

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is dated as of [November] ●, 2017

BETWEEN:

**Deloitte Restructuring Inc.**, in its capacity as Receiver and Manager (the “**Receiver Manager**”) of **Network Intelligence Inc.** (the “**Debtor**”)

AND:

● (the “**Interested Party**”)

CONTEXT:

- A. Deloitte Restructuring Inc. was appointed as the Receiver Manager of the Debtor by Order of the Honourable Mr. Justice Bowden of the Supreme Court of British Columbia made on October 31, 2017.
- B. The Receiver Manager and the Interested Party wish to enter into discussions regarding the potential sale and acquisition (the “**Proposed Transaction**”) of all of the assets, undertakings, properties and legal and beneficial ownership interests, if any, of the Debtor, comprising, acquired for or used in relation to a business carried on by the Debtor (the “**Property**”).
- C. The Receiver Manager intends to provide certain confidential information pertaining to the Debtor and the Property to the Interested Party for review and consideration in order to facilitate discussions with respect to the Proposed Transaction.

THEREFORE, the parties agree as follows:

- 1. In this Confidentiality Agreement:
  - 1.1 “**Affiliate**” means an affiliate as that term is defined in the *Business Corporations Act* (British Columbia);
  - 1.2 “**Communication**” means any notice, demand, request, consent, approval or other communication which is required or permitted by this Confidentiality Agreement to be given or made by a party;
  - 1.3 “**Confidential Information**” means any information relating to the Debtor or its business, whether communicated in written form, orally, visually, demonstratively, technically or by any other electronic form or other media, or committed to memory, and whether or not designated, marked, labelled or identified as confidential or proprietary, including but not limited to the following documents and information relating to the Debtor or its business

(all of which may or may not be made available to the Interested Party in an electronic data room assembled and administered by the Receiver Manager):

- 1.3.1 high level strategy;
- 1.3.2 financial statements (audited or otherwise);
- 1.3.3 cash flow;
- 1.3.4 key contracts and agreements;
- 1.3.5 asset listings;
- 1.3.6 employee listing and sample employee agreements;
- 1.3.7 corporate tax return and SR&ED claim;
- 1.3.8 insurance policy;
- 1.3.9 technical specifications and block diagram for intellectual property; and
- 1.3.10 budget and milestones for the development of intellectual property,

and all analyses, compilations, records, data, reports, correspondence, memoranda, specifications, materials, applications, technical data, studies, derivative works, reproductions, copies, extracts, summaries or other documents containing or based upon, in whole or in part, any of the information listed above in this Section 1.3, but excluding information, other than Personal Information, which:

- 1.3.11 is generally available to or known by the public, other than as a result of improper disclosure by the Interested Party or any of its Representatives; or
  - 1.3.12 is or was obtained by the Interested Party from a source other than the Receiver Manager, the Debtor or any person bound by a duty of confidentiality to the Receiver Manager or the Debtor;
- 1.4 **“Personal Information”** means any information collected in the course of the Debtor’s business that relates to identifiable individuals;
  - 1.5 **“Provider”** means a third party service provider;
  - 1.6 **“Representatives”** means the Affiliates of a party, and the advisors, agents, consultants, directors, officers, management, employees, subcontractors,

and other representatives, including accountants, auditors, financial advisors, lenders and lawyers of a party and of that party's Affiliates; and

- 1.7 **"Secondary Information"** is defined in Section 10.
2. The Interested Party acknowledges that the Proposed Transaction, if consummated, 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 with respect to the completeness or accuracy of any of the Confidential Information disclosed to the Interested Party under this Confidentiality Agreement. The Interested Party further agrees and acknowledges that the Receiver Manager is not responsible for, and will bear no liability with respect to, any Confidential Information or any other information obtained by any party in connection with the Proposed Transaction.
3. The Interested Party acknowledges that the Confidential Information is confidential and proprietary. The Interested Party further acknowledges that, except for the purpose of evaluating the Proposed Transaction, the Interested Party has no right to use, title to, or interest in, the Confidential Information.
4. The Interested Party agrees to provide Confidential Information only to those Representatives who need to review it for the purpose of evaluating the Proposed Transaction, who are informed by the Interested Party of the confidential nature of the Confidential Information, and who agree in writing to be bound by the terms of this Confidentiality Agreement. The Interested Party further agrees to be responsible for any breach of this Confidentiality Agreement by any of its Representatives. The Interested Party will make all reasonable, necessary and appropriate efforts to safeguard the Confidential Information from disclosure to any person other than as permitted by this Confidentiality Agreement.
5. Confidential Information will not be used by the Interested Party or its Representatives, directly or indirectly, for any purpose other than to evaluate the Proposed Transaction.
6. Without the prior written consent of the Receiver Manager, the Interested Party will not, and will cause its Representatives not to, disclose to any other person:
  - 6.1 any part of the Confidential Information;
  - 6.2 that the Confidential Information has been made available;
  - 6.3 that this Confidentiality Agreement has been entered into;
  - 6.4 that any discussions or negotiations have been entered into with respect to the Proposed Transaction; or
  - 6.5 any of the terms, conditions or other facts with respect to the Proposed Transaction,

except, and only to the extent that, disclosure is, in the opinion of its legal counsel, required to be made under applicable law or regulations or by any competent governmental, judicial or other authority, provided that the Interested Party will advise the Receiver Manager so the Receiver Manager may seek a protective order or other appropriate remedy and, where reasonably practical, consult with the Receiver Manager before that disclosure concerning the Confidential Information the Interested Party proposes to disclose. The Interested Party will cooperate with the Receiver Manager on a reasonable basis to obtain a protective order or other appropriate remedy.

7. The Interested Party will keep a record of the location of the Confidential Information and all Representatives and any Provider to whom it is provided and will implement appropriate security measures consistent with best practices or otherwise take necessary precautions in order to secure the Confidential Information and ensure that appropriate technical and organizational means are in place to protect the Confidential Information against unauthorized or unlawful access or processing and against accidental loss, destruction or damage, including taking reasonable steps to ensure the reliability of any Representative and any Provider permitted by the Interested Party to have access to the Confidential Information. The Interested Party will also exercise due diligence in verifying that any Provider permitted by the Interested Party to have access to the Confidential Information has in place appropriate security measures consistent with best practices and would take necessary precautions in order to secure the Confidential Information.
8. The Interested Party agrees to notify the Receiver Manager immediately upon discovery of an unauthorized use or disclosure of Confidential Information or any breach of this Confidentiality Agreement.
9. If the parties determine not to proceed with the Proposed Transaction, or if the Proposed Transaction is proceeded with but fails to close, the Interested Party will promptly deliver to the Receiver Manager or destroy all Confidential Information provided by the Receiver Manager to the Interested Party or its Representatives, without retaining any copies or records. If the parties proceed with the Proposed Transaction but it involves the acquisition of less than the entire operations and assets of the Debtor, the Interested Party will promptly deliver to the Receiver Manager all Confidential Information provided by the Receiver Manager to the Interested Party or its Representatives that is related to those operations and assets excluded from the acquisition, without retaining any copies or records.
10. The parties acknowledge that data stored in the computers and data storage and retrieval systems or network of the Interested Party and, if applicable, its Representatives, including Confidential Information stored in electronic form, may be automatically backed up by a Provider. The parties agree that to the extent that those back-up procedures automatically create electronic copies of Confidential Information ("**Secondary Information**"), the Provider may, despite any requirement under this Confidentiality Agreement for the Interested Party to return

or destroy any Confidential Information, retain Secondary Information in its archival storage for the period that it would normally archive electronic data, provided that:

- 10.1 those data are periodically and systematically overwritten or otherwise destroyed;
- 10.2 the Provider is bound by written agreement with the Interested Party to maintain the confidentiality of all of the data of the Interested Party and its Representatives, on terms substantially similar to those in this Confidentiality Agreement; and
- 10.3 the Interested Party will be responsible and liable for any use or disclosure of Confidential Information by the Provider that would be contrary to the terms of this Confidentiality Agreement if that use or disclosure was by the Interested Party.

Secondary Information will be subject to the provisions of this Confidentiality Agreement until destroyed and may not be accessed by the Interested Party, any of its Representatives or the Provider during its period of archival storage.

11. Use of Confidential Information by, or disclosure of Confidential Information to, any person that is not a party to this Confidentiality Agreement or a Representative permitted by the Interested Party to have access to the Confidential Information, that results from a breach of the electronic security of the computers and data storage and retrieval systems or network of the Interested Party or any of its Representatives, or the Provider, will be treated as a disclosure by the Interested Party contrary to the terms of this Confidentiality Agreement, [whether or not the breach results from a failure by the Interested Party or, if applicable, any of its Representatives, to implement appropriate security measures consistent with best practices or otherwise take necessary precautions in order to secure the Confidential Information.
12. The Interested Party acknowledges that the Receiver Manager does not make any express or implied representation or warranty as to the accuracy or completeness of the Confidential Information and agrees that the Receiver Manager will not have any liability, direct or indirect, to the Interested Party or its Representatives relating to or resulting from the Confidential Information or the use by the Interested Party or its Representatives of, or reliance on, the Confidential Information, errors in the Confidential Information, or omissions from the Confidential Information, except in accordance with any specific representation or warranty made in any definitive agreement entered into in respect of the Proposed Transaction.

13. The Interested Party acknowledges that any breach of this Confidentiality Agreement would cause serious and irreparable damage and harm to the Receiver Manager and the Debtor, and that remedies at law would be inadequate to protect against breach of this Confidentiality Agreement. Therefore, the Interested Party agrees in advance to the granting of injunctive relief in favour of the Receiver Manager and the Debtor for any breach of the sections of this Confidentiality Agreement and to the specific enforcement of the terms of this Confidentiality Agreement, without proof of actual damages, in addition to any other remedy to which the Receiver Manager and the Debtor would be entitled.
14. The obligations set out in this Confidentiality Agreement will terminate only with respect to Confidential Information which becomes the property of the Interested Party upon the closing, if any, of the Proposed Transaction, and will otherwise be perpetual.
15. Any Communication must be in writing and either: delivered personally or by courier; sent by prepaid registered mail; or transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission, charges (if any) prepaid. Any Communication must be sent to the intended recipient at its address as follows:

15.1 to the Receiver Manager at:

Deloitte Restructuring Inc.  
2800 – 1055 Dunsmuir Street  
Vancouver, BC, Canada V7X 1P4

Attention: Jeff Keeble  
Tel. No.: 604-235-4197  
Fax No.: 604-602-1583  
E-mail: jkeeble@deloitte.ca

with a copy to counsel for the Receiver Manager:

Gowling WLG (Canada) LLP  
Suite 2300 – 550 Burrard Street  
Vancouver, BC, Canada V6C 2B5

Attention: Colin D. Brousson  
Tel. No.: 604-891-2286  
Fax No.: 604-683-3558  
E-mail: colin.brousson@gowlingwlg.com

15.2 to the Interested Party at:

●  
Attention: ●  
Tel. No.: ●  
Fax No.: ●  
E-mail: ●

or at any other address as any party may at any time advise the other by Communication given in accordance with this Section 15. Any Communication delivered to the party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that party's address, provided that if that day is not a business day then the Communication will be deemed to have been given or made and received on the next business day. Any Communication sent by prepaid registered mail will be deemed to have been given or made and received on the fifth business day after which it is mailed. If a strike or lockout of postal employees is then in effect, or generally known to be impending, every Communication must be delivered personally or by courier or transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission. Any Communication transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day which is not a business day or after 5:00 p.m. (local time of the recipient), the Communication will be deemed to have been given or made and received on the next business day.

16. No supplement, modification, amendment, waiver, discharge or termination of this Confidentiality Agreement or any section of this Confidentiality Agreement is binding unless it is in writing and executed by the party to be bound. No waiver of, failure to exercise, or delay in exercising, any section of this Confidentiality Agreement constitutes a waiver of any other section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.
17. This Confidentiality Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Confidentiality Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no representations, warranties or other agreements between the parties, in connection with the subject matter of this Confidentiality Agreement except as specifically set out in this Confidentiality Agreement. No party has been induced to enter into this Confidentiality Agreement in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Confidentiality Agreement.
18. Neither this Confidentiality Agreement nor any right or obligation under it may be assigned by either party without the prior written consent of the other party. This

Confidentiality Agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, estate trustees, trustees, personal or legal representatives, successors and permitted assigns.

19. Each section of this Confidentiality Agreement is distinct and severable. If any provision of this Confidentiality Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that section will not affect the legality, validity or enforceability of the remaining sections, or the legality, validity or enforceability of that section in any other jurisdiction.
20. This Confidentiality Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of British Columbia and the laws of Canada applicable in that Province.
21. Each of the parties irrevocably and unconditionally submits and attorns to the exclusive jurisdiction of the courts of the Province of British Columbia to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by applicable law, each of the parties:
  - 21.1 irrevocably waives any objection, including any claim of inconvenient forum, that it may now or in the future have to the venue of any legal proceeding arising out of or relating to this Confidentiality Agreement in the courts of that Province, or that the subject matter of this Confidentiality Agreement may not be enforced in those courts;
  - 21.2 irrevocably agrees not to seek, and waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 21, of the substantive merits of any suit, action or proceeding; and
  - 21.3 to the extent a party has or may acquire any immunity from the jurisdiction of any court or from any legal process, whether through service or notice, attachment before judgment, attachment in aid of execution, execution or otherwise, with respect to itself or its property, that party irrevocably waives that immunity in respect of its obligations under this Confidentiality Agreement.
22. This Confidentiality Agreement may be executed and delivered by the parties in one or more counterparts, each of which will be an original, and those counterparts will together constitute one and the same instrument. Delivery of this Confidentiality Agreement by facsimile, e-mail or other functionally equivalent electronic means of transmission constitutes valid and effective delivery.
23. This Confidentiality Agreement has been reviewed by each party's professional advisors, and revised during the course of negotiations between the parties. Each party acknowledges that this Confidentiality Agreement is the product of their joint efforts, that it expresses their agreement, and that, if there is any ambiguity in any

of its provisions, that provision should not be interpreted in favour of either one of them.

*[Remainder of page intentionally left blank. Signature page follows.]*

Each of the parties has executed and delivered this Confidentiality Agreement as of the date noted at the beginning of this Confidentiality Agreement.

**DELOITTE RESTRUCTURING INC.** in its capacity as court-appointed Receiver Manager of Network Intelligence Inc., with no personal or corporate liability

Per:

\_\_\_\_\_  
Name:

Title:

●

Per:

\_\_\_\_\_  
Name:

Title: