

CANADA

SUPERIOR COURT  
(Commercial Division)  
*The Companies' Creditors Arrangement Act*

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PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
No.: 500-11-034815-080

IN THE MATTER OF THE PLAN OF  
ARRANGEMENT AND COMPROMISE  
OF:

KOMUNIK CORPORATION

-and-

KOMUNIK DATAMARK INC.

-and-

KOMUNIK INTRAMEDIA INC.

Petitioners

-and-

RSM RICHTER INC.

Monitor

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PETITION FOR THE EXTENSION OF THE STAY PERIOD AND FOR THE  
APPROVAL OF A TRANSACTION FOR THE SALE OF THE  
KONVERSATION DIVISION OF KOMUNIK CORPORATION  
( Section 11 of the *Companies' Creditors Arrangement Act* R.S.C. (1985), c. C-36, as  
amended ("CCAA"))

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING  
IN THE COMMERCIAL CHAMBER AND FOR THE JUDICIAL DISTRICT OF  
MONTRÉAL, THE PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. On November 18, 2008, the Honorable Justice William Fraiberg, J.S.C issued an Order (the "Initial Order") granting Komunik Corporation ("Komunik"), Komunik Datamark Inc. ("Datamark") and Komunik Intramedia Inc. ("Intramedia") (collectively, the "Company"), protection under the CCAA until December 18, 2008;

2. On December 15, 2008, the Honourable Justice Fraiberg issued an order (the "**Second Order**"), granting the Petitioners' Petition for the Extension of the Stay Period, the Approval of the Appointment of a Chief Restructuring Officer, the Approval of a Key Employees' Retention Plan and other conclusions";
3. Pursuant to the Second Order, the CCAA protection provided under the Initial Order was continued, and the Stay Period under the Initial Order was extended until January 30, 2009;
4. The Company hereby respectfully seeks from this Court an Order for:
  - (i) the extension of the Initial Order;
  - (ii) the extension of the Stay Period and the Stay Termination Date (as defined in the Initial Order), to February 25, 2009;
  - (iii) the approval of a transaction between Komunik and Intema Solutions Inc. (the "**Offeror**"), pursuant to which the Konversation division of Komunik ("**Konversation**") will be sold to the Offeror (the "**Konversation Transaction**");
  - (iv) the issuance of a vesting order relating to the Konversation assets being sold;
  - (v) the approval of additional forbearance agreements entered into by Komunik and its lenders;
5. Petitioners refer the Court to the *Second Report of RSM Richter Inc.* (the "**Monitor's Second Report**") filed in support hereof as **Exhibit P-1**, which provides a detailed update regarding the Company's recent financial performance, its restructuring measures and efforts, the Sale Process (as defined in the Initial Order) and the Company's activities;

## **II. THE COMPANY'S OPERATIONS AND ACTIVITIES**

6. The Company has operated with minimal disruption since the date of the Initial Order;
7. While continuing to operate in the normal course, the Company has, with the assistance of the Monitor, in the period subsequent to the Monitor's First Report:
  - (i) negotiated with suppliers and service providers regarding the terms on which goods and services are to be provided to the Company and paid for by the Company during the CCAA Proceedings;

- (ii) continued to communicate with major customers with regard to the Company's restructuring efforts;
- (iii) corresponded with and reported to HSBC Capital (Canada) Inc. ("HSBC Capital"), HSBC Bank Canada ("HSBC Bank") and its consultant, PricewaterhouseCoopers LLP;
- (iv) corresponded with the employees' representatives to provide them with information related to the CCAA proceedings;
- (v) addressed various issues and inquiries made by creditors of the Company; and
- (vi) assisted with the Sale Process (as defined in the Initial Order);

### III. THE COMPANY'S RESTRUCTURING EFFORTS

8. The principal purpose of the Company's restructuring efforts is to discontinue those parts of the business which are unprofitable and to focus the business in Québec and Calgary, Alberta;
9. Consolidating the Company's operations will reduce overhead costs, eliminate surplus labour and simplify accounting systems;
10. In furtherance of these restructuring objectives, the Company has taken the following measures since the issuance of the Monitor's First Report :
  - (i) continued the wind down of its Winnipeg and Mississauga operations, which are scheduled to be terminated by the end of March, but which have been substantially downsized since the commencement of these proceedings;
  - (ii) reduced the total number of employees by an additional 13 individuals, such that a total of 62 employees have now been terminated or have resigned since the issuance of the Initial Order;
  - (iii) communicated with prospective purchasers for its surplus equipment in Winnipeg and Mississauga; and
  - (iv) conducted the Sale Process (as defined in the Initial Order) and sought refinancing options.

### IV. THE COMPANY'S SALE PROCESS

11. A Sale Process was approved by the Court pursuant to the Initial Order;
12. Since the date of the Second Order, the Monitor and the Company have worked together to perform the various activities related to the Sale Process, as set out below;

13. As of January 15, 2009 (the deadline for receipt of offers), a number of offers had been received, which offers were examined and analyzed by the Monitor and the Company;
14. Offers received included bids for the entire Company as a going concern, as well as bids for certain divisions, notably Konversation (which shall be discussed separately below);
15. The Monitor and the Company concurrently solicited bids for the surplus equipment no longer needed as a result of the shutdown of the Winnipeg and Mississauga facilities;
16. On January 19, 2009, a number of offers were received for such surplus equipment, which offers are currently being considered by the Monitor and the Company.
17. It is expected that the sale of the surplus equipment will yield only a nominal sum, such that the said sale could occur without this Honourable Court's approval, pursuant to the terms of the Initial Order;
18. With regard to the offers received in the context of the main Sale Process, each of them require further diligence so that offers can be submitted on an unconditional basis;
19. The Company is seeking an extension of the Stay Period in order to allow it to finalize a going concern transaction and/or to further explore a refinancing opportunity;
20. However, the Monitor and the Company consider that immediate action is required with regard to one of the offers received for Konversation, as set out below;

**V. THE KONVERSATION TRANSACTION**

21. On the deadline date of the Sale Process, the Monitor and the Company had received very similar offers for Konversation;
22. Konversation focuses on interactive / web consulting and interactive marketing;
23. Konversation employs 14 people, with one additional employee currently on maternity leave;
24. This division operates outside the core business of the Company and is not considered by the Company and the Monitor as integral to the Company's restructured business;

25. In light of this, the Company has sought to move forward immediately with the sale of Konversation, and the Monitor concurs that this is appropriate;
26. To this end, following receipt and analysis of the offers, the Monitor requested that the Konversation bidders submit revised bids by January 22, 2009;
27. The Monitor and the Company received a revised bid from the Offeror (the "Offer") on January 22, 2009;
28. The Monitor and the Company consider that the Offer, a copy of which is attached herewith under seal of confidentiality as **Exhibit P-2**, should be accepted;
29. The Offer, Exhibit P-2, is set out in the form of an Agreement of Purchase and Sale, and is communicated under seal by request of the Monitor, which considers that its public disclosure would cause a potential loss of value if the Konversation Transaction fails to close and Konversation has to be marketed once again;
30. As appears from Exhibit P-2, it is a mutual condition of the parties thereto that an order be obtained from this Honourable Court approving the Konversation Transaction and vesting in the Offeror all the right, title and interest of the Company in the Konversation assets free and clear of all liens, security interests and other encumbrances;
31. The Monitor and the Company consider that this condition is acceptable, and therefore hereby seek such an order in order to proceed with the Konversation Transaction;
32. As appears from the Monitor's Second Report, the Monitor is of the view that the Konversation Transaction should be approved for the following reasons:
  - (i) the Konversation Transaction is consistent with the overall strategy of eliminating non-core portions of the Company's business;
  - (ii) the Konversation Transaction will allow recoveries to be maximized;
  - (iii) the marketing process for Konversation was commercially reasonable, yielded maximum value under the circumstances, and further marketing would not be likely to yield a superior transaction;

- (iv) the Konversation Transaction provides most Konversation employees an opportunity for employment with the Offeror;
- 33. For these reasons, the Company and the Monitor hereby request that this Honourable Court grant its approval for the Konversation Transaction and issue an order vesting the right, title and interest of the Company in the Konversation assets (as described in the Offer, Exhibit P-2) free and clear of all liens, security interests and other encumbrances;
- 34. It is submitted that such an order is in the best interests of all stakeholders and is important to the Company's ability to successfully restructure its business;

#### **VI. THE FORBEARANCE AGREEMENTS**

- 35. On November 18, 2008, this Court approved the HSBC Bank Forbearance Agreement (as defined in the Initial Order) and the HSBC Capital Forbearance Agreement (as defined in the Initial Order);
- 36. Such forbearance agreements expired on December 19, 2008;
- 37. In the context of the Second Order, this Court approved the HSBC Bank Second Forbearance Agreement and the HSBC Capital Second Forbearance Agreement, which agreements were executed on December 15, 2008 and expire on January 30, 2009;
- 38. HSBC Bank and HSBC Capital have given their conditional support to the filing of the present Petition and the Company' continued restructuring process;
- 39. As such, Komunik and :
  - (a) HSBC Bank agreed on the terms of a third forbearance agreement executed on January 27, 2009, a copy of which is filed in support hereof as **Exhibit P-3** (the "**HSBC Bank Third Forbearance Agreement**"), provided that the HSBC Bank Third Forbearance Agreement is approved by this Court and that no default occurs thereunder; and
  - (b) HSBC Capital agreed on the terms of a second forbearance agreement executed on January 27, 2009, a copy of which is filed in support hereof as **Exhibit P-4** (the "**HSBC Capital Third Forbearance Agreement**"), provided that the HSBC Capital Third Forbearance Agreement is approved by this Court and that no default occurs thereunder;

**VII. THE COMPANY'S REQUEST OF AN EXTENSION**

40. The current stay of proceedings expires on January 30, 2009;
41. The Company hereby seeks an extension of the stay of proceedings and renewal of the Initial Order to February 25, 2009.
42. The Company's cash flow projection for the extension period is filed in support hereof as **Exhibit P-5**;
43. The cash flow projection reflects that the Company will be in compliance with the terms of both the HSBC Bank Third Forbearance Agreement and the HSBC Capital Third Forbearance Agreement through to February 25, 2009.
44. Given that, as described in the present petition, the circumstances are such that an order should be rendered, and given that the Company has acted and is acting in good faith and with due diligence, the Company respectfully submits that the petition should be granted as per its conclusions;

**WHEREFORE, MAY IT PLEASE THIS COURT TO:**

**GRANT** the present *Petition for the Extension of the Stay Period and for the Approval of a Transaction for the Sale of the Konversation Division of Komunik Corporation* (the "**Petition**");

**EXEMPT** Komunik Corporation, Komunik Datamark Inc. and Komunik Intramedia Inc. (collectively, the "**Company**") from having to serve the Petition and from any notice of presentation;

**EXTEND** the Stay Period and the Stay Termination Date (as defined in the Order rendered on November 18, 2008 by the Honourable William Fraiberg, S.C.J., (the "**Initial Order**")), up to and including February 25, 2009;

**RENEW**, in full, subject to any necessary adaptations, the Initial Order until February 25, 2009;

**APPROVE** the contents of the Agreement of Purchase and Sale (Exhibit P-2, filed under seal) executed between the Company and Intema Solutions Inc. (the "**Agreement**");

**APPROVE AND AUTHORIZE** the sale by the Company to Intema Solutions Inc. of all assets described at Schedule 1.1(e) of the Agreement (and for greater clarity which assets do not and shall not include leased assets) (the "**Purchased Assets**"), pursuant to and in accordance with the terms and conditions set out in the Agreement;

**AUTHORIZE** the Company to execute any and all other documents necessary in order to complete the sale of the Purchased Assets;

**ORDER AND DECLARE** that upon closing of the transaction set out in the Agreement, the Purchased Assets shall be vested absolutely and exclusively in and with Intema Solutions Inc., free and clear of and from any and all rights, interests, prior claims, hypothecs, security interests (whether contractual, statutory or otherwise), liens, assignments, judgments, executions, writs of seizure and sale, options, adverse claims, levies, charges, liabilities (direct, indirect, absolute or contingent), or other claims or encumbrances, whether or not they have been attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order issued on November 18, 2008 by Justice William Fraiberg, J.S.C., and/or any other CCAA order; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of any province in Canada and the *Civil Code of Québec* (all of which are collectively referred to as the "Encumbrances") and, for greater certainty, **ORDER** that all of the Encumbrances affecting or relating to the Purchased Assets be expunged and discharged as against the Purchased Assets as of such final execution, subject to the following paragraph hereof;

**ORDER** that the Encumbrances be transferred to and conveyed upon, and thus charge, the proceeds from the sale of the Purchased Assets, subject to all defects, attributes and considerations affecting and/or relating to the Encumbrances in existence prior to the said transfer;

**ORDER** the Monitor to hold the said proceeds from the sale of the Purchased Assets in trust, until such time as this Court issues an order authorizing the distribution of such proceeds;

**ORDER** that notwithstanding:

- a) these proceedings under the CCAA;
- b) any petitions for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any received order issued pursuant to any such petition or;
- c) the provisions of any federal or provincial statute;

the vesting of the Purchased Assets in Intema Solutions Inc., as well as the execution of all agreements pursuant to this Order, shall be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it give rise to an oppression remedy;

**ORDER** that the Agreement of Purchase and Sale be kept confidential and under seal until the earlier of a) the closing of the transaction set out in the Agreement and b) further order of this Court;

**APPROVE** and **ORDER** the implementation of the terms and conditions of the HSBC Bank Third Forbearance Agreement (Exhibit P-3 to this Petition);

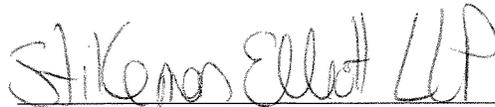
**APPROVE** and **ORDER** the implementation of the terms and conditions of the HSBC Capital Third Forbearance Agreement (Exhibit P-4 to this Petition);

**APPROVE** the Monitor's activities, as described in the Monitor's Second Report (Exhibit P-1 to this Petition);

**ORDER** the provisional execution of the order to be rendered herein notwithstanding any appeal;

**THE WHOLE**, without costs, save in case of contestation.

Montreal, this 27<sup>th</sup> day of January 2009

A handwritten signature in cursive script that reads "Stikeman Elliott LLP". The signature is written in dark ink and is positioned above a horizontal line.

**STIKEMAN ELLIOTT LLP**

Attorneys for Petitioners

**NOTICE OF PRESENTATION**

**TO:** Mr. Robert Kofman Fax: (514) 875-6246  
Mr. Shawn Travitsky Fax: (514) 934-3504  
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**TAKE NOTICE** that the foregoing "*Petition for the Extension of the Stay Period and for the Approval of a Transaction for the Sale of the Konversation Division of Komunik Corporation*" shall be presented before one of the Honourable Judges of the Superior Court for the District of Montreal, on **January 28<sup>TH</sup>, 2009 at 9:30 a.m., room 13.12**, in the Montreal Courthouse, located at 1 Notre-Dame Street East, in the City of Montreal, Province of Quebec, or so soon thereafter as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montreal, this 27<sup>th</sup> day of January 2009



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**STIKEMAN ELLIOTT LLP**

Attorneys for Petitioners

SUPERIOR COURT  
(Commercial Division)  
The Companies' Creditors  
Arrangement Act

---

N°. 500-11-034815-080

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

---

IN THE MATTER OF THE PLAN OF  
ARRANGEMENT AND COMPROMISE OF:

KOMUNIK CORPORATION

-and-

KOMUNIK DATAMARK INC.

-and-

KOMUNIK INTRAMEDIA INC.

Petitioners

- and -

RSM RICHTER INC.

Monitor

BS0350

File: 121414-1014

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    PETITION FOR THE EXTENSION OF THE  
    STAY PERIOD AND FOR THE APPROVAL OF  
    A TRANSACTION FOR THE SALE OF THE  
    KONVERSATION DIVISION OF KOMUNIK  
    CORPORATION

(Section 11 of the *Companies' Creditors Arrangement  
Act* R.S.C. (1985), c. C-36, as amended ("CCAA"))

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ORIGINAL

---

Mtre. Jean Fontaine

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CANADA

SUPERIOR COURT  
(Commercial Division)  
*The Companies' Creditors Arrangement Act*

---

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
No.: 500-11-034815-080

IN THE MATTER OF THE PLAN OF  
ARRANGEMENT AND COMPROMISE  
OF:

KOMUNIK CORPORATION

-and-

KOMUNIK DATAMARK INC.

-and-

KOMUNIK INTRAMEDIA INC.

Petitioners

-and-

RSM RICHTER INC.

Monitor

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**LIST OF EXHIBITS**

- EXHIBIT P-1:** The Monitor's Second Report;
- EXHIBIT P-2** Offer for the purchase of the Konversation division of Komunik Corporation, *under seal*;
- EXHIBIT P-3** HSBC Bank Third Forbearance Agreement dated January 27, 2009;
- EXHIBIT P-4** HSBC Capital Third Forbearance Agreement dated January 27, 2009;

**EXHIBIT P-5**     The Company's cash flow projection for the extension period.

Montreal, this 27<sup>th</sup> day of January 2009

A handwritten signature in cursive script that reads "Stikeman Elliott LLP". The signature is written in dark ink and is positioned above a horizontal line.

**STIKEMAN ELLIOTT LLP**  
Attorneys for Petitioners

SUPERIOR COURT  
(Commercial Division)  
The Companies' Creditors  
Arrangement Act

---

N°. 500-11-034815-080

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

---

IN THE MATTER OF THE PLAN OF  
ARRANGEMENT AND COMPROMISE OF:

KOMUNIK CORPORATION

-and-

KOMUNIK DATAMARK INC.

-and-

KOMUNIK INTRAMEDIA INC.

Petitioners

- and -

RSM RICHTER INC.

Monitor

BS0350

File: 121414-1014

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LIST OF EXHIBITS

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ORIGINAL

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Montréal, Québec, Canada, H3B 3V2

**RSM! Richter**

**Second Report of  
RSM Richter Inc. Re:  
Komunik Corporation,  
Komunik Datamark Inc. and  
Komunik Intramedia Inc.**

RSM Richter Inc.  
Toronto, January 26, 2009

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Appendix "A"      Cash Flow Projection

**QUEBEC  
SUPERIOR COURT  
- COMMERCIAL DIVISION -**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, C.C.-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
KOMUNIK CORPORATION, KOMUNIK DATAMARK INC.  
AND KOMUNIK INTRAMEDIA INC.**

**SECOND REPORT OF RSM RICHTER INC.  
IN ITS CAPACITY AS MONITOR OF  
KOMUNIK CORPORATION, KOMUNIK DATAMARK INC.  
AND KOMUNIK INTRAMEDIA INC.**

**January 26, 2009**

**1. INTRODUCTION**

This report is filed by RSM Richter Inc. ("Richter") in its capacity as monitor ("Monitor") of Komunik Corporation ("Komunik"), Komunik Datamark Inc. ("Datamark") and Komunik Intramedia Inc. ("Intramedia") (collectively, the "Company").

Pursuant to an order (the "Initial Order") of the Quebec Superior Court - District of Montreal (Commercial Division) (the "Court") made on November 18, 2008, the Company was granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") and Richter was appointed as the Monitor in the CCAA proceedings (the "CCAA Proceedings").

On December 15, 2008, this Honourable Court made an order ("Extension Order") approving, *inter alia*, an extension of the stay of proceedings to January 30, 2009.

## 1.1 Purposes of this Report

The purposes of this report (“Report”) are to:

- a) Provide background information concerning the Company and the CCAA Proceedings;
- b) Provide an update regarding the Company’s restructuring efforts, including the sale process authorized by the Initial Order (“Sale Process”); and
- c) Recommend that this Honourable Court make an order:
  - Granting the Company’s request for an extension of its stay of proceedings from January 30, 2009, the date that the stay of proceedings expires, to February 25, 2009;
  - Approving a transaction with Intema Solutions Inc. (the “Purchaser”) to purchase the Company’s Konversation division, including certain related fixed assets (“Konversation Transaction”);
  - Issuing a vesting order relating to the assets sold pursuant to the Konversation Transaction;
  - Approving the amended forbearance agreements entered into with HSBC Bank Canada (“HSBC Bank”) and HSBC Capital (Canada) Inc. (“HSBC Capital”); and
  - Approving the Monitor’s activities since December 12, 2008, the date of the Monitor’s first report (“First Report”), to January 26, 2009, as described in this Report.

## 1.2 Currency

Unless otherwise noted, all currency references in this Report are to Canadian dollars.

## 1.3 Terms of Reference

In preparing this Report, the Monitor has relied upon unaudited financial information prepared by the Company’s management, the Company’s books and records and discussions with its management. The Monitor has not performed an audit or other verification of such information. An examination of the Company’s financial forecasts as outlined in the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future

oriented financial information relied upon in this Report is based on management's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Report, or relied upon by the Monitor in preparing this Report.

## **2. BACKGROUND**

The Company is a provider of integrated document management and printing services. The Company focuses on business forms, pressure sensitive labels, tags, short-to-medium run commercial printing, digital printing and relationship marketing.

In June, 2007, Komunik acquired Datamark Systems Group Inc., a significantly larger business than Komunik at the time. The subsequent amalgamation resulted in Komunik's common shares being traded on the Toronto Stock Exchange under the symbol KOM.

Further background information concerning the Company is provided in the Company's petition for the Initial Order dated November 18, 2008 and the First Report.

### **2.1 Restructuring**

The Company continues to implement its restructuring plan. As discussed in the First Report, the restructuring plan principally involves the termination of the Company's operations at its Markham and Mississauga, Ontario and Winnipeg, Manitoba facilities. The Company intends to focus on its business in Quebec and Calgary, Alberta. The Company is also considering further cost-cutting initiatives.

In furtherance of the restructuring efforts, since the date of the First Report, the Company has undertaken the following:

- Continued the wind-down of its Winnipeg operations, which are scheduled to be discontinued shortly. The Company intends to vacate this facility by March 31, 2009;
- Continued the wind-down of its Mississauga operations, which are scheduled to be discontinued by the end of January, 2009. The Company intends to vacate this facility by April 30, 2009 (only seven employees are scheduled to be working at this facility between the present date and April 30, 2009);
- Reduced head count by a further 13 individuals (a total of 62 employees have been terminated or have resigned since the Initial Order);
- Ran a process to sell surplus fixed assets in Mississauga and Winnipeg; and
- Conducted the Sale Process and refinancing process for the business, as detailed further in Section 4 below.

### **3. THE COMPANY'S ACTIVITIES**

The Company's business has operated with minimal disruption since the date of the Initial Order, during which time the Company has implemented the restructuring initiatives detailed above and conducted the Sale Process, with the assistance of and under the supervision of the Monitor. In this regard, the Company's activities have included the following since the date of the First Report:

- Negotiating with suppliers and service providers regarding the terms on which goods and services are to be provided to the Company and paid for by the Company during the CCAA Proceedings;
- Communicating with major customers regarding its restructuring efforts;
- Corresponding with and reporting to HSBC Capital, HSBC Bank and its consultant, PricewaterhouseCoopers LLP ("PWC"), as contemplated by the Bank Forbearance Agreement and the HSBC Capital Forbearance Agreement;
- Corresponding with employees and their representatives to the extent required;

- Addressing various issues and inquiries made by creditors of the Company; and
- Advancing the Sale Process.

#### **4. SALE PROCESS**

Since the date of the First Report, the Company and the Monitor carried out the Sale Process in accordance with the Initial Order. The offer deadline was January 15, 2009, on which date a number of offers were received, including several going-concern offers for the entire business and offers for certain divisions. Refinancing offers were also submitted. Each offer for the entire business requires further diligence so that offers can be submitted on an unconditional basis. The Company is seeking an extension of its stay of proceedings to February 23, 2009 to allow it to finalize a going-concern transaction for the entire business or to consider a refinancing opportunity (other than for the Konversation division, discussed below).

##### **4.1 Konversation Transaction**

Offers were received for the Konversation division (interactive/web consulting and interactive marketing) at the offer deadline of January 15, 2008. The offers received had a similar value. The Company's management does not believe that the Konversation division is integral to the restructured business and thus wishes to complete a sale of the Konversation division to the Purchaser.

On January 19, 2009, after considering the offers received for the business, the Monitor requested that the Konversation bidders submit revised offers on January 22, 2009. The Monitor has recommended that the Company support the transaction with the Purchaser, which offer was resubmitted on that date. The Company's Board of Directors ("Board") is to meet on January 27, 2009 to consider approval of the Konversation Transaction. The

Company's counsel or the Monitor's counsel will advise this Honourable Court on the return of the motion of the Board's deliberations. The Monitor is optimistic that the Board will vote to approve the Konversation Transaction.

The Monitor is of the opinion that the asset purchase agreement in respect of the Konversation Transaction should be filed with the Court on a confidential basis, as disclosing it could result in a loss of value if the transaction does not close and the Konversation division has to be marketed once again.

The asset purchase agreement includes a condition that the Court approves the Konversation Transaction and vesting in the Purchaser all the rights, title and interest of the Company in the Konversation assets, free and clear of all liens, security interests and other encumbrances.

The Monitor is of the view that the Konversation Transaction should be approved by this Honourable Court for the following reasons:

- It is consistent with the overall strategy of eliminating non-core portions of the business;
- It will allow recoveries to be maximized;
- The marketing process for the Konversation division was commercially reasonable and has yielded the maximum value attainable in the circumstances. The Monitor and the Company do not believe that further time spent marketing the Konversation division would yield a superior transaction; and
- The Konversation Transaction provides certain employees with an opportunity for employment with the Purchaser.

HSBC Bank and HSBC Capital have confirmed to the Monitor that they support the Konversation Transaction.

## **4.2 Sale of Surplus Equipment**

The Company's restructuring plan includes the shutdown of its Winnipeg, Manitoba and Mississauga, Ontario facilities and the transfer of these operations to its Quebec and Calgary facilities. The Company identified certain equipment at the Winnipeg and Mississauga facilities which will not be required when the businesses are transitioned. Accordingly, the Company, via the Monitor, solicited offers for these assets, which were due on January 19, 2009. The Company is currently considering these offers. It is expected that the sale of these assets will be for nominal value and that the sale could be completed by the Company without the Court's approval, in accordance with the terms of the Initial Order. The Initial Order allows non-ordinary course transactions to be completed without Court approval, provided that the greater of the book value or the purchase price does not exceed \$250,000 or \$500,000, respectively, in the aggregate.

## **5. FORBEARANCE AGREEMENTS**

On December 15, 2008, the Company entered into amended forbearance agreements with HSBC Bank and HSBC Capital, which establish the terms pursuant to which HSBC Bank and HSBC Capital agreed to continue to support the business during the CCAA Proceedings. Both agreements expire on January 30, 2009. HSBC Bank and HSBC Capital have agreed to extend the terms of the forbearance agreements to February 25, 2009. The terms of the amended forbearance agreements are largely unchanged.

## 6. CASH FLOW

The Company's cash flow projection for the extension period is attached as Appendix "A". The cash flow projection reflects that the Company will be in compliance with the terms of the amended forbearance agreements with HSBC Bank and HSBC Capital through to February 25, 2009, and that the Company is projected to have funding sufficient to operate its business through to that date.

## 7. COMPANY'S REQUEST FOR AN EXTENSION

The current stay of proceedings expires on January 30, 2009. The Company is seeking an extension of the stay of proceedings to February 25, 2009.

The Monitor supports the Company's request for an extension of the stay of proceedings for the following reasons:

- The Company is acting in good faith and with due diligence in its restructuring efforts;
- An extension of the stay of proceedings would allow the Company, with the assistance of the Monitor and the CRO, the time required to advance the restructuring of the business and/or to complete the Sale Process;
- The granting of the extension should not prejudice any employee or creditor - arrangements are in place to pay for post-filing services and supplies;
- HSBC Bank and HSBC Capital have advised that they support the requested extension; and
- In the absence of an extension of the stay, the value to be generated from a sale of the business, or a refinancing of the business, would not be maximized.

## **8. OVERVIEW OF THE MONITOR'S ACTIVITIES**

The Monitor's activities from November 18, 2008 to December 12, 2008 were approved pursuant to the Extension Order. Since December 12, 2008, the Monitor's activities have included:

### **8.1 Court Matters**

- Attending at Court on December 15, 2008, in respect of, among other things, the Company's request for an extension of its stay of proceedings;
- Placing on its website copies of materials filed in these proceedings, including the First Report and the Extension Order; and
- Drafting the Report and reviewing the materials to be filed by the Company contemporaneously herewith.

### **8.2 Cash Monitoring and Reporting**

- Reviewing and commenting on the Company's financial projections, financial statements for the quarter ended October 31, 2008, weekly margin position reports and other financial information;
- Monitoring receipts and disbursements in accordance with the provisions of the Initial Order;
- Reviewing on a daily basis receipts, disbursements, purchase orders, and bank statements, each on a divisional basis;
- Corresponding extensively with Company representatives regarding their reporting to the Monitor, particularly in respect of disbursements;
- Corresponding with HSBC Bank, HSBC Capital and PWC, including providing cash flow variance analyses and update memoranda;
- Assisting the Company, on a weekly basis, to prepare rolling 13-week cash flow projections provided to HSBC Bank, HSBC Capital and PWC; and
- Corresponding regularly with PWC regarding weekly cash monitoring and reporting.

### 8.3 Sale Process

Procedures undertaken in respect of the Sale Process since the First Report include:

- Corresponding with the Company regarding information required for the data room;
- Posting in the data room updated financial information as it became available throughout the Sale Process and informing prospective purchasers of these updates;
- Granting data room access to prospective purchasers upon receipt of an executed confidentiality agreement;
- Attending numerous conference calls with potential purchasers to discuss this opportunity, the Sale Process and the data room;
- Assisting with the drafting of a form of offer, being a draft asset purchase agreement;
- Drafting update emails to stakeholders outlining the Sale Process developments;
- Scheduling meetings among potential purchasers, management and the Monitor;
- Attending at meetings and conference calls with potential purchasers;
- Assisting the Company to respond to numerous information requests made by potential purchasers;
- Reviewing offers received pursuant to the Sale Process;
- Communicating with prospective purchasers regarding their offers;
- Preparing a summary of the results of the Sale Process;
- Negotiating the sale of the Konversation division;
- Assisting the Company to prepare materials to solicit offers for its surplus equipment; and
- Drafting and distributing a letter to prospective purchasers of the surplus equipment and following up with those parties by email and/or telephone.

#### 8.4 Administration

- Periodically attending at the Company's premises in order to carry out its mandate in accordance with the Initial Order;
- Corresponding extensively with management regarding, among other things, the Company's operational/financial performance, the Sale Process, employee issues, supplier issues and customer issues;
- Assisting the Company in dealing with numerous post-filing issues, including those related to banking, suppliers, customers and employees;
- Attending at meetings with the Company's management;
- Attending on conference calls and corresponding with certain of the Company's customers, as requested by the Company and/or the customers;
- Assisting the Company in negotiating with suppliers and service providers regarding the terms on which goods and services are provided to the Company and paid for by the Company during the CCAA Proceedings;
- Corresponding with certain of the Company's lessors regarding the CCAA proceedings and their claims against the Company;
- Responding to numerous creditor inquiries regarding the CCAA Proceedings;
- Corresponding regularly with Ogilvy Renault LLP, the Monitor's counsel in this matter, and Stikeman Elliott LLP, the Company's counsel in this matter, regarding, *inter alia*, employee issues, matters related to the Company's leases and the Sale Process;
- Other matters pertaining to the administration of this mandate.

#### 9. CONCLUSION AND RECOMMENDATION

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 of this Report.

\* \* \*

All of which is respectfully submitted,



**RSM RICHTER INC.  
IN ITS CAPACITY AS CCAA MONITOR OF  
KOMUNIK CORPORATION, KOMUNIK DATAMARK INC.  
AND KOMUNIK INTRAMEDIA INC. AND NOT IN ITS PERSONAL CAPACITY**

SUPERIOR COURT  
(Commercial Division)  
The Companies' Creditors  
Arrangement Act

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N°. 500-11-034815-080

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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IN THE MATTER OF THE PLAN OF  
ARRANGEMENT AND COMPROMISE OF:

KOMUNIK CORPORATION

-and-

KOMUNIK DATAMARK INC.

-and-

KOMUNIK INTRAMEDIA INC.

Petitioners

- and -

RSM RICHTER INC.

Monitor

BS0350

File: 121414-1014

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EXHIBIT P-1

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ORIGINAL

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Mtre. Jean Fontaine

(514) 397-3337

Fax: (514) 397-3487

STIKEMAN ELLIOTT LLP

BARRISTERS & SOLICITORS

1155 René-Lévesque Blvd. West, 40<sup>th</sup> Floor

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SUPERIOR COURT  
(Commercial Division)  
The Companies' Creditors  
Arrangement Act

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N°. 500-11-034815-080

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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IN THE MATTER OF THE PLAN OF  
ARRANGEMENT AND COMPROMISE OF:

KOMUNIK CORPORATION

-and-

KOMUNIK DATAMARK INC.

-and-

KOMUNIK INTRAMEDIA INC.

Petitioners

- and -

RSM RICHTER INC.

Monitor

BS0350

File: 121414-1014

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EXHIBIT P-2, *under seal*

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ORIGINAL

---

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Montréal, Québec, Canada, H3B 3V2

## FOURTH AMENDMENT TO THE FORBEARANCE AGREEMENT

This Third Amendment to the Forbearance Agreement (this “**Agreement**”) is entered into as of January 27, 2009 amongst Komunik Corporation (the “**Borrower**”) and HSBC Bank Canada (the “**Bank**”).

### RECITALS

**WHEREAS** the Borrower is a corporation resulting from the statutory arrangement under the provisions of section 192 of the *Canada Business Corporations Act* which effected the acquisition by Komunik Corporation (the “**Predecessor**”) of all of the issued and outstanding common shares of Datamark Systems Group Inc. (“**Group**”) and the amalgamation (the “**Amalgamation**”) of the Predecessor and Group.

**WHEREAS** the Bank and the Predecessor entered into a facility letter dated February 1, 2007 as amended by letters dated March 22, 2007 and May 1, 2007 (collectively, the “**Facility Letter**”) with respect to certain credit facilities.

**WHEREAS** by guarantees granted on June 12, 2007 by each of Komunik Datamark Inc. (formerly Datamark Systems Inc./Datamark Systèmes Inc. and hereinafter referred to as “**DSI**”) and Komunik Intermedia Inc. (formerly Les Impressions Intra-Media Inc. and hereinafter referred to as “**Intra-Media**”), DSI and Intra-Media agreed to guarantee the payment of all obligations of the Predecessor to the Bank (collectively, the “**Guarantees**”).

**WHEREAS** the obligations of DSI and Intra-Media in favour of the Bank, including without limitation the obligations of the Predecessor to the Bank payable by each of DSI and Intra-Media under the Guarantees, were secured by the security and hypothecs described in Schedule A hereto (collectively, the “**Schedule A Security**”).

**WHEREAS** the Bank has expressed to the Borrower its dissatisfaction in relation to the Borrower’s account and the operating losses being incurred and failure of the Borrower to comply with several of its financial covenants under the Facility Letter.

**WHEREAS** the Borrower has incurred losses of approximately \$6.2 million as at April 30, 2008 and \$3.8 million for the seven (7) month period ended November 30, 2008.

**WHEREAS** the Borrower is insolvent and cannot meet its obligations as they generally become due.

**WHEREAS** such defaults and operating losses of the Borrower (“**Existing Defaults**”) are continuing and have not been cured.

**WHEREAS** the Bank has advised the Borrower that it wishes to discontinue financing the Borrower and the Borrower has confirmed its intentions to seek re-financing.

**WHEREAS**, the Bank has now engaged the services of PricewaterhouseCoopers LLP (“**PWC**” or the “**Consultant**”) to review elements of the Borrower’s business without any intervention thereto or partaking in any managerial decisions of the Borrower.

**WHEREAS** the Borrower has now engaged the services of RSM Richter Inc. (“**Richter**”) to advise it in the restructuring.

**WHEREAS** the Bank has issued a notice pursuant to Section 244 of the *Bankruptcy and Insolvency Act* and the Borrower has waived any delay in relation to such notice.

**WHEREAS** the Borrower has sought an order (the “**Initial Order**”) pursuant to the *Companies Creditors Arrangement Act* (“**CCAA**”).

**WHEREAS** the Initial Order was rendered on November 18, 2008 and Richter was appointed as Monitor.

**WHEREAS**, with a view to permit the Borrower to evaluate its alternatives and continue the sale process already undertaken, the Bank is willing to forbear from enforcing its rights that arise because of the Existing Defaults for a limited period of time, provided that the Borrower complies with the terms of this Agreement.

**WHEREAS** the parties have entered into a Forbearance Agreement dated July 30, 2008 (the “**Original Agreement**”).

**WHEREAS** the parties have entered into a First Amendment to the Forbearance Agreement dated October 15, 2008 (the “**First Amendment**”).

**WHEREAS** the parties have entered into a Second Amendment and Restated Forbearance Agreement dated November 17, 2008 (the “**Second Amendment**”).

**WHEREAS** the parties have entered into a Third Amendment and Restated Forbearance Agreement dated December 15, 2008 (the “**Third Amendment**”).

**WHEREAS** the parties wish to further amend the Original Agreement, (the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment and this Agreement are together referred to as the “**Forbearance Agreement**”) in the manner set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **SECTION 1** **INTERPRETATION**

- 1.1 The introductory paragraph and recitals hereof and all schedules attached hereto form an integral part of this Agreement.

- 1.2 All capitalized terms used herein (including in the introductory paragraph and recitals set forth above) and not otherwise defined herein shall have the meanings assigned to such terms in the Facility Letter and in the Original Agreement.

**SECTION 2**  
**CONFIRMATION OF OBLIGATIONS**

- 2.1 The Borrower acknowledges and agrees that as of the date hereof:
- (a) the Borrower is without right of compensation, offset, defence, or counterclaim with respect to any of the Obligations;
  - (b) it is in default by virtue of the Existing Defaults;
  - (c) the amount of outstanding loans and advances as at January 26, 2009 due to the Bank is, in principal, \$15,986,246.00, plus interest.

The aforesaid sums are subject to adjustment for items in circulation, fees, costs and accessories.

**SECTION 3**  
**ACNOWLEDGEMENTS AND AMENDMENTS**

- 3.1 The reference to "5:00 p.m. Montreal time on January 30, 2009" in item (a) of the definition of "Termination Date", set forth in Section 1 of the Third Amendment is hereby extended to 5:00 p.m. Montreal time on February 25, 2009;
- 3.2 Except as specifically provided herein, all other terms and conditions of the Forbearance Agreement shall remain in full force and effect;

**SECTION 4**  
**REPRESENTATIONS AND WARRANTIES**

In consideration of the limited agreement of the Bank to forbear from the exercise of its rights and remedies as set forth above, the Borrower hereby represents and warrants to the Bank, as at the date hereof as follows:

- 4.1 The Borrower has made full disclosure to the Bank of all existing defaults and all other disclosures as is required under the Facility Letter, the Security Documents and the Original Agreement;
- 4.2 The execution, delivery and performance of this Agreement by the Borrower is within such person's power and have been duly authorized by all necessary action.
- 4.3 This Agreement constitutes a valid and legally binding agreement enforceable against the Borrower, in accordance with its terms subject to the effects of bankruptcy, insolvency and other laws affecting creditors' rights generally.

- 4.4 The Facility Letter, the Security Documents and the Forbearance Agreement constitute valid and legally binding obligations of the Borrower enforceable in accordance with the terms thereof subject to the effects of bankruptcy, insolvency and other laws affecting creditors' rights generally.

**SECTION 5**  
**COVENANTS OF THE BORROWER**

In order to induce the Bank to forbear from the exercise of its rights and remedies as set forth above, the Borrower hereby covenants and agrees with the Bank as follows:

- 5.1 Except as for Existing Defaults, the Borrower shall continue to perform and observe all terms and conditions contained in the Facility Letter, the Security Documents and the Forbearance Agreement and particularly but without restriction to the generality of that which precedes there shall be no default of the margin requirements contained in the Facility Letter.
- 5.2 The Borrower shall deliver to the Bank in a timely fashion each of the following items in form and substance acceptable to the Bank:
- (a) upon the Bank's request, forecasts, reports and financial information, as may be specified by the Bank from time to time;
  - (b) by no later than the end of business day on Friday of each week, the updated Weekly Cash Flow Projections for a thirteen (13) week period, beginning on the previous Monday;
- 5.3 The Borrower and Richter shall fully collaborate with PWC for the Monitoring and PWC shall have unrestricted access to the information required, the personnel of the Borrower and of Richter and to the reports prepared or being prepared by Richter. The Borrower and Richter will co-operate with PWC and allow PWC to continue ongoing monitoring of borrowing base and the Borrower's financial progress measured against the first Weekly Cash Flow Projection with periodic reports to the Bank as requested by the Bank.
- 5.4 On each Thursday (based on the close of business of the preceding Friday) an aged list of the Borrower's accounts receivable (including the name and address of each debtor and the amount owing by such debtor) and estimate of the inventory and the margining base calculation.
- 5.5 The Borrower shall provide the Bank and PWC with the monthly internal financial statement by no later than February 23<sup>th</sup>, 2009.
- 5.6 The Borrower shall reimburse the Bank for all costs and expenses incurred by the Bank in connection with the negotiation, preparation and enforcement of this Agreement, in connection with the management of the Borrower's account (including, without limitation, the Bank's fees and expenses, the Bank's attorneys' and Consultant's reasonable fees and expenses), as well as the enforcement and protection of its rights pursuant to the Facility Letter, the Security Documents, the Forbearance Agreement or

otherwise and the Bank is hereby authorized to debit the Borrower's account to pay all said fees and expenses.

- 5.7 The Borrower shall pay to the Bank a non-refundable forbearance fee equal to \$10,000 (such fee, the "**Forbearance Fee**"). The Forbearance Fee shall be deemed to be fully earned on the date hereof and is due and payable immediately, and the Bank is hereby authorized to debit the Borrower's account to pay said Forbearance Fees.
- 5.8 The Borrower undertakes to operate its business in a manner that will allow it to cure the Defaults (including any Existing Default). However, such tolerance by the Bank is subject to the condition that the charges created by the Security Documents do legally and factually charge all the assets described therein in order to guarantee the repayment of all Obligations of the Borrower to the Bank.
- 5.9 The Borrower unconditionally undertakes not to have any Margin Deficit, at any time. In addition, the Borrower undertakes to meet the margin projections shown in the cash-flow attached.
- 5.10 Should there be a Margin Deficit, in addition to being a Forbearance Default, the Bank may refuse to honour any cheque drawn on the accounts or any payment request of any nature whatsoever.
- 5.11 The Borrower will continue the already undertaken sale process, whereby all assets have been offered for sale. Said process shall continue to be supervised by Richter, as Court-appointed Monitor. The final date for binding offers, with all conditions satisfied or waived, to be in place shall be no later than February 6, 2009 and closing shall take place no later than February 23, 2009. Again, the process and documentation have to be agreed upon by the Bank.
- 5.12 During the sale process described in paragraph 5.11 above, the Borrower may also consider a possible refinancing, being understood that said refinancing attempts shall not prejudice, delay or directly or indirectly jeopardize the sale process and the timeline set forth in paragraph 5.11 above shall apply to the sale process and the refinancing attempts, being understood that under both scenarios the Bank and HSBC Capital (Canada) will be repaid in full upon closing and that the process shall maximize the value generally.
- 5.13 If after having completed the due diligence by no later than February 6, 2009, none of the offers provide for a purchase price sufficient to repay in full the Obligations of the Borrower to the Bank or that no offer is otherwise satisfactory to the Bank, then the Forbearance Agreement shall immediately terminate without any further notice or delay.
- 5.14 The Borrower acknowledges that no offer can be accepted and no transaction can be completed without the prior written consent of the Bank.
- 5.15 In addition, Richter, as Court-appointed Monitor pursuant to the Initial Order, shall monitor and review the receipts and disbursements of the Borrower, on a daily basis and shall report to the Bank and PWC.

- 5.16 Subject to the Administration Charge and the Director's Charge, the Bank shall continue to be an unaffected and an excluded creditor for all intent and purposes and for any and all of the indebtedness and Obligations of the Borrower to the Bank;
- 5.17 The Borrower reaffirms that the Bank will be at liberty to discuss this account and exchange information regarding the Borrower with HSBC Capital (Canada) Inc.

## **SECTION 6**

### **COURT APPROVALS**

It is understood and agreed that this Agreement is strictly subject to and conditional on the occurrence of all of the following, by no later than January 29, 2009:

- (a) the issuance of an Order by the Superior Court of Quebec, Commercial Division, District of Montreal, pursuant to the *Companies Creditors' Arrangement Act*, in the form of the draft order attached hereto as Schedule "A";
- (b) the approval of this Agreement by the Superior Court of Quebec, Commercial Division, District of Montreal;

The Bank expressly reserves its rights to seek any Court Order it may deem required or appropriate during the Initial Order. In the event that any one or all of the foregoing do not occur then the Bank at its option, may cancel this Agreement upon simple written notice to such effect to be given to the Borrowers.

## **SECTION 7**

### **MISCELLANEOUS**

- 7.1 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 7.2 Governing Law and Language. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the Province of Quebec and the federal laws of Canada applicable therein. The parties hereto have expressly required that this Agreement be drafted in the English language. *Les parties aux présentes ont expressément exigé que la présente convention soit rédigée en anglais.*
- 7.3 Counterparts. This Agreement may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.
- 7.4 Continued Effectiveness. Except as expressly set forth in this Agreement, the terms of the Facility Letter, the Security Documents and the Original Agreement remain unchanged, and all such documents shall remain in full force and effect and are hereby confirmed and ratified.

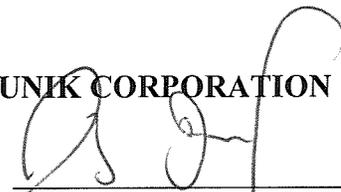
- 7.5 No Novation. This Agreement shall not be deemed or construed to be a satisfaction, reinstatement, novation or release of the Facility Letter or of any of the Security Documents or, except as expressly provided herein, a waiver by the Bank of any of its rights and remedies under the Facility Letter or the Security Documents, or at law or in equity.
- 7.6 Article 1594 C.C.Q. The Borrower shall be “*en demeure*” by the mere lapse of time for performing its obligations hereunder, as contemplated in Article 1594 of the *Civil Code of Quebec*.
- 7.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, of the parties hereto pertaining to the subject matter hereof.
- 7.8 Amendments. This Agreement may not be modified or amended except by written agreement of the parties hereto.
- 7.9 Execution. In the event that a copy of this Agreement duly signed by the Borrower is not delivered to the Bank, prior to 11:30 a.m. Montreal time on January 27, 2009, this Agreement shall be deemed to be null and void, and the Bank shall not be bound by this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first set forth above.

**KOMUNIK CORPORATION**

**HSBC BANK CANADA**

per:

  
Name: \_\_\_\_\_  
Duly authorized pursuant to a  
resolution of the Board of Directors  
dated \_\_\_\_\_

per:

\_\_\_\_\_  
Name:  
Duly authorized

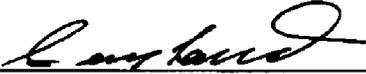
- 7.5 No Novation. This Agreement shall not be deemed or construed to be a satisfaction, reinstatement, novation or release of the Facility Letter or of any of the Security Documents or, except as expressly provided herein, a waiver by the Bank of any of its rights and remedies under the Facility Letter or the Security Documents, or at law or in equity.
- 7.6 Article 1594 C.C.Q. The Borrower shall be "*en demeure*" by the mere lapse of time for performing its obligations hereunder, as contemplated in Article 1594 of the *Civil Code of Quebec*.
- 7.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, of the parties hereto pertaining to the subject matter hereof.
- 7.8 Amendments. This Agreement may not be modified or amended except by written agreement of the parties hereto.
- 7.9 Execution. In the event that a copy of this Agreement duly signed by the Borrower is not delivered to the Bank, prior to 11:30 a.m. Montreal time on January 27, 2009, this Agreement shall be deemed to be null and void, and the Bank shall not be bound by this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have signed this Agreement as of the date first set forth above.

**KOMUNIK CORPORATION**

**HSBC BANK CANADA**

per: \_\_\_\_\_  
Name:  
Duly authorized pursuant to a  
resolution of the Board of Directors  
dated

per:   
Name:  
Duly authorized  
**STEPHEN G. WAYLAND**  
ASSISTANT VICE PRESIDENT

**Schedule A**

1. a movable hypothec without delivery dated June 8, 2007 in the principal amount of CDN\$35,000,000 granted by DSI in favour of the Bank and registered at the Register of Personal and Movable Real Rights (the “**RPMRR**”) under number 07-0327581-0003;
2. the general security agreement dated June 12, 2007 granted by DSI in favour of the Bank;  
and
3. a movable hypothec without delivery dated June 8, 2007 in the principal amount of CDN\$35,000,000 granted by Intra-Media in favour of the Bank and registered at the RPMRR under number 07-0327581-0004.

SUPERIOR COURT  
(Commercial Division)  
The Companies' Creditors  
Arrangement Act

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N° . 500-11-034815-080

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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IN THE MATTER OF THE PLAN OF  
ARRANGEMENT AND COMPROMISE OF:

KOMUNIK CORPORATION

-and-

KOMUNIK DATAMARK INC.

-and-

KOMUNIK INTRAMEDIA INC.

Petitioners

- and -

RSM RICHTER INC.

Monitor

BS0350

File: 121414-1014

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EXHIBIT P-3

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ORIGINAL

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Montréal, Québec, Canada, H3B 3V2

## SECOND AMENDMENT TO THE FORBEARANCE AGREEMENT

This First Amendment to the Forbearance Agreement (this “**Agreement**”) is entered into as of January 27, 2009 amongst Komunik Corporation (the “**Borrower**”) and HSBC Capital (Canada) Inc. (“**Capital**”).

### RECITALS

**WHEREAS** the Borrower is a corporation resulting from the statutory arrangement under the provisions of section 192 of the *Canada Business Corporations Act* which effected the acquisition by Komunik Corporation (the “**Predecessor**”) of all of the issued and outstanding common shares of Datamark Systems Group Inc. (“**Group**”) and the amalgamation (the “**Amalgamation**”) of the Predecessor and Group.

**WHEREAS** Capital and the Predecessor entered into a Credit Agreement dated as of June 12, 2007 (“**Credit Agreement**”) with respect to certain credit facilities.

**WHEREAS** by guarantees granted on June 12, 2007 by each of Komunik Datamark Inc. (formerly Datamark Systems Inc./Datamark Systèmes Inc. and hereinafter referred to as “**DSI**”) and Komunik Intermedia Inc. (formerly Les Impressions Intra-Media Inc. and hereinafter referred to as “**Intra-Media**”), DSI and Intra-Media agreed to guarantee the payment of all obligations of the Predecessor to Capital (collectively, the “**Guarantees**”).

**WHEREAS** the obligations of DSI and Intra-Media in favour of Capital, including without limitation the obligations of the Predecessor to Capital payable by each of DSI and Intra-Media under the Guarantees, were secured by the security and hypothecs described in Schedule A hereto (collectively, the “**Schedule A Security**”).

**WHEREAS** Capital has expressed to the Borrower its dissatisfaction in relation to the Borrower’s account and the operating losses being incurred and failure of the Borrower to comply with several of its financial covenants under the Credit Agreement was communicated.

**WHEREAS** the Borrower has incurred losses of approximately \$6.2 million as at April 30, 2008 and \$3.8 million for the seven (7) month period ended November 30, 2008.

**WHEREAS** the Borrower is insolvent and cannot meet its obligations as they generally become due.

**WHEREAS** such defaults and operating losses of the Borrower (“**Existing Defaults**”) are continuing and have not been cured.

**WHEREAS** Capital has advised the Borrower that it wishes to discontinue financing the Borrower and the Borrower has confirmed its intentions to seek re-financing.

**WHEREAS**, Capital has now engaged the services of PricewaterhouseCoopers LLP (“**PWC**” or the “**Consultant**”) to review elements of the Borrower’s business without any intervention thereto or partaking in any managerial decisions of the Borrower.

**WHEREAS** the Borrower has now engaged the services of RSM Richter Inc. (“**Richter**”) to advise it in the restructuring.

**WHEREAS** Capital has issued a notice pursuant to Section 244 of the *Bankruptcy and Insolvency Act* and the Borrower has waived any delay in relation to such notice.

**WHEREAS** the Borrower has sought an Order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act* (“**CCAA**”).

**WHEREAS** the Initial Order was rendered on November 18, 2008 and Richter was appointed as Monitor.

**WHEREAS**, with a view to permit the Borrower to evaluate its alternatives and continue the sale process already undertaken Capital is willing to forbear from enforcing its rights that arise because of the Existing Defaults for a limited period of time, provided that the Borrower complies with the terms of this Agreement.

**WHEREAS** the parties have entered into a Forbearance Agreement dated November 17, 2008 (the “**Original Agreement**”).

**WHEREAS** the parties have entered into a First Amendment to the Forbearance Agreement dated December 15, 2008 (the “**First Agreement**”).

**WHEREAS** the parties wish to amend the Original Agreement (the Original Agreement, the First Amendment and this Agreement are together referred to as the “**Forbearance Agreement**”) in the manner set forth herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **SECTION 1** **INTERPRETATION**

The introductory paragraph and recitals hereof and all schedules attached hereto form an integral part of this Agreement.

All capitalized terms used herein (including in the introductory paragraph and recitals set forth above) and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

## **SECTION 2** **CONFIRMATION OF OBLIGATIONS**

The Borrower acknowledges and agrees that as of the date hereof:

- (a) the Borrower is without right of compensation, offset, defence, or counterclaim with respect to any of the Obligations;
- (b) it is in default by virtue of the Existing Defaults;
- (c) the amount of outstanding loans and advances as at January 27, 2009 due to Capital are as follows:

i	Principal	-	\$3,750,000.00
ii	Deferred Interest	-	\$309,032.11
iii	Current Interest		<u>\$29,855.58</u>
TOTAL:			\$4,088,887.69

The aforesaid sums are subject to adjustment for items in circulation, fees, costs and accessories.

### **SECTION 3** **ACKNOWLEDGEMENTS AND AMENDMENTS**

- 3.1 The reference to "5:00 p.m. Montreal time on January 30, 2009" in item (a) of the definition of "Termination Date", set forth in Section 1 of the First Amendment to the Forbearance Agreement is hereby extended to 5:00 p.m. Montreal time on February 25, 2009.
- 3.2 Except as specifically provided herein, all other terms and conditions of the Forbearance Agreement shall remain in full force and effect;

### **SECTION 4** **REPRESENTATIONS AND WARRANTIES**

In consideration of the limited agreement of Capital to forbear from the exercise of its rights and remedies as set forth above, the Borrower hereby represents and warrants to Capital, as at the date hereof as follows:

- 4.1 The Borrower has made full disclosure to Capital of all existing defaults and all other disclosures as is required under the Credit Agreement, the Security Documents and the Original Agreement;
- 4.2 The execution, delivery and performance of this Agreement by the Borrower is within such person's power and have been duly authorized by all necessary action.
- 4.3 This Agreement constitutes a valid and legally binding agreement enforceable against the Borrower, in accordance with its terms subject to the effects of bankruptcy, insolvency and other laws affecting creditors' rights generally.

- 4.4 The Credit Agreement, the Security Documents and this Agreement constitute valid and legally binding obligations of the Borrower enforceable in accordance with the terms thereof subject to the effects of bankruptcy, insolvency and other laws affecting creditors' rights generally.

**SECTION 5**  
**COVENANTS OF THE BORROWER**

In order to induce Capital to forbear from the exercise of its rights and remedies as set forth above, the Borrower hereby covenants and agrees with Capital as follows:

- 5.1 Except as for Existing Defaults, the Borrower shall continue to perform and observe all terms and conditions contained in the Credit Agreement, the Security Documents and this Agreement and particularly but without restriction to the generality of that which precedes there shall be no default of the margin requirements contained in the Credit Agreement.
- 5.2 The Borrower shall deliver to Capital in a timely fashion each of the following items in form and substance acceptable to Capital:
- (a) upon Capital's request, forecasts, reports and financial information, as may be specified by Capital from time to time;
  - (b) by no later than the end of business day on Friday of each week, the updated Weekly Cash Flow Projections for a thirteen (13) week period, beginning on the previous Monday;
- 5.3 The Borrower and Richter shall fully collaborate with PWC for the Monitoring and PWC shall have unrestricted access to the information required, the personnel of the Borrower and of Richter and to the reports prepared or being prepared by Richter. Likely, The Borrower and Richter will co-operate with PWC and allow PWC to continue ongoing monitoring of borrowing base and the Borrower's financial progress measured against the first Weekly Cash Flow Projection with periodic reports to Capital as requested by Capital.
- 5.4 On each Thursday (based on the close of business of the preceding Friday) an aged list of the Borrower's accounts receivable (including the name and address of each debtor and the amount owing by such debtor) and estimate of the inventory and the margining base calculation.
- 5.5 The Borrower shall provide Capital and PWC with the monthly internal financial statement by no later than February 23, 2009.
- 5.6 The Borrower shall reimburse Capital for all costs and expenses incurred by Capital in connection with the negotiation, preparation and enforcement of this Agreement, in connection with the management of the Borrower's account (including, without limitation, Capital's fees and expenses, Capital's attorneys' and Consultant's reasonable fees and expenses), as well as the enforcement and protection of its rights pursuant to the

Credit Agreement, the Security Documents, this Agreement or otherwise and Capital is hereby authorized to debit the Borrower's account to pay all said fees and expenses.

- 5.7 The Borrower shall pay to Capital a non-refundable forbearance fee equal to \$50,000 (such fee, the "**Forbearance Fee**"). The Forbearance Fee shall be deemed to be fully earned on the date of the Original Agreement and is due and payable after the repayment of all obligations owed to HSBC Bank (Canada) (the "**Bank**").
- 5.8 The Borrower undertakes to operate its business in a manner that will allow it to cure the Defaults (including any Existing Default). However, such tolerance by Capital is subject to the condition that the charges created by the Security Documents do legally and factually charge all the assets described therein in order to guarantee the repayment of all Obligations of the Borrower to Capital.
- 5.9 The Borrower undertakes to meet the margin projections shown in the cash-flow attached.
- 5.10 The Borrower will continue the already undertaken sale process whereby all assets have been offered for sale. Said process shall continue to be supervised by Richter, as Court-appointed Monitor. The final date for binding offers, with all conditions satisfied or waived, to be in place shall be no later than February 6, 2009 and closing shall take place no later than February 23, 2009. Again, the process and documentation have to be agreed upon by Capital.
- 5.11 During the sale process described in paragraph 5.10 above, the Borrower may also consider a possible refinancing, being understood that said refinancing attempts shall not prejudice, delay or directly or indirectly jeopardize the sale process and the timeline set forth in paragraph 5.10 above shall apply to the sale process and the refinancing attempts, being understood that under both scenarios the Bank and Capital will be repaid in full upon closing and that the process shall maximize the value generally.
- 5.12 If after having completed the due diligence by no later than February 6, 2009, none of the offers provide for a purchase price sufficient to repay in full the Obligations of the Borrower to Capital or that no offer is otherwise satisfactory to Capital, then the Forbearance Agreement shall immediately terminate without any further notice or delay.
- 5.13 The Borrower acknowledges that no offer can be accepted and no transaction can be completed without the prior written consent of Capital.
- 5.14 In addition, Richter, as Court-appointed Monitor pursuant to the Initial Order, shall monitor and review the receipts and disbursements of the Borrower, on a daily basis and shall report to Capital and PWC.
- 5.15 Subject to the Administration Charge and the Director's Charge, Capital shall continue to be an unaffected and an excluded creditor for all intent and purposes and for any and all of the indebtedness and Obligations of the Borrower to the Bank;

5.16 The Borrower reaffirms that Capital will be at liberty to discuss this account and exchange information regarding the Borrower with HSBC Bank Canada.

## **SECTION 6** **COURT APPROVALS**

It is understood and agreed that this Agreement is strictly subject to and conditional on the occurrence of all of the following, by no later than January 29, 2009:

- (a) the issuance of an Initial Order by the Superior Court of Quebec, Commercial Division, District of Montreal, pursuant to the *Companies Creditors' Arrangement Act*, in the form of the draft order attached hereto as Schedule "A";
- (b) the approval of this Agreement by the Superior Court of Quebec, Commercial Division, District of Montreal;

Capital expressly reserves its rights to seek any Court Order it may deem required or appropriate during the Initial Order. In the event that any one or all of the foregoing do not occur then Capital at its option, may cancel this Agreement upon simple written notice to such effect to be given to the Borrowers.

## **SECTION 7** **MISCELLANEOUS**

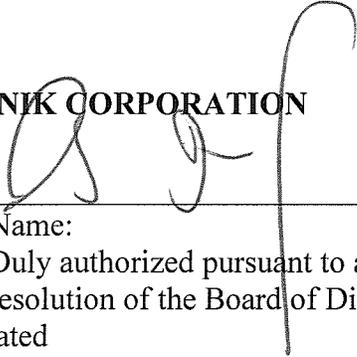
- 8.1 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 8.2 Governing Law and Language. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the Province of Quebec and the federal laws of Canada applicable therein. The parties hereto have expressly required that this Agreement be drafted in the English language. *Les parties aux présentes ont expressément exigé que la présente convention soit rédigée en anglais.*
- 8.3 Counterparts. This Agreement may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.
- 8.4 Continued Effectiveness. Except as expressly set forth in this Agreement, the terms of the Credit Agreement, the Security Documents and the Original Agreement remain unchanged, and all such documents shall remain in full force and effect and are hereby confirmed and ratified.
- 8.5 No Novation. This Agreement shall not be deemed or construed to be a satisfaction, reinstatement, novation or release of the Credit Agreement or of any of the Security Documents or, except as expressly provided herein, a waiver by Capital of any of its rights and remedies under the Credit Agreement or the Security Documents, or at law or in equity.

- 8.6 Article 1594 C.C.Q. The Borrower shall be “*en demeure*” by the mere lapse of time for performing its obligations hereunder, as contemplated in Article 1594 of the *Civil Code of Quebec*.
- 8.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, of the parties hereto pertaining to the subject matter hereof.
- 8.8 Amendments. This Agreement may not be modified or amended except by written agreement of the parties hereto.
- 8.9 Execution. In the event that a copy of this Agreement duly signed by the Borrower is not delivered to Capital, prior to 11:30 a.m. Montreal time on January 27, 2009, this Agreement shall be deemed to be null and void, and Capital shall not be bound by this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have signed this Agreement as of the date first set forth above.

**KOMUNIK CORPORATION**

per:



\_\_\_\_\_

Name:  
Duly authorized pursuant to a  
resolution of the Board of Directors  
dated

**HSBC CAPITAL (CANADA) INC.**

per:

\_\_\_\_\_

Name:  
Duly authorized

per:

\_\_\_\_\_

Name:  
Duly authorized

- 8.6 Article 1594 C.C.Q. The Borrower shall be “*en demeure*” by the mere lapse of time for performing its obligations hereunder, as contemplated in Article 1594 of the *Civil Code of Quebec*.
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- 8.8 Amendments. This Agreement may not be modified or amended except by written agreement of the parties hereto.
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**IN WITNESS WHEREOF**, the parties hereto have signed this Agreement as of the date first set forth above.

**KOMUNIK CORPORATION**

per: \_\_\_\_\_  
Name:  
Duly authorized pursuant to a  
resolution of the Board of Directors  
dated

**HSBC CAPITAL (CANADA) INC.**

per: \_\_\_\_\_  
Name: *PAUL L. CLARIQUE*  
Duly authorized

per: \_\_\_\_\_  
Name: *JOHN PHILIP*  
Duly authorized

**Schedule A**

1. a movable hypothec without delivery dated June 8, 2007 in the principal amount of CDN\$6,300,000 granted by DSI in favour of Capital registered at the Register of Personal and Movable Real Rights (the "**RPMRR**") under number 07-0327587-0003;
2. a general security agreement granted by DSI in favour of Capital on June 12, 2007; and
3. a movable hypothec without delivery dated June 8, 2007 in the principal amount of CDN\$6,300,000 granted by Intra-Media in favour of Capital registered at the RPMRR under number 07-0327587-0004.

SUPERIOR COURT  
(Commercial Division)  
The Companies' Creditors  
Arrangement Act

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N°. 500-11-034815-080

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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IN THE MATTER OF THE PLAN OF  
ARRANGEMENT AND COMPROMISE OF:

KOMUNIK CORPORATION

-and-

KOMUNIK DATAMARK INC.

-and-

KOMUNIK INTRAMEDIA INC.

Petitioners

- and -

RSM RICHTER INC.

Monitor

BS0350

File: 121414-1014

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EXHIBIT P-4

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ORIGINAL

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Mtre. Jean Fontaine

(514) 397-3337

Fax: (514) 397-3487

STIKEMAN ELLIOTT LLP

BARRISTERS & SOLICITORS

1155 René-Lévesque Blvd. West, 40<sup>th</sup> Floor

Montréal, Québec, Canada, H3B 3V2

Komunik Corporation  
Cash Flow Forecast

For the period ending February 27, 2009  
(C\$, 000's)

	23-Jan-09	30-Jan-09	06-Feb-09	13-Feb-09	20-Feb-09	27-Feb-09	Total
<u>Cash Receipts</u>							
Accounts Receivable	1,868	1,868	1,902	1,902	1,902	1,902	11,344
Sale of Equipment	-	-	-	300	-	-	300
GST/QST Collected on Sales	241	241	245	245	245	245	1,461
Total Cash Receipts	2,109	2,109	2,147	2,447	2,147	2,147	13,105
<u>Operating Disbursements</u>							
Direct Material and Labour	843	871	1,113	796	1,113	796	5,534
Factory Expenses	311	103	387	114	387	114	1,417
Selling	199	106	250	365	250	117	1,286
Administration	229	67	246	59	166	59	827
GST/QST Paid on Purchases	93	145	138	138	138	138	790
GST/QST Rentittances	49	250	-	-	50	370	719
Total Operating Disbursements	1,724	1,542	2,134	1,473	2,104	1,595	10,571
Net Cash Flow From Operations	385	566	13	974	43	552	2,533
Maintenance Capital Expenditures							
Vacation Pay	20	20	25	25	25	25	140
Restructuring Costs	103	100	60	-	-	-	263
Net Cash Flow Before Debt Service	262	246	(272)	749	(182)	327	1,130
Interest	-	-	100	-	-	-	100
Secured Debt Repayments	-	-	-	300	-	-	300
Total Net Cash Flow (note)	262	246	(372)	449	(182)	327	730

SUPERIOR COURT  
(Commercial Division)  
The Companies' Creditors  
Arrangement Act

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N°. 500-11-034815-080

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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IN THE MATTER OF THE PLAN OF  
ARRANGEMENT AND COMPROMISE OF:

KOMUNIK CORPORATION

-and-

KOMUNIK DATAMARK INC.

-and-

KOMUNIK INTRAMEDIA INC.

Petitioners

- and -

RSM RICHTER INC.

Monitor

BS0350

File: 121414-1014

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EXHIBIT P-5

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ORIGINAL

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Mtre. Jean Fontaine (514) 397-3337  
Fax: (514) 397-3487

STIKEMAN ELLIOTT LLP  
BARRISTERS & SOLICITORS  
1155 René-Lévesque Blvd. West, 40<sup>th</sup> Floor  
Montréal, Québec, Canada, H3B 3V2

SUPERIOR COURT  
(Commercial Division)  
The Companies' Creditors  
Arrangement Act

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N°. 500-11-034815-080

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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IN THE MATTER OF THE PLAN OF  
ARRANGEMENT AND COMPROMISE OF:

KOMUNIK CORPORATION

-and-

KOMUNIK DATAMARK INC.

-and-

KOMUNIK INTRAMEDIA INC.

Petitioners

- and -

RSM RICHTER INC.

Monitor

BS0350

File: 121414-1014

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LIST OF EXHIBITS AND  
EXHIBITS P-1 TO P-5

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ORIGINAL

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