



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

REQUISITION – GENERAL

Filed by: Deloitte Restructuring Inc., the Court Appointed Receiver and Manager of Network Intelligence Inc.

Required:

1. To file the attached Third Report of Deloitte Restructuring Inc., the Court Appointed Receiver and Manager of Network Intelligence Inc.

Date: January 4, 2017

Michèle Hay Legal Assistant
Signature of lawyer for filing party
for Colin D. Brousson

THIS REQUISITION was prepared by Colin D. Brousson of the firm of Gowling WLG (Canada) LLP, Barristers & Solicitors, whose place of business and address for delivery is 2300 - 550 Burrard Street, Vancouver, B.C. V6C 2B5, Telephone: 604 683-6498; Fax: 604 683 3558.



COURT FILE NUMBER S-179749

COURT SUPREME COURT OF BRITISH COLUMBIA

REGISTRY VANCOUVER

PETITIONER 1130489 B.C. LTD.

RESPONDENT NETWORK INTELLIGENCE INC.

DOCUMENT **THIRD REPORT OF THE COURT APPOINTED RECEIVER
AND MANAGER OF NETWORK INTELLIGENCE INC. DATED
JANUARY 3, 2018**

PREPARED BY DELOITTE RESTRUCTURING INC.

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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INTRODUCTION

1. Pursuant to an Order (the "**Receivership Order**") granted by the Supreme Court of British Columbia (the "**Court**") on October 31, 2017 (the "**Date of Receivership**"), Deloitte Restructuring Inc. ("**Deloitte**") was appointed as receiver and manager (the "**Receiver**") of all assets, undertakings and properties of Network Intelligence Inc. ("**Network**" or the "**Company**").
2. Pursuant to the Receivership Order, the Receiver assigned Network into bankruptcy on November 3, 2017 (the "**Date of Bankruptcy**") and Deloitte was appointed as the trustee in bankruptcy of the Company (the "**Trustee**").
3. Pursuant to the Receivership Order, the Receiver has the power to fund the receivership and the ongoing operations of Network through the issuance of Receiver's borrowing certificates (the "**Receiver's Certificates**") which Receiver's Certificates hold a priority secured charge against all the assets and undertaking of Network. To the date of this report, the Receiver has issued Receiver's Certificates in the total amount of:
 - 3.1 USD \$3,148,848 and CAD \$1,150,000 in favour of 1130489 B.C. Ltd. ("**113**"); and
 - 3.2 CAD \$1,300,000 in favour of 1143569 B.C. Ltd ("**114**").
4. Details of the Receiver borrowings are included in the following tables.

| Receiver Borrowings from 113 | | |
|------------------------------|------------|------------------|
| Date | Currency | Amount |
| 8-Nov-17 | USD | 658,848 |
| 10-Nov-17 | USD | 2,190,000 |
| 23-Nov-17 | USD | 250,000 |
| 24-Nov-17 | USD | 50,000 |
| Total | USD | 3,148,848 |
| 10-Nov-17 | CAD | 500,000 |
| 15-Nov-17 | CAD | 200,000 |
| 23-Nov-17 | CAD | 300,000 |
| 14-Dec-17 | CAD | 150,000 |
| Total | CAD | 1,150,000 |

| Receiver Borrowings from 114 | | |
|------------------------------|------------|------------------|
| Date | Currency | Amount |
| 15-Dec-17 | CAD | 1,300,000 |
| Total | CAD | 1,300,000 |

5. A copy of the Receivership Order and other information regarding the receivership and bankruptcy proceedings of the Company can be accessed on Deloitte's website at <http://www.insolvencies.deloitte.ca/en-ca/Pages/networkintelligence.aspx>.

6. On November 20, 2017, the Receiver filed its first report to Court (the "**First Report**") to support its application on November 22, 2017 (the "**November 22 Application**") to, among other things, seek the Court's approval of both the asset purchase agreement between 113 and the Receiver dated November 20, 2017 (the "**Stalking Horse Bid**") along with the sale process for the assets of Network (the "**Sale Procedures**"). Pursuant to the November 22 Application, the Court granted an order approving the Stalking Horse Bid and Sale Procedures (the "**Sale Approval Order**").
7. On December 14, 2017, the Receiver filed its second report with the Court (the "**Second Report**") in relation to an application by 114 on December 14, 2017 (the "**December 14 Application**"). In the December 14 Application, 114 sought to extend the bid deadline in the Sale Approval Order (the "**Bid Deadline**") from December 15, 2017 to January 31, 2018 in order to have time to consider making a qualified bid for the Company's assets as part of the Sale Procedures.
8. 114 was formed by thirty (30) individuals, family trusts and corporations who the Receiver understands are limited partners (the "**Limited Partners**") in the Istuary Innovation Fund I Limited Partnership, Istuary Innovation Fund II Limited Partnership, Istuary Innovation Fund III Limited Partnership and Platinum Fund III (collectively, the "**Istuary Partnerships**"). The Limited Partners advanced monies through the Istuary Partnerships to different companies affiliated with Istuary Group Holdings Ltd., including Network.
9. Pursuant to the December 14 Application, following written confirmation to the Receiver by 10:00 am PST on December 15, 2017 that 114's counsel were holding the sum of CAD \$1.3 million and that such sum would be paid to the Receiver and used to fund the Receivership until January 15, 2018, in accordance with the Receivership Order (the "**Extension Pre-Condition**"), the Court agreed to extend the Bid Deadline from December 15, 2017 to January 5, 2018.
10. 114 met the Extension Pre-Condition and, as such, the Bid Deadline is now January 5, 2018 at 10:00 am Pacific Time.
11. This is the third report of the Receiver (the "**Third Report**"). The Third Report is filed to provide information to the Court as well as to provide the Court with the Receiver's position in relation to an application brought by 113 which the Receiver understands is currently proposed to be heard by the Court on January 5, 2018 (the "**113 Security Application**") for:
 - 11.1 A declaration that 113 has a valid and enforceable security interest by virtue of the general security agreement (the "**113 GSA**"), registered by 113 in the British Columbia personal property registry on August 16, 2017 and dated August 22, 2017, by which Network granted a security interest in and to all of Network's present and after acquired property (the "**113 Security**");
 - 11.2 A declaration that the 113 Security secures all amounts due and owing to 113 by the Company under the Promissory Note, the Convertible Loan and the Loan and Service Agreement (as all defined later in this Third Report), plus interest and costs payable in accordance with their contractual terms (the "**Secured Obligations**"); and
 - 11.3 An Order directing the Receiver to credit-bid, or pay out of from any proceeds of sale arising under the Sale Procedures approved in the Sale Approval Order, and varied December 14, 2017, the Secured Obligations, after payment of the priority charges owing under the Receivership Order.

12. Unless otherwise provided, all other capitalized terms not defined in this Third Report are as defined in the First Report and the Second Report.

NOTICE TO READER

13. In preparing this Third Report, the Receiver has relied on unaudited financial and other information, the books and records of the Company and 113 and discussions with management, employees, contractors, interested parties and the Company's stakeholders. The financial information of 113 or the Company has not been audited, reviewed or otherwise verified by the Receiver as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally accepted accounting principles and the reader is cautioned that this report may not disclose all significant matters about the Company. Additionally, none of the Receiver's procedures were intended to disclose defalcations or other irregularities. If the Receiver were to perform additional procedures or to undertake an audit examination of the financial statements in accordance with generally accepted auditing standards, additional matters may have come to the Receiver's attention. Accordingly, the Receiver does not express an opinion nor does it provide any other form of assurance on the financial or other information presented herein. The Receiver may refine or alter its observations as further information is obtained or brought to its attention after the date of this report.
14. The Receiver assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction, or use of this Third Report. Any use which any party makes of this Third Report, or any reliance or decision to be made based on this Third Report, is the sole responsibility of such party.
15. All dollar amounts in this Third Report are in Canadian dollars, unless otherwise indicated. All Canadian currency amounts have been converted to US funds using an average foreign exchange rate over the period of 1.28.

113 PRE-RECEIVERSHIP SECURITY

16. The Receiver understands that 113 advanced various funds to the Company prior to the Date of the Receivership in order to continue its operations and 113 received the 113 Security in return. 113 provided the following facilities to Network prior to the Date of Receivership (the "**113 Facilities**"):
 - 16.1 A loan and service agreement for USD \$1.2 million dated August 22, 2017 between 113 and Network (the "**Loan and Service Agreement**"). In addition to the Network covenant, a guarantee (the "**Guarantee**") in support of the Loan and Service Agreement was provided to 113 by Istuary Holdings Ltd. ("**Istuary Holdings**"). The Guarantee was secured through a share pledge agreement dated August 22, 2017 between 113 and Istuary Holdings (the "**Share Pledge Agreement**") where Istuary Holdings agreed to pledge its 7,000,000 common shares in Network (the "**Pledged Shares**") to 113 as security for the Loan and Service Agreement in addition the 113 GSA. The stated interest under the Loan and Service Agreement was 50% per annum compounded annually.

- 16.2 A promissory note of CAD \$350,000 dated September 12, 2017 from Network to 113 (the "**Promissory Note**"). No interest appears payable under the terms of the Promissory Note.
 - 16.3 A convertible loan agreement dated September 15, 2017 between 113 and Network (the "**Convertible Loan**") for a credit facility for a maximum amount of USD \$10 million. The interest under the Convertible Loan is 12% per annum compounded annually.
17. The 113 GSA, which was executed by Network on August 22, 2017, purports to secure all obligations of Network to 113. These obligations would include Network debt to 113 which was eventually incurred under all three of the 113 Facilities.

ADVANCES MADE UNDER THE 113 FACILITIES

18. On December 4, 2017, 113 provided the Receiver with a detailed schedule of all of the transactions under each of the 113 Facilities that included, among other things, the date of the transaction, cheque number, amount, payee, description, bank account and loan facility (the "**113 Reconciliation**") which included a summary table (the "**113 Summary**"). The Receiver has been provided with various subsequent versions of the 113 Summary which has included differing amounts and calculations of interest and fees on the Convertible Loan and Loan and Service Agreement. Given the changing amounts, the Receiver has performed its own calculation of interest and focused its analysis on the principal advances.
19. The Receiver was also provided with various information from 113 to support the amounts included in the 113 Reconciliation for the period August 28, 2017 to November 2, 2017 (the "**113 Transactions**"). This information includes the following documents (the "**113 Supporting Documents**"):
- 19.1 Payroll receipt confirmations;
 - 19.2 Invoices;
 - 19.3 Bank statements of 113;
 - 19.4 Bank statements of CanTech Capital Inc. ("**CanTech**");
 - 19.5 Wire confirmations; and
 - 19.6 Email receipts.
20. The Receiver understands from 113 that:
- 20.1 Funds advanced to Network for the period from August 28, 2017 to September 28, 2017, prior to the set up of 113's bank accounts, were funded by 113 to Network under the 113 Facilities through CanTech Capital Inc. ("**CanTech**").
 - 20.2 Funds advanced to Network after September 28, 2017 were all sent to Network directly by 113 through the 113 bank accounts; and
 - 20.3 CanTech is a venture capital company based in Toronto, Ontario that provides funds to start-ups and early stage technology companies and is 113's main lender.

21. The amounts the Receiver understands 113 purported to advance under the 113 Facilities to the Date of Receivership as outlined in the 113 Summary are summarized in the table below and detailed in Appendix "A".

| As at the Date of Receivership (USD) | |
|--|------------------|
| Loan Facility | Principal |
| Loan and Service Agreement (Note 1) | 926,563 |
| Promissory Note (Note 2) | 273,438 |
| Convertible Loan | 2,511,385 |
| Total | 3,711,385 |
| Note 1 - This loan facility was satisfied in full through the enforcement of the Share Pledge Agreement. | |
| Note 2 - The detail behind the 113 Reconciliation totals USD \$155,214 and does not reconcile to the 113 Summary. The Receiver understands this is due to a categorization of a transaction as noted later in this Report. | |

Loan and Service Agreement

22. The Receiver notes the following with respect to the Loan and Service Agreement as at the Date of Receivership:
- 22.1 The Loan and Service Agreement provided for a loan of USD \$1.2 million for a term of one week from the first advance;
 - 22.2 The Receiver understands that approximately USD \$771,000 was advanced under the Loan and Service Agreement between August 28, 2017 and August 31, 2017, within the initial one week term, and a further amount of approximately USD \$155,000 was advanced between September 5, 2017 and September 15, 2017, outside of the initial one week term; and
 - 22.3 Pursuant to a letter from 113's counsel dated December 28, 2017 (the "**December 28 Letter**"), the Receiver understands that, following the missed repayment under the Loan and Service Agreement, the Share Pledge Agreement was enforced and the Pledged Shares were transferred to 113 in full satisfaction of the debt under the Loan and Service Agreement prior to the Date of Receivership. A copy of the December 28 Letter is attached hereto as Appendix "**B**".
23. As a result of the above, the Receiver understands that:
- 23.1 There is no debt to 113 remaining due from Network under the Loan and Service Agreement;
 - 23.2 113 is no longer seeking to include any amounts under the Loan and Service Agreement to offset the purchase price in its Stalking Horse Bid in the 113 Security Application; and
 - 23.3 In the 113 Security Application, 113 only seeks to credit bid the balances owing to 113 from Network under the Promissory Note and the Convertible Loan, together with the amounts issued and due to 113 under the outstanding Receiver's Certificates.
24. Given this revised position under the pending 113 Security Application concerning the Loan and Service Agreement, the Receiver provides no further analysis in this Third Report on the Loan and Service Agreement or its security.

Promissory Note and Convertible Loan

25. The Receiver completed the following with respect to the 113 Reconciliation, the 113 Transactions and the 113 Supporting Documents for the Promissory Note and Convertible Loan:
 - 25.1 The amount of each transaction included in the 113 Reconciliation was compared to the Supporting Documents;
 - 25.2 For a sample of the advances, the Receiver compared the amount from the 113 Reconciliation to the bank statements;
 - 25.3 For a sample of the operational and IP related advances, the Receiver completed a more detailed analysis of the 113 Supporting Documents by specifically comparing the date of the transaction, payee, description of purchase, and total amount to the 113 Reconciliation;
 - 25.4 For a sample of the payroll related advances, the Receiver completed:
 - 25.4.1 A more detailed review of the 113 Supporting Documents by specifically reviewing and comparing the amounts to the confirmation of receipt letters from employees as well as reviewing the current employee listing for the name of the recipient to ensure the existence of the employee; and
 - 25.4.2 A comparison of the date, payee and amount to the 113 Reconciliation.
 - 25.5 For a sample of the travel related reimbursement advances, the Receiver compared the date, amounts, and payee to invoices and confirmations of payment.
26. Based on its review, the Receiver notes the following:
 - 26.1 It was unable to verify approximately USD \$48,000 in advances under the Promissory Note related mainly to payroll and approximately USD \$3,000 in advances under the Convertible Loan. As a result, the Receiver has not been able to verify certain Promissory Note and Convertible Loan transactions totalling USD \$51,000 to any 113 Supporting Documents (the "**Unsupported Advances**"), excluding the Loan and Service Agreement which is no longer an issue as there is no debt remaining to 113 under this facility. As at the date of this Third Report, the Receiver has not received additional supporting documentation from 113 for the Unsupported Advances. Details of the Unsupported Advances are included in Appendix "A".
 - 26.2 The Receiver noted the following minor discrepancies:
 - 26.2.1 Between the 113 Reconciliation and the bank statements for the Promissory Note and Convertible Loan due to foreign exchange discrepancies as the bank statement amounts were converted as at the date of the transaction where as the 113 Transactions were all translated from CAD to USD as at December 15, 2017 at a rate of 1.28.
 - 26.2.2 Between the date of the transactions in the 113 Reconciliation and the bank statements due to timing differences between when cheques were issued and when the cheques were presented at the bank.
 - 26.3 The Receiver notes that 113 has subsequently confirmed since the Date of Receivership that it does not expect to recover the fees on the Convertible Loan and this amount has been removed from the Receiver's adjusted balances, as detailed later in this Third Report.

- 26.4 There are approximately USD \$15,000 in travel related advances under the Convertible Loan and 113 has provided reasonable explanations and supporting documents for these amounts.
- 26.5 The Receiver notes that the 113 Summary and the 113 Reconciliation do not agree. 113 confirmed that an advance totalling USD \$206,700 on September 26, 2017 should be split between the Promissory Note and the Convertible Loan, which has not been reflected in the 113 Reconciliation. The Receiver has made this adjustment in Appendix "A" and reflected this in its interest calculations.
- 26.6 In addition to the above, the Receiver notes that there is a difference of USD \$285 between the 113 Summary and the 113 Reconciliation for the Loan and Service Agreement and the Convertible Loan. The Receiver has made this adjustment in Appendix "A".
- 26.7 The Receiver notes that 113 has calculated interest based on 360 days where as the Receiver has conducted its calculations based on 365 days.

113 SECURITY REVIEW AND RELATED MATTERS

- 27 The Receiver's independent legal counsel, Gowling WLG LLP ("**Gowling**"), has been assisting the Receiver on various receivership matters and has completed a review of the 113 Security (the "**113 Security Review**"). Based on the 113 Security Review, subject to limitations, assumptions and qualifications in the 113 Security Review, Gowling has opined that 113 has a perfected and enforceable security interest against the personal property of Network. The 113 Security Review does not opine on the amount of the Secured Obligations which were analyzed in the foregoing sections. A copy of the 113 Security Review is attached hereto as Appendix "C".

Potential Preferences under Section 95 of the BIA

- 28 The 113 Security Review raises a potential concern surrounding the timing of the 113 Facilities, specifically that they were arranged within the three month period prior to the initial bankruptcy event as set out in section 95 of the *Bankruptcy and Insolvency Act* (the "**BIA**").
- 29 The 113 Security Review was completed under the assumption that 113 and the Company are arms-length parties, 113 was not a creditor at the time it was granted the 113 GSA, and 113 was not obliged to provide the advances under the 113 Facilities under a prior agreement(s). It was also assumed in the 113 Security Review that the 113 GSA was not granted to 113 by Network with a view to creating a preference.
- 30 Based on the 113 Supporting Documents the Receiver notes that the advances from 113 to Network as set out in the 113 Reconciliation all appear to have been made at the time set out in the 113 Reconciliation and therefore allowed Network to continue operations. The 113 GSA appears to have been provided to secure these advances as fresh advances. Neither the Receiver nor the Trustee have become aware of any evidence to suggest that 113 was:
 - 30.1 Not an arms-length party under the BIA;
 - 30.2 A creditor at the time 113 was granted the 113 GSA; or
 - 30.3 Obligated to provide the advances under the 113 Facilities under any prior agreement(s).

If the Receiver were to receive any evidence of the above, its conclusions set out in this report could be different.

Potential Criminal Interest Rate under the Loan and Service Agreement

- 31 The 113 Security Review notes that the 50% interest rate included in the Loan and Service Agreement together with all fees and charges in connection with same needs to be reviewed in light of section 347 of the *Criminal Code*, R.S.C. 1985, c.C-46 which makes it an offence to enter into an agreement to receive or actually receive a rate of interest in excess of 60.0% per year of the aggregate value of credit advanced. However, given the Receiver's understanding that 113 will no longer will be seeking relief under the pending 113 Security Application concerning the Loan and Service Agreement, the Receiver provides no further analysis in this report on same.

URGENCY OF THE 113 SECURITY APPLICATION

- 32 The Receiver is not aware of any urgency for the 113 Security Application, particularly as it is not yet known whether 113 will be the successful bidder for the Network assets. The successful bidder will be determined by January 8, 2017 at which point if 113 is the successful bidder the 113 Security Application could be heard at any point prior to closing. If 113 is not the successful bidder, the 113 Security Application could be heard at any time prior to the distribution of proceeds.

THE TRUSTEE'S POSITION

- 33 The Trustee has not reviewed the issues around the 113 Security with the estate inspectors (the "**Inspectors**") or with unsecured creditors of the bankruptcy estate due to the timing of the receipt of the 113 Security Application and the holidays. At this time, the Trustee does not know if the Inspectors or any of the creditors would direct the Trustee to challenge the validity of the 113 Security. If these directions were provided, then the Trustee would require funding or would advise the creditor(s) that it may obtain from the Court an order, pursuant to section 38 of the BIA, authorizing it to take the proceeding in its own name(s) and at its own expense and risk on notice being given to the other creditors. However, based on the information made available to the Receiver and Trustee to date, including Gowling's 113 Security Review, the Trustee is of the view that there would not be a benefit to the estate in challenging the validity of the 113 Security generally. The Trustee is of the view that there are certain amounts (i.e. the Unsupported Advances) included in the Secured Obligations that may be challengeable and as such the Trustee will take issue with these just as the Receiver has in this matter. The Receiver will provide a copy of this Third Report to the Inspectors and the creditors of Network when it is filed.

CONCLUSION

- 34 The Receiver is aware of issues raised related to the timing of the 113 Facilities in the 113 Security Review. However, based on the information received to date, the Receiver is not aware of any evidence to support a finding that the 113 Security created a preference over other creditors. It appears to the Receiver that 113 made fresh advances under the 113 Facilities in return for the 113 Security. As such, the Receiver does not challenge the validity of the 113 Security generally.

35 Based on the Receiver's review of the 113 Reconciliation, the 113 Summary, the 113 Transactions and the 113 Supporting Documents, the Receiver does take issue with the amount owing under the 113 Facilities. The amounts set out in the following tables for the Promissory Note and Convertible Loan appear to be properly supported and could form part of the Secured Obligations. These amounts are calculated as at the proposed date of the Vesting Order, being January 11, 2018, together with the Receiver's Certificates in USD and CAD, plus interest thereon:

| As at the Date of the Vesting Order on Jan. 11, 2018 | | | | | | | |
|--|------------------|----------------|----------|------------------|----------------------|--|------------------|
| Loan Facility | Principal | Interest | Fees | Total | Unsupported Advances | Total Supported Principal and Interest | Daily Interest % |
| Convertible Loan | 2,511,385 | 69,496 | - | 2,580,881 | 3,064 | 2,577,817 | 0.033% |
| Receiver's USD Certificates | 3,148,848 | 60,373 | - | 3,209,221 | - | 3,209,221 | 0.033% |
| Total USD | 5,660,233 | 129,869 | - | 5,790,102 | 3,064 | 5,787,038 | |
| Promissory Note | 350,000 | - | - | 350,000 | 61,918 | 288,082 | nil |
| Receiver's CAD Certificates | 1,150,000 | 19,198 | - | 1,169,198 | - | 1,169,198 | 0.033% |
| Total CAD | 1,500,000 | 19,198 | - | 1,519,198 | 61,918 | 1,457,280 | |

36 Based on an exchange rate of 1.28, the Receiver has converted the USD amounts in the table above into CAD as follows:

| As at the Date of the Vesting Order on Jan. 11, 2018 (CAD) | | | | | | | |
|--|------------------|----------------|----------|------------------|----------------------|--|------------------|
| Loan Facility | Principal | Interest | Fees | Total | Unsupported Advances | Total Supported Principal and Interest | Daily Interest % |
| Convertible Loan | 3,214,573 | 88,955 | - | 3,303,528 | 3,921 | 3,299,606 | 0.033% |
| Receiver's USD Certificates | 4,030,525 | 77,278 | - | 4,107,803 | - | 4,107,803 | 0.033% |
| Promissory Note | 350,000 | - | - | 350,000 | 61,918 | 288,082 | nil |
| Receiver's CAD Certificates | 1,150,000 | 19,198 | - | 1,169,198 | - | 1,169,198 | 0.033% |
| Total CAD | 8,745,098 | 185,431 | - | 8,930,529 | 65,840 | 8,864,689 | |
| Note 1 - The Receiver has used a FX rate of 1.28 | | | | | | | |

All of which is respectfully submitted at Vancouver, British Columbia this 3rd day of January, 2018.

DELOITTE RESTRUCTURING INC.

In its capacity as Court appointed Receiver and Manager Network Intelligence Inc. and not in its personal capacity



Jeff Keeble, CA, CIRP, LIT, CBV
Senior Vice-President

Appendix A –Summary of 113 Advances for the Period from August 28, 2017 to November 2, 2017

Network Intelligence Inc., in Receivership and Bankruptcy
Summary of 113 Advances for the period from August 28, 2017 to November 2, 2017
Amounts in USD

| Loan Type | Advances Per 113 Reconciliation | Supported Advances | Unsupported Advances | Notes |
|---|---------------------------------|---------------------|----------------------|--------|
| | USD | USD | USD | |
| Promissory Note | | | | |
| IT Contracting | \$ 12,646 | \$ 12,500 | \$ 146 | Note 1 |
| Payroll | 93,375 | 45,174 | 48,201 | |
| Petty Cash / Misc. | 27 | 0 | 27 | |
| Rent - Burnaby | 49,167 | 49,167 | | |
| IP - Adjustment | 118,223 | 118,223 | | |
| Promissory Note Total | 273,438 | 225,064 | 48,374 | |
| Convertible Loan | | | | |
| Accounts Payable | 187,692 | 187,692 | | Note 1 |
| Backend Services | 25,026 | 25,026 | | |
| CRA Payroll Source Deductions | 434,678 | 434,678 | | |
| Front End Tools and VIP | 1,318 | 1,318 | | |
| IP and Support | 1,067,965 | 1,067,965 | - | |
| IT Contracting | 12,558 | 12,558 | | |
| Lab Environment and Prototype | 119,791 | 119,791 | | |
| Legal Fees | 28,665 | 28,665 | | |
| Payroll and Contractors | 476,277 | 475,105 | 1,172 | |
| Petty Cash / Misc. | 5,528 | 3,637 | 1,892 | |
| Property Insurance | 1,875 | 1,875 | | |
| Deloitte Receiver Retainer Fee | 46,875 | 46,875 | | |
| Deloitte Trustee Retainer Fee | 19,531 | 19,531 | | |
| Rent - Burnaby | 32,675 | 32,675 | | |
| Rent - Markham | 11,127 | 11,127 | | |
| Travel | 13,558 | 13,558 | | |
| Burnaby Office Renovation | 144,755 | 144,755 | | |
| IP - Adjustment | (118,223) | | | |
| Adjustment amount | (285) | | | |
| Convertible Loan Total | 2,511,385 | 2,626,830 | 3,064 | |
| Sub Total | 2,784,823 | 2,851,893 | 51,437 | |
| Loan and Service Agreement | | | | |
| IP and Support | 70,000 | 70,000 | | Note 2 |
| Payroll and Contractors | 816,699 | 803,986 | 12,712 | |
| Petty Cash / Misc. | 247 | 247 | | |
| Rent - Burnaby | 15,677 | 15,677 | | |
| Rent - Markham | 22,253 | 22,253 | | |
| Travel | 1,401 | 1,401 | | |
| Adjustment amount | 285 | 285 | | |
| Loan and Service Agreement Total | 926,563 | 913,850 | 12,712 | |
| Grand Total | \$ 3,711,385 | \$ 3,765,744 | \$ 64,149 | |

Note 1 - Per confirmation from 113, this amount was split between the Promissory Note and Convertible Loan but categorized in the 113 Reconciliation as only an advance under the Convertible Loan.

Note 2 - Per confirmation from 113, there is a variance of USD \$285 between the 113 Reconciliation and the total of the Loan and Service Agreement.

Appendix B – Letter from
Lawson Lundell dated
December 28, 2017



Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC
Canada V6C 3L2

December 28, 2017

VIA E-MAIL

DLA Piper (Canada) LLP
Suite 1000, Livingston Place West
250 2nd Street SW
Calgary AB T2P 0C1

Attention: Karen Fellowes

Dear Sirs and Mesdames:

Re: Bankruptcy and Receivership of Network Intelligence Inc. (“Network”)

Kimberley Robertson
D: 604.631.9142 | 403.218.7527
F: 604.641.4428
krobertson@lawsonlundell.com

Thank you to Ms. Fellowes for copying us on her letter of December 24, 2017 (the “**114 Letter**”) to counsel for the Receiver.

In reviewing the matters raised with 1130489 BC Ltd. (“**113**”), it became apparent that I had been proceeding under a mistaken belief as to the initial transactional history of this matter, which I would like to correct. I would also like to make it clear that this mistake is entirely at my hands, given that I was not involved with this matter when it first arose.

Specifically, there is no remaining debt owing under the initial Loan and Service Agreement being enforced by 113.

Satisfaction of the Loan and Service Agreement

As you will have noted in reviewing the exhibits to Mr. Nie’s affidavit, this loan was guaranteed by Istuary Group Holdings Ltd., with that guarantee being secured by a Share Pledge Agreement. After the loan fell was not repaid the Share Pledge Agreement was enforced as against Istuary Group Holdings Ltd., and the Shares Istuary Group Holdings Ltd. held in Network where transferred to 113 accordingly.

In short, 113 was willing to stand in the same position as the other convertible debt holders who had their interest converted to equity, by converting its debt to equity as well, which circumstances suggest may ultimately have no value.

Thereafter, in order to finance the continued operation of Network, 113 agreed to make further financing available, first under the \$350,000 Promissory Note given the urgency and then, once it was in place, under the Convertible Loan Agreement.

Given this, the issues raised as to the enforceability of the Loan and Service Agreement, including its interest rate and recoverable fees under it, are irrelevant to the credit bid, as the only amounts that 113 seeks to credit bid are the amounts owing under the (1) Promissory Note (2) Convertible Loan Agreement and (3) Receiver's Certificates.

Validity of 113's Security

In any event, we would like to address some of the issues raised in the 114 Letter, as they go to the overall transaction and motives of 113, which 114 seems to be putting into issue.

In particular, the 114 Letter questions the security review and vetting letter obtained by the Receiver, by which it was determined that 113 has a valid and enforceable security interest in the assets, specifically in respect of the Promissory Note (subject to assumptions and qualification, we are told), but in doing so seems to be conflating two issues: (1) that 113 has a valid and enforceable security interest and (2) what amounts advanced by 113 are secured by that security.

As to the first point, the 114 Letter does not have any specific factual basis, as opposed to general statements, to show that the security interest (which by all accounts meets the form, substance, and perfection requirements under the *Personal Property Security Act*) is in any way a preference under s. 95 of the *Bankruptcy and Insolvency Act*, or a transfer at undervalue under s. 96.

As to the security being a preference, 113 was not a creditor to Network prior to entering into these transactions and the August 2017 General Security Agreement (the "GSA"). All the advances are "fresh advances" in that they were specifically made *after* the GSA was granted. As the GSA security would have had to have been given in favour of a "creditor" who was getting a preference for past advances to be a preference, these transactions cannot fall under s. 95.

Turning then to the issue of whether they were transfers at undervalue, the amount of the debt being asserted is equal to the fresh advances that were made, or, put another way, the amount of the secured debt, and security granted, was for full and proper consideration such that these transactions cannot be undervalue as required for a determination under s. 96.

We also note that the requirement that a security interest be given to secure these fresh advances, given the financial issues that were arising at the time, is entirely reasonable.

The 114 Letter also referenced an attached Amended Civil Claim, which was not in fact attached. We would ask that counsel provide a copy in that regard. In any event, to the best of my understanding there are no claims advanced against 113 or any of its directors. The concern raised is, with respect, unwarranted, baseless and without foundation.

Amount Secured by 113 Security

As to the second point, and the amount secured, the 114 Letter seems to raise two issues:

1. Whether advances were in fact made; and
2. If all advances/expenses are in fact recoverable

Specifically, the 114 Letter suggests (although not clearly) that because advances were not made directly to Network, but rather to their employees and third party suppliers, they are not loans to Network. We refer you to Paragraph 13.1 of the August 22, 2017 Loan and Service Agreement (and specifically, the “Services” portion of this Agreement) which confirms that 113 was arranging for and implementing payment of trade payables and the operating costs of Network, among other things. I understand that the reason for this was that, previously, Istuary Innovation Labs had been providing these services to Network, specifically HR, Financing/accounting and administrative functions. At the time that Network sought this financing from 113, Istuary Innovation Labs had no remaining employees, such that there was no one working in the accounting department to process payments. Accordingly, 113 stepped into that role and made arrangements to make those payments directly.

It is trite, and it is a point I made in court however it is one worth repeating, but all of the fresh advances made by 113 since August 2017 under its security are the only reason that there is an asset being sold in this bid process at all – all other Istuary company assets, that being office furniture, were being sold by Able Auctions on December 14, 2017, while we were in court.

As to the handful of expenses referenced as being concerning, 113 would be more than happy to answer any specific question upon an issue being properly particularized. And, of course, given that some of them may relate to the first Loan and Service Agreement, perhaps some of those issues are now moot.

In any event, in response to the query about travel expenses, many of these were for employees of Network. For those that relate to 113 specifically, we refer you to Paragraph 6.1 of the Convertible Loan Agreement of September 15, 2017, and Paragraph 15 and 18.3 of the General Security Agreement, by each of which all such fees and costs are recoverable. I understand that some of these travel costs were incurred by Alex Wang to fly to Vancouver twice to bring the cheque book and to pay employees’ salaries manually while 113 was putting systems in place, and to deal with the Bailiff who was enforcing a Landlords’ Distraint claim against the Istuary premises, which housed Network operations which could have affected realization on the Network assets.

Nonetheless, to the extent either 114 or the Receiver has other issues or questions please advise and 113 may, on a without prejudice basis in an effort to resolve issues between the parties, avoid unnecessary cost and expense to the Receiver, and narrow the outstanding issues, consider withdrawing its claim for those specific items.

In light of the issues raised by 114, 113 intends to proceed with its application to have the court confirm the amounts that it is entitled to credit bid with its offer, based on the validity of the

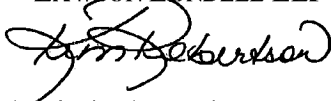
Page 4

security agreement. However, as noted above, it will not be seeking to credit bid advances made under the Loan and Service Agreement.

Should 114 oppose that application, particularly without providing proper particulars of the basis for the challenge and given the allegations that 114 has made without any basis to do so, we will seek costs against 114 on a full indemnity solicitor and own client basis.

Yours truly,

LAWSON LUNDELL LLP

A handwritten signature in black ink, appearing to read "Kimberley Robertson", written over the printed name below.

Kimberley Robertson

KAR/als

Enc.

Enc.

cc: Colin Brousson, counsel for the Receiver

Appendix C – 113 Security Review



December 6, 2017

Via E-Mail

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

Jonathan B. Ross*
*Law Corporation
Direct +1 604 891 2778
jonathan.ross@gowlingwlg.com
File No. V47245

Attention: Jeff Keeble

Dear Sirs:

Re: Review of 1130489 B.C. Ltd. ("113") granted by Network Intelligence Inc. ("NI")

You were appointed Receiver Manager of NI in this matter by the Court on October 31, 2017. You were also appointed as bankruptcy trustee of NI under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**") on November 3, 2017. On November 3, 2017, we provided you with a preliminary review of the security granted in favour of 113 over the assets and undertaking of NI. We now formalize that review.

A. Materials Reviewed

We have reviewed the following documents which were provided to us by counsel for 113 as attached to the Petition filed by 113 in SCBC Action No. VLC-S-S-179749 (the "**Receivership Action**");

1. The General Security Agreement dated August 22, 2017 (the "**GSA**") granted by NI to 113;
2. Promissory Note dated September 12, 2017 (the "**Promissory Note**") from NI to 113; and
3. Loan and Service Agreement dated August 22, 2017 (the "**Loan and Service Agreement**") between 113, NI and Istuary Group Holdings Ltd.;

We have also reviewed the following document which was provided to us by counsel for 113, but has to our knowledge not been filed in the Receivership Action.

4. Convertible Loan Agreement dated September 15, 2017 ("**Convertible Loan Agreement**") between 113 and NI;

(collectively, the GSA, the Loan and Service Agreement, the Promissory Note and the Convertible Loan Agreement are the "**Financing Documents**").

We have also reviewed the following document provided by you which we have assumed accurately sets out the advances made by 113 to NI under the Promissory Note, the Loan and Service Agreement and the Convertible Loan Agreement:

5. NI Loan Summary with interests_11022017.xlsx (the "**Loan Summary**").

In addition, we have caused to be made searches of NI in the British Columbia Company Registry and in the Personal Property Registry ("PPR") under the British Columbia *Personal Property Security Act* ("PPSA"). We have reviewed the results of those searches and have made such other investigations and searches as we have deemed necessary or appropriate in the preparation of this opinion.

B. Assumptions

With respect to the opinion expressed below, we have assumed that:

1. any copies of documents submitted to or reviewed by us are true copies conforming to the originals thereof;
2. all signatures are genuine and seals have been affixed where indicated;
3. all information provided to us by offices of public record is accurate and complete;
4. all individuals acting or purporting to act as corporate or public officials have the capacity to do so and we have assumed the identity of them;
5. 113 and NI have at all times dealt at arms-length;
6. new value as set out in the Loan Summary has been given by 113 to NI with respect to the transactions to which the Financing Documents relate and 113 was not a creditor or obliged to become a creditor of NI prior to the granting of the GSA;
7. the Loan Summary accurately sets out all advances made to NI by 113 prior to and including November 2, 2017¹;
8. the parties have not entered into any agreement to postpone the time for attachment of the security interests (the "**Security Interests**") under the GSA;
9. perfection of the Security Interests in any manner other than by registration by debtor name is not relevant;
10. the chief executive office and the principal place of business of NI is in British Columbia;
11. there are no relevant special facts which are not ascertainable from the Financing Documents and the Loan Summary which might become the basis for a challenge to the GSA, including without limitation any special facts that may lead to a determination that the granting of the GSA or the entering into the other Financing Documents constitute an improper or fraudulent preference, a fraudulent conveyance, or a transfer at undervalue;
12. the GSA and other Financing Documents were not entered into by NI with the intent to defraud, defeat or delay a creditor or other party nor with a view to prefer one creditor over another;

¹ There appear to be inconsistencies in the Loan Summary between the detailed information provided for each advance and the totals provided at the top of the spreadsheet. In the instances of such apparent inconsistencies we have preferred the detailed information for the purposes of this letter.

13. the Financing Documents have been duly authorized, executed and delivered by NI;
14. you have requested our opinion on the validity of the GSA as a whole and not enforceability of the GSA on a paragraph-by-paragraph basis; and

C. The Promissory Note and the GSA

The GSA is dated August 22, 2017 and creates a security interest in all of the present and after acquired personal property of NI which security interest secures all of the obligations of NI to 113 however incurred. The GSA appears to have been executed by Yi An Sun on behalf of NI.

The Promissory Note is dated September 13, 2017 and provides that NI will pay to 113 C\$350,000 on or before September 30, 2017. The Loan Summary appears to indicate that US\$155,214 was advanced in return for the Promissory Note between September 15, 2017 and September 26, 2017. There is no interest accruing under the Promissory Note. The Promissory Note provides that NI's obligations under the Promissory note are secured by the GSA. The Promissory Note appears to bear the same signature as the GSA as authorized signatory.

D. Timing, Preference and Transfers an Undervalue

The timing of the Financing Documents all being entered into by NI within a few months prior to the appointment of the Receiver Manager and the bankruptcy may raise some potential concerns. Specifically, the timing falls within the three month period prior to the initial bankruptcy event set out in BIA s. 95 with regard to potential preferences to arms-length parties, and within the one year period prior to the initial bankruptcy event set out in BIA s. 96 with regard to potential transfers at undervalue to arms-length parties.

As noted above, we have assumed that 113 and NI are arms-length parties.

In order for a secured charge on property granted to an arms-length party to be subject to **Section 95** of the BIA it must be made by an insolvent debtor in favour of a creditor with a view to giving that creditor a preference.²

We have assumed that 113 was not a creditor of NI at the time that it granted the GSA and this assumption is supported by the Loan Summary which shows the first advance to NI taking place on August 28, 2017. Further, a grant of security made in return for a new advance cannot be attacked as a preference.³ We have also assumed that the advances set out in the Loan Summary accurately represent present and future advances given in return for the GSA (in other words, they are not advances that 113 was obliged to make under a prior agreement that is unknown to us).

We have also assumed that the GSA was not granted by NI to 113 with a view to creating a preference. This assumption is supported by the Loan Summary which appears to show legitimate business uses for the advances obtained in return for the GSA. In other words, 113 appears to have advanced new money to allow NI to carry on the ordinary course of business and in consideration of same NI granted 113 security against NI.

² *Re. Port Hardy Properties Ltd.* (1985), 56 C.B.R. (N.S.) 117, 1985 CanLII 413 (B.C.C.A.) at para. 23

³ *British Columbia Bond Corp. v. Lang*, [1931] 2 D.L.R. 985, 1931 CarswellBC 1 (S.C.) at para. 3

Section 96 of the BIA applies to transfers at undervalue from an insolvent debtor to an arms-length party where the debtor intends to defraud, defeat or delay a creditor.

We have assumed that NI had no intention to defraud, defeat or delay a creditor or other party. As noted above this assumption is supported by the apparent legitimate use of the advances obtained in return for the GSA as set out in the Loan Summary.

We also note that, at least with regard to the interest-free Promissory Note secured by the GSA, there is no diminishment of NI's estate that we would expect to see in a transfer at undervalue.

E. Opinions

Based and relying upon the foregoing and the other limitations, assumptions and qualifications set out in this letter, in our opinion:

1. NI is a company incorporated under the laws of the Province of British Columbia;
2. the GSA creates a security interest in favour of 113 in the right, title and interest of NI in all of NI's present and after-acquired personal property in which a security interest may be created under the PPSA and perfected by registration in the PPR (the "Collateral");
3. the GSA is valid and perfected as against the Collateral, and is enforceable against NI and its trustee in Bankruptcy;
4. there are no defects in the perfection of the GSA which render it ineffective against a trustee in bankruptcy and registration of the financing statement in the PPR on August 16, 2017 (as disclosed in the PPR searches of NI conducted on November 3, 2017 and December 4, 2017), naming 113 as secured party and NI as debtor under base registration no. 209643K is effective to perfect the Security Interests created by the GSA against a trustee in bankruptcy.

F. Registration and Searches

We express no opinion as to the priority of the Security Interests. However, based on our PPR searches of NI and without providing any opinion whatsoever we note that there is security interest registered in favour of Royal Bank of Canada against NI under base registration 465668J dated August 9, 2016.

G. Qualifications

Our opinions herein are subject to the following qualifications:

1. our opinion is limited to matters of British Columbia law only and we provide no opinion on the registration, validity, or perfection of the GSA in jurisdictions other than British Columbia. No opinion is given on any security interest, the validity of which is governed by the laws of a jurisdiction other than British Columbia;
2. we express no opinion as to the legal or beneficial title of NI to, or any other rights of NI in, any Collateral or other property;

3. we express no opinion as to the granting of or perfection of any security interest in land or interest in land;
4. we express no opinion on the amount of any debt owed by NI to 113 secured by the GSA. Specifically we provide no opinion on the enforceability of the Loan and Service Agreement or the Convertible Loan Agreement.

H. Other Matters

The **Loan and Service Agreement** provides for the loan of US\$1.2 million for a term of one week from the first advance. We note that the Loan Summary shows US\$771,035 advanced under the Loan and Service Agreement between August 28, 2017 and August 31, 2017 (within the one week term) and a further US\$155,243 advanced between September 5 and September 15, 2017 (outside the one week term).

The Loan and Service Agreement provides for an interest rate of 50.0% per year. It also provides, at clause 6, that NI shall pay all of 113's costs, including its fee, broker commission, solicitor's fees and disbursements for the preparation of the agreement and that upon default NI shall pay all costs, charges and expenses of 113 in enforcing the agreement, including solicitor and client costs. We note that the Loan Summary appears to indicate fees of US\$46,328 in relation to the Loan and Service Agreement, although it is not clear how these were calculated or whether they have been paid.

Section 347 of the *Criminal Code*, R.S.C. 1985, c. C-46 makes it an offence to enter into an agreement to receive or actually receive a rate of interest in excess of 60.0% per year of the aggregate value of credit advanced. Importantly, "interest" under the Criminal Code includes many charges and expenses that are paid or payable for the advancing of credit. As such, some or all of the fees payable under clause 6 of the Loan and Service Agreement may need to be included as interest for the purpose of calculating the actual rate for the purpose of the Criminal Code.

Further, the Loan and Service Agreement at clause 13 provides for 113 to provide certain services to NI during the term of the Loan and Service Agreement and in return NI pays a service fee of US\$55,000. We do not know if these services have been provided or if NI has made a payment to 113 in this regard.

The Loan and Service Agreement is purportedly "terminated" by the Promissory Note.

We expressly provide no opinion on the enforceability of the interest provisions or any other provision of the Loan and Service Agreement or the status of debt incurred by NI under the Loan and Service Agreement as set out in the Loan Summary or otherwise. However, we did wish to bring some of the issues in the Loan and Service Agreement to your attention in any event. These concerns may become more relevant in a potential purchase of the NI assets if, as expected, 113 wishes to credit bid debt incurred under the Loan and Service Agreement as part of its payment of the purchase price. You may wish to require 113 to obtain a Court order to prove the amount and validity of the debt under the Loan and Service Agreement in such a credit bid.

The **Convertible Loan Agreement** provides for a credit facility for a maximum amount of US\$10 million payable over one or more advances at an interest rate of 12.0% per year. The facility is convertible to preferred shares at the option of 113 and if not so converted is repayable on the



anniversary of the first advance. The Loan Summary appears to show a first advance made under the Convertible Loan Agreement on September 26, 2017 and a total of US\$2,629,893 advanced between that date and November 2, 2017.

We also note that clause 15.1(h) of the Convertible Loan Agreement makes the obligation of 113 to make any advance contingent on the conversion of certain debt owed by NI pursuant to (a) a convertible loan agreement dated August 23, 2016 between NI and Istuary Innovation Fund II Limited Partnership, (b) a convertible loan agreement dated January 5, 2017 between the NI and Istuary Innovation Fund III Limited Partnership, and (c) a convertible loan agreement dated January 5, 2017 between NI and Istuary Platinum Fund III Limited Partnership (collectively the "**Third Party Convertible Loan Agreements**") into common shares of NI.

We do not know whether the Third Party Convertible Loan Agreements were in fact converted by NI or whether such a conversion was lawful if it took place. We understand that you have not seen any documents to date which address either of those points, but you have been advised by management at NI that the conversion did happen. In any event, we expressly provide no opinion on the enforceability of the Convertible Loan Agreement or the alleged conversion.

Similar to the issues noted above in connection with the Loan and Service Agreement, we simply wanted to highlight some of the notable aspects of the Convertible Loan Agreement. If 113 wishes to credit bid debt under the Convertible Loan Agreement in any purchase of NI assets it may become necessary to require 113 to obtain a Court order to prove the amount and validity of debt attributed to the Convertible Loan Agreement.

I. Use and scope of this letter

This letter is solely for your use and benefit and may not be disclosed to or relied upon by anyone other than you. Our opinion is given as of the date of this letter and solely with respect to the laws of the Province of British Columbia and the federal laws of Canada applicable in British Columbia, in effect on the date of this letter.

Please contact us if you have any questions.

Sincerely,

Gowling WLG (Canada) LLP



Jonathan B. Ross

JBR:mcn