

Court File # 25-2172984  
Estate # 25-2172984



**IN THE MATTER OF THE AMENDED AMENDED PROPOSAL OF  
MICROPLANET TECHNOLOGY CORP.  
OF THE CITY OF CALGARY  
IN THE PROVINCE OF ALBERTA**

**THIRD SUPPLEMENTAL REPORT TO THE REPORT OF TRUSTEE ON PROPOSAL**

**A. INTRODUCTION**

1. Deloitte Restructuring Inc. is the Trustee acting in the proposal of MicroPlanet Technology Corp. ("MTC" or the "Company"), an insolvent company. The original proposal was filed with the Official Receiver on October 3, 2016 pursuant to Part III of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") (the "Original Proposal"). The Company's amended proposal was filed with the Official Receiver on November 21, 2016 (the "Amended Proposal") and was subsequently further amended and filed with the Official Receiver on December 6, 2016 (the "Amended Amended Proposal").
2. The Report of Trustee on Proposal dated December 6, 2016 (the "Trustee's Court Report") was filed with the Court and forwarded to the Official Receiver on December 6, 2016.
3. The Trustee's supplemental report to the Trustee's Court Report dated December 14, 2016 (the "First Supplemental Court Report") was filed with the Court on December 14, 2016 and also forwarded to the Official Receiver.
4. On December 14, 2016, the Company's legal counsel and counsel for Mr. Brett Ironside agreed to adjourn the Court hearing to approve the Amended Amended Proposal that was scheduled to be heard on December 15, 2016 to January 11, 2017.
5. The Trustee's second supplemental report to the Trustee's Court Report dated January 6, 2017 (the "Second Supplemental Court Report") was filed with the Court on January 6, 2017 and also forwarded to the Official Receiver.
6. The Company's application to the Court for approval of the Amended Amended Proposal was held on January 11, 2017 along with an application brought by Mr. Brett Ironside to adjourn the Court approval application to further amend the Amended Amended Proposal (the "Amendment

**Request**") and to seek an order for the calling and holding of a meeting of shareholders of MTC (the **"MTC Shareholders Meeting Request"**).

7. The Court adjourned the January 11, 2017 application in order for the parties to obtain and provide to the Court additional information regarding the value of the US tax losses associated with MicroPlanet, Inc. (**"MI"**, together with MTC, the **"Companies"**) of approximately USD \$25 million (the **"MI Tax Losses"**) and the relationships among the various parties involved with the Amended Amended Proposal. The tax losses of MI were previously disclosed by the Trustee as totaling approximately USD \$22 million as tax losses of approximately USD \$1.3 million incurred in 2013 were not included in the total along with general business credits of approximately USD \$700,000. As part of the adjournment, counsel for MTC, Mr. Ironside, and the Trustee, along with Mr. Myron Tetreault, were to agree on a form of order. As the parties could not come to an agreement, another Court application took place on January 13, 2017 and an order was finalized and agreed to on January 18, 2017 (the **"Adjournment Order"**). The more significant terms of the Adjournment Order were as follows:
  - a. Examinations of Mr. Wolfgang Struss, President of MTC, Mr. Wayne Smith, principal of the Proposal Sponsor, and Mr. Ironside, shareholder of MTC, were to take place within prescribed timeframes with respect of their various affidavits previously filed in these proceedings;
  - b. Mr. Ironside was permitted to submit further evidence on the value of the MI Tax Losses and the value of the other assets of MI at his own expense, provided that any further evidence on the value of the MI Tax Losses was filed and served by Ironside on or before January 19, 2017;
  - c. The MTC Shareholders Meeting Request was dismissed; and
  - d. Various deadlines were set for the Trustee, MTC, Mr. Ironside and other parties to file reports or briefs before the next Court application scheduled for February 8, 2017 to consider the approval of the Amended Amended Proposal and the Amendment Request.
8. The various Trustee and Court documents related to the proposal proceedings of the Company can be found on the Trustee's website at: [www.insolvencies.deloitte.ca/en-ca/microplanettechnologycorp](http://www.insolvencies.deloitte.ca/en-ca/microplanettechnologycorp) (the **"Trustee's Website"**).

**B. PURPOSE OF THE THIRD SUPPLEMENTAL REPORT AND TERMS OF REFERENCE**

9. The purpose of this third supplemental report to the Trustee's Court Report (the "**Third Supplemental Court Report**") is to report on the value of the MI Tax Losses, the value of the Canadian tax losses associated with MTC of approximately \$7.5 million (the "**MTC Tax Losses**") and to respond to any evidence filed by Mr. Ironside in regards to the value of the MI Tax Losses or the value of the other assets of MI, and to report on certain other matters. The Trustee cautions that the analysis contained in this Third Supplemental Court Report is not a detailed analysis or opinion of the US or Canadian tax consequences to MTC, MI, or any other party resulting from any of the proposed transactions discussed below.
10. Unless otherwise defined in this Third Supplemental Court Report, capitalized terms will have the meaning ascribed in the Trustee's Court Report, the First Supplemental Court Report and the Second Supplemental Court Report.
11. In preparing this Third Supplemental Court Report, the Trustee has relied on unaudited financial information, the books and records of the Company and MI and discussions with the management of the Company and MI ("**Management**") and certain interested parties and stakeholders. The Trustee has not performed an independent review or audit of the information provided.
12. The Trustee 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 Supplemental Court Report.
13. All amounts included herein are in Canadian dollars unless otherwise stated.

**C. VALUE OF TAX LOSSES**

14. The First Supplemental Court Report in paragraphs 19 to 23 described at a high level the tax losses of MTC and MI and the Trustee's view on the potential value of those losses. The Trustee has again consulted its internal Canadian and US tax experts in preparing this Third Supplemental Court Report. This report includes additional details surrounding the tax losses, but it is not intended or meant to be a comprehensive review or tax opinion on the treatment, rules around and value of tax losses, which are complex, but more of a high level overview for the benefit of the Court that also addresses the facts in these particular circumstances.

**Description of the MI Tax Losses**

15. The Trustee was previously provided with the latest tax return of MI, which is still in draft form and unfiled, and covers the twelve month period ended December 31, 2013 (the “**2013 MI Tax Return**”).
16. The MI Tax Losses of approximately USD \$25 million that are available to MI as reported in the 2013 MI Tax Return, represent mainly net operating losses as follows:

| Tax Year | Loss Sustained | Loss Previously Applied | Loss Remaining |
|----------|----------------|-------------------------|----------------|
| 12/31/00 | \$ 149,764     | \$ 0                    | \$ 149,764     |
| 12/31/01 | 815,240        | 0                       | 815,240        |
| 12/31/02 | 784,355        | 0                       | 784,355        |
| 12/31/03 | 843,467        | 0                       | 843,467        |
| 12/31/04 | 1,141,640      | 0                       | 1,141,640      |
| 12/31/05 | 2,505,980      | 0                       | 2,505,980      |
| 12/31/05 | 835,327        | 0                       | 835,327        |
| 12/31/06 | 1,920,157      | 0                       | 1,920,157      |
| 12/31/07 | 2,224,727      | 0                       | 2,224,727      |
| 12/31/08 | 4,430,031      | 0                       | 4,430,031      |
| 12/31/09 | 2,918,925      | 0                       | 2,918,925      |
| 12/31/10 | 1,869,352      | 0                       | 1,869,352      |
| 12/31/11 | 1,560,634      | 0                       | 1,560,634      |
| 12/31/12 | 1,449,677      | 0                       | 1,449,677      |
| 12/31/13 | 1,282,202      | 0                       | 1,282,202      |
| Total    | \$ 24,731,478  | \$ 0                    | \$ 24,731,478  |

17. In addition to the above net operating losses, MI has an additional amount of approximately USD \$700,000 in general business credits included in the 2013 MI Tax Return. The only key difference between net operating losses and business credits is that the business credits are applied after the taxable income calculation has been made so they are ordinarily not used unless all of the net operating losses have been used up first. The net operating losses can be used by MI in the ordinary course to offset any net taxable income in future periods, and thus indirectly offset US taxes in such period, if any. The MI Tax Losses expire 20 years after the year if which they were incurred. The MI Tax Losses to 2013 are expected to fully expire by approximately 2033, but it should be noted

that MI has incurred additional tax losses since 2013 and the Trustee understands that MI tax returns have not been prepared since 2013 in order to quantify these additional losses. Management has indicated that this should not be a significant amount as there have been minimal operations in MI since that time.

18. It is uncertain whether the MI Tax Losses could be realized in the carry forward period in the ordinary course of business and, according to the consolidated audited financial statements of MTC for the year ended December 31, 2013 (the "**2013 Consolidated Financial Statements**"): "the availability of the deductions for income tax purposes have been restricted due to previous changes in control of companies in the group and may be further restricted if there are future changes in control. U.S. net operating loss carry forwards of \$5,231,000 are limited annually to an amount calculated by reference to the fair market value of MI on the date of the change in ownership. The expected limitation is approximately \$600,000 per year." As a result, all of the MI Tax Losses would not be available to offset any taxable income in the future in the normal course of operations based on the US tax limitations, as further described below.

#### **General treatment and US tax rules around US tax losses**

19. After a change in control of the ownership of MI, as contemplated by the Amended Amended Proposal, the MI Tax Losses would be affected by variables such as the value of the sole share owned by MTC (the "**MI Share**") and whether MI had assets with unrealized built-in gains at the time of the transaction/sale.
20. The tax loss limitation rules in Title 26 of the United States Code (the "**Code**") are triggered by an ownership change. In general, an ownership change occurs when more than 50% of the corporation's stock, by value, changes ownership during a rolling three year period. If the MI Share is sold as contemplated in the Amended Amended Proposal, then it is likely that MI's Tax Losses would become restricted in their ability to offset future taxable income.
21. The limitation in the ability to use the MI Tax Losses drops dramatically as the value of the MTC's equity value also decreases. The general rule for computing the amount of MI's historic tax losses that can be used in any one year subsequent to a change in control of MI is equal to the value of the MI stock immediately before the ownership change multiplied by the applicable federal rate that was in effect at that date (essentially a long term interest rate for government debt). The unused portion of a year's limit may be carried forward to subsequent years. The value of the acquired company

stock will generally, but not always, be the amount the acquirer paid for the stock. For example, if the MI Share was sold in February 2017 for USD \$1,000,000, the applicable federal rate for that month would be approximately 2.8% and MI, or a subsequent US consolidated group in which MI is a member, would only be able to use a maximum of USD \$28,000 of MI's historic tax losses each year thereafter. After 20 years, unless the built-in gain exception discussed in paragraph 26 below applies, a maximum of USD \$560,000 of the MI Tax Losses could be utilized before they expire. The other approximately USD \$24 million of the MI Tax Losses would therefore be extinguished before they could be used, thus effectively making them worthless.

22. If a corporation with accumulated tax losses has a net built-in-gain in its assets on the change-date, and the amount is significant (generally more than 15% of the total value of the loss corporation's assets), the corporation may be eligible for an increase to its loss limitation equal to a portion or all of such built-in gain. The precise rules for determining the potential increase to the base loss limitation rules, however, are quite complex. It is our understanding that there is likely to be a relatively minor, if any, net unrealized built-in gain in the assets of MI.
23. Setting aside for a moment the risks posed by the US tax loss limitation rules discussed in the above paragraph, there is also a risk that the Internal Revenue Service ("IRS") may deem a corporation such as MI that holds primarily tax losses to have undergone a "deemed" liquidation for tax purposes even if the company still exists for legal purposes. In a worst case scenario, if the company subject to the deemed liquidation is insolvent at the time of the liquidation, all of its tax attributes, including tax losses, would be extinguished. However, this would generally only be the case when the company has no remaining assets. In this case, it appears that MI does own self-created intangible property that could arguably prevent the IRS from taking the position that MI has undergone a "deemed" liquidation.
24. In general, the cancellation of debt ("COD") of a borrower will result in income to the borrower in an amount equal to the difference between the amount paid to retire the debt and the remaining balance of the debt that is settled. However, under the Code there are certain codified rules that may apply to exclude COD income from a corporation's taxable income. The likely most relevant of these codified exclusions in the case of MI would appear to be the "insolvency" exception. In short, if MI is considered to be insolvent because its liabilities exceed the accumulated fair market value of its assets, any cancellation of its debt would not result in MI recognizing COD income to the extent of MI's insolvency.

25. If MI were to have COD income that is excluded under the COD income exclusion rules discussed above, the Code would also generally mandate that a corresponding reduction of the corporation's tax attributes occur. Under the default rules, the first tax attributes to be reduced are generally a corporation's tax losses, which are reduced dollar-for-dollar for the amount of COD income that was excluded. However, it may also be possible to reduce the corporation's other tax attributes, such as tax credits, tax basis of depreciable assets, foreign tax credits, etc.
26. Finally, outside of the above US tax rules associated with the MI Tax Losses, there is also a secondary set of loss limitation rules that effectively back-up the US tax rules described above. These rules, while invoked far less often, can also be applicable to the MI Tax Losses should MI be acquired with the "principal purpose" of acquiring MI's Tax Losses.

**Description of MTC Tax Losses**

27. The Trustee has been provided with the latest filed tax return of MTC which covers the twelve month period ended December 31, 2012 (the "2012 MTC Tax Return").
28. The MTC Tax Losses of approximately \$7.5 million that are available to MTC as reported in the 2012 MTC Tax Return represent non-capital losses as follows.

| Tax Year | Loss Sustained | Loss Previously Applied | Loss Remaining |
|----------|----------------|-------------------------|----------------|
| 12/31/04 | \$ 34,225      | \$ 0                    | \$ 34,225      |
| 12/31/05 | 28,611         | 0                       | 28,611         |
| 12/31/05 | 510,355        | 0                       | 510,355        |
| 12/31/06 | 855,736        | 0                       | 855,736        |
| 12/31/07 | 695,964        | 0                       | 695,964        |
| 12/31/08 | 1,041,164      | 0                       | 1,041,164      |
| 12/31/09 | 1,243,336      | 0                       | 1,243,336      |
| 12/31/10 | 1,019,235      | 0                       | 1,019,235      |
| 12/31/11 | 1,048,512      | 0                       | 1,048,512      |
| 12/31/12 | 985,483        | 0                       | 985,483        |
| Total    | \$ 7,462,621   | \$ 0                    | \$ 7,462,621   |

29. According to the 2012 MTC Tax Return, a total of approximately \$600,000 of the MTC Tax Losses expired in 2015 and the remainder of approximately \$6.9 million will expire from 2026 to 2032 (pursuant to a 20 year limitation period). It should be noted that MTC has incurred additional tax losses since 2012, but the Trustee understands that the MTC tax returns have not been prepared since 2012 in order to quantify these additional losses. Management has indicated that this should not be a significant amount as there have been minimal operations in MTC since that time.
30. The Trustee understands that the MTC Tax Losses arose from MTC borrowing to invest in MI and from the stewardship costs associated with MTC being a public company of which the only substantial asset was the equity held in MI. If this is the case, then the non-capital losses were losses from property and they would not survive a "loss restriction" event. A loss restriction event is defined in subsection 251.2(2) of the *Income Tax Act* (the "ITA") and includes an acquisition of control of a corporation, as traditionally defined, subject to the exceptions set out in subsection 256(7) of the ITA. However, section 256.1 of the ITA also deems an acquisition of control to have occurred if there has been an acquisition by a person or group of shares of the corporation with a fair market value equal to 75% of the fair market value of all shares outstanding. This section of the ITA also includes various specific anti-avoidance measures.
31. If there has been no previous loss restriction event, which we assume is the case for MTC, then the MTC Tax Losses could be used by MTC in the ordinary course to reduce income taxes in future periods, if any. The MTC Tax Losses expire at various times through to the year ending December 31, 2032 (for the losses up to 2012). Based on the current financial position of MTC and the lack of any operations, it does not appear that there would be any income in MTC to allow for any such losses to be realized in the carry forward period and thus they have negligible value.

**General treatment and rules around Canadian tax losses**

32. The MTC Tax Losses would be restricted on any changes in control of MTC as follows:
- a. If the MTC Tax Losses were losses from business, a strategic purchaser buying an operating company and operating the business with a reasonable expectation of profit would normally attribute some value to the tax loss carry forward balances. However, as the MTC Tax Losses are understood to be from property (i.e., from the ownership of MI and related custodial costs of the public company) such a transaction would terminate access to the MTC Tax Losses.

- b. In the Canadian Federal 2013 Budget, new limitations broadened the circumstances in which tax losses of corporations would be restricted. The changes effectively meant that a “naked lossco” would have minimal value because of the difficulty in finding a source of business which did not effectively terminate access to the losses.
- c. Since any plausible transaction also involves the compromise of MTC indebtedness, the “debt forgiveness” provisions in the ITA would reduce MTC’s Canadian non-capital loss carry forward balance as well on a similar basis to those described for the US tax losses.

#### Current transactions in the US and Canadian markets

- 33. In the US market, for all of the reasons described above, there generally is no legitimate “market” for selling loss companies purely for their tax attributes such as loss carry forwards. The US system is designed to prevent the sale or, as the IRS phrases it, the “trafficking of losses.” If a company is sold and the principal purpose is for the acquirer to use the target’s losses, the IRS can deny the deduction.
- 34. Within Canada, the new provisions of section 251.2 of the ITA have effectively shut down the market for “pure” loss companies like MTC. In the acquisition of a company with an on-going business, and tax loss carry forward balances, the value attributed to the losses typically depends on the cash flow projections, and how the losses affect the timing of income taxes payable. As a result, the value attributed to the losses reflects particular income projections and the discount rate employed, making it difficult to generalize as to the market value of tax losses since any actual transaction involves the sale of shares which carry with them the ownership both of the business assets and the tax balances.

#### Value of the MI Tax Losses and the MTC Tax Losses

- 35. MI’s ability to continue using its Tax Losses after a change in control relates directly to the amount paid for MI by the acquirer. After a change in control, the amount of tax losses that may be used each year is the product of value of the corporate stock prior to the change event multiplied by the applicable federal rate. Since the best evidence of stock value will generally be the amount paid for the stock, the amount paid for MI is the variable with the greatest impact upon the value of the tax losses. Our best estimate at this point, as set out above, is that the MI Tax Losses will be severely restricted in their future use. However, the precise amount of the restriction is highly dependent on

the established fair market value of MI when it is acquired from MTC. In a scenario where there was no change in control and the current shareholders wanted to fund the companies, the MI Tax Losses could only be used if income was generated and there is no guarantee this will happen. The value of losses is typically derived from the time value of cash outflows avoided and the value would remain nominal and is contingent on the amount of revenue that can be sheltered from tax.

36. For MTC, losses from property do not survive an acquisition of control, so the losses would have no value. In addition, even if the losses were from business as opposed to property, due to the small amount, the costs to verify them, and other due diligence required to create a plan to use them is such that they would have no practical value other than as an attribute of the business. In a scenario where there was no change in control and the current shareholders wanted to fund the Companies, the MTC Tax Losses could only be used if income was generated and there is no guarantee this will happen. Value of losses is typically derived from the time value of cash outflows avoided and the value would remain nominal and is contingent on the amount of revenue that can be sheltered from tax.

**D. EVIDENCE FILED BY MR. IRONSIDE OR OTHERS ON THE VALUE OF THE TAX LOSSES OR OTHER ASSETS OF MI**

37. As outlined in the Adjournment Order, the Court directed that Mr. Ironside could submit further evidence on the value of the MI Tax Losses and the value of the other assets of MI at his own expense, provided that any further evidence on the value of the MI Tax Losses be filed and served by Ironside on or before January 19, 2017. On January 19, 2017, counsel for Mr. Ironside provided a letter stating that Mr. Ironside had made efforts to determine the value of the MI Tax Losses, but notwithstanding his efforts Mr. Ironside was unable to ascertain the value of the MI Tax Losses in the context of the Amended Amended Proposal.
38. The Trustee has never been provided any information from Mr. Ironside to substantiate or support the value of the MI assets, including the MI Tax Losses, despite previous requests. As previously reported, the Trustee has made attempts to engage with Mr. Ironside following receipt of a letter dated October 20, 2016 from his legal counsel that raised several concerns with the original proposal (the "**October 20, 2016 Letter**") but Mr. Ironside has not provided any information directly to the Trustee to address his concerns raised in the October 20, 2016 Letter and has not attended any of the creditor meetings or contacted the Trustee to engage in further dialogue regarding those concerns.

39. The Trustee has also not received any information from Mr. Myron Tetreault to the date of this report in regards to the value of the MI Tax Losses or any ideas on how a proposal could be structured in order to utilize them. This is despite his letter dated December 12, 2016 (the “**Tetreault Letter**”) where he indicates that *“At the creditors’ meeting, representatives of Deloitte conceded that such tax losses would typically have a value of \$0.05 to \$0.20 per dollar of losses, which in the case of MicroPlanet could imply a value of \$1,500,000 to \$6,000,000, which far exceeds the consideration being offered as part of this proposal. MicroPlanet has made no efforts to make use of these tax losses or to structure the proposal in a manner that would allow them to be used in the future.”* The Trustee responded to this comment in the First Supplement Court Report and noted in page four of the minutes of the reconvened meeting of creditors on December 2, 2016 that “while tax losses of an insolvent company can have a value, there are complex tax rules and debt forgiveness implications in that regard.” The Trustee has further detailed its views on the MI Tax Losses in this report.

#### OTHER MATTERS

40. The Trustee received an unsolicited call on January 18, 2017 from an individual representing himself as working for a company in the energy management solution industry, and made inquiries of MI and its technology. The Trustee provided an update on the proceedings, offered the contact information for Mr. Struss, directed the company to the Trustee’s Website for further information and offered to answer any other questions the company had after reviewing the additional information. The Trustee followed up with the individual on January 23, 2017 and spoke with him on January 25, 2017. The individual indicated that the company was interested in the technology and the tax losses and was again directed to contact Mr. Struss. As of the date of this report, the Trustee is not certain if this party has any serious interest in MI or its technology. The Trustee has not been contacted by any other interested parties.
41. The Second Supplemental Report outlined the status of the various disputed proofs of claim. The Trustee has followed up with the various parties and has received no further information and has no further updates in that regard.

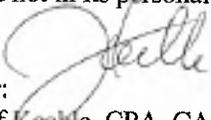
**E. CONCLUSION**

42. As set out above, this Third Supplemental Court Report has been prepared to provide the Court with the Trustee's responses and comments in regards to the value of the MI Tax Losses, MTC Tax Losses, and any evidence filed by Mr. Ironside in regards to the value of the Tax Losses or the value of any other assets of MI and to report on certain other matters with respect of the Company's proposal proceedings. Based on the information reviewed and related analysis, the Trustee's recommendation on the Amended Amended Proposal remains unchanged.

Dated at Calgary, this 26<sup>th</sup> day January, 2017.

**DELOITTE RESTRUCTURING INC.,**

In its capacity as Trustee under the  
Amended Amended Proposal of  
MicroPlanet Technology Corp.,  
and not in its personal capacity

  
Per:  
Jeff Keeble, CPA, CA, CIRP, LIT, CBV  
Senior Vice-President