

COURT FILE NUMBER 1801-10477

COURT COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP  
OF HATSIZE LEARNING CORPORATION

JUDICIAL CENTRE CALGARY

APPLICANT BANK OF MONTREAL

RESPONDENT HATSIZE LEARNING CORPORATION

DOCUMENT **APPROVAL AND VESTING ORDER  
(Sale by Receiver)**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT DENTONS CANADA LLP  
15<sup>th</sup> Flr., Bankers Court, 850-2<sup>nd</sup> Street SW  
Calgary, Alberta T2P 0R8  
Attention: Derek Pontin / John Regus  
Phone: (403) 268- 6301 / 7086  
Fax: (403) 268-3100

I hereby certify this to be a true copy of the original order

Dated this 18 day of Sept 2018

*[Signature]*  
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: September 18, 2018

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary Courts Centre, Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice C.M. Jones

**UPON THE APPLICATION** by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the undertaking, property and assets of Hatsize Learning Corporation (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Ascend Learning, LLC (the "**Purchaser**"), dated September 13, 2018, as appended to the Confidential Appendix (the "**Confidential Appendix**") to the First Report of the Receiver dated September 14, 2018 (the "**Report**"), and vesting in the Purchaser (or its nominee) the Debtor's right, title and interest in and to the property described in the Sale Agreement (the "**Purchased Assets**");

**AND UPON HAVING READ** the Receivership Order dated August 3, 2018 (the "**Receivership Order**"), the Confidential Appendix, the Report, and the Affidavit of Service of Rosie Donaleshen sworn September 18, 2018, to be filed; **AND UPON HEARING** the submissions of counsel for the Receiver, the Purchaser, and Bank of Montreal, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Rosie Donaleshen;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

**APPROVAL OF TRANSACTIONS**

2. The Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Purchased Assets to the Purchaser (or its nominee).
3. The sale process and all actions taken by the Receiver to date, as outlined in the Report and Confidential Appendix, are commercially reasonable and are hereby ratified and approved.
4. The Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders.

**VESTING OF PROPERTY**

5. Upon the delivery of a Receiver's certificate to the Purchaser (or its nominee) substantially in the form set out in **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from all rights of first refusal and pre-emptive rights of third parties, any and all security interests (whether contractual, statutory, or otherwise), hypothecs, caveats, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing, any encumbrances or charges created by the Receivership Order and all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system. For greater certainty, this Court orders that all of the Claims affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
6. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
7. The Purchaser (and its nominee, if any) shall, by virtue of the completion of the Transaction, have no liability of any kind whatsoever in respect of any Claims against the Debtor.

8. The Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such person remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
9. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.
10. The Receiver is to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser (or its nominee).
11. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* and section 20(e) of the *Alberta Personal Information Protection Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser, i) any personal information of customers of the Debtor and users of the Debtor's Property, including all persons or entities who have had or continue to have any interface with the Purchased Assets in the course of the Debtor's business; and 2) all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees, including personal information of those employees listed in the Sale Agreement. The Purchaser (or its nominee) shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.
12. Notwithstanding:
  - the pendency of these proceedings;
  - any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
  - any assignment in bankruptcy made in respect of the Debtor

the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act (Canada)* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
13. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

**MISCELLANEOUS MATTERS**

14. 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 Receiver and its agents in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders as 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.
15. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
16. Service of this Order on any party not attending this application is hereby dispensed with.

" C M Jones "

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Justice of the Court of Queen's Bench of Alberta

## Schedule "A"

## Form of Receiver's Certificate

Clerk's Stamp

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COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
	IN THE MATTER OF THE RECEIVERSHIP OF HATSIZE LEARNING CORPORATION
JUDICIAL CENTRE	CALGARY
APPLICANT	BANK OF MONTREAL
RESPONDENT	HATSIZE LEARNING CORPORATION
DOCUMENT	<b>RECEIVER'S CERTIFICATE</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	DENTONS CANADA LLP 15 <sup>th</sup> Fl., Bankers Court, 850-2 <sup>nd</sup> Street SW Calgary, Alberta T2P 0R8 Attention: Derek Pontin / John Regush Phone: (403) 268- 6301 / 7086 Fax: (403) 268-3100

**RECITALS**

- A. Pursuant to an Order of the Honourable Justice Eidsvik of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated August 3, 2018, Deloitte Restructuring Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Hatsize Learning Corporation (the "**Debtor**").
- B. Pursuant to an Order of the Court dated September **[18]**, 2018, the Court approved the agreement of purchase and sale made as of September **[12]**, 2018 (the "**Sale Agreement**") between the Receiver and Ascend Learning, LLC. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in **[Article 9]** of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in **[Article 9]** of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee); and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at **[Time]** on **[Date]**.

**DELOITTE RESTRUCTURING INC., in its capacity as receiver and manager of the undertaking, property and assets of Hatsize Learning Corporation, and not in its personal or corporate capacity.**

Per: \_\_\_\_\_

Name:

Title:

## Schedule "B"

## Purchased Assets

- I. All assets owned, used or licensed by Hatsize in the business necessary for the Purchaser to substantially perform (or have performed on its behalf) and receive the benefit of the services and provided under the MSA, including, but not limited to:

**1. Assigned Contracts**

- Whipcord Agreement. Master Service Agreement No. BNC00073 between Hatsize Learning Corporation and Blackbridge Networks Ltd. dated November 20, 2013 (a/k/a Master Services Agreement No. MSA-BNA00910-1 between Hatsize Learning Corporation and Whipcord Ltd. f/k/a BlackRidge Networks Ltd.), as amended, including Service Schedule A-3 and Service Schedule E-2.
- AWS;
- Zendesk;
- Atlassian/Jira;
- Atlassian/Confluence;
- Resilo – Btsync;
- Microsoft Agreement;
- VMware, vSphere/ESC Vcenter. VMware Embedded Software OEM Agreement between VMware, Inc. and Hatsize Learning Corporation dated June 30, 2016.
- Insight Canada.
- BlueChip 41398. Lease Contract between Hatsize Learning Corporation and Priority Leasing Inc., as assigned to Blue Chip Leasing Corporation pursuant to a Master Assignment of Leases or Security Agreements dated September 4, 2015.
- BlueChip 51153. Lease Contract between Hatsize Learning Corporation and Priority Leasing Inc., dated November 4, 2015, as assigned to Blue Chip Leasing Corporation pursuant to a Master Assignment of Leases or Security Agreements dated September 4, 2015.
- CWB 1-1. Lease Contract between Hatsize Learning Corporation and Priority Leasing Inc. (Lease No. 2844428).
- CWB 1-2. Lease Contract between Hatsize Learning Corporation and Priority Leasing Inc. (Lease No. 2832917).
- RCAP. Lease Contract between Hatsize Learning Corporation and Priority Leasing Inc. (Lease No. 423249-299570).

**2. Documentation**

Documentation, including:

- User Guides;
- Build and Deployment Instructions;
- Architectural documentation;
- Technical Specifications, including APIs;
- Source code documentation;
- Software development processes;
- Bug lists and Features Requests Lists; and

- Product Requirements Documents, Marketing Requirements Documents.

### **3. Software**

Software and related tools, databases, and resource files, including, but not limited to:

- All source code, including but not limited to, Hatsize's cloud-based virtual labs solution in source code form, and all software made available within Hatsize's internal SVN server;
- Build tools, including compilers, debuggers and configuration files;
- Test tools, including test scripts, build scripts, deployment scripts and related documentation;
- Images and containers, including scripts and to assemble and deploy such images and containers; and
- Databases, including data base content and scheme, and media files.

### **4. Hardware and Servers**

- All items in Lethbridge colocation center; All items in Toronto colocation center;
- All spare parts and hot swap inventory; and
- All on-premise computers, hardware, networking equipment and servers.

### **5. Website, Social Media, Domain Names**

All: (i) websites and social media accounts owned, maintained or operated by or on behalf of Hatsize; (ii) all names (including domain names) and handles associated with such websites and accounts; and (iii) all content of such websites and accounts, including:

[www.hatsize.com](http://www.hatsize.com);  
[learningseries.com](http://learningseries.com);  
[learningseries.ca](http://learningseries.ca);  
[learningseries.org](http://learningseries.org).

### **6. Intellectual Property**

All other intellectual property and related rights, including: (i) patents; (ii) copyrights; (iii) trademarks; and (iv) trade secrets and know-how, and any applications or registrations in connection with the foregoing, including:

### **7. Intellectual Property**

- Administration passwords and other credentials;
- Network components, including firewalls, load balancers, switches;
- Applications, including SVN.

II. Any and all Hatsize developed training courses.