



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

RECEIVERSHIP ORDER

BEFORE THE HONOURABLE MADAM JUSTICE WATCHUK) June 15, 2020
)
)

ON THE APPLICATION of the Plaintiffs, Derek Ham, Graham Saunders, 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. (the "**Plaintiffs**") for an Order pursuant to Section 39 of the *Law and Equity Act*, RSBC 1996 c 253 (the "**LEA**"), as amended, appointing Crowe MacKay & Company Ltd. as the receiver, without security, 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 Debtor's fiscal years ended 2018 and 2019 ("**SR&ED Claims**"), coming on for hearing by telephone this day at the Courthouse located at 800 Smithe Street, Vancouver, British Columbia; and on hearing Hunter Parsons, counsel for the Plaintiffs; and on no one else appearing, though duly served; and on the consent of the Technology Incentives Inc.

("Technology Incentives"); and on the consent of Crowe MacKay & Company Ltd.; and on reading the materials filed;

THIS COURT ORDERS that:

APPOINTMENT

1. Pursuant to s. 39 of the *LEA*, Crowe MacKay & Company Ltd. is appointed a receiver (the "**Receiver**"), without security, of:
 - (a) all of the Debtor's books, records and documents (the "**Documents**"):
 - (i) for the purposes of preparing and filing with Canada Revenue Agency, the Debtor's 2018 and 2019 tax returns (the "**Tax Returns**"); and
 - (ii) for the purposes of preparing and filing with Canada Revenue Agency, the Debtor's applications in respect of the 2018 and 2019 SR&ED Claims;

(the "**Filings**"); and
 - (b) any and all proceeds payable by Canada Revenue Agency in respect of the Debtor arising from the Filings (the "**Proceeds**").

(collectively, the "**Property**").

RECEIVER'S POWERS

2. The Receiver is empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds arising out of or from the Property;
 - (b) to receive, preserve and protect the Property;
 - (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons, from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order, in particular, the preparation and filing of the Filings and recovery of the Proceeds, if any;
 - (d) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the

Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;

- (e) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (f) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

3. Each of (a) the Debtor; (b) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; and (c) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, "**Persons**" and each a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
4. All Persons, other than governmental authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
5. Upon request, all Persons shall provide to the Receiver any information pertaining to the Debtor that may be relevant to the Property or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5 or 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to solicitor client privilege or statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover

and fully copy all of the information contained therein whether by way of printing the information or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (a) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on; (b) affect the rights of any regulatory body as set forth in section 69.6(2) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“*BIA*”); (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any “eligible financial contract” as defined in the *BIA*.

NO INTERFERENCE WITH THE RECEIVER

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this

Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

11. All Persons having oral or written agreements with the Debtor 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 Debtor are 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 Receiver, and the Receiver shall be entitled to the continued use of the Debtor's current 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable, in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post-Receivership Accounts**") and the monies standing to the credit of such Post-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

13. Subject to the employees' right to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtor, including any successor employer liabilities as referred to in Section 14.06(1.2) of the *BIA*, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*, SC 2005, c 47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

PERSONAL INFORMATION

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or Section 18(1)(o) of the *Personal Information Protection Act*, SBC 2003, c 63, the Receiver may disclose, as necessary, personal information of identifiable individuals to consultants or professionals engaged to assist with the Filings. Each such consultant or professional shall maintain and protect the privacy of such information and limit the use of such information to its completion of the Filings, and if it does not complete the Filings, shall return all such information to the Receiver, or in the alternative destroy all such information.

LIMITATION ON THE RECEIVER'S LIABILITY

15. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
 - (a) any gross negligence or wilful misconduct on its part; or
 - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the *BIA* or by any other applicable legislation.

RECEIVER'S ACCOUNTS

16. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.
17. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
18. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

19. The Receiver is authorized and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable,

provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

20. Neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
21. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.
22. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

ALLOCATION

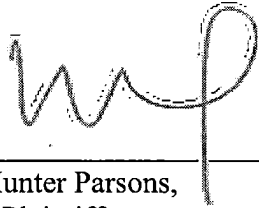
23. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver’s Charge and Receiver’s Borrowings Charge amongst the Property.

GENERAL

24. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
25. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
26. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

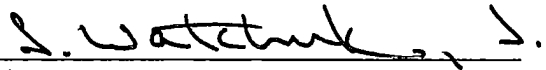
27. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
28. The Plaintiffs shall have their costs of this motion, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
29. Endorsement of this Order by counsel appearing on this application other than the Plaintiffs' counsel is dispensed with.
30. This Order may be endorsed by electronic counterpart, each of which shall be deemed to be an original signature.

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 Hunter Parsons,
lawyer for the Plaintiffs

By the Court.



Registrar

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Crowe MacKay & Company Ltd., the Receiver (the "**Receiver**") of all of the assets, undertakings and properties of XERAFLOP TECHNOLOGIES INC. also known as XERA ONE TECHNOLOGIES acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (the "**Court**") dated the 15th day of June, 2020 (the "**Order**") made in Supreme Court of British Columbia Action No. S-194621 has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the ____ day of each month after the date hereof at a notional rate per annum equal to the rate of ____ per cent above the prime commercial lending rate of ____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at _____, British Columbia.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2020.

Crowe MacKay & Company Ltd., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____
Name: Derek Lai
Title: Licensed Insolvency Trustee, Partner & Senior Vice President

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RECEIVERSHIP ORDER

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