

## ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of the 20th day of November, 2017

BETWEEN:

**DELOITTE RESTRUCTURING INC.**, in its capacity as court-appointed receiver of all assets and undertaking of Network Intelligence Inc., and not in its personal or corporate capacity, having an office at 2800 – 1055 Dunsmuir Street, Vancouver, British Columbia

(the “**Vendor**”)

AND:

**1130489 B.C. Ltd.**, a corporation formed pursuant to the laws of British Columbia and having a registered and records office at 1600 – 925 West Georgia Street, Vancouver, British Columbia

(the “**Purchaser**”)

### BACKGROUND

- A. Network Intelligence Inc. (“**NI**”) was in the business of researching and developing enterprise SSD controller solutions which meet enterprise users’ requirements for high bandwidth, high computing throughput, fast response speed, high time to failure and high scalability (the “**Business**”).
- B. Pursuant to an order (the “**Receivership Order**”) of the Supreme Court of British Columbia made on October 31, 2017 in Supreme Court of British Columbia (the “**Court**”) Action Number S-179749, Vancouver Registry (the “**Receivership Action**”), the Court made an Order appointing the Vendor as the court-appointed receiver of all of the assets and undertaking of NI with the power and authority to, among other things, carry on the Business and sell the Purchased Assets (as defined below).
- C. In addition, pursuant to the Receivership Order, the Vendor was authorized to borrow such monies as it may consider necessary up to a maximum of \$5,000,000 and the whole of the assets, undertakings and properties of NI were subject to fixed and specific charge (the “**Receiver’s Borrowing Charge**”) as security for payment of the amounts borrowed in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject in priority to the Receiver’s Charge (as defined in the Receivership Order) and the charges as set out in Section 14.06(7), 81.4(4) and 81.6(2) of the BIA, and certain enumerated security and was authorized to issue borrowing certificates evidencing amounts borrowed under the Receiver’s Borrowing Charge (the “**Receiver’s Borrowing Certificate**”).

- D. The Vendor wishes to sell, and the Purchaser wishes to purchase, all of NI's right, title and interest in and to the Purchased Assets on and subject to the terms and conditions of this Agreement.

## TERMS OF AGREEMENT

In consideration of the premises and the covenants, agreements, representations, warranties, and payments contained in this Agreement, the parties agree with one another as follows:

### 1. Definitions

The following terms have the following meanings:

- (a) **"Agreement"** means this asset purchase agreement made as of the date first written above;
- (b) **"Assigned Contracts"** means all of the contracts set out in **Schedule "A"**;
- (c) **"Books and Records"** means, NI's sales and purchase records, account receivables, lists of potential customers, inquiry logs, lists of all referral sources including, without limitation, all agent and international agency lists, research and development reports and records including with respect to Scientific Research and Development, certificates and certifications, operating guides and manuals for all Office Equipment and Supplies, business reports, records for all current and former employees, and all other documents, files, correspondence and other information (whether in written, printed, electronic or computer printout form).
- (d) **"Break Fee"** has the meaning ascribed thereto in section 16.1;
- (e) **"Business"** has the meaning ascribed to it in Recital A;
- (f) **"Business Day"** means any day other than a Saturday, a Sunday or any other statutory holiday in British Columbia;
- (g) **"Closing Date"** means the fourth Business Day following the date on which the Vesting Order is pronounced, or such other date as agreed upon in writing by the Vendor and the Purchaser not to exceed 10 Business Days from the date the Vesting Order is pronounced;
- (h) **"Closing Time"** means 2:00 pm, Vancouver, British Columbia time on the Closing Date;
- (i) **"Computers"** means all of NI's computers and computer equipment, including any computers or servers on which any of the Intellectual Property is stored, including those specifically enumerated in **Schedule "B"**;
- (j) **"Court"** has the meaning ascribed thereto in Recital B;

- (k) “**Employees**” means all personnel and independent contractors employed, engaged or retained by the Vendor in connection with the Business, including any that are on medical or long-term disability leave or other statutory or authorized leave of absence.
- (l) “**Encumbrance**” means any encumbrance or interest against or in the Purchased Assets of any kind whatsoever and includes, without limitation, a security interest, mortgage, lien, hypothec, pledge, assignment, charge, title retention agreement, option, trust or deemed trust (whether contractual, statutory or otherwise arising), licence and any covenant or other agreement, restriction or limitation relating to the Purchased Assets or the transfer of the Purchased Assets to the Purchaser pursuant to this Agreement;
- (m) “**ETA**” means the *Excise Tax Act* (Canada);
- (n) “**Goodwill**” means with respect to NI, its goodwill related to the business undertaking that NI undertakes including the right to carry on business under its name;
- (o) “**Government Entity**” means any Canadian, foreign, domestic, federal, territorial, provincial, state, municipal or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, bureau, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing having jurisdiction with respect to NI, the Purchased Assets or any other matter that is the subject of this Agreement;
- (p) “**GST**” means the goods and services tax payable pursuant to the ETA;
- (q) “**Intellectual Property**” means all of NI’s Canadian and foreign intellectual and industrial property rights of any kind, including all: (i) Trademarks, tradenames, logos and business names; (ii) Patents; (iii) inventions, novel devices, processes, compositions of matter, methods, techniques, improvements, observations, discoveries, apparatuses, machines, designs, expressions, theories, distinguishing guises, formulae, processes and ideas, whether or not patentable and whether or not a patent has been issued or a patent application has been made therefor; (iv) copyrights; (v) mask works; (vi) trade secrets, know-how, and other proprietary, confidential, technical or business information including applications, registrations and renewals in connection thereof; (vii) software and technology including uniform resource locators (URL’s), the internet websites related thereto and goodwill associated thereto, (viii) rights of privacy and rights to personal information, (ix) all telephone, telex, and facsimile numbers and internet protocol addresses, (x) Scientific Research and Development and any data and technical expertise, (xi) the Vendor’s corporate name and (xii) all moral or other rights in the foregoing and in other similar intangible assets, and all rights and remedies (including the right to sue for and recover damages, profits and any other remedy)

for past, present, or future infringement, misappropriation, or other violation relating to any of the foregoing;

- (r) “**NI**” has the meaning ascribed thereto in Recital A;
- (s) “**Office Equipment and Supplies**” means all of the chattels, of any nature, used in connection with NI’s business undertaking, including without limitation, desks, office furniture, fixtures, tools, Computers, electronic equipment, audio and visual equipment, and accessories, located at NI’s premises at either 306-3500 Gilmore Way, Burnaby, BC or 1A, 75 Tiverton Court, Markham, ON;
- (t) “**Party**” means either the Vendor or the Purchaser, as applicable, and “**Parties**” means both the Vendor and the Purchaser;
- (u) “**Patents**” means all of NI’s Canadian and foreign (whether national or multinational) statutory invention registrations, patents (including certificates of invention and other patent equivalents), patent applications, provisional patent applications and patents issuing therefrom, industrial designs, and industrial models, as well as all reissues, divisions, substitutions, continuations, continuations-in-part, patent disclosures, extensions and re-examinations, and all rights therein provided by multinational treaties or conventions.
- (v) “**Person**” means any individual, corporation, partnership, limited partnership, limited liability company, joint venture, association, joint-stock company, trust, society, incorporated organization or any other similar entity;
- (w) “**Purchase Price**” has the meaning ascribed thereto in Section 4;
- (x) “**Purchased Assets**” means all of the assets, undertakings and property of NI, including the Books and Records, Computers, Goodwill, Office Equipment and Supplies, Software and Intellectual Property, any entitlement to SR&ED claims or amounts, and right title and interest in Assigned Contracts, but does not include:
  - i. any assets that NI holds pursuant to any lease or similar arrangement with any third party; or
  - ii. any moneys or amounts that may from time to time be on deposit in the name of NI with or owed to NI by the Royal Bank of Canada, Royal Bank Mortgage Corporation, the Royal Trust Company or Royal Trust Corporation of Canada or any two or more of them, and in NI’s rights in those moneys or those amounts, or any proceeds thereof;
- (y) “**Purchaser’s Solicitors**” means Lawson Lundell LLP with offices at 1600 – 925 West Georgia Street, to the attention of Ms. Kimberley A. Robertson;
- (z) “**Receiver’s Certificate**” means a certificate executed by an officer of the Vendor in substantially the form attached hereto as **Schedule “C”**;

- (aa) **“Receivership Action”** has the meaning ascribed thereto in Recital B;
- (ab) **“Receiver’s Borrowing Certificate”** has the meaning ascribed to it in Recital C;
- (ac) **“Receiver’s Borrowing Charge”** has the meaning ascribed to it in Recital C;
- (ad) **“Receivership Charge”** has the meaning given it in the Receivership Order
- (ae) **“Receivership Order”** has the meaning ascribed thereto in Recital A;
- (af) **“Sale Procedure”** means the procedure for marketing and selling the Purchased Assets as materially set out in **Schedule “D”** hereto.
- (ag) **“Sale Procedure Order”** means the order of the Court approving the Sale Procedure in all material respects and approving the Receiver Manager’s entering into this Agreement as materially set out (without Schedules) in **“Schedule “E”** hereto;
- (ah) **“Sales Taxes”** means all transfer, sales, excise, stamp, license, production, value-added and other like taxes, assessments, charges, duties, fees, levies or other governmental charges of any kind, and includes without limitation additions by way of penalties, interest and other amounts with respect thereto, including provincial sales tax and GST;
- (ai) **“Scientific Research and Development”** means all of the right, title and interest in the research and investigation as undertaken by NI or any of its employees, agents, or contractors by means of experimentation or analysis carried out in the field of science, to acquire new knowledge, to devise and develop new products or processes, or to apply newly acquired knowledge in making improvements to existing products or processes, including development, testing and evaluation of a prototype;
- (aj) **“Servers”** means all of the equipment, and hardware running NI’s computer operating systems and providing storage in respect of the Intellectual Property;
- (ak) **“Software”** means all software relating to NI’s business undertaking including all versions thereof, and all related documentation, manuals, source code and object code, program files, data files, computer related data, databases systems, field and data definitions and relationships, data definition specifications, data models, program and system logic, interfaces, program modules, routines, sub-routines, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts, and all other material related to such software.
- (al) **“Trademarks”** means, together with the goodwill associated therewith, all of NI’s Canadian, provincial and foreign trademarks, service marks, trade dress, logos, slogans, distinguishing guises and indicia, trade names (including all assumed or fictitious names under which the NI’s business has been conducted),

corporate names, business names, domain names, and any other indicia of source or sponsorship of goods or services, whether or not registered, including all common law rights, and registrations, applications for registration and renewals thereof, including all marks registered in the Canadian Intellectual Property Office or any trademark offices of other states or nations throughout the world and all rights therein;

(am) “**Vendor’s Solicitors**” means Gowling WLG (Canada) LLP, having an office at Suite 2300, 550 Burrard Street, Vancouver, British Columbia, to the attention of Colin Brousson; and

(an) “**Vesting Order**” means an Order of the Court in the Receivership Action in form and content satisfactory to the Purchaser and the Vendor, each acting reasonably, approving the entry into this Agreement by the Vendor and the consummation of the transactions contemplated hereby, and vesting in the Purchaser or its nominee(s) all right, title and interest of NI in and to the Purchased Assets free and clear of all Encumbrances upon payment of the Purchase Price.

## 2. **Currency and Form of Payment**

2.1 All references to currency shall mean Canadian Dollars unless otherwise expressly provided.

2.2 All payments to be made by the Purchaser to the Vendor to effect the transactions set out in this Agreement are to be payable by certified cheque, bank draft or wire transfer to the Vendor’s Solicitors, “In Trust”.

## 3. **Purchase and Sale of Purchased Assets**

3.1 Subject to the timely fulfillment or waiver of the conditions precedent herein, including the granting of the Vesting Order, the Vendor agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor, all right, title and interest of NI in and to the Purchased Assets, if any, upon the terms hereof.

## 4. **Purchase Price and Payment**

4.1 The aggregate cash consideration payable by the Purchaser to the Vendor for the Purchased Assets is NINE MILLION DOLLARS (\$9,000,000.00) (the “**Purchase Price**”), plus all applicable Sales Taxes. For greater certainty, the parties acknowledge and agree that the Purchase Price shall be allocated as follows:

(a)	Computers (excluding Servers)	\$110,445.00
(b)	Servers (7 in Burnaby, 3 in Markham, \$1,800.00 each)	\$18,000.00
(c)	Goodwill	\$1.00

(d)	Remaining Purchased Assets	<u>\$8,871,554.00</u>
	Total	\$9,000,000.00

4.2 Subject to the terms and conditions of this Agreement, the Purchase Price shall be paid as follows as the Closing time:

- (a) satisfaction of all amounts owing under any security interest, trust, lien, charge or encumbrance, statutory or otherwise over the Purchased Assets, in favour of any person or Government Entity, which ranks in priority ahead of any security interest held by the Purchaser, if any, by way of payment to the Vendor's Solicitors 'in Trust' in a form of payment as is acceptable under the terms of this Agreement;
- (b) satisfaction of all amounts owing under the Receiver's Charge by way of payment to the Vendor's Solicitors 'in Trust' in a form of payment as is acceptable under the terms of this Agreement;
- (c) by a set off or reduction of the amount, if any, that the Purchaser is owed under the Receiver's Borrowing Certificates in respect of the Receiver's Borrowing Charge;
- (d) by a set off or reduction of the amount, if any, that the Purchaser is owed by NI arising from any of its debts and obligations as secured by the General Security Agreement entered into between NI and the Purchaser, and registered in the British Columbia Personal Property Registry under and pursuant to the Personal Property Security Act of British Columbia; and
- (e) the remaining balance owing, if any, by way of payment to the Vendor's Solicitors 'in Trust' in a form of payment as is acceptable under the terms of this Agreement.

## 5. Employees

5.1 No later than December 19, 2017, the Purchaser shall offer employment to all Employees, other than independent contractors, (the "**Target Employees**"). Such offers shall:

- (a) be for employment with the Purchaser that treats the period of employment of the Target Employee in question with NI and/or the Vendor as employment with the Purchaser for all purposes, and shall be on terms and conditions which, in the aggregate, are no less favourable than:
  - i. for those Target Employees who were employed by NI immediately prior to the Receivership Order, the terms in effect in respect of those Target Employees at that time; and

- ii. for those Target Employees who were not employed by NI immediately prior to the Receivership Order, the terms in effect with respect to those Employees at the time the offers are made.
  - (b) have a deadline for acceptance of December 29, 2017 unless otherwise agreed to by the Purchaser;
  - (c) be effective and contingent on the consummation of the transactions contemplated by this Agreement; and
  - (d) state that upon employment commencing with the Purchaser, the Purchaser shall be the Target Employee's sole employer in respect of the Business.
- 5.2 No later than December 19, 2017, the Purchaser shall offer to retain all Employees who are independent contractors (the "**Target Consultants**"). Such offers shall:
- (a) be for engagement with the Purchaser that treats the period of engagement of the Target Consultant in question with NI and/or the Vendor as engagement with the Purchaser for all purposes, and shall be on terms and conditions which, in the aggregate, are no less favourable than:
    - i. for those Target Consultants who were engaged by NI immediately prior to the Receivership Order, the terms in effect in respect of those Target Consultants at that time; and
    - ii. for those Target Consultants who were not engaged by NI immediately prior to the Receivership Order, the terms in effect with respect to those Target Consultants at the time the offers are made.
  - (b) have a deadline for acceptance of December 29, 2017 unless otherwise agreed to by the Purchaser;
  - (c) be effective and contingent on the consummation of the transactions contemplated by this Agreement; and
  - (d) state that upon engagement commencing with the Purchaser, with engagement with Vendor ceases due to the engagement with the Purchaser.
- 5.3 Those Target Employees and Target Consultants who accept the Purchaser's offer of employment extended in accordance with the terms of this Agreement, and who become employed or otherwise engaged by the Purchaser, shall be referred to herein as "**Transferred Workers**".
- 5.4 All items in respect of Transferred Workers including premiums for employment insurance, workers' compensation, Plans, accrued statutory holiday pay, fees, wages, salaries, commissions, bonuses, accumulated vacation with pay credits or entitlements and other employee benefits or claims which may become payable to, receivable by, or



accrued in favour of Transferred Workers up to the opening of business on the Closing Date will be appropriately adjusted to the opening of business on the Closing Date.

- 5.5 The Purchaser's obligation under this Section 5 is solely to make offers as described in this Section 5. The Purchaser will not be obligated to any Employee who refuses those offers, regardless of the reason for refusal. The Vendor will render all reasonable assistance to encourage Employees to accept the offers of employment or engagement in accordance with their terms and conditions.
- 5.6 Subject to Section 5.4 of this Agreement, the Vendor shall have no obligations or liability in respect of Transferred Workers once they become employees or otherwise engaged by the Purchaser.

## 6. Taxes

- 6.1 The Parties acknowledge that the Purchase Price is exclusive of all Sales Taxes. The Purchaser will be solely liable for and shall pay all Sales Taxes, including, without limitation, provincial sales taxes and GST payable upon and in connection with the sale and transfer of the Purchased Assets by the Vendor to the Purchaser, and will file all necessary documentation with respect to such Sales Taxes when due. If the Vendor is required under any applicable law to pay any such Sales Taxes, the Purchaser shall promptly reimburse the Vendor the full amount of such Sales Taxes upon delivery to the Purchaser of copies of receipts showing payment of such Sales Taxes. If prior to the Closing Date the Purchaser becomes a GST Registrant, the Parties will, on the Closing Date, elect jointly under section 167(1)(B) of the Excise Tax Act (Canada), in the prescribed form and containing the prescribed information to permit the Purchased Assets to be conveyed without GST being payable in respect of the purchase and sale thereof hereunder, and the Parties will jointly complete the election forms in respect of such election. The Parties agree that: (a) they will claim the benefit of any provision of applicable laws which allows all or any part of the Purchased Assets to be transferred by the Vendor to the Purchaser without payment of any Sales Taxes; and (b) they will, upon reasonable request from the other, cooperate fully in connection with the preparation and filing of any documents or tax returns with any Government Entity, and to use their commercially reasonable efforts to obtain any certificate or other document from any Government Entity, or any other Person, as may be necessary or commercially advisable to mitigate, reduce or eliminate any tax that could be imposed (including, but not limited to, taxes with respect to the transactions contemplated hereby).

## 7. Representations and Warranties of the Vendor

- 7.1 The Vendor represents and warrants to the Purchaser that:
- (a) subject to the Vesting Order being granted, the Vendor has the power, authority and capacity to enter into this Agreement, subject to its terms;
  - (b) the Vendor is not a non-resident of Canada within the meaning of section 116 of the *Income Tax Act*; and

- (c) the Vendor plans to register for purposes of the GST and will provide its registration number prior the Closing Date.
- 7.2 Except as expressly warranted by the Vendor in this Agreement, the Purchaser shall be deemed to have relied solely and entirely upon its own investigations and inspections of and with respect to the Purchased Assets and to the extent that any information which the Vendor has provided to the Purchaser is based on the records of NI, the Vendor makes no representation whatsoever with respect to the accuracy of any such information.
- 7.3 Notwithstanding anything to the contrary herein, the Purchaser hereby expressly acknowledges that: (i) if any consents of any Person are required to effect the transfer of any of the Purchased Assets to the Purchaser pursuant to this Agreement, then it is the sole responsibility of the Purchaser to obtain any such consents, and the granting of any such consents shall not be a condition precedent to the Purchaser's obligations under this Agreement, including the payment of the Purchase Price; and (ii) all costs and other liabilities associated with obtaining any such consents are the sole obligation of the Purchaser.
- 7.4 The Purchaser hereby acknowledges that: (i) another prospective purchaser may make an offer for the Purchased Assets, including without limitation at the hearing of the application for the Vesting Order; (ii) the Vendor is duty bound to consider any such offers; and (iii) if any such offer is, in the Vendor's view, better for the stakeholders as whole in comparison to this Agreement, the Vendor may in such circumstances have a duty to recommend that the Court approve such other offer and not this Agreement. The Purchaser hereby acknowledges that it has been advised by the Vendor that, in order to protect its interests, the Purchaser should retain legal counsel to appear at the hearing of the application for the Vesting Order, including to make an amended or further offer for the Purchased Assets should that be necessary.
8. **"As Is, Where Is"**
- 8.1 The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an "as is, where is" basis as they exist on the date hereof, and that once the Purchased Assets are in the possession of the Purchaser, the Vendor will have no further liability to the Purchaser. The Purchaser further acknowledges that it has conducted any and all diligence and inspections as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity, quality, assignability and condition of the Purchased Assets that it deemed appropriate, and has satisfied itself with regard to this matter. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity, quality, assignability or in respect of any other matter or thing concerning the Purchased Assets or the right of the Vendor to sell them, save as expressly represented or warranted in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the Sale of Goods Act (British Columbia) or similar legislation in any other jurisdiction do not apply to this transaction of purchase and sale and have been waived by the Purchaser.

## **9. Representations and Warranties of the Purchaser**

**9.1** The Purchaser represents and warrants to the Vendor as follows, with the intent that the Vendor will rely on these representations and warranties in entering into this Agreement, and in concluding the purchase and sale contemplated by this Agreement:

- (a) the Purchaser is a corporation duly incorporated, validly existing and in good standing under the jurisdiction of its incorporation and in accordance with applicable legislation governing corporations in the jurisdiction of its incorporation, and has the power and capacity to enter into this Agreement and carry out its terms;
- (b) the execution and delivery of this Agreement and the completion of the transaction contemplated by this Agreement have been duly and validly authorized by all necessary corporate action on the part of the Purchaser, and this Agreement constitutes a legal, valid and binding obligation of the Purchaser; and
- (c) the Purchaser is a non-resident of Canada within the meaning of the *Income Tax Act* (Canada) and is a non-Canadian person for the purposes of the *Investment Canada Act* (Canada).

## **10. Survival of Representations**

**10.1** All representations and warranties made by the Vendor and the Purchaser in Sections 7 and 9, respectively, shall survive the Closing and shall continue for a period of six months after the Closing and after such period neither Party shall have any further liability hereunder with respect to such representations and warranties except with respect to any claims made by the other Party within such period or in the case of fraud.

## **11. Covenants of the Vendor**

**11.1** Upon payment of the Purchase Price by the Purchaser at the Closing Time, and subject to the terms of this Agreement, the Vendor will transfer and assign to the Purchaser all of NI's right, title and interest in and to the Purchased Assets in accordance with the terms of this Agreement and the Vesting Order.

**11.2** Subject to the terms of this Agreement, the Vendor will use all commercially reasonable efforts to take or cause to be taken all other actions, and do or cause to be done all other things, necessary or appropriate to obtain the Vesting Order and to consummate the transactions contemplated by this Agreement.

**11.3** From the date of this Agreement until completion of the transaction contemplated herein the Vendor covenants to maintain the Purchased Assets in a commercially reasonable manner.

**11.4** From the date of this Agreement until completion of the transaction contemplated herein, and except as contemplated by this Agreement or in the ordinary course of the Business, the Vendor will not sell, transfer or otherwise dispose of, or agree to sell, transfer, pledge,

lease, encumber or otherwise dispose of, any Purchased Assets, or enter into any agreement or transaction which would result in the creation of any Encumbrance on any of the Purchased Assets.

**12. Covenants of the Purchaser**

**12.1** At Closing, the Purchaser will assume and thereafter perform all obligations and liabilities arising from and in connection with the Purchased Assets that accrue from and after the Closing.

**13. Conditions Precedent in Favour of the Purchaser**

**13.1** The obligations of the Purchaser under this Agreement are subject to the fulfillment of the following conditions precedent:

- (a) each of the representations and warranties of the Vendor set forth in Section 7.1 shall be true and correct as if restated on and as of the Closing Date;
- (b) the covenants and obligations contained in this Agreement to be complied with by the Vendor on or before the Closing shall have been complied with and not been breached in any material respect; and
- (c) on or before the Closing Date, the Vendor will have delivered all items which it is required to deliver to the Purchaser pursuant to Section 20.3.

**13.2** The Purchaser may, in its sole discretion, waive any of the foregoing conditions. Any waiver by the Purchaser must be in writing and delivered to the Vendor's Solicitors.

**13.3** If any one of the conditions precedent contained in Section 13.1 has not been satisfied or waived by the Purchaser on or before the Closing Date, the Purchaser may terminate this Agreement by written notice to the Vendor.

**14. Conditions Precedent in Favour of the Vendor**

**14.1** The obligations of the Vendor under this Agreement are subject to the fulfillment of the following conditions precedent:

- (a) each of the representations and warranties of the Purchaser set forth in Section 9.1 shall be true and correct as if restated on and as of the Closing Date;
- (b) the covenants and obligations contained in this Agreement to be complied with by the Purchaser on or before the Closing shall have been complied with and not been breached in any material respect; and
- (c) on or before the Closing Date, the Purchaser will have delivered all items which it is required to deliver to the Vendor pursuant to Section 20.2.

14.2 The Vendor may, in its sole discretion, waive any of the foregoing conditions. Any waiver by the Vendor must be in writing and delivered to the Purchaser's Solicitors.

14.3 If any one of the conditions precedent contained in Section 14.1 has not been satisfied or waived by the Vendor on or before the Closing Date, the Vendor may terminate this Agreement by written notice to the Purchaser.

## 15. Mutual Conditions Precedent

15.1 The obligations of the Parties under this Agreement are subject to the following mutual conditions precedent:

- (a) on or before the fifth Business Day following the execution of this Agreement by both the Vendor and the Purchaser, the Vendor filing with the Court the necessary materials to bring the application seeking the Sale Procedure Order, and setting the Sale Procedure to obtain the Vesting Order;
- (b) the Sale Procedure Order approving all material terms of the Sale Procedure set out as Schedule "C" hereto having been granted by the Court within 10 business days of the execution of this Agreement;
- (c) the Vesting Order having been granted by the Court; and
- (d) there shall be in effect no order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of the Court or other court of competent jurisdiction or of a relevant Government Entity prohibiting the consummation of the transactions contemplated hereby and which has not been withdrawn or terminated.

15.2 The Parties may agree to amend or waive any the foregoing conditions. Any amendment or waiver by the Parties must be in writing and delivered to one another's solicitors.

15.3 Unless otherwise agreed to by the Parties in writing, if the condition precedent contained in Subsection 15.1(a) has not been satisfied on or before December 31, 2017 or such later date as the Parties may subsequently agree in writing, or if the condition precedent contained in Subsection 15.1(c) has not been satisfied on the Closing Date, then this Agreement and the obligations of the Parties hereunder shall automatically terminate without any further action on the part of either Party.

## 16. Break Fee and Expense Reimbursement

16.1 Subject to 16.2 and the approval of the Court pursuant to the Sale Procedure Order, the Purchaser shall be entitled, in consideration for the release of its rights under this Agreement, to payment of a break fee (the "**Break Fee**") in cash in the amount of \$50,000, that being a reasonable estimate of its costs and 'out of pocket' expenses reasonably incurred in connection with this transaction and bringing this offer before the Court, for the benefit of the parties to the Receivership Action.

16.2 The Break Fee shall be paid to the Purchaser only if:

- (a) the Purchaser is not in breach or default of any provision of this Agreement, which breach or default has not been waived in writing by the Vendor;
- (b) the Purchaser has not otherwise terminated this Agreement pursuant to Section 18; and
- (c) the Court approves an offer for the Purchased Assets other than from the Purchaser, and the closing of a transaction in respect of such other offer has occurred.

**17. Efforts to Fulfill Conditions Precedent**

17.1 Each Party shall proceed diligently and in good faith and use commercially reasonable efforts to satisfy and comply with and assist in the satisfaction of and compliance with the conditions precedent contained herein.

**18. Termination**

18.1 This Agreement may be terminated prior to or at the Closing Time as follows:

- (a) by mutual written agreement of the Parties; or
- (b) by either Party in accordance with Section 13.3 or 14.3, as applicable.

18.2 Each Party's right of termination under this Section 18 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. Nothing in this Section 18 limits or affects any other rights or causes of action any Party may have with respect to the representations, warranties, covenants and indemnities in its favour contained in this Agreement. If a Party waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of its rights of termination in the event of non-fulfilment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part.

**19. Risk**

19.1 The Purchased Assets will be at the Vendor's risk until the completion of the transaction contemplated herein on the Closing Date and thereafter at the Purchaser's risk.

**20. Closing**

20.1 Subject to the terms and conditions of this Agreement, and the satisfaction or the waiver of the conditions precedent in Sections 13 through 15, the purchase and sale of the Purchased Assets will be completed at the Closing Time at the offices of the Vendor's Solicitors.

**20.2** At the Closing Time the Purchaser will deliver, or cause to be delivered to the Vendor, the Purchase Price, less the Deposit, as owing over and above the amounts being credit bid, if any, plus all applicable Sales Taxes.

**20.3** At the Closing Time the Vendor shall deliver, or cause to be delivered to the Purchaser:

- (a) all of NI's Books and Records that are in the Vendor's possession;
- (b) all of NI's right, title and interest in and to the Purchased Assets free and clear of all Encumbrances, in accordance with the Vesting Order;
- (c) a Court-certified copy of the Vesting Order;
- (d) an executed copy of the Receiver's Certificate;
- (e) all such assignments, instruments of transfer, deeds, assurances, consents, registrations and other documents executed by the Vendor as requested by the Purchaser in respect of transferring the Purchased Assets to the Purchaser and registrations in connection therewith, or in respect of the Assigned Contracts; and
- (f) a receipt for the Purchase Price and all applicable Sale Taxes;

and the Purchaser shall be entitled to possession of the Purchased Assets, in accordance with the Vesting Order, upon payment of the Purchase Price in accordance with this Agreement.

**20.4** If, after the pronouncement of the Vesting Order, the Purchaser is unable to obtain any consent as may be required in respect of any of the Assigned Contracts, the Vendor will, at the Purchaser's request, use reasonable commercial efforts to obtain an Assignment Order at or prior to the Closing Date. If the Vendor seeks an Assignment Order, the Purchaser will provide an affidavit or other evidence to support its ability to perform the obligations under the Assigned Contracts.

## **21. Vendor Liability**

**21.1** The Purchaser hereby expressly acknowledges and agrees that the Vendor is acting only in its representative capacity as appointed receiver of the assets and undertaking of NI and shall have no personal liability under or as a result of entering into or carrying out the transaction which is the subject of this Agreement except in such capacity and without limitation to the generality of the foregoing the Vendor shall have no liability under or as a result of entering into or carrying out of such transaction in its personal capacity.

## **22. Post-Closing Access to Computers**

**22.1** After the Closing Date, the Purchaser will make the Computers available to the Vendor, as reasonably requested, including for any purposes associated with the Vendor's duties as receiver of the assets and undertaking of NI, and will preserve all information, records,

or documents stored on the Computers until such time as the Vendor is discharged as receiver.

**23. Further Assurances**

23.1 The parties will execute such further and other documents and do such further and other things as may be necessary to carry out and give effect to the intent of this Agreement.

**24. Notice**

24.1 All notices required or permitted to be given under this Agreement will be in writing and delivered by courier, to the address of the intended recipient set forth on the first page of this Agreement or at such other address as may from time to time be notified by any of the parties in the manner provided in this Agreement.

**25. Legal Advice**

25.1 The Purchaser has consulted with and been advised by its own solicitors before entering into this Agreement, has read same and knows the contents thereof.

**26. Entire Agreement**

26.1 This Agreement constitutes the entire agreement between the parties and there are no representations or warranties, express or implied, statutory or otherwise and no collateral agreements other than as expressly set forth or referred to in this Agreement.

**27. Amendment**

27.1 No amendment of this Agreement will be binding unless made in writing by all the parties to this Agreement.

**28. Assignment**

28.1 This Agreement may not be assigned by any party hereto without the prior written consent of the other party hereto, which consent may be arbitrarily withheld, provided that the Purchaser may designate one or more nominees to take title in and to the Purchased Assets, or any part thereof, by giving the Vendor written notice of such assignment at least two clear Business Days prior to the date of the hearing of the application for the Vesting Order.

**29. Time of the Essence**

29.1 Time will be of the essence of this Agreement.

**30. Singular, Plural and Gender**

30.1 Words importing the singular include the plural and vice versa, and words importing gender include the masculine, feminine, and neuter genders.



**31. Certain Words**

31.1 In this Agreement, the words "including" and "includes" means "including (or includes) without limitation", and "third party" means any Person who is not a Party.

**32. Actions to be Performed on a Business Day**

32.1 Whenever this Agreement provides for or contemplates that a covenant or obligation is to be performed, or a condition is to be satisfied or waived on a day which is not a Business Day, such covenant or obligation shall be required to be performed, and such condition shall be required to be satisfied or waived on the next Business Day following such day.

**33. Applicable Law and Court Jurisdiction**

33.1 This Agreement shall be governed by, and construed in accordance with, the laws of the Province of British Columbia and the laws of Canada applicable therein, and the parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of British Columbia in relation to any matter relating to this Agreement.

**34. Successors and Assigns**

34.1 This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

**35. Headings**

35.1 The headings appearing in this Agreement are inserted for convenience of reference only and will not affect the interpretation of this Agreement.

**Counterparts**

35.2 This Agreement may be signed in counterparts and each such counterpart will constitute an original document and such counterparts, taken together, will constitute one and the same instrument. A counterpart may be delivered by email or any other form of electronic transmission.

AS EVIDENCE OF THEIR AGREEMENT the parties have executed this Agreement as of the day and year first above written.

**DELOITTE RESTRUCTURING INC.**, in its capacity as court-appointed receiver of all assets and undertaking of Network Intelligence Inc., and not in its personal or corporate capacity,

Per:

  
\_\_\_\_\_

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Name: Jeff Keeble  
Title: Senior Vice President

**1130489 BC Ltd.**

Per:



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Name: Shiyong Wang  
Title: Director

## SCHEDULE "A"

### ASSUMED CONTRACTS

Vendor	Contract name	Nature of Contract	Notes
Cadence Design Systems	UART, WDT, GPIO licensing agreement	IP licensing	
Cadence Design Systems	DDR controller, DDR PHY, NAND PHY, PCIe Controller licensing agree	IP licensing	
Cadence Design Systems	Tensilica licensing agreement	IP licensing	
Cadence Design Systems	Tensilica SDK & Support (Oct'17-Oct'18)	EDA tools and IP support	
Cadence Design Systems	Design IP maintenance (July'17-July'18)	IP support	
Cadence Design Systems	VIP and EDA Cards (Oct'17)	SW Tools License	
Digital Blocks	DMA-2 Channel IP licensing agreement	IP licensing	
Digital Blocks	I2C IP licensing agreement	IP licensing	
Digital Blocks	SPI IP licensing agreement	IP licensing	
Digital Blocks	DMA-8 Channel IP licensing agreement	IP licensing	
Barco Silex	AES, TRNG IP licensing agreement	IP licensing	
Barco Silex	IP maintenance support agreement (to be signed soon)	IP maintenance Service	Didn't sign yet
Chips&Media Inc	Video transcoder Encoder*Decoder IP licensing agreement	IP licensing	
Mobiveil	EFC, LDPC, BCH IP licensing agreement	IP licensing	
Mobiveil	Maintenance service (to be signed soon)	IP maintenance Service	Didn't sign yet
Renesas	PCIe PHY IP licensing agreement	IP licensing	
Arteris	NoC (2016) IP licensing agreement	IP licensing	
Arteris	NoC Maintenance (to be signed soon)	IP maintenance Service	Didn't sign yet
Uniquify	Design Service & IP licensing agreement	Design service Agreement	
PCI-SIG	PCI-SIG Membership agreement	Membership	
NVMe	NVMe Membership agreement	Membership	
UNH-IOL	UNH-IOL Membership Agreement	Membership	
Shaw	Internet Service Agreement	Internet Account	
BambooHR	BambooHR Account	OA Systems Account	
Atlassian	JIRA account	OA Systems Account	
Redstone Enterprise	Lease agreement	Office lease	
<del>Toshiba</del>	<del>Lease agreement</del>	<del>Office lease</del>	<del>Will need to be renewed</del>

WSG

## SCHEDULE "B"

### COMPUTERS

#### Computer Equipment

Location	Description
Vancouver	Palo Alto 3020
Vancouver	NetApp AFF300
Vancouver	NetApp 2554
Vancouver	Dell M1000 Chassis
Vancouver	Dell 10G Switch
Vancouver	Blade Server 1
Vancouver	Blade Server 2
Vancouver	Blade Server 3
Vancouver	Blade Server 4
Vancouver	Blade Server 1 (Whistler)
Vancouver	Blade Server 2 (Whistler)
Vancouver	Dell 7910 Server
Vancouver	Lenovo 1U server 128GB
Dell 1U Server	VMHost 2
Burnaby	Cisco 3850
Burnaby	Cisco 2900
Burnaby	Cisco 2900
Burnaby	Cisco 2900
Monitors Vancouver	85
Monitors Toronto	60
Laptops	(as per attached list)
Toronto	NetApp 2554
Toronto	Dell M1000 Chassis
Toronto	Dell 10G Switch
Toronto	Cisco 1Gig Switch
Toronto	Cisco 1Gig Switch
Toronto	Cisco 1Gig Switch
Toronto	Cisco 1Gig Switch
Toronto	Blade Server 1
Toronto	Blade Server 2
Toronto	Blade Server 3
256 GB Ram from Toronto Server	
256 GB Ram from Toronto Server	
Toronto	Desktop PC (15PXBH2) YYZ1DTP036
Toronto	EATON 9PX6K UPS

Toronto	Lenovo Server 1
Toronto	Lenovo Server 2
Toronto	Lenovo Server 3
Toronto	Lenovo Storage
Toronto Lab	Old Desktop PC1
Toronto Lab	Old Desktop PC2
Toronto Lab	Old Desktop PC3
Toronto Lab	Old Desktop PC4
Toronto Lab	Old Desktop PC5
Toronto Lab	Old Desktop PC6
Toronto Lab	Old Desktop PC7
Toronto Lab	Old Desktop PC8
Toronto Lab	Old Desktop PC9
Toronto Lab	Old Desktop PC10
Vancouver Lab	Old Desktop PC1
Vancouver Lab	Old Desktop PC2
Vancouver Lab	Old Desktop PC3
Vancouver Lab	Old Desktop PC4
Vancouver Lab	Old Desktop PC5
Vancouver Lab	Old Desktop PC6
Vancouver Lab	Old Desktop PC7
Vancouver Lab	Old Desktop PC8
Vancouver Lab	Old Desktop PC9
Vancouver Lab	Old Desktop PC10
Waterloo	Lenovo Storage

## Laptops

Laptop 1	Serial Number 1	Hostname 1	Laptop 2	Serial Number	Hostname 2
E550	PFOBMX9G		E7470	F2QRKC2	
E7470	4PVMR72				
E550	PFOBZEFN		E550	PFOCSDRO	
E7470	MJ038C8G				
T450	PC07UPUC				
E550	PFOCV9JD				
E550	PFOCSEUD				
T450	PC07UPXC				
T450	PC0A23MZ				
T450	PC07UPZ5	YYZ1NBP063			
T450	PC0ARSBV				
T450	PC0A0WZN				
E550	PFOCSDWX				

E7470	E7470	2FCSSC2		E550	SL10H41170
E7470	E7470	8LVMR72			
E7470	C9Q9J7				
E7470	2KQPR72				
E550	PF0BWY1T				
E7470	7GHNTF2	YYZ1NBP093			
E7470	5CLDJC2				
E7470	5Z4XR72				
E7470	B5VBGC2				
E7470	5FF6NC2				
E7470	6XPPMF2	YVR1NBP096			
E7470	JN15HC2				
E7470	96F2QF2				
E7470	YYZ1NBP084				
E7470	C9KHSC2				
E550	PF0CV8VR				
E7470	YYZ1NBP070				
E7470	4107QC2				
E550	PF0BZEFN		E550	PF0CSDRO	
E7470	3BN8GC2				
T450	PC073JCN				
E7470	8CNFMC2				
E7470	1BD8RF2	YYZ1LTNI0002			
E7470	D612CG2	YVR1NBP059			
E7470	1QFYR72				
T450s	MJ0385Z5				
E7470	6RCCK72				
X1 Carbon	R9-0H6CU3				
E7470	JTTRQ72				
E7470	FQBKRF2				
Dell E7470 i7	BNNRPC2	YYZ1LTNI0001			
Dell E7470 i7	28D8RF2	YVR1LTNI0001			
Dell E7470 i5		YVR1LTNI0002			
Dell E7470 i7	GXGVRF2	YYZ1NBP098			
Dell E7470 i7	2YFTR72	CAVCNBP176			
Dell E7470i7	2XFPP72	CAVCNBP148	E550	CA101-0286	YVR1NBP075
Dell E7470i7	GGGFP72	CAVCNBP145			
Dell E7470 i7	DBD8RF2				
Dell E7470 i7	4NFSR72				
Dell E7470 i7	CZ4XR72				
Dell E7470 i7	24GQSC2				

Dell E7470 i7	5CVRPC2				
Dell E7470 i7	2QPPMF2				
Dell E7470 i7	G8D8RF2				
Dell E7470 i7	93D8RF2				
Dell E7470 i7	D8D8RF2				
Dell E7470 i7	FDLDJC2				
Dell E7470 i7	1MR8RF2				
Dell E7470 i7	BNNRPC2				
Dell E7470 i7	JPV1CG2				
Dell E7470 i7	HSXOSF2				
Dell E7470 i7	DD4HGC2				
Dell E7470 i7	JDQRKC2				
Dell E7470 i7	73GQSC2				
Dell E7470 i7	5ZFQSC2				
Dell E7470 i7	5515HC2				
Dell E7470 i7	28D8RF2				
Dell E7470 i7	F2QRKC2				
Dell E7470 i7	7F82CG2				

**SCHEDULE "C"**

**FORM OF RECEIVER'S CERTIFICATE**

**TO:** 1130489 BC LTD. (the "Purchaser")

**RE:** Asset Purchase Agreement dated November 20, 2017 (the "Agreement") between **DELOITTE RESTRUCTURING INC.**, in its capacity as court-appointed receiver of all assets and undertaking of Network Intelligence Inc., and not in its personal or corporate capacity, (the "Vendor") and the Purchaser.

Unless otherwise defined herein, the definitions provided for in the Agreement are adopted in this certificate (the "Certificate").

I, Jeff Keeble, a Senior Vice President of Deloitte Restructuring Inc., hereby certify that as of the date of this Certificate:

1. I am personally familiar with the matters hereinafter mentioned.
2. Each of the representations and warranties of Vendor contained in Section 9.1 of the Agreement were true and correct in all material respects when made and are true and correct in all material respects as of the Closing Date.
3. All obligations of Vendor contained in the Agreement to be performed prior to or at the Closing Time have been timely performed in all material respects.
4. This Certificate is made by Deloitte Restructuring Inc. in its capacity as court-appointed receiver of all assets and undertaking of Network Intelligence Inc., and not in its personal or corporate capacity, and is binding upon Vendor.
5. This Certificate is made with full knowledge that Purchaser is relying on the same for the closing of the transactions contemplated by the Agreement.

**IN WITNESS WHEREOF** I have executed this Certificate this \_\_\_\_ day of \_\_\_\_\_, 2017.

**DELOITTE RESTRUCTURING INC.**, in its capacity as court-appointed receiver of all assets and undertaking of Network Intelligence Inc., and not in its personal or corporate capacity,

Per:

Name: Jeff Keeble

Title: Senior Vice President



**Schedule "D"**  
**Sales Procedure**

**SCHEDULE "B"**  
**SALE PROCEDURE**

Pursuant to an Order (as may be amended from time to time, the "**Receivership Order**") of the Honourable Mr. Justice Bowden of the Supreme Court of British Columbia (the "**Court**") dated October 31, 2017, (the "**Date of Receivership**"), Deloitte Restructuring Inc. ("**Deloitte**") was appointed as Receiver Manager (in such capacity, the "**Receiver Manager**") over all of the assets, undertakings, properties and legal and beneficial ownership interests of Network Intelligence Inc. (the "**Debtor**"), comprising, acquired for or used in relation to a business carried on by the Debtor (the "**Property**").

On November 22, 2017, the Court made an order (the "**Sale Procedure Order**") among other things, approving (a) the Receiver Manager's entry into a certain agreement of purchase and sale for the Property between the Receiver Manager and 1130489 B.C. Ltd. (as party to the agreement, the "**Stalking Horse Bidder**") dated November 20, 2017 (the "**Stalking Horse Agreement**") so as to set a minimum price in respect of the Receiver Manager's sales process; and (b) this Sale Procedure for the solicitation of offers for the acquisition of the Property.

Accordingly, the following Sale Procedure shall govern the proposed sale of all or substantially all of the Property pursuant to one or more Bids. This Sale Procedure shall govern the sales process relating to the solicitation by the Receiver Manager of one or more Bids for the Property that are superior to that contemplated by the Stalking Horse Agreement.

All denominations are in Canadian Dollars.

**1. Definitions**

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

"**Acknowledgement of Sale Procedure**" means an acknowledgement of the Sale Procedure in the form attached as **Schedule "A"** hereto;

"**Acquisition Entity**" means an entity specially formed for the purpose of effectuating the contemplated transaction;

"**Bid**" means an offer or proposals for the acquisition of the Property submitted by a Qualified Bidder. For clarity only a Qualified Bidder may submit a Bid for consideration in this Sale Process;

"**Bid Deadline**" means 10:00 a.m. Pacific Time on December 15, 2017;

"**Bidder Qualification Requirements**" has the meaning given to it in Section 6;

"**Confidentiality Agreement**" means an executed confidentiality agreement in form and substance acceptable to the Receiver Manager and its counsel;

"**Due Diligence Materials**" means some or all of the following information regarding the Debtor to the extent that it is available to the Receiver Manager:

- (a) high level strategy;
- (b) financial statements;
- (c) cash flow;

- (d) key contracts and agreements;
- (e) asset listings;
- (f) employee listing and sample employee agreements;
- (g) corporate tax return and SR&ED claim;
- (h) insurance policy;
- (i) technical specifications and block diagram for intellectual property; and
- (j) budget and milestones for the development of intellectual property

all of which will be made available to Participants by way of an electronic data room assembled and administered by the Receiver Manager.

**“Good Faith Deposit”** means a cash deposit equal to five percent (10%) of the total purchase price contemplated under the applicable Modified APA;

**“Modified APA”** means an executed mark-up of the Stalking Horse Agreement reflecting the applicable Qualified Bidder’s proposed changes to the Stalking Horse Agreement;

**“Participant”** means any person who has delivered the Participant Requirements and had those Participant Requirements deemed satisfactory by the Receiver Manager in accordance with Section 3;

**“Participant Requirements”** has the meaning given to it in Section 4;

**“Principals”** means, collectively, the equity holder(s) of any Acquisition Entity and any guarantor of any Bid made by such Acquisition Entity;

**“Qualified Bidder”** means a Participant that, (i) having satisfactorily met the Participant Requirements prior to the Bid Deadline, (ii) meets the Bidder Qualification Requirements prior to the Bid Deadline, and (iii) whom the Receiver Manager, in accordance with Section 5, deems is reasonably likely to submit a binding bona fide offer that would have an aggregate purchase price for the Property that exceeds the Stalking Horse Purchase Price by 10% and would be able to consummate a transaction if selected as the Successful Bidder.

**“Qualified Bid”** means a Bid submitted by a Qualified Bidder on or prior to the Bid Deadline that satisfies the conditions set out in Section 7 hereof. For clarity the Stalking Horse Agreement is a Qualified Bid.

**“Sale Procedure Order”** means the Order authorizing this Sale Procedure;

**“Sealed Bid Process”** has the meaning given to it in Section 10;

**“Sealed Bid Participants”** has the meaning given to it in Section 10;

**“Stalking Horse Addendum”** has the meaning given it in Section 8;

**“Stalking Horse Purchase Price”** means NINE MILLION DOLLARS (\$9,000,000);

“**Successful Bid**” means the highest and best Qualified Bid as determined by the Receiver Manager, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

“**Successful Bidder**” means the Qualified Bidder who submitted the Successful Bid;

“**Vesting Order**” means the order of the Court that approves the sale of the Property to the Successful Bidder and vests title of the Property to the Successful Bidder.

## 2. **Assets for Sale**

The Receiver Manager is soliciting superior offers for all of the Assets. For the purposes of this Sale Procedure a Bidder may exclude from its Bid any of the Property.

The sale of any of the Property pursuant to this Sale Procedure shall be on an “**as is, where is**” basis and without representations or warranties of any kind, nature, or description by the Receiver Manager, or its directors, officers, employees or agents except to the extent set forth in the Successful Bid. The Stalking Horse Bidder and each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its Bid, that it has relied solely on its own independent review, investigation, and/ or inspection of any documents and/ or the Property in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Property, or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure.

## 3. **Marketing**

The Receiver Manager will solicit Bids for the Property including but not limited to the following:

- (a) preparing a teaser document (the “**Teaser**”) that outlines the Property for sale, includes the Stalking Horse Agreement and this Sale Procedure and invites parties to satisfy the Participant Requirements to gain access to the Due Dilligence Materials;
- (b) sending the Teaser to a list of potential interested parties as provided by the Debtor’s management and based on the Receiver Manager’s research as soon as the Stalking Horse Agreement and the Sale Procedure is approved by the Court; and
- (c) posting an advertisement in the Globe and Mail or similar national newspaper within five business days after the approval of the Sale Procedure, inviting parties to participate in the sales process; and
- (d) responding as appropriate at any time prior to the Bid Deadline to various questions and queries from interested parties, Participants and Qualified Bidders with the assistance of Debtor’s management.

## 4. **Participant Requirements**

In order to participate in this Sales Process an interested person must first deliver each of the following to the Receiver Manager:

- (a) an executed Confidentiality Agreement;

- (b) an executed Acknowledgement of Sale Procedure;
- (c) identification of the Participant and any Principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction.

(Collectively the “**Participant Requirements**”)

The Receiver Manager shall review all Participant Requirements received as soon as practicable after receipt and if the Participant Requirements are deemed satisfactory by the Receiver Manager at its reasonable discretion then the person shall be deemed a Participant in this Sales Process.

#### **5. Participant’s access to Due Diligence Materials**

Only those persons deemed to be Participants in this Sales Process will be permitted access to the Due Diligence Materials. Participants will be permitted access to the Due Diligence Materials as soon as practicable after being deemed Participants.

The Receiver Manager may at its discretion furnish but shall not be obligated to furnish any due diligence information other than the Due Diligence Materials. The Receiver Manager is not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Property.

#### **6. Bidder Qualification Requirements.**

To have a Bid considered by the Receiver Manager a Participant must establish itself as a Qualified Bidder. In order to be considered for qualification as a Qualified Bidder, each Participant must provide the Receiver Manager with each of the following prior to the Bid Deadline:

- (a) written evidence of the Participant’s chief executive officer or other appropriate senior executive’s approval of the Bid; provided, however, that, if the Participant is an Acquisition Entity, then the Participant must furnish written evidence reasonably acceptable to the Receiver Manager of the approval of the Bid by the Acquisition Entity’s Principals; and
- (b) written evidence upon which the Receiver Manager may reasonably conclude that the Participant has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:
  - (i) Participant’s or, in the case of an Acquisition Entity, the Principals’, current financial statements (audited if they exist);
  - (ii) contact names and numbers for verification of financing sources;
  - (iii) evidence of the Participant’s or Principals’ internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and

- (iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Receiver Manager demonstrating that such Participant has the ability to close the contemplated transaction;

provided, however, that the Receiver Manager shall determine, in its reasonable discretion, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Participant's financial qualifications

(collectively the "**Bidder Qualification Requirements**").

The Receiver Manager shall review all Bidder Qualification Requirements received from a Participant as soon as practicable after receipt and if the Receiver is satisfied at its reasonable discretion with the reputation and creditworthiness of the Participant and that it is reasonably likely that the Participant will submit a binding bona fide offer that would have an aggregate purchase price for the Property that exceeds the Stalking Horse Purchase Price by 10% and that the Participant will be able to consummate a transaction if selected as a Successful Bidder, then that Participant shall be deemed a Qualified Bidder in this Sales Process. The Receiver Manager shall notify each Participant of its determination as to whether the Participant is a Qualified Bidder as soon as practicable after receipt of that Participant's Bidder Qualification Requirements. A participant may amend or resubmit Bidder Qualification Requirements at any time prior to the Bid Deadline and the Receiver Manager shall review such amended or resubmitted Bidder Qualification Requirements as soon as practicable after receipt of same.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Bidder for all purposes of this Sale Procedure.

Each Participant shall comply with all reasonable requests for additional information by the Receiver Manager regarding such Participant and its contemplated transaction. Failure by a Participant to comply with requests for additional information will be a basis for the Receiver Manager to determine that the Participant is not a Qualified Bidder.

## 7. **Bid Requirements**

Only Qualified Bidders shall have their Bid's considered by the Receiver. In order to be considered a Qualified Bid a Bid must satisfy each of the following conditions:

- (a) Written Submission of Modified APA and Commitment to Close. A Qualified Bid must be submitted by the Bid Deadline in the form of a Modified APA (together with a blackline of the Modified APA against the Stalking Horse Agreement), and a written and binding commitment to close on the terms and conditions set forth therein.
- (b) Irrevocable. A Qualified Bid must be open for acceptance and irrevocable until December 22, 2017;
- (c) Contingencies. A Qualified Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated with a Qualified Bid may not, in aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;
- (d) Financing Sources. A Qualified Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction

satisfactory to the Receiver Manager and appropriate contact information for such financing sources must be provided;

- (e) No Fees payable to Qualified Bidder. A Qualified Bid may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement or similar type of payment;
- (f) Good-Faith Deposit. Each Qualified Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver Manager by certified cheque or banker's draft, to be held by the Receiver Manager in trust in accordance with this Sale Procedure;
- (g) Stalking Horse Purchase Price. The aggregate consideration in a Qualified Bid must have a purchase price that exceeds the Stalking Horse Purchase Price by an amount of not less than 10% of the Stalking Horse Purchase Price; and
- (h) Delivery. A Qualified Bid must be delivered to the Receiver Manager in a sealed envelope in accordance with Section 14 at or prior to the Bid Deadline.

The Receiver Manager shall not unseal or read any Bid except in accordance with Section 10 below.

Notwithstanding the above requirements, the Stalking Horse Agreement is and is deemed to be a Qualified Bid for all purposes of this Sale Procedure.

**8. Stalking Horse Bidder may increase its Bid**

The Stalking Horse Bidder may at any time prior to the Bid Deadline submit to the Receiver Manager in a sealed envelope an executed addendum to the Stalking Horse Bid amending the Stalking Horse Bid as to Purchase Price only (the "**Stalking Horse Addendum**"). The Stalking Horse Addendum shall not be unsealed or read by the Receiver Manager except in accordance with Section 10 below.

**9. If no Qualified Bid other than the Stalking Horse Bid**

If no Bid other than the Stalking Horse Agreement (and the sealed Stalking Horse Addendum if any) is received by the Bid Deadline, then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder at the price set out in the Stalking Horse Agreement and the Stalking Horse Addendum (if any) shall be destroyed without being opened. The Receiver Manager shall then as soon as reasonably practicable seek Court approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein by Vesting Order and the Receiver Manager shall post notice of such facts on its website established in connection with the Receivership Proceedings.

**10. If one or more Bids in addition to the Stalking Horse Bid**

If one or more Bids other than the Stalking Horse Bid is received by the Bid Deadline, the Receiver Manager shall conduct a sealed bid process (the "**Sealed Bid Process**") among only those Qualified Bidders who submitted Bids (collectively the "**Sealed Bid Participants**") to determine the Successful Bid.

The Sealed Bid Process shall be conducted as follows:

- (a) the Receiver Manager shall open and read all Bids submitted by Qualified Bidders other than the Stalking Horse Bidder and determine which, if any, are Qualified Bids pursuant to the requirements set out in Section 7;
- (b) if the Receiver Manager determines that none of the Bids is a Qualified Bid then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder at the price set out in the Stalking Horse Agreement and the Stalking Horse Addendum (if any) shall be destroyed without being opened;
- (c) if the Receiver Manager determines that one or more of the Bids is a Qualified Bid then the Receiver Manager shall then unseal and read the Stalking Horse Addendum and shall then determine which among the Qualified Bids and the Stalking Horse Agreement as amended by the Stalking Horse Addendum is the Successful Bid;
- (d) the Receiver Manager shall determine the Successful Bidder by no later than 5:00 p.m. Pacific Time on December 18, 2017. After the Receiver Manager determines the Successful Bid the Receiver Manager shall
  - (i) as soon as practicable advise the Sealed Bid Participants of its determination and post notice of the determination on its website established in connection with the Receivership Proceedings; and
  - (ii) not later than December 22, 2017 seek Court approval of, and authority to consummate, the Successful Bid and the transactions provided for therein by Vesting Order.

The Receiver Manager shall be entitled to, but is not obligated to, seek additional information and clarifications from any Participant or Qualified Bidder in respect of its Bidder Qualification Requirements or Bid at any time provided that nothing herein shall entitle a Qualified Bidder to improve its Bid as submitted at the Bid Deadline.

#### **11. Acceptance of Successful Bid and Vesting Order**

The Receiver Manager shall complete the sale transaction or transactions with the Successful Bidder following the granting of a Vesting Order with regard to the Successful Bid. The Receiver Manager will be deemed to have accepted a Successful Bid only when a Vesting Order has been granted with regard to the Successful Bid. The Receiver Manager shall apply for a Vesting Order as soon as practicable after the determination by the Receiver Manager of the Successful Bidder. The Vesting Order shall be sought by hearing in Court unless otherwise sought by desk order in accordance with Paragraph 8(a) of the Sale Procedure Order.

#### **12. Effect of a Failure to Complete Successful Bid**

If the Successful Bid is made by a party other than the Stalking Horse Bidder, and either (i) the Court refuses to approve that Bid, or (ii) if approved by the Court, the Successful Bidder does not complete the transaction as contemplated therein and on the terms approved by the Vesting Order, the Stalking Horse Bidder shall have a right of first refusal to complete the sale on the same terms and conditions as approved by the Vesting Order, and the Receiver Manager or the Stalking Horse Bidder will be at liberty to apply to amend the Vesting Order to substitute the Stalking Horse Bidder as purchaser accordingly.

**13. Return of Good Faith Deposit**

Good Faith Deposits of all Qualified Bidders shall be held in an account of the Receiver Manager. Good Faith Deposits of all Qualified Bidders, other than the Successful Bidder, shall be returned to such Qualified Bidders within three (3) business days of the selection of the Successful Bidder. Good Faith Deposits of the Successful Bidder shall be applied to the purchase price of such transaction at closing. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver Manager shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of their damages resulting from the breach or failure to perform by the Successful Bidder.

**14. Delivery of documents to the Receiver Manager**

All documents or other materials to be delivered to the Receiver Manager pursuant to this Sales Procedure, including the Participant Requirements and the Bidder Qualification Requirements but excluding all Bids must be submitted by email to [lchung@deloitte.ca](mailto:lchung@deloitte.ca) and [jkeeble@deloitte.ca](mailto:jkeeble@deloitte.ca) so that they are actually received by the Receiver Manager no later than the Bid Deadline.

Bids, including the Good Faith Deposit in the form of a certified cheque or bank draft must be delivered to the Receiver Manager at 2800 – 1055 Dunsmuir Street, Vancouver, BC, Canada V7X 1P4 Attention Jeff Keeble, by hard copy in a sealed envelope by the Bid Deadline. The envelope containing the Bid shall be marked:

NETWORK INTELLIGENCE INC. IN RECEIVERSHIP  
CONFIDENTIAL SEALED BID

A Bid that is not received by hard copy prior to the Bid Deadline shall not constitute a Qualified Bid and shall be disqualified.

**15. Modifications and Reservations**

This Sale Procedure may be modified or amended by the Receiver Manager provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

The Receiver Manager may reject at any time before entry of an order of the Court approving a Successful Bid, any Bid (except the Stalking Horse Agreement, other than in accordance with its terms) that is (a) inadequate or insufficient, (b) not in conformity with the requirements of this Sale Procedure, or the terms and conditions of sale, or (c) contrary to the best interests of the Receivership estates.



**ACKNOWLEDGEMENT OF SALE PROCEDURE**

The undersigned hereby acknowledges receipt of the Sale Procedure approved by the Order of the Supreme Court of British Columbia on November 22, 2017 in Action No. S-179749 (Vancouver) and further acknowledges that compliance with the terms and provisions of the Sale Procedure is required in order to participate in the Sale Procedure and for any Bid to be considered by the Receiver Manager.

This \_\_\_\_\_ day of \_\_\_\_\_.

[NAME]

By:

\_\_\_\_\_  
[Signing Officer]

**Schedule "E"**  
**Sales Process Order**

No. S-179749  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE RECEIVERSHIP OF NETWORK INTELLIGENCE INC.

BETWEEN:

1130489 B.C. LTD.

PETITIONER

AND:

NETWORK INTELLIGENCE INC.

RESPONDENT

**ORDER MADE AFTER APPLICATION**  
**(Sale Procedure Approval Order)**

BEFORE THE HONOURABLE  
  
JUSTICE

WEDNESDAY THE 22ND DAY  
  
OF NOVEMBER, 2017

ON THE APPLICATION of Deloitte Restructuring Inc. in its capacity as court-appointed Receiver Manager of Network Intelligence Inc. (in such capacity the "Receiver Manager"), for an Order approving a sale procedure for all of the assets and undertaking of Network Intelligence Inc. (the "Debtor"), coming on for hearing this day at the Courthouse, 800 Smithe Street, Vancouver, British Columbia;

AND ON READING the Receiver Manager's First Report to the Court dated November 20, 2017 AND ON HEARING Jonathan B. Ross, Counsel for the Applicant Receiver Manager and other counsel as listed on **Schedule "A"** hereto, and no one appearing for ● or ● , although duly served;

**THIS COURT ORDERS THAT**

**DEFINITIONS**

1. Capitalized terms not defined herein shall have the meanings set out in the Sale Procedure attached hereto as **Schedule "B"**.

## SERVICE

2. The time for service of the Notice of Application for this order and the supporting materials therefore, including the Receiver Manager's First Report to the Court is hereby abridged and so that this application is properly returnable today and hereby dispenses with further service thereof.

## SALE PROCEDURE

3. The Sale Procedure substantially in the form attached as **Schedule "B"** hereto is hereby approved.
4. The Receiver Manager is hereby authorized to carry out the Sale Procedure and to take such steps and execute such documentation as may be necessary or incidental to the Sale Procedure.
5. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver Manager may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of the Property (the "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver Manager, or in the alternative destroy all such information. The purchaser of the Property shall be entitled to continue to use the personal information provided to it related to the Property, in a manner which is in all material respects identical to the prior use of such information by the Receiver Manager, and shall return all other personal information.

## STALKING HORSE AGREEMENT

6. The execution by the Receiver Manager of the Stalking Horse Agreement is hereby authorized, *nunc pro tunc*, provided that nothing herein approves the sale of the Purchased Assets as defined in the Stalking Horse Agreement on the terms set out in the Stalking Horse Agreement, and that the approval of any sale of the Purchased Assets by the Court will be subject to a Vesting Order anticipated to be granted in accordance with the Sale Procedure, with such application to be heard on December 22, 2017, subject to further order of the Court.

7. The obligation to pay a break fee on the terms set out in the Stalking Horse Agreement is hereby approved.
8. Notwithstanding paragraph 6 above, and in accordance with the Sale Procedure, the Stalking Horse Bidder and the Receiver Manager
  - (a) shall be entitled to a Vesting Order with respect to the Stalking Horse Agreement approving the sale of the Purchased Assets as defined in the Stalking Horse Agreement at the price set out in the Stalking Horse Agreement upon the Receiver Manager filing an affidavit with the Court that no Qualified Bids (other than the Stalking Horse Agreement and Stalking Horse Addendum) were received by the Receiver Manager by the Bid Deadline, and are at liberty to seek the Vesting Order by desk order; or
  - (b) shall be entitled to seek an amendment to any Vesting Order made to substitute the Stalking Horse Bidder for the Successful Bidder named in that Vesting Order in the event that the Successful Bidder named in that Vesting Order fails to complete the sale contemplated by the Successful Bid, all in accordance with paragraph 10 of Schedule "B" hereto.

**APPROVAL OF RECEIVER MANAGER'S REPORT**

9. The First Report and the activities of the Receiver Manager described therein are hereby approved.

**GENERAL**

10. The Receiver Manager may apply from time to time to this Court for advice and directions in the discharge of its powers and duties hereunder.
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**SCHEDULE "A"**  
**LIST OF COUNSEL**

