

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST



THE HONOURABLE MR. )

JUSTICE HAINEY )

TUESDAY, THE 24<sup>TH</sup>

DAY OF JULY, 2018

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 DISCOVERY AIR INC.

APPLICANT

**CCAA TERMINATION ORDER**

**THIS MOTION**, made by Discovery Air Inc. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, *inter alia*, terminating these proceedings commenced pursuant to the CCAA (the "**CCAA Proceedings**"), discharging KSV Kofman Inc. ("**KSV**") in its capacity as monitor (the "**Monitor**") and approving the Fifth Report (defined below), and the Monitor's fees and disbursements described in the Kofman Affidavit and the Latham Affidavit (as both terms are defined below) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicant, the affidavit of Paul Bernards sworn July 16, 2018, and the Exhibits thereto (the "**Bernards Affidavit**"), the Fifth Report of KSV, in its capacity as Monitor dated July 17, 2018 (the "**Fifth Report**"), the affidavit of Robert Kofman, sworn July 17, 2018 (the "**Kofman Affidavit**") and the affidavit of Joseph Latham, sworn July 17, 2018 (the "**Latham Affidavit**"), and on hearing the submissions of counsel for the Applicant, the Monitor, Clairvest Group Inc., the ad hoc committee of unsecured debenture

holders, and those other parties present, no one else appearing although duly served as appears from the Affidavit of Service of Jennifer Stam sworn July 16, 2018, filed:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record, the Fifth Report, the Kofman Affidavit and the Latham Affidavit is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

### **APPROVAL OF MONITOR'S REPORTS, ACTIVITIES AND FEES**

2. **THIS COURT ORDERS** that the Fifth Report and the activities and conduct of the Monitor described in the Fifth Report be and are hereby approved.

3. **THIS COURT ORDERS** that the professional fees and disbursements of the Monitor as set out in the Kofman Affidavit are hereby approved.

4. **THIS COURT ORDERS** that the professional fees and disbursements of Goodmans LLP, legal counsel of the Monitor, as set out in the Latham Affidavit, are hereby approved.

5. **THIS COURT ORDERS** that the professional fees and disbursements of the Monitor and counsel to the Monitor for completion of the remaining activities in connection with the CCAA Proceedings, estimated not to exceed the Fee Accrual (as defined in the Fifth Report), are hereby authorized and approved and that no further approval of the fees and disbursements of the Monitor or its counsel is required.

### **TERMINATION OF THE CCAA PROCEEDINGS**

6. **THIS COURT ORDERS** that effective upon the filing of a certificate of the Monitor substantially in the form attached as Schedule A hereto (the "**Monitor's Termination Certificate**") certifying that all of the remaining matters in the CCAA Proceedings as set out in the Fifth Report have been completed, the CCAA Proceedings shall be terminated without any further act or formality.

7. **THIS COURT ORDERS** that, notwithstanding the termination of the CCAA Proceedings, the sale approval and vesting orders made by this court on June 22, 2018 (collectively, the “**Approval and Vesting Orders**”) and the order regarding document preservation made by this court on June 22, 2018 all in the CCAA Proceedings, shall not be affected, varied, derogated from, limited or amended in any way, and such orders are expressly continued and confirmed and, notwithstanding any subsequent bankruptcy or other proceeding in respect of the Applicant: (a) the steps taken by the Applicant in connection with the refinancing by the Purchaser (as defined in the Approval and Vesting Orders for the Northern Transactions (as defined in the Fifth Report)) of the credit facilities provided to the Northern Businesses by the Canadian Imperial Bank of Commerce shall not be void or voidable by creditors of the Applicant or any trustee in bankruptcy thereof, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation; and (b) in the event that any of the Applicant’s property, assets or undertaking (including cash and the proceeds of any tax refunds paid to or on behalf of the Applicant, and all of which are purchased assets that are the subject of the Approval and Vesting Orders) are subsequently obtained by or otherwise in the possession of a trustee in bankruptcy of the Applicant, such trustee in bankruptcy shall forthwith deliver same to the purchaser of such assets, property and undertaking, without set-off, deduction, or charge of any kind, and such assets, property or undertaking shall not comprise property of the Applicant or its estate divisible among its creditors, provided however, for greater certainty, that in the event that the trustee in bankruptcy shall obtain or otherwise be in possession of property, assets or undertaking that it or any third party alleges are not property, assets or undertaking of the Applicant (and therefore allegedly not purchased assets), then (I) the trustee in bankruptcy shall not be obligated to deliver same forthwith to the purchaser, (II) such trustee in bankruptcy shall notify the purchaser of the existence of such assets, property or undertaking; and (III) absent agreement as to entitlement thereto, the entitlement to such property, assets and undertaking may be determined by the Court in the bankruptcy proceedings on notice from the trustee to the purchaser

## **DISCHARGE OF THE MONITOR**

8. **THIS COURT ORDERS AND DECLARES** that the Monitor has satisfied all of its duties and obligations pursuant to the CCAA and the Orders of this Court granted in the CCAA Proceedings.

9. **THIS COURT ORDERS AND DECLARES** that, upon the filing of the Monitor's Termination Certificate, KSV is hereby discharged as Monitor effective immediately and shall have no further duties, obligations, or responsibilities as Monitor, save and except as set out in paragraph 11 hereof.

10. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of the CCAA Proceedings or the discharge of the Monitor, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor and its counsel shall continue to have the benefit of, the approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order dated March 21, 2018 (the "**Initial Order**") or any other Order of this Court in the CCAA Proceedings, all of which are expressly continued and confirmed, including in connection with any actions taken by the Monitor pursuant to this Order following the filing of the Monitor's Termination Certificate.

11. **THIS COURT ORDERS** that notwithstanding the discharge of KSV as Monitor and the termination of these CCAA Proceedings, the Monitor shall remain Monitor and have the authority to complete or address any matters that may be ancillary or incidental to the CCAA Proceedings following the filing of the Monitor's Termination Certificate, and in connection therewith: (a) KSV and its counsel shall continue to have the benefit of all approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order and all other Orders made in the CCAA Proceedings, and (b) KSV and its counsel shall be paid by the Applicant their reasonable fees and disbursements at their standard rates and charges for all activities undertaken by them pursuant to this Order following the filing of the Monitor's Termination Certificate.

## **RELEASES**

12. **THIS COURT ORDERS** that, upon the filing of the Monitor's Termination Certificate, the Monitor, counsel to the Monitor, and each of their respective affiliates and officers, directors,

partners, employees and agents (collectively, the “**Released Parties**”) are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the filing of the Monitor’s Termination Certificate or completed pursuant to the terms of this Order in any way relating to, arising out of, or in respect of the CCAA Proceedings, the respective conduct of the Released Parties in the CCAA Proceedings, and any matter with respect to the Applicant and the Non-Applicant Subsidiaries and their respective businesses, assets and property (collectively, the “**Released Claims**”), and any such Released Claims are hereby released, stayed, extinguished and forever barred, and the Released Parties shall have no liabilities in respect thereof, provided that the Released Claims shall not include any claim or liabilities arising out of any gross negligence or wilful misconduct on the part of the applicable Released Party.

13. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against any of the Released Parties, nor shall they be obligated to be involved in any such proceeding, in any way arising from or related to the CCAA Proceedings, except with an Order of this Court made on at least seven days’ prior written notice to the applicable Released Parties and upon further securing, as security for costs, the full indemnity costs of the applicable Released Parties in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

#### **COURT-ORDERED CHARGES**

14. **THIS COURT ORDERS** that, upon the filing of the Monitor’s Termination Certificate and subject to the payment of all obligations secured thereby, each of the Charges (as defined in the Initial Order) is discharged and released.

#### **STAY EXTENSION**

15. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 15 of the Initial Order) be and is hereby extended to and including the earlier of (a) filing of the Monitor’s Termination Certificate; and (b) August 31, 2018.

**GENERAL**

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JUL 24 2018

PER / PAR:



**SCHEDULE “A”  
MONITOR’S TERMINATION CERTIFICATE**

**Court File No. CV-18-594380-00CL**

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 DISCOVERY AIR INC.

APPLICANT

**MONITOR’S TERMINATION CERTIFICATE**

**RECITALS**

- A. Pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 21, 2018, KSV Kofman Inc. was appointed as the Monitor of the Applicant in the within proceedings (the “**CCAA Proceedings**”).
- B. The CCAA Proceedings have been completed in accordance with the Orders of this Court and under the supervision of the Monitor.
- C. Pursuant to the Order of this Court dated July 24, 2018 (the “**CCAA Termination Order**”), the Monitor shall be discharged and these proceedings shall be terminated upon the filing of this Monitor’s Certificate with the Court.
- D. Unless otherwise indicated herein, capitalized terms used in this Monitor’s Certificate shall have the meanings given to them in the CCAA Termination Order.

**THE MONITOR CERTIFIES** the following:

- 1. All remaining matters in the CCAA Proceedings as set out in the Fifth Report have been completed.

**ACCORDINGLY**, the Monitor's Termination Certificate is filed as of the date set forth below.

**DATED** at Toronto, Ontario this \_\_\_\_ day of \_\_\_\_\_, 2018.

**KSV KOFMAN INC., in its capacity as CCAA  
Monitor of Discovery Air Inc., and not in its  
personal capacity**

Per: \_\_\_\_\_

Name:

Title:



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

Court File No.: CV-18-594380-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DISCOVERY AIR INC. (the "APPLICANT")**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

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**CCAA TERMINATION ORDER**

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