use the Company's 13 leased premises. The right to use the premises expires on November 19, 2009. During the Transition Period, the Purchaser was to obtain the consents from the landlords to assignments of the leases or to find alternative premises;
- The Purchaser has reimbursed the Company for costs incurred by the Company in connection with the TOA, including employee costs, amounts payable under any Contracts and occupancy costs. Pursuant to the TOA, the Purchaser also paid a deposit equal to the Monitor's estimate of 15 days of such expenses, which amount remains on deposit in the Monitor's trust account. The Purchaser has indemnified 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; and

- The Purchaser continued to have access to the Company's former bank accounts with Comerica. This provision was an accommodation to the Purchaser to allow it time to arrange new bank accounts and to arrange to have customers redirect payments to the new accounts.

A copy of the TOA is attached as Appendix "C".

3.1 Proposed Extension of the Transition Period

The Purchaser has requested an extension of the Transition Period and of the stay of proceedings. The Purchaser has requested these extensions for the following reasons:

- Until the ESI litigation (discussed in Section 4 below) is resolved, the Purchaser is unable to determine whether or not it will take an assignment of the BA Agreement and is considering issues with respect to the PM Agreement which may be resolved by the return of this motion; and
- The Purchaser has dealt with 10 of the 13 leased premises. The Purchaser has been unable to finalize lease arrangements with the Company's Calgary, Edmonton and Kitchener landlords, though the Purchaser's counsel has advised that these discussions are well advanced and resolution of these matters is feasible in their view within the extended Transition Period. The Purchaser requires an extension of the Transition Period in order to finalize these negotiations or to relocate those facilities.

It should be noted that the Purchaser has arranged for new bank accounts. The Purchaser is not seeking to extend the period of time to continue to use the Comerica accounts.

3.2 Recommendation re: Transition Period

The Monitor supports the request for an extension of the Transition Period for the following reasons:

- Based on its discussions with the Purchaser's counsel, The Monitor understands that the three affected landlords (Calgary, Edmonton and Kitchener) are not opposed to the proposed extension of the Transition Period. However, should developments in that regard arise between the date of service of this Report and the return date of this motion, the Monitor will so advise this Honourable Court;

- An extension is required until the ESI litigation is resolved – the matter is set down for hearing on November 30, 2009; and
- All Transition Period expenses, including professional fees in connection with the TOA, are to be funded by the Purchaser.¹

4. ESI LITIGATION

On November 4, 2009, legal counsel to the Company, ESI, the Purchaser and the Monitor attended a scheduling motion with the Honourable Justice Morawetz concerning the ESI litigation. A copy of the Endorsement of the Honourable Justice Morawetz dated November 4, 2009 is attached as Appendix “D”.

The dispute between the parties resulted in the Company filing a motion returnable November 30, 2009 for an order, *inter alia*:

- Declaring that the BA Agreement and PM Agreements remain in full force and effect;
- Restraining ESI from interfering with the Company’s rights under the BA Agreement and the PM Agreement;
- Declaring that the BA Agreement and the PM Agreement are assignable to the Purchaser; and
- Restraining ESI from carrying on business analysis, project management and contract management development programs in Canada.

The Purchaser requires a determination or resolution of the ESI litigation before it can determine whether or not to take an assignment of the BA Agreement and the PM Agreement, though in the latter respect, further discussions may resolve this issue prior to the return of this motion.

¹ The Purchaser has also confirmed that it would fund the costs associated with this extension motion. In addition, the deposit for Transition Period expenses will remain in the Monitor’s trust account for the proposed extension period.

The litigation is detailed in the materials filed with this Honourable Court by the Company, copies of which the Monitor has made available on its website. ESI filed responding materials on November 12, 2009.

5. EXTENSION OF THE STAY OF PROCEEDINGS

The Company is seeking an extension of the stay of proceedings to coincide with the proposed extension of the Transition Period. The Monitor supports the request for an extension of the stay of proceedings for the following reasons:

- The Company is acting in good faith and with due diligence to bring these proceedings to a conclusion;
- An extension of the stay of proceedings is required in order for the Company to advance its litigation with ESI;
- It will enable the Company to continue to perform its obligations under the TOA; and
- It will not prejudice any employee or creditor as there are sufficient funds on deposit from the proceeds of the Transaction to fund unpaid post-filing services and supplies provided to the Company up to the closing date of the Transaction, if any. Costs incurred subsequent to that date are to be funded by the Purchaser in accordance with the TOA, including on-going costs of the Monitor, its counsel, the Company and its counsel.

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

6. 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;
- Facilitating distributions in accordance with the Distribution Order;

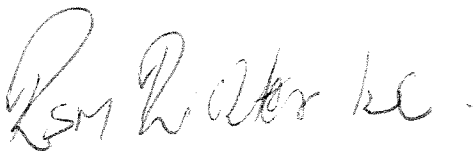
- Dealing extensively with the Purchaser concerning the TOA, including facilitating payments from the funds in the Monitor's trust account for the post-filing period prior to the Transaction;
- Assisting the Company to deal with numerous post-filing issues, including supplier, landlord, employee and customer issues;
- Reviewing Court materials and correspondence in connection with the ESI litigation;
- Posting on its website materials filed in these proceedings, including materials filed with this Honourable Court;
- Dealing with Comerica, Vengrowth and Wellington, including their legal counsel;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

7. 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 cursive script, appearing to read "RSM Richter Inc.", is written in black ink.

**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.

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

JUL 08 2009

PER / PAR:

[Signature]

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

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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 "A"	Amended and Restated Initial Order of the <i>Ontario</i> Superior Court of Justice dated July 8, 2009
Appendix "B"	Monitor's First Report to Court dated July 3, 2009 (without appendices)
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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.", followed by a period.

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

TRANSITION AND OCCUPATION SERVICES AGREEMENT

THIS AGREEMENT made this 17th day of August, 2009.

BY AND AMONG:

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

-and-

GLOBAL KNOWLEDGE NETWORK (CANADA) INC.

(a corporation incorporated under the laws of the Province of Ontario)

(the "**Purchaser**")

WHEREAS:

- A. By an Order of the Ontario Superior Court of Justice dated June 29, 2009, as 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**") and RSM Richter Inc. was appointed as the monitor (the "**Monitor**") in the CCAA Proceedings;
- B. Pursuant to an Agreement of Purchase and Sale dated August 5, 2009 (the "**APA**") between the Vendors and the Purchaser, the Purchaser agreed to purchase the Assets of the Vendors on the terms and conditions set out therein;
- C. On August 19, 2009 a Motion will be brought before the Ontario Superior Court of Justice to approve the APA;
- D. The APA provides for a transition period (the "**Transition Period**") with respect to employees and certain contracts and leases, the terms of which are set out in this Transition and Occupation Services Agreement (the "**Agreement**"); and
- E. The APA also provides for an occupation period (the "**Occupation Period**") during which the Purchaser shall be entitled to use and occupy the Leased Premises.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

INTERPRETATION

1. (a) **Definitions:** For the purposes of this Agreement, the following terms shall have the following meanings:

“**Business**” has the meaning set out in Section 3(a).

“**Deposit**” has the meaning set out in Section 12.

“**Employees**” has the meaning set out in Section 3(a).

“**Excluded Contracts**” has the meaning set out in Section 3(b).

“**Leases**” means all leases in respect of the Leased Premises under which one or both of the Vendors or either of them are tenants and pursuant to which one or both of the Vendors have rights and obligations as tenants or tenant, as the case may be, which Leased Premises are listed in Schedule A attached hereto.

“**Occupancy Expenses**” has the meaning set out in Section 17.

“**Occupation Period**” has the meaning set out in Section 15.

“**Transition Period**” has the meaning set out in Section 2.

“**Transition Period Expenses**” has the meaning set out in Section 8.

“**Transition Services**” has the meaning set out in Section 3.

“**Vesting Certificate**” has the meaning set out in Section 14(iii).

- (b) **Other Definitions:** Capitalized terms used herein and not otherwise defined herein, shall have the meaning given to them in the APA.

TRANSITION PERIOD AND TRANSITION SERVICES

2. **Transition Period.** The Transition Period shall commence at the Time of Closing and shall expire at 5:00 p.m. (Toronto time) on the date which is ninety (90) days after the Closing Date, or the Business Day immediately following should that date fall on a weekend or a holiday, 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**”).

3. **Transition Period Services.** The parties hereby agree that during the Transition Period, the Vendors shall provide the following services to the Purchaser:

- (a) the Vendors shall continue to employ those employees of the Vendors who are not hired by the Purchaser at Closing or terminated by the Vendors prior to Closing and shall make such employees (the "**Employees**") available to the Purchaser in connection with the operation of the business of the Vendors to be carried on by the Purchaser (the "**Business**"). The Vendors shall not terminate any such Employees except "for cause" or with the prior written consent of the Purchaser. The Vendors shall not have any responsibility to retain individuals who decide to seek alternative employment. From time to time during the Transition Period the Purchaser shall notify the Vendors and the Monitor of those Employees to whom the Purchaser will not make an offer of employment and those Employees who have rejected an offer of employment from the Purchaser and all Transition Expenses in respect of such Employees shall terminate immediately upon the giving of such notice by the Purchaser;
- (b) the Vendors shall not, without the prior written consent of the Purchaser, terminate during the Transition Period any Contract which is identified as an Excluded Asset pursuant to the APA (the "**Excluded Contracts**") other than those Excluded Contracts which the Purchaser notifies, from time to time, the Vendors and the Monitor that the Purchaser does not wish to assume, and further each of the Vendors hereby appoints the Purchaser as its agent to operate the Excluded Contracts, subject to the terms hereof;
- (c) the Vendors shall assist the Purchaser in its efforts to determine those employees to whom the Purchaser wishes to offer employment and the Vendors shall provide to the Purchaser all relevant terms of the employment of the Employees, as the Purchaser may request, subject to compliance with applicable law;
- (d) the Vendors shall authorize the Purchaser to occupy the Leased Premises, subject to the terms hereof; and
- (e) notwithstanding section 5.10 of the APA, for the purposes of providing the Transition Services, as defined herein, and facilitating the terms of this Agreement, the Vendors will not cancel their corporate name, business or trade names relating to the Business and shall maintain such names until the expiry of the Transition Period, or until such earlier time as the Purchaser may require.

(collectively, the "**Transition Services**").

Neither of the Vendors nor the Monitor shall have any operational obligation in respect of the Business during the Transition Period, except as otherwise provided herein. Notwithstanding the foregoing, nothing in this Agreement or any other agreement among the parties hereto shall be construed as an assignment to or an assumption by the Purchaser of any of Vendors' obligations to any of their Employees or under the Excluded Contracts. In that regard, the Vendors shall continue to pay all wages and benefits to such Employees during the Transition Period.

The Vendors shall at all times during the Transition Period maintain in full force and effect worker's compensation insurance (including employer liability insurance) covering all Employees then employed by the Vendors, or either of them, in accordance with the Vendors' existing insurance coverage as of the Closing Time.

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

4. The Purchaser shall have the right to review the Excluded Contracts, including all the Leases, and from time to time during the Transition Period shall notify the Vendors of the Excluded Contracts which the Purchaser wishes to assume and be assigned to the Purchaser.
5. Each of the Vendors shall actively cooperate with the Purchaser to obtain, as may be required by the terms of the Excluded Contracts, all necessary consents or waivers to the assignment of such Excluded Contracts, as requested by the Purchaser, on terms and conditions satisfactory to the Purchaser, acting reasonably.
6. During the term hereof, the Vendors shall, subject to receipt of the necessary consents, assign to the Purchaser all of the Vendors' rights, benefits and interests in and to such Excluded Contracts as requested by the Purchaser and upon such assignment the Purchaser shall assume all obligations and liabilities of the Vendors under such Excluded Contracts, whether arising prior to or after Closing. And further, all Transition Period Expenses in respect of any such Excluded Contract shall terminate immediately upon the assignment of any such Excluded Contract to the Purchaser.
7. The Vendors acknowledge and agree that, subject to the terms hereof, as the Purchaser is liable and responsible for all obligations of the Vendors under the Excluded Contracts during the Transition Period, all revenue to be paid or due and payable to the Vendors pursuant to such Excluded Contracts shall be owing to, and be for the account of, the Purchaser and shall be promptly paid or remitted to the Purchaser by the Vendors or the Monitor, as the case may be, upon receipt of same.

TRANSITION PERIOD EXPENSES

8. The Purchaser hereby undertakes, covenants and agrees that it shall reimburse the Vendors or the Monitor, as the case may be, for the actual out of pocket costs and expenses, plus all applicable taxes, incurred by the Vendors or the Monitor for those Transition Services rendered to the Purchaser during the Transition Period, which costs and expenses shall be limited to the following:
 - (a) the Vendors' actual employee payroll costs incurred and paid in respect of the Employees;
 - (b) the Vendors' actual costs incurred for employee benefits in respect of the Employees;
 - (c) the Vendors' actual costs, including actual commissions earned, incurred during the Transition Period all of which are associated with the obligations due and payable under the Excluded Contracts;

- (d) Occupancy Expenses (as defined below in section 17);
- (e) professional fees and expenses (including counsel expenses) of the Monitor incurred in connection with the administration of this Agreement determined in accordance with the Monitor's standard hourly rates and which fees are estimated by the Monitor to be in the range of \$10,000 to \$20,000 per month; and
- (f) such other reasonable costs incurred by the Vendors and the Monitor as a result of providing to the Purchaser the Transition Services specified in section 3 hereof.

(collectively, the "**Transition Period Expenses**").

The Purchaser may review and audit all Transition Period Expenses at any time.

9. It is expressly agreed that the Transition Period Expenses shall not include any cost or expense for services rendered by any of the Vendors' employees, personnel, consultants or any other Persons providing services to the Vendors, or any cost or expense associated with the Excluded Contracts on or prior to the Closing Time and/or any cost or obligation arising in connection with the termination or severance of any employee of the Vendors.

10. The parties acknowledge and agree that all accounts receivable, prepayments and deposits in favour of and due to the Vendors at the Closing Time (the "**Accounts Receivable**") shall become assets of the Purchaser on Closing and all Accounts Receivable received by the Vendors or the Monitor after Closing shall be held in trust for the benefit of the Purchaser and may be used by the Vendors or the Monitor to reimburse the Transition Period Expenses.

11. If and only to the extent that there exists a shortfall between i) the cash received by the Vendors or the Monitor in respect of the Accounts Receivable and ii) the Transition Period Expenses, then, five (5) Business Days prior to the date on which any Transition Period Expense must be paid, the Vendors or the Monitor shall provide the Purchaser with notice of such expense and the Purchaser shall, within three (3) Business Days of receiving such notice, wire sufficient funds to make such payment to the Vendors or the Monitor. In the event that the Vendors or the Monitor do not receive the funds prior to the date on which the payment is due, the Monitor shall be entitled to use the Deposit (defined below) to make the payment and the Purchaser shall thereafter replenish the Deposit.

12. As a condition to entering into this Agreement, the Purchaser shall pay to the Monitor a deposit of \$1,500,000 (the "**Deposit**"), which is the amount that is estimated to be the Transition Period Expenses for fifteen (15) days, as security for the Purchaser's obligation to reimburse the Vendors and the Monitor for the Transition Period Expenses and which may be used and/or replenished in accordance with the terms of this Agreement. The Deposit shall be held in an interest bearing account and 30 days following the expiration of the Transition Period, the Monitor shall promptly return to the Purchaser any unused portion of the Deposit plus any excess funds paid to the Vendors or the Monitor by the Purchaser and all accrued interest thereon, provided that adequate provision has been made to fund costs payable by the Purchaser pursuant to this Agreement.

13. If at any time, the Vendors or the Monitor reasonably believe that they will no longer have sufficient funds from the Deposit to fund the Transition Period Expenses, the Vendors or the Monitor shall provide the Purchaser with at least three (3) Business Days' written notice and the Purchaser shall thereafter replenish the Deposit up to the original Deposit amount or in the amount the Purchaser, the Vendors and the Monitor may otherwise agree. In the event that the Purchaser does not provide such funds within the three (3) Business Day period, the Vendors may thereafter elect to terminate this Agreement. Notwithstanding any such termination, the Vendors and the Monitor shall retain all rights and remedies available at law or in equity, including the entitlement to reimbursement for Transition Period Expenses due and owing up to the date of the termination of this Agreement.

END OF THE TRANSITION PERIOD

14. **End of the Transition Period:**

- (i) During the Transition Period, the Purchaser, in its sole discretion, may offer employment to any of the Employees employed by the Vendors. The parties acknowledge and agree that the Purchaser shall not assume any liability for any Employee of the Vendors that the Purchaser 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. Not less than two (2) Business Days prior to the expiration of the Transition Period, the Purchaser shall provide to the Vendors and the Monitor, a list of the then current Employees of the Vendors to whom the Purchaser intends to make an offer of employment.
- (ii) Subject to the Purchaser providing earlier notice that it will not be taking an assignment and assumption of a particular Excluded Contract pursuant to Section 3(b) hereof, no later than seven (7) Business Days prior to the expiration of the Transition Period, the Purchaser shall provide the Monitor and the Vendors with written notice listing the Excluded Contracts that the Purchaser desires to acquire and assume from and after the termination of the Transition Period. On the last day of the Transition Period, provided all consents or waivers required under such Excluded Contracts have been obtained, the Vendors shall assign all of the Vendors' rights, benefits and interests in such Excluded Contracts to the Purchaser.
- (iii) On the date of expiration of the Transition Period, and subject to the terms and conditions in sub-clause (ii) above, the Monitor shall file with the Court in the CCAA Proceedings a certificate (the "**Vesting Certificate**"), certifying that the Purchaser has advised that the consents or waivers required by such Excluded Contracts referred to in subclause (ii) herein have been obtained to the satisfaction of the Purchaser.
- (iv) If during the Transition Period or at any time thereafter, either of the Vendors receives or obtains any monies in respect of any security deposit held by a landlord pursuant to any of the Leases, then the Vendors shall promptly pay to the

Purchaser a dollar amount which is equivalent to that amount which either of the Vendors received in connection with any security deposit held by a landlord pursuant to any of the Leases.

- (v) In consideration of the Purchaser acquiring all of the Assets pursuant to the APA, each of the Vendors jointly and severally agrees with the Purchaser that for a four year period following the date hereof, within any province of Canada, neither of the Vendors will a) engage in, or assist any Person that is engaged in, a business that is, directly or indirectly, competitive with the Business, or b) solicit or accept any business from any customer, supplier or licensee of the Vendors, if such solicitation or business would, directly or indirectly, compete for any service or trade of the Business as it is then carried on by the Purchaser, and this provision shall survive the termination of this Agreement and continue in full force and effect following such termination.

OCCUPATION PERIOD

15. **Occupation Period.** The Purchaser and the Vendors agree that during the period beginning on the Closing Date and ending on the date which is 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 the date 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 Date (the “**Occupation Period**”), the Purchaser shall be entitled to occupy and use the Leased Premises (or any particular Leased Premise or Leased Premises) identified in Schedule A attached hereto for the purposes of conducting the Business (provided that the activities and use of the Leased Premises are consistent with the terms of such lease). No provision in this section 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. Notwithstanding anything to the contrary contained in this Agreement, the Purchaser shall be under no obligation to seek the consent to the assignment or the assignments of the Leases in respect of the Leased Premises.

16. **Bankruptcy.** The Purchaser acknowledges that the Vendors may file an assignment in bankruptcy in order to facilitate occupation by the Purchaser of the Leased Premises.

17. **Occupancy Expenses.**

- (a) During and in respect of its period of occupancy of the Leased Premises hereunder, the Purchaser hereby undertakes to reimburse the Vendors or the Monitor, as the case may be, for all Basic Rent and Additional Rent (each as defined in each Lease) and all other amounts for which the tenant identified in such Lease has liability pursuant to the terms of the said Lease for the period from and after the date hereof, whenever due, to the date that the Purchaser either: i) acquires and assumes the Lease; or ii) notifies the Vendors that the Purchaser does not wish to acquire or assume such Lease (the “**Occupancy Expenses**”). Such reimbursement of Occupancy Expenses shall be included in the Transition Period Expenses.

- (b) The Vendors or the Monitor hereby undertake to pay the Occupancy Expenses as and when due in accordance with the terms of each such Lease or when payable by the Vendors and hereby undertake to pay such amounts directly to those entitled to receive payment.

18. **Right of Possession.** Nothing herein shall affect the Vendors' possession of, or right of possession, if any, in and to the Leased Premises and its rights of access thereto for the purposes of the administration of the CCAA Proceedings of the Vendors by the Monitor.

19. **Purchaser's Covenant.** During the Occupation Period, the Purchaser covenants and agrees that it shall:

- (a) abide by the terms of the Leases and all statutes, by-laws, rules, regulations, orders, whether municipal, provincial or federal, relating to the Leased Premises;
- (b) not assign, sublet or otherwise allow any other person to occupy the Leased Premises; or
- (c) not improve or alter any of the structures or fixtures on the Leased Premises (except as otherwise expressly permitted by each such Lease).

20. The Purchaser shall use, keep and maintain the Leased Premises and shall, upon the expiry of the Occupation Period, vacate the Leased Premises in accordance with the terms of the applicable Lease as if the Purchaser were the tenant of the Leased Premises; it being acknowledged that the Purchaser shall only be responsible for repairs to any items in the Leased Premises resulting directly from the Purchaser's occupation of the Leased Premises during the Occupation Period.

21. Neither the Vendors nor the Monitor shall be responsible for any personal injury sustained by the Purchaser or by any servant, agent, licensee, employee or customer of the Purchaser who may be on the Leased Premises. All risks of any such injury are hereby assumed by the Purchaser during the Occupation Period.

22. The right of occupation herein is a personal right arising from negotiated terms of the APA, this Agreement and the Transaction referenced herein and not as a result of a tenancy agreement or payment of rent. The parties hereto agree the right of occupation herein shall not be interpreted or be deemed to be a tenancy agreement nor be subject to or governed by the *Tenant Protection Act* or any other similar or replacement legislation.

MISCELLANEOUS

23. **Indemnity.** The Purchaser hereby indemnifies and saves harmless the Vendors and the Monitor from and against all manner of claims, demands, liabilities, debts, dues, actions, causes of actions, suits, proceedings, judgments, expenses, damages and disbursements of any nature whatsoever arising from the Purchaser's failure to pay Transition Period Expenses or acts or omissions in connection with the Purchaser's obligations during the Transition Period and related to this Agreement.

24. **Insurance.** The Purchaser represents and warrants to the Vendors that it has obtained adequate insurance coverage on the Leased Premises and shall, upon request, provide evidence thereof.

25. **Further Assurances.** Each of the parties hereto, at the expense of the requesting party (unless otherwise specified herein), shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use reasonable efforts and take all such steps as may be reasonably within its power to implement to the full extent the provisions of the agreement.

26. **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 Training LLC
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.

27. **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 Monitor on behalf of the Vendors and the Purchaser or by their respective solicitors.

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

29. **Miscellaneous.**

- (a) This Agreement shall be binding upon and enure to the benefit of the Vendors and the Purchaser and their respective successors and assigns and shall enure to the benefit of the Monitor.
- (b) 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 the parties hereby irrevocably attorn to the courts of the Province of Ontario with respect to any matter ensuing hereunder.
- (c) In the event there is an inconsistency between this Agreement and the APA, this Agreement shall prevail.
- (d) Neither this Agreement nor any provision herein may be amended, waived, discharged or terminated except with the written consent of the Monitor and by an instrument in writing, signed by the parties or by the party against whom enforcement of the amendment, waiver, discharge or termination is sought.
- (e) This Agreement may be executed in counterparts and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.
- (f) This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals or representations, written or oral, with respect thereto.

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

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first above written.

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/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

By: _____

Name: _____

Title: _____

I/We have the authority to bind the Corporation.

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

By: _____

Name: Brian Holland

Title: President

I have authority to bind the corporation.

SCHEDULE A

List of Leased Premises

Vancouver

Bentall Tower Two, Suite 400
555 Burrard Street
Vancouver, BC
V7X 1M8

Victoria

838 Fort Street
Victoria, BC
V8W 1H8

Calgary

700 2nd Street West,
Suite 400
Calgary, AB
T2P 2W1

Edmonton

College Plaza
8215-1 12 Street, Suite 1100
Edmonton, AB
T6G 2C8

Winnipeg

201 Portage Avenue
Suite 1903
Winnipeg, MB
R3B 3K6

Toronto

CIBC Building
2 Bloor Street West
Suites 800 & 1200
Toronto, ON
M4W 3E2

Mississauga

30 Eglinton Avenue West
Suite 804
Mississauga, ON
L5R 3E7

Ottawa

Holland Cross
1600 Scott Street, 3rd Floor
Tower B
Ottawa, ON
K1Y 4N7

Kitchener

50 Queen Street North
Suite 860
Kitchener, ON
N2H 6P4

Montréal

800 Boul. René-Levesque Ouest
Bureau 990
Montréal, QC
H3B 1X9

Halifax

1809 Barrington Street
Suite 900
Halifax, NS
B3J 3K8

Sydney

70 Crescent Street
Suite 101
Sydney, NS
B1S 2Z7

St. John's

Viking Building
136 Crosbie Road, Suite 409
St. John's, NL
A1B 3K3

Court File Number: 0

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Nxiant Learning Inc.

Plaintiff(s)

AND

Defendant(s)

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No.:	Facsimile No.:
G. Blanchetrit. for Nxiant	416-218-1141	416-218-1241
C. Francis for ESI Intellectual	416-369-4137	416-264-9227
M. Forte for Proton	416-216-4870	416-216-3830
M. Sims for Global Knowledge	416-595-8577	416-595-8695

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- ☐ Adjourned to: _____
☐ Time Table approved (as follows):

Issue
 A 3 Motions to be heard. Scheduled.

① ESI will challenge form

② Nxiant moving for injunctive + other relief.

③ Global moving for relief similar to that of Nxiant.

1 DAY hearing booked Monday Nov 30/09

Nxiant + Global to use best efforts to coordinate their respective positions.

Counsel to coordinate cross examination.
 Facts to be filed.

Nov 4/09 Date

[Signature]
 Judge's Signature

☐ Additional Pages _____