

No. S-194621
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DEREK HAM, GRAHAM SUNDERS, GRAHAM SAUNDERS
IN HIS CAPACITY AS TRUSTEE OF THE SAUNDERS
FAMILY TRUST, PLAZACORP INVESTMENTS LIMITED,
SCM INVESTMENT LP BY ITS GENERAL PARTNER SCM
MANAGEMENT GP INC.

PLAINTIFFS

AND:

XERAFLOP TECHNOLOGIES INC. also known as XERA ONE
TECHNOLOGIES

DEFENDANT

**ORDER MADE AFTER APPLICATION
(CLAIMS PROCESS ORDER)**

BEFORE) THE HONOURABLE JUSTICE) 21/APR/2022
) VEENSTRA)

ON THE APPLICATION of Crowe MacKay & Company Ltd. in its capacity as receiver (the “Receiver”) over the entitlement of Xeraflop Technologies Inc. also known as Xera One Technologies (the “Debtor”) to investment tax credits and refundable investment tax credits in respect of the Debtor’s “SR&ED qualified expenditure pool” from the Scientific Research and Experimental Development program administered by the Canada Revenue Agency with respect to the fiscal years ended 2018 and 2019 (the “SRED Claims”), coming on for hearing by Teams at 800 Smithe Street, Vancouver, British Columbia, on April 21, 2022, and on hearing Lee Marriner, counsel for the Receiver, and on no one else appearing, though duly served;

THIS COURT ORDERS that:

- 1. For the purposes of this Order, the following terms will have the following meanings:
 - (a) “Appointment Order” means the Receivership Order of the Honourable Madam Justice Watchuk made on June 15, 2020 in this proceeding;
 - (b) “Books and Records” means the written material obtained by the Receiver in respect of the SRED Claims;

- (c) **“Business Day”** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Vancouver, British Columbia;
- (d) **“Claims Package”** means a document package that will consist of a copy of this Order, a Notice to Prove Claim, a form of Proof of Claim, and such other materials as the Receiver considers necessary or appropriate;
- (e) **“Court”** means the Supreme Court of British Columbia;
- (f) **“Excluded Receivership Claim”** means any claim secured by the Receiver’s Charge (as defined in the Appointment Order), any claim secured by the Receiver’s Borrowings Charge (as defined in the Appointment Order), any claim of Canada Revenue Agency related to Goods and Services Tax or payroll source deductions owed by the Debtor, and any claim of Her Majesty the Queen in right of the Province of British Columbia including, for certainty, a claim of the Director of Employment Standards;
- (g) **“Notice of Acceptance, Revision or Disallowance”** means a notice delivered by the Receiver informing a Receivership Creditor that the Receiver has accepted, revised or disallowed all or any part of such Receivership Creditor’s Receivership Claim, which notice will be substantially in the form attached as Schedule “B” to this Order and will set out the reasons for such allowance, revisions and/or disallowance, as applicable;
- (h) **“Notice to Prove Claim”** means the notice in the form attached as Schedule “A” to this Order to be published in accordance with this Order;
- (i) **“Person”** means any individual, general or limited partnership, firm, association, joint venture, trust, entity, corporation, limited or unlimited liability company, unincorporated organization, trade union, pension plan administrator, pension plan regulator, governmental authority or agency, employee or other association, or any other juridical entity howsoever designated or constituted;
- (j) **“Proof of Claim”** means the form completed and filed by a Receivership Creditor setting forth its Receivership Claim, with supporting documents if necessary, which proof of claim will be substantially in the form attached to this Order as Schedule “C”;
- (k) **“Proven Receivership Claim”** means the amount and classification of any Receivership Claim as finally determined in accordance with this Receivership Claims Procedure;
- (l) **“Receiver’s Website”** means <https://www.crowemackayco.ca/engagements/recent-engagements>
- (m) **“Receivership Claim”** means any right of any Person against the SRED Claims, or either of them, in connection with any indebtedness, liability or obligation of any kind (including, without limitation, by operation of a trust), whether liquidated,

unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise and whether or not such right is executory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future that could be asserted by way of set-off, counterclaim or otherwise, which indebtedness, liability or obligation is based in whole or in part on facts existing on or prior to the date of this Order (each a **“Receivership Claim”** and, collectively, the **“Receivership Claims”**), provided, however, that no **“Receivership Claim”** will include an Excluded Receivership Claim;

- (n) **“Receivership Claims Bar Date”** means 30 days after the date Claims Packages are sent by the Receiver in accordance with paragraph 2 (a) of this Order;
- (o) **“Receivership Claims Procedure”** means the procedures outlined in this Order, including the schedules to this Order; and
- (p) **“Receivership Creditor”** means any Person having a Receivership Claim, including, without limitation, any beneficiary of the SRED Claims, or either of them, held in trust.

NOTICE TO CREDITORS AND OTHERS

2. The Receiver will:

- (a) no later than ten Business Days after the date this Order is pronounced, cause a Claims Package to be sent to all known creditors of the Debtor shown on the books and records of the Debtor by ordinary mail, facsimile transmission, email message, or personal delivery, with such mode of delivery being in the Receiver’s discretion based upon reasonable belief that delivery by such mode will come to the notice of the recipient; and
- (b) no later than five Business Days after the date this Order is pronounced, post a copy of the Order on the Receiver’s Website.

3. If the Receiver becomes aware of further claims of any Person not included in the initial distribution of the Claims Package, the Receiver will distribute copies of the Claims Package to such a Person, but the entitlement to each such Person to receive notice is abridged to the date the Claims Package is distributed to each such Person, subject to further order of this Court.


CLAIMS BAR DATE AND CLAIM DISPUTES

4. A Receivership Creditor who wishes to assert a Receivership Claim must file a Proof of Claim and supporting documents with the Receiver by delivering the Proof of Claim and supporting documents by ordinary mail, registered mail, courier, email, or personal delivery by the Receivership Claims Bar Date at:

Crowe MacKay & Company Ltd.
 1100 – 1177 West Hastings St,
 Vancouver, BC V6E 4T5

Attention: Derek Lai
 Email: derek.lai@crowemackay.ca

Nelson Allan
nelson.allan@crowemackay.ca

5. A Receivership Creditor who does not file a Proof of Claim on or before the Receivership Claims Bar Date in accordance with paragraph 4 of this Order: 
 - (a) will be forever barred from asserting or enforcing any such Receivership Claim; and
 - (b) will not be entitled to receive any distributions from any of the SRED Claims.
6. The Receiver will review each Proof of Claim filed by the Receivership Claims Bar Date and may accept, revise or disallow, in whole or in part, each Receivership Claim. Upon accepting, revising or disallowing a Receivership Claim, in whole or in part, the Receiver will send a Notice of Acceptance, Revision or Disallowance to the Receivership Creditor.
7. The Receiver may request additional information with respect to any Receivership Claim and may request that any Receivership Creditor file further documents not filed with the Receivership Creditor's Proof of Claim.
8. The Receiver may attempt to resolve the classification and amount of any Receivership Claim with the Receivership Creditor on a consensual basis prior to accepting, revising or disallowing such Receivership Claim.
9. Where a Receivership Claim has been revised or disallowed, in whole or in part, by a Notice of Acceptance, Revision or Disallowance, the revised or disallowed portion of that Receivership Claim will not establish a Proven Receivership Claim unless the Receivership Creditor successfully appeals the decision of the Receiver in accordance with paragraph 10 of this Order.
10. Any Receivership Creditor who disputes a revision or disallowance of a Receivership Claim in a Notice of Acceptance, Revision or Disallowance may appeal the decision of the Receiver and seek a determination of the validity and value of the Receivership Claim by filing in this proceeding and serving on the Receiver a notice of application supported by affidavit materials by no later than 15 Business Days after delivery of the Notice of Acceptance, Revision or Disallowance, or by a later date agreed between the Receiver and the Receivership Creditor. The Receiver is at liberty, but not required, to respond to or appear at the hearing of any such application. The standard of review for the appeal of a Notice of Acceptance, Revision or Disallowance will be the same as for the appeal of a disallowed claim pursuant to the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3.
11. Any Receivership Creditor who fails to file and serve a notice of application and affidavit material according to paragraph 10 of this Order will be deemed to accept the Receiver's

decision as set out in the Notice of Acceptance, Revision or Disallowance.

DISTRIBUTION

- 12. The Receiver is authorized, relying upon the results of the Receivership Claims Procedure and after the resolution of all appeals pursuant to the Receivership Claims Procedure, to make distributions in respect of Proven Receivership Claims without further order of this Court.

GENERAL

- 13. The Receiver may set off against a Receivership Claim of any Receivership Creditor any claims of any nature whatsoever, including, without limitation, contingent claims, that the Debtor may have against such Receivership Creditor arising prior to the entry of this Claims Process Order. Neither the failure to assert set-off nor the allowance of any Receivership Claim will constitute a waiver or release by the Receiver of any such claim that the Receiver may have against such Receivership Creditor.
- 14. The Receiver may apply to this Court for directions with respect to the Receivership Claims Process or this Claims Process Order.
- 15. In carrying out the terms of this Claims Process Order, the Receiver:
 - (a) will have all the protections given to it by the Appointment Order, including the stay of proceedings in its favour;
 - (b) will not incur liability or obligation as a result of carrying out the Claims Process Order; and
 - (c) will not be liable for claims or damages resulting from any errors or omissions in the Books and Records.
- 16. Endorsement of this Order by counsel appearing on this application other than the Receiver's counsel is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



 Signature of Lee Marriner,
 lawyer for the Receiver



 By the Court.

Registrar

Foxley

CHECKED
<i>DL</i>

Schedule "A"

No. S-194621
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DEREK HAM, GRAHAM SUNDEERS, GRAHAM SAUNDERS
IN HIS CAPACITY AS TRUSTEE OF THE SAUNDERS
FAMILY TRUST, PLAZACORP INVESTMENTS LIMITED,
SCM INVESTMENT LP BY ITS GENERAL PARTNER SCM
MANAGEMENT GP INC.

PLAINTIFFS

AND:

XERAFLOP TECHNOLOGIES INC. also known as XERA ONE
TECHNOLOGIES

DEFENDANT

NOTICE TO PROVE CLAIM

TAKE NOTICE that by Order of the Supreme Court of British Columbia pronounced on April 21, 2022 (the "Claims Process Order"), Crowe MacKay & Company Ltd. in its capacity as receiver (the "Receiver") over the entitlement of Xeraflop Technologies Inc. also known as Xera One Technologies (the "Debtor") to investment tax credits and refundable investment tax credits in respect of the Debtor's "SR&ED qualified expenditure pool" from the Scientific Research and Experimental Development program administered by the Canada Revenue Agency with respect to the fiscal years ended 2018 and 2019 (the "SRED Claims"), has been authorized to conduct a claims process for the determination of claims against the Debtor.

In order to participate in any distribution of the SRED Claims, any creditor having a claim against the Debtor must file a Proof of Claim in accordance with the Claims Process Order. If a creditor does not file a Proof of Claim by the Claims Bar Date, it will not be entitled to participate in any way in any distribution of the SRED Claims.

Copies of the Proof of Claim form and the Claims Process Order may be obtained at <https://www.crowemackayco.ca/engagements/recent-engagements> or by sending a written request to the Receiver at:

Crowe MacKay & Company Ltd.
1100 – 1177 West Hastings St,
Vancouver, BC V6E 4T5

Attention: Derek Lai
Email: derek.lai@crowemackay.ca

Nelson Allan
nelson.allan@crowemackay.ca

Schedule "B"

No. S-194621
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DEREK HAM, GRAHAM SUNDERS, GRAHAM SAUNDERS
IN HIS CAPACITY AS TRUSTEE OF THE SAUNDERS
FAMILY TRUST, PLAZACORP INVESTMENTS LIMITED,
SCM INVESTMENT LP BY ITS GENERAL PARTNER SCM
MANAGEMENT GP INC.

PLAINTIFFS

AND:

XERAFLOP TECHNOLOGIES INC. also known as XERA ONE
TECHNOLOGIES

DEFENDANT

NOTICE OF ACCEPTANCE, REVISION, OR DISALLOWANCE OF CLAIM

TO: **[creditor]**

Crowe MacKay & Company Ltd., in its capacity as receiver (the "Receiver") over the entitlement of Xeraflop Technologies Inc. also known as Xera One Technologies (the "Debtor") to investment tax credits and refundable investment tax credits in respect of the Debtor's "SR&ED qualified expenditure pool" from the Scientific Research and Experimental Development program administered by the Canada Revenue Agency with respect to the fiscal years ended 2018 and 2019 (the "SRED Claims"), hereby gives you notice that the Receiver has reviewed your claim submitted pursuant to the Claims Process Order made on April 21, 2022 and has accepted, revised or rejected your Receivership Claim or any part thereof, as follows:

[describe acceptance, revision, or disallowance and an explanation]

If you do not agree with this Notice of Acceptance, Revision, or Disallowance, you may appeal the decision of the Receiver by, no later than 15 business days after delivery of this Notice of Acceptance, Revision, or Disallowance, filing at the Supreme Court of British Columbia and serving on the Receiver at the following address a notice of application supported by affidavit materials:

Gehlen Dabbs
1201 – 1030 West Georgia St
Vancouver, BC V6E 2Y3
Attention: Geoffrey H. Dabbs
Email: gd@gdlaw.ca

If you do not appeal the decision of the Receiver in this manner, you will be deemed to accept the Receiver's decision as set out in this Notice of Acceptance, Revision, or Disallowance.

Dated at Vancouver, British Columbia, this ____ day of _____, 2022.

Schedule "C"

No. S-194621
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DEREK HAM, GRAHAM SUNDERS, GRAHAM SAUNDERS IN HIS
CAPACITY AS TRUSTEE OF THE SAUNDERS FAMILY TRUST,
PLAZACORP INVESTMENTS LIMITED, SCM INVESTMENT LP BY
ITS GENERAL PARTNER SCM MANAGEMENT GP INC.

PLAINTIFFS

AND:

XERAFLOP TECHNOLOGIES INC. also known as XERA ONE
TECHNOLOGIES

DEFENDANT

PROOF OF CLAIM

1. Full name of creditor: _____ (the "Creditor").

2. Full mailing address of the creditor:

3. Telephone number: _____

4. Email: _____

5. Claim details:

Unsecured claim of: \$ _____

Secured claim of: \$ _____

6. Attached to this Proof of Claim are all relevant documents establishing the validity, amount, and particulars of the claim.

Dated at _____ this _____ day of _____, 2022.

Per: _____

Name of creditor: _____

Signature: _____