



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

**REQUISITION**

Filed by: The Receiver, Crowe MacKay & Company Ltd.

Required: To reset the hearing of the application (Notice of Application filed March 19, 2022, attached) to Thursday, April 21, 2022 at 9:45 a.m., by MS Teams at the Vancouver Courthouse at 800 Smithe Street, Vancouver, British Columbia, BY CONSENT.

This is an application for a claims process order in a receivership.

The time estimate for the hearing of the application is 20 minutes.

This matter is not within the jurisdiction of a Master.

Dated: March 30, 2022

A handwritten signature in blue ink, appearing to read "Lee J. Marriner".

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Signature of Lee J. Marriner  
Lawyer for the Receiver, Crowe MacKay &  
Company Ltd.

Email: [lm@gdlaw.ca](mailto:lm@gdlaw.ca)  
Phone: 604.633.5534



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**PLAINTIFFS**

**AND:**

**XERAFLOP TECHNOLOGIES INC. also known as XERA ONE  
TECHNOLOGIES**

**DEFENDANT**

**NOTICE OF APPLICATION**

**Name of applicant:** Crowe MacKay & Company Ltd. in its capacity as receiver of Xeraflop Technologies Inc. (the "Receiver")

**To:** The Plaintiffs

TAKE NOTICE that an application will be made by the Receiver to the presiding judge by MS Teams at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on March 31, 2022 at 9:45 a.m. for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. A Claims Process Order in order in the form attached as Schedule "A" to this notice of application.

**Part 2: FACTUAL BASIS**

**Background**

1. The defendant, Xeraflop Technologies Inc. also known as Xera One Technologies ("Xeraflop"), was a start-up technology company. Prior to the receivership, Xeraflop was developing a merchant advertising program to offer services including on-location video advertisements, sponsored search results, and banner advertisements.

2. In this action, filed on April 8, 2019, the plaintiffs sought judgments against Xeraflop related to loan agreements with Xeraflop. On March 5, 2020, the plaintiffs obtained default judgments against Xeraflop.

### **The Receivership**

3. On June 15, 2020, on application of the plaintiffs, the Receiver was appointed over the entitlement of Xeraflop to investment tax credits and refundable investment tax credits in respect of Xeraflop's "SR&ED qualified expenditure pool" from the Scientific Research and Experimental Development program administered by the CRA with respect to Xeraflop's fiscal years ended 2018 and 2019 (the "SR&ED Claims").

4. The June 15, 2020 Receivership Order permitted the Receiver to use Xeraflop's books, records, and documents to prepare and file Xeraflop's 2018 and 2019 tax returns with the CRA and applications in respect of the SR&ED Claims.

5. By Order made on August 25, 2020, the Receivership Order was varied to add a paragraph permitting the Receiver to prepare and file further tax returns with the CRA, including GST returns and payroll returns.

6. As described in greater detail in the First Report of the Receiver, dated August 14, 2020, the Receiver submitted Xeraflop's 2018 tax return and SR&ED Claim to the CRA before the June 30, 2020 deadline. The CRA assessed the 2018 tax return and SR&ED Claim and issued a cheque to the Receiver in the amount of \$638,614 (the "2018 Proceeds"). The CRA subsequently advised the Receiver that it had failed to set off Xeraflop's arrears in payroll source deductions for the 2018 and 2019 tax years, and that Xeraflop's CRA account was non-compliant due to outstanding GST returns.

7. As set out in the Second Report of the Receiver, dated March 8, 2022, the Receiver has, *inter alia*:

- a. paid the CRA \$293,540.26 for Xeraflop's unpaid payroll source deductions for the 2018 and 2019 tax years;

- b. received notice from the CRA that it re-assessed Xeraflop's GST returns and concluded Xeraflop owed \$49,000;
- c. filed a Notice of Objection with respect to the CRA GST return re-assessment described above;
- d. received notice from the CRA that Xeraflop owes a further \$55,000.00 related to unpaid source deductions for the 2018 and 2019 tax years;
- e. submitted Xeraflop's 2019 tax return and SR&ED Claim to the CRA; and
- f. followed up with the CRA regarding the resolution of issues that will permit the release of the 2019 SR&ED refund.

#### **Purpose and Overview of the Claims Process**

8. The Receiver anticipates it will receive the 2019 SR&ED refund from the CRA shortly. At this juncture, the Receiver needs to determine the nature, quantum, validity and enforceability of claims against Xeraflop in order to facilitate an orderly distribution of the proceeds of the SR&ED Claims.

9. The Receiver is aware of a number of parties who may have claims against Xeraflop that could entitle them to participate in the proceeds of the SR&ED Claims, including:

- a. the Director of Employment Standards pursuant to a December 15, 2020 Determination under the *Employment Standards Act*, RSBC 1996, c 113;
- b. the Plaintiffs; and
- c. potential unsecured creditors of Xeraflop according to Xeraflop's books and records.

10. The proposed Claims Process Order is similar to the claims process in the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 and to claims processes used in other receivership and *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 proceedings.

11. The terms of the proposed Claims Process Order will:

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- a. require the Receiver to distribute a claims package to all known creditors of Xeraflop;
- b. permit all Receivership Creditors to deliver a proof of claim to the Receiver by a claims bar date, which the Receiver will then review and either accept, revise, or disallow; and
- c. permit a Receivership Creditor to dispute a revision or disallowance by the Receiver by appeal to the Court.

12. It is expected that once the claims process is complete, the Receiver will be in a position to distribute the proceeds of the SR&ED Claims and bring the receivership to an end.

### **Part 3: LEGAL BASIS**

1. The June 15, 2020 Receivership Order appointed the Receiver over any and all proceeds payable by the CRA in respect of filings with the CRA. The Receivership Order also permitted the Receiver to apply to the Court for advice and directions in the discharge of its powers and duties under the Receivership Order.

2. In order to distribute the proceeds of the filings with the CRA in the form of the SR&ED refunds, the Receiver needs to conduct a claims process that will allow all creditors and claimants to submit a proof of claim to the Receiver in order to participate in the distribution of the proceeds.

### **Part 4: MATERIAL TO BE RELIED ON**

1. Receivership Order of the Honourable Madam Justice Watchuk, entered on June 15, 2020.

2. Order of the Honourable Madam Justice Watchuk, entered on August 28, 2020.

3. First Report of Crowe MacKay & Company Ltd., Court Appointed Receiver of Xeraflop Technologies Inc., August 14, 2020.

4. Second Report Crowe MacKay & Company Ltd., Court Appointed Receiver of Xeraflop Technologies Inc., March 8, 2022.

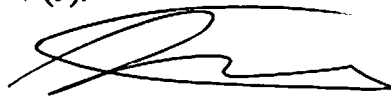
The Applicant estimates that the application will take 20 minutes.

This matter is not within the jurisdiction of a master.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Dated: March 18, 2022



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Signature of Lee Marriner,  
Lawyer for the Applicant,  
Crowe MacKay & Company Ltd., Receiver of  
Xeraflop Technologies Inc.  
Email: [lm@gdlaw.ca](mailto:lm@gdlaw.ca)  
Telephone: 604-633-5534



- (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), and any claim of Canada Revenue Agency related to Goods and Services Tax or payroll source deductions owed by the Debtor;
- (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](mailto:derek.lai@crowemackay.ca)

Nelson Allan  
[nelson.allan@crowemackay.ca](mailto: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 3 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

## Schedule "A"

No. S-194621  
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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 TO PROVE CLAIM**

TAKE NOTICE that by Order of the Supreme Court of British Columbia pronounced on \_\_\_\_, 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](mailto:derek.lai@crowemackay.ca)

Nelson Allan  
[nelson.allan@crowemackay.ca](mailto:nelson.allan@crowemackay.ca)

Schedule "B"

No. S-194621  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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**DEREK HAM, GRAHAM SUNDERS, GRAHAM SAUNDERS  
IN HIS CAPACITY AS TRUSTEE OF THE SAUNDERS  
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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 \_\_\_\_\_, 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](mailto: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: \_\_\_\_\_