



No. S-179749
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE RECEIVERSHIP OF NETWORK INTELLIGENCE INC.

BETWEEN:

1130489 B.C. LTD.

PETITIONER

AND:

NETWORK INTELLIGENCE INC.

RESPONDENT

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

BEFORE THE HONOURABLE

MR. JUSTICE MCEWAN



WEDNESDAY THE 22ND DAY

OF NOVEMBER, 2017

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

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

THIS COURT ORDERS THAT

DEFINITIONS

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

SERVICE

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

SALE PROCEDURE

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

STALKING HORSE AGREEMENT

6. The execution by the Receiver Manager of the Stalking Horse Agreement is hereby authorized, *nunc pro tunc*, provided that nothing herein approves the sale of the Purchased Assets as defined in the Stalking Horse Agreement on the terms set out in the Stalking Horse Agreement, and that the approval of any sale of the Purchased Assets by the Court will be subject to a Vesting Order

anticipated to be granted in accordance with the Sale Procedure, with such application to be heard on December 22, 2017, subject to further order of the Court.

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

APPROVAL OF RECEIVER MANAGER'S REPORT

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


GENERAL

10. The Receiver Manager may apply from time to time to this Court for advice and directions in the discharge of its powers and duties hereunder.

- 11. Endorsement of this Order by counsel appearing on this application other than Colin D. Brousson is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:



Signature of Colin D. Brousson
lawyer for Deloitte Restructuring Inc.,
the Court Appointed Receiver and Manager
of Network Intelligence Inc.

BY THE COURT



DISTRICT REGISTRAR

SCHEDULE "A"

LIST OF COUNSEL

LAWYER NAME

REPRESENTING

Kimberley A. Robertson
Lawson Lundell LLP

The Petitioner
1130489 B.C. Ltd.

Murphy & Company

The Respondent
Network Intelligence Inc.

SCHEDULE "B" SALE PROCEDURE

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

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

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

All denominations are in Canadian Dollars.

1. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Assets for Sale

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

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

3. Marketing

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

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

4. Participant Requirements

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

- (a) an executed Confidentiality Agreement;
- (b) an executed Acknowledgement of Sale Procedure;

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

(Collectively the "**Participant Requirements**")

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

5. **Participant's access to Due Diligence Materials**

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

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

6. **Bidder Qualification Requirements.**

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

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

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

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

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

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

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

7. **Bid Requirements**

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

- (a) **Written Submission of Modified APA and Commitment to Close.** A Qualified Bid must be submitted by the Bid Deadline in the form of a Modified APA (together with a blackline of the Modified APA against the Stalking Horse Agreement), and a written and binding commitment to close on the terms and conditions set forth therein.
- (b) **Irrevocable.** A Qualified Bid must be open for acceptance and irrevocable until December 22, 2017;
- (c) **Contingencies.** A Qualified Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated with a Qualified Bid may not, in aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;
- (d) **Financing Sources.** A Qualified Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Receiver Manager and appropriate contact information for such financing sources must be provided;
- (e) **No Fees payable to Qualified Bidder.** A Qualified Bid may not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement or similar type of payment;

- (f) Good-Faith Deposit. Each Qualified Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver Manager by certified cheque or banker's draft, to be held by the Receiver Manager in trust in accordance with this Sale Procedure;
- (g) Stalking Horse Purchase Price. The aggregate consideration in a Qualified Bid must have a purchase price that exceeds the Stalking Horse Purchase Price by an amount of not less than 10% of the Stalking Horse Purchase Price; and
- (h) Delivery. A Qualified Bid must be delivered to the Receiver Manager in a sealed envelope in accordance with Section 14 at or prior to the Bid Deadline.

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

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

8. Stalking Horse Bidder may increase its Bid

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

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

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

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

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

The Sealed Bid Process shall be conducted as follows:

- (a) the Receiver Manager shall open and read all Bids submitted by Qualified Bidders other than the Stalking Horse Bidder and determine which, if any, are Qualified Bids pursuant to the requirements set out in Section 7;
- (b) if the Receiver Manager determines that none of the Bids is a Qualified Bid then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder at the price set out in the Stalking Horse Agreement and the Stalking Horse Addendum (if any) shall be destroyed without being opened;

- (c) if the Receiver Manager determines that one or more of the Bids is a Qualified Bid then the Receiver Manager shall then unseal and read the Stalking Horse Addendum and shall then determine which among the Qualified Bids and the Stalking Horse Agreement as amended by the Stalking Horse Addendum is the Successful Bid;
- (d) the Receiver Manager shall determine the Successful Bidder by no later than 5:00 p.m. Pacific Time on December 18, 2017. After the Receiver Manager determines the Successful Bid the Receiver Manager shall
 - (i) as soon as practicable advise the Sealed Bid Participants of its determination and post notice of the determination on its website established in connection with the Receivership Proceedings; and
 - (ii) not later than December 22, 2017 seek Court approval of, and authority to consummate, the Successful Bid and the transactions provided for therein by Vesting Order.

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

11. Acceptance of Successful Bid and Vesting Order

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

12. Effect of a Failure to Complete Successful Bid

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

13. Return of Good Faith Deposit

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

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

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

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

NETWORK INTELLIGENCE INC. IN RECEIVERSHIP
CONFIDENTIAL SEALED BID

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

15. **Modifications and Reservations**

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

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

ACKNOWLEDGEMENT OF SALE PROCEDURE

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

This _____ day of _____.

[NAME]

By:

[Signing Officer]

No. S-179749
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE RECEIVERSHIP OF NETWORK
INTELLIGENCE INC.

BETWEEN:

1130489 B.C. LTD.

PETITIONER

AND:

NETWORK INTELLIGENCE INC.

RESPONDENT

ORDER MADE AFTER APPLICATION

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