

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**MOTION RECORD  
(Approval and Vesting Orders and Other Relief)  
(returnable June 22, 2018)**

**VOLUME 2 OF 2**

June 15, 2018

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) WEDNESDAY, THE 21<sup>ST</sup>  
JUSTICE HAINEY ) DAY OF MARCH, 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



**INITIAL ORDER**

**THIS APPLICATION**, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCA") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Paul Bernards, sworn March 21, 2018, and the Exhibits thereto (the "**Bernards Affidavit**"), and on reading the consent of KSV Kofman Inc. ("**KSV**") to act as the Monitor (in such capacity, the "**Monitor**"), and upon reading the pre-filing report of KSV dated March 21, 2018, in its capacity as the proposed Monitor, and on hearing the submissions of counsel for the Applicant and those subsidiaries set out in Schedule "A" hereto (each a "**Non-Applicant Subsidiary**" and collectively the "**Non-Applicant Subsidiaries**", and together with the Applicant the "**Discovery Air Group**"), the proposed Monitor and Clairvest Group Inc., no one appearing for any other party although duly served as appears from the affidavit of service of Katie Parent sworn March 21, 2018,

## **SERVICE AND DEFINED TERMS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies. Although not Applicants, the Non-Applicant Subsidiaries shall enjoy certain benefits of the protections and authorizations provided by this Order, as set out herein.

## **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system including, subject to the Definitive Documents (as hereinafter defined), the operating facility with Canadian Imperial Bank of Commerce ("**CIBC**") and borrowings that may be made under that facility as well as the cash pooling arrangements currently in place as described in the Bernards Affidavit or replace it with another substantially

similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Discovery Air Group of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Discovery Air Group, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System (and, in particular, in its capacity as the operating facility lender), an unaffected creditor under the Plan or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* R.S.C. 1985 c. B-3, as amended (“**BIA**”) with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. For greater certainty, any security held by CIBC in connection with the foregoing shall continue to retain its priority in respect of any usage or borrowings made from and after the date of this Order.

6. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents, the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course, prior to, on or after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

8. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents, the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents, until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts



payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, once a month on the first day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that the Applicant shall be entitled but not obligated to continue to make payments of interest at current rates in place as of the date of this Order (and, for greater certainty, not at any default rate) owing to each of Roynat Inc. ("**Roynat**") and ECN Aviation Inc. ("**ECN**") in connection with the secured credit facilities that it has with each such lender and, in the case of Roynat, its regularly scheduled payment of principal on April 15, 2018 provided, for greater certainty, that the maturity of the Roynat facility on such date is stayed as set out herein (all as contemplated by the cash flow forecast attached to the Bernards Affidavit).

10A **THIS COURT ORDERS** that the Applicant shall continue to make payments of interest at current rates in place as of the date of this Order (and, for greater certainty, not at any default rate) and other repayments of borrowings from time to time outstanding pursuant to the terms of the operating facility with CIBC provided, for greater certainty, that the maturity of and the final repayment of principal upon maturity or any acceleration under the CIBC facility is stayed as set out herein.

11. **THIS COURT ORDERS** that other than as set out in paragraphs 10 and 10A, and except as may otherwise specifically be permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

12. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$500,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) with the approval of the Monitor, enter into one or more agreements for the provision of shared services with any or all of Top Aces Inc. and/or the Non-Applicant Subsidiaries; and
- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

13. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant' claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at

the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE DISCOVERY AIR GROUP OR THEIR PROPERTY**

15. **THIS COURT ORDERS** that until and including April 20, 2018, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

16. **THIS COURT ORDERS** that during the Stay Period, except with the written consent of the Applicant and the Monitor, or with leave of this Court, no Proceedings shall be commenced or continued against or in respect of the Non-Applicant Subsidiaries, or any of their current and future assets, businesses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the “**Non-Applicant Subsidiaries’ Property**”, and together with the Non-Applicant Subsidiaries’ businesses, collectively, the “**Non-Applicant Subsidiaries’ Property and Business**”), arising upon or as a result of (i) the insolvency of the Applicant; (ii) the making or filing of these proceedings or of any order in these proceedings; (iii) any default or event of default arising as a result of or pursuant to either of (i) or (ii) or any default under the terms of any document entered into in connection with any of Discovery’s or the Non-Applicant Subsidiaries’ secured debt facilities including any guarantee thereunder to which any of the Applicant or the Non-Applicant Subsidiaries are a party; or (iv) any default arising out of a contract or agreement to which the Applicant and one or more Non-Applicant Subsidiaries is a party (collectively the “**Non-Applicant Subsidiary Default Events**”). Without limitation, the operation of any provision of a contract or agreement between a Non-Applicant Subsidiary and any other Person that purports to effect or cause a

termination or cessation of any rights of the Non-Applicant Subsidiary, or to accelerate, terminate, discontinue, alter, interfere with, repudiate, cancel, suspend, amend or modify such contract or agreement, in each case as a result of one or more Non-Applicant Subsidiary Default Events, is hereby stayed and restrained during the Stay Period.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

17. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

17A **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any Person against or in respect of the Non-Applicant Subsidiaries, or affecting the Non-Applicant Subsidiaries' Property and Business, as a result of a Non-Applicant Subsidiary Default Event are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Non-Applicant Subsidiaries to carry on any business which the Non-Applicant Subsidiaries are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

18A **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any other party as a result of a Non-Applicant Subsidiary Default Event, except with the written consent of the Applicant and the Monitor, or leave of this Court.

18B. **THIS COURT ORDERS** that, notwithstanding paragraphs 15 to 18A or any other provisions of this Order, upon the occurrence of an event of default under the CIBC operating facility other than a default which may arise as a result of, or otherwise relate to, the insolvency of the Applicant, the commencement of the Applicant's proceedings under the CCAA or any relief granted in these proceedings occurring after the date hereof, CIBC shall immediately upon notice to the Applicant and the Monitor be entitled to cease making advances to the Applicant and, upon 2 days' notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant, the Non-Applicant Subsidiaries, the Property or the Non-Applicant Subsidiaries' Property under or pursuant to the CIBC operating facility and any and all security granted thereunder, including without limitation, set off and/or consolidate any amounts owing by CIBC to the Applicant against the obligations of the Applicant or the Non-Applicant Subsidiaries to CIBC under the operating facility, to make demand, accelerate payment and give other notices, provided however, that CIBC may not take any further steps to enforce its security without leave of this Court, including without limitation, applying for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and/or the Non-Applicant Subsidiaries and for the appointment of a trustee in bankruptcy of the Applicant and/or the Non-Applicant Subsidiaries; and the foregoing rights and remedies of CIBC shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant, the Non-Applicant Subsidiaries, the Property, the Business or the Non-Applicant Subsidiaries' Property and Business.

#### **CONTINUATION OF SERVICES**

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility

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or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

19A **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with one or more Non-Applicant Subsidiaries or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to any Non-Applicant Subsidiaries, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Non-Applicant Subsidiaries as a result of a Non-Applicant Subsidiary Default Event, and that the Non-Applicant Subsidiaries shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Non-Applicant Subsidiaries in accordance with normal payment practices of the Non-Applicant Subsidiaries or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant or any Non-Applicant

Subsidiary. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

21. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant or of the Non-Applicant Subsidiaries with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant or of the Non-Applicant Subsidiaries whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

22. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 48 and 50 herein.

24. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

**APPOINTMENT OF MONITOR**

25. **THIS COURT ORDERS** that KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Discovery Air Group's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender (as defined herein) and its counsel and CIBC and its counsel on a periodic basis of financial and other information as agreed to between the Applicant and the DIP Lender that may be used in these proceedings, including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender or CIBC, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel and CIBC and its counsel on a periodic basis, as agreed to by the DIP Lender;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;



- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) conduct, supervise and carry out any sales process(es) with respect to the Property and the Business;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (j) commence applications for recognition of these proceedings outside of Canada in its capacity as foreign representative without further Order of this Court; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

27. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property or the Non-Applicant Subsidiaries' Property and shall take no part whatsoever in the management or supervision of the management of the Business or the Non-Applicant Subsidiaries' Property and Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the foregoing, or any part thereof.

28. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property or the Non-Applicant Subsidiaries' Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure

imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property or the Non-Applicant Subsidiaries' Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

30. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements incurred prior to or following the date hereof, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis or at such other intervals as the Applicant and the Monitor may agree.

32. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as

security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 48 and 50 hereof.

34. **THIS COURT ORDERS** that KSV in its capacity as Monitor in these proceedings be and hereby is authorized to act as a foreign representative of the Applicant and of these proceedings for the purpose of having these proceedings recognized outside of Canada.

#### **INTERCOMPANY FINANCING**

35. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents, the Applicant may advance funds to its Non-Applicant Subsidiaries after the date of this Order, whether through operation of the Cash Management System, an intercompany loan, including, without limitation, loans made pursuant to the DIP Term Sheet, or otherwise (“**Intercompany Advances**”). The Applicant’s accounts and records shall constitute, in the absence of manifest error, *prima facie* evidence of the balance of the Intercompany Advances.

36. **THIS COURT ORDERS** that the Intercompany Advances to each Non-Applicant Subsidiary shall be secured by a charge in favour of the Applicant (each, an “**Intercompany Charge**”) over the applicable Non-Applicant Subsidiary’s Property to the extent of each of their respective indebtedness to the Applicant for Intercompany Advances. The Intercompany Charges shall have the priority set out in paragraph 50 hereof.

#### **DIP FINANCING**

37. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from CEP IV Co-Investment Limited Partnership (the “**DIP Lender**”) in order to finance the Applicant’s working capital requirements and other general corporate purposes and capital expenditures and the Intercompany Advances, provided that borrowings under such credit facility shall not exceed \$12.6 million unless permitted by further Order of this Court.

38. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicant and the DIP Lender dated as of March 21, 2018 (the "**DIP Term Sheet**"), filed.

39. **THIS COURT ORDERS** that the Applicant and the Non-Applicant Subsidiaries, as applicable, are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents, including, without limitation, in connection with the Intercompany Advances (collectively and including the DIP Term Sheet, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant and the Non-Applicant Subsidiaries, as applicable, are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 48 and 50 hereof. Without limiting the generality of the foregoing, the Applicant's obligations under the DIP Term Sheet and the Intercompany Advances shall also be secured by the assignment by the Applicant to the DIP Lender of the Intercompany Charges and the repayment obligations of the Non-Applicant Subsidiaries to the Applicant in respect of the Intercompany Advances, each of which are hereby assigned.

41. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge, the Intercompany Charges or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents, the DIP Lender's Charge or the Intercompany Charges, the DIP Lender shall immediately

upon notice to the Applicant and the Monitor be entitled to cease making advances to the Applicant and, upon 2 days' notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant, the Non-Applicant Subsidiaries, the Property or the Non-Applicant Subsidiaries' Property under or pursuant to the DIP Term Sheet, Definitive Documents, the DIP Lender's Charge or the Intercompany Charges, including without limitation, set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant or the Non-Applicant Subsidiaries to the DIP Lender under the DIP Term Sheet, the Definitive Documents, the DIP Lender's Charge or the Intercompany Charges, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and/or the Non-Applicant Subsidiaries and for the appointment of a trustee in bankruptcy of the Applicant and/or the Non-Applicant Subsidiaries; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant, the Non-Applicant Subsidiaries, the Property, the Business or the Non-Applicant Subsidiaries' Property and Business.

42. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any Plan or any proposal filed by the Applicant under the BIA, with respect to any advances made under the Definitive Documents.

#### **KEY EMPLOYEE RETENTION PLAN**

43. **THIS COURT ORDERS** that the Applicants' Key Employee Retention Plan ("KERP"), as described in the Bernards Affidavit is hereby approved.

44. **THIS COURT ORDERS** that the Applicants are hereby authorized and directed to enter into the KERP with KERP Employees (as defined in the Bernards Affidavit).

45. **THIS COURT ORDERS** that the amounts payable to the Key Employees pursuant to the KERP are hereby secured by a charge (the "**KERP Charge**") on the Property, in favour of

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the Key Employees. The KERP Charge shall have the priority set out in paragraphs 48 and 50 hereof

46. **THIS COURT ORDERS** that the aggregate amount secured by the KERP Charge granted to secure the Applicants' obligations under the KERP shall be in an amount of no more than CDN\$1.65 million.

47. **THIS COURT ORDERS** that Confidential **Exhibit "K"** to the Bernards Affidavit be and is hereby sealed pending further order of this Court.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

48. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge, the KERP Charge and the DIP Lender's Charge, as among them, against the Property shall be as follows:

First – Administration Charge (to the maximum amount of \$750,000);

Second – Directors' Charge (to the maximum amount of \$100,000);

Third – KERP Charge (to the maximum amount of \$1.65 million); and

Fourth – DIP Lender's Charge.

49. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the KERP Charge, the DIP Lender's Charge or the Intercompany Charges (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

50. **THIS COURT ORDERS** that:

- a) each of the Administration Charge, the Directors' Charge and the KERP Charge (all as constituted and defined herein) shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") of the Applicant in favour

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of any Person other than (i) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or similar provincial legislation or (ii) any statutory super priority deemed trusts and liens for unremitted employee source deductions;

- b) the DIP Lender's Charge shall rank immediately in priority to Clairvest's Encumbrances granted by or against the Applicant or the Property and any other Encumbrances that rank behind such Clairvest Encumbrances; provided, for greater certainty, that the DIP Lender's Charge shall rank subordinate to any Encumbrances that have priority over such Clairvest Encumbrances; and
- c) the Intercompany Charges shall rank immediately in priority to Clairvest's Encumbrances granted by or against any Non-Applicant Subsidiary or the Non-Applicant Subsidiaries' Property and any other Encumbrances that rank behind such Clairvest Encumbrances; provided, for greater certainty, that the Intercompany Charges shall rank subordinate to any Encumbrances that have priority over such Clairvest Encumbrances with respect to the Non-Applicant Subsidiaries' Property.

51. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant and the Non-Applicant Subsidiaries shall not grant any Encumbrances over any Property or Non-Applicants Subsidiaries' Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge, the KERP Charge, the DIP Lender's Charge or the Intercompany Charges, unless the Applicant also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge, the beneficiaries of the KERP Charge, and the Administration Charge, or further Order of this Court.

52. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the DIP Term Sheet, the Definitive Documents, the DIP Lender's Charge and the Intercompany Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for

bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant or the Non-Applicant Subsidiaries, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant or the Non-Applicant Subsidiaries of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant or the Non-Applicant Subsidiaries pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

53. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the interests of the Applicant or of the Non-Applicant Subsidiaries in such real property leases.

#### **SERVICE AND NOTICE**

54. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe & Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the



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names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

55. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<http://www.ksvadvisory.com/insolvency-cases/discovery-air/>’.

56. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant’s creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

57. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

58. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

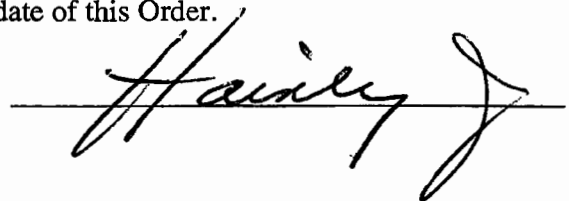
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59. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other jurisdiction, to give effect to this Order and to assist the Applicant, 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.

60. **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 the foreign representative of the Applicant for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

61. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

62. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



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**Schedule "A" – Non- Applicant Subsidiaries**

1. Great Slave Helicopters Ltd.
2. Air Tindi Ltd.
3. Discovery Mining Services Ltd.
4. Discovery Air Technical Services Inc.

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. (the "APPLICANT")

Court File No.:

CV-18-544380-COCL

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

Proceeding commenced at Toronto

**INITIAL ORDER**

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Lawyers for the Applicant

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# TAB 6

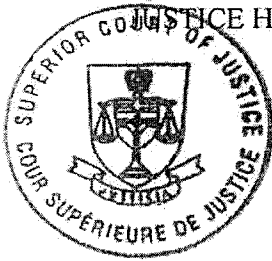
**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )

WEDNESDAY, THE 4<sup>th</sup>

JUSTICE HAINEY )

DAY OF APRIL, 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

**SSP APPROVAL 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*, approving a sale solicitation process and certain related relief, 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 March 27, 2018, and the Exhibits thereto (the "**Bernards Affidavit**"), the First Report of KSV Kofman Inc., in its capacity as Monitor (the "**Monitor**") dated March 29, 2018, and the affidavit of Stephen Campbell sworn April 4, 2018 filed, and on hearing the submissions of counsel for the Applicant, the Monitor and Clairvest Group Inc., the Ad Hoc Committee of Holders of 8.375% Unsecured Debentures, no one else appearing although duly served as appears from the Affidavits of Service of Katie Parent sworn March 29, 2018 and April 2, 2018, filed:

*the Supplement to the  
First Report of  
the Monitor, dated  
April 3, 2018,*

*GH*

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**SERVICE**

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

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them under the Sale Solicitation Process attached hereto as Schedule "A" (the "SSP").

**APPROVAL OF STALKING HORSE AGREEMENTS**

3. **THIS COURT ORDERS** that the execution, delivery, entry into, compliance with, and performance by the Applicant of each of the Top Aces Stalking Horse Agreement, GSH Stalking Horse Agreement, ATL Stalking Horse Agreement and DMS Stalking Horse Agreement (each, as defined in the Bernards Affidavit, and, collectively the "**Stalking Horse Agreements**"), be and is hereby ratified, authorized and approved, *provided, however*, that nothing contained in this Order approves the sale or the vesting of any property, assets or undertaking of the Applicant to either of the Stalking Horse Bidders pursuant to any of the Stalking Horse Agreements and that, if any or all of the Stalking Horse Agreements are the Accepted Bid under the SSP, the approval of the sale and vesting of the assets contemplated to be sold thereunder to the applicable Stalking Horse Bidder shall be considered by this Court on a subsequent motion or motions made to this Court following completion of the SSP, all in accordance with the terms of the SSP.

4. **THIS COURT ORDERS** that the Stalking Horse Agreements be and are hereby approved and accepted solely for the purposes of constituting stalking horse bids under the SSP.

5. **THIS COURT DECLARES** that the Stalking Horse Bidders are parties to these proceedings.

6. **THIS COURT ORDERS** that the Stalking Horse Agreements shall not be rendered invalid or unenforceable and the rights and remedies of the Stalking Horse Bidders thereunder shall not otherwise be limited or impaired in any way by: (a) the Applicant's CCAA proceedings and the declarations of insolvency made in connection therewith; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"),

or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of security interests, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the execution, delivery or performance of the Stalking Horse Agreements shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party; and
- (b) the Stalking Horse Bidders shall not have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Stalking Horse Agreements.

**APPROVAL OF SSP**

7. **THIS COURT ORDERS** that the SSP (subject to such non-material amendments as may be agreed to by the Monitor and the Stalking Horse Bidders (including all schedules thereto)) be and is hereby approved and the Monitor, the Applicant, the Non-Applicant Subsidiaries (as defined in the Initial Order) Top Aces Inc. and Top Aces Holdings Inc. (together with the Applicant and the Non-Applicant Subsidiaries, the "Companies") are hereby authorized and directed to take such steps as they deem necessary or advisable (subject to the terms of the SSP) to carry out the SSP, subject to prior approval of this Court being obtained before completion of any transaction(s) under the SSP.

8. **THIS COURT ORDERS** that the Monitor, the Companies and their respective affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the SSP, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or wilful misconduct of the Monitor or the Companies, as applicable, as determined by the Court.



9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Monitor, the Applicant and the Non-Applicant Subsidiaries (under the direction of the Monitor) are hereby authorized and permitted to disclose and transfer to each potential bidder (the “**Bidders**”) (including, without limitation, the Stalking Horse Bidders) and to their Representatives, if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in the Companies’ records pertaining to the Companies’ past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale of the shares and assets contemplated by the Stalking Horse Agreements (a “**Sale**”). Each Bidder or Representative to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Sale, and if it does not complete a Sale, shall return all such information to the Monitor, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Monitor. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Accepted Bid(s), shall be entitled to use the personal information provided to it that is related to the Property acquired pursuant to the SSP in a manner that is in all material respects identical to the prior use of such information by the relevant Company or Companies, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor.

10. **THIS COURT ORDERS** that none of the Companies or any of their employees or Representatives shall communicate directly with Clairvest regarding any information relating to the SSP including, without limitation, the identities of the Interested Parties (as defined in the SSP).

**GENERAL**

11. **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

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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.

12. **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.

13. **THIS COURT ORDERS** that at any time during the SSP, the Monitor, the Applicant or any Stalking Horse Bidder may apply to the Court for directions with respect to the SSP.



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**Schedule "A" – Sale Solicitation Process**

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## SALE SOLICITATION PROCESS

### Introduction

On March 21, 2018, Discovery Air Inc. (the “**Debtor**”) commenced a proceeding (the “**CCAA Proceeding**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Pursuant to the initial order issued by the Court in the CCAA Proceeding (the “**Initial Order**”), KSV Kofman Inc. was appointed as monitor (the “**Monitor**”) in the CCAA Proceeding.

The following Schedules are incorporated into this SSP: (a) Schedule “A” – References and Definitions; (b) Schedule “B” – Form of Acknowledgment of Sale Solicitation Process; (c) Schedule “C” – Addresses for Notice; and (d) Schedule “D” – Auction Procedures.

On April 4, 2018, the Debtor brought a motion before the Court, for, among other things, an order (the “**SSP Order**”) approving:

- (a) the Top Aces Stalking Horse Agreement pursuant to which the Top Aces Stalking Horse Bidder has agreed to: (i) purchase: (A) the Top Aces Holdco Shares; (B) certain assets owned by the Debtor and used in the Top Aces business and/or shared between the Top Aces business and the businesses of GSH, ATL and DMS; and (C) intercompany debt owing by Top Aces and/or Top Aces Holdco to the Debtor, if any (collectively, “**Top Aces Property**”); and (ii) assume or otherwise satisfy certain liabilities and/or extinguish certain indebtedness, if any;
- (b) the following Stalking Horse Agreements between the Debtor and the Northern Stalking Horse Bidder:
  - (i) the GSH Stalking Horse Agreement pursuant to which the Northern Stalking Horse Bidder has agreed to: (i) purchase: (A) the GSH Shares; (B) certain assets owned by the Debtor and used in the GSH business as more particularly described in the GSH Stalking Horse Agreement; and (C) certain intercompany debt owing by GSH to the Debtor (collectively, the “**GSH Property**”); and (ii) assume or otherwise satisfy certain liabilities and/or extinguish certain indebtedness of the Debtor;
  - (ii) the ATL Stalking Horse Agreement pursuant to which the Northern Stalking Horse Bidder has agreed to: (i) purchase: (A) the ATL Shares; (B) certain assets owned by the Debtor and used in the ATL business as more particularly described in the ATL Stalking Horse Agreement; and (C) certain intercompany debt owing by ATL to the Debtor (collectively, the “**ATL Property**”); and (ii) assume or otherwise satisfy certain liabilities and/or extinguish certain indebtedness owing by the Debtor;
  - (iii) the DMS Stalking Horse Agreement pursuant to which the Northern Stalking Horse Bidder has agreed to: (i) purchase: (A) the DMS Shares; and (B) certain assets owned by the Debtor and used in the DMS business as more particularly described in the DMS Stalking Horse Agreement

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(together with the DMS Shares, the “DMS Property”); and (ii) assume or otherwise satisfy certain liabilities and/or extinguish certain indebtedness owing by the Debtor; and

(c) this SSP.

On April [4], 2018, the Court granted the SSP Order. The Monitor will conduct the SSP in accordance with the SSP Order and this SSP.

Under the SSP, all qualified interested parties will be provided with an opportunity to participate in the SSP on the terms set out herein.

**Commencement of the SSP and Identifying Bidders**

1. The purpose of the SSP is to conduct certain processes to provide interested parties with opportunities to submit competing offers on an “as is, where is” basis to purchase: (a) the Top Aces Property; (b) the GSH Property or all or substantially all of the assets of GSH; (c) the ATL Property or all or substantially all of the assets of ATL; and (d) the DMS Property or all or substantially all of the assets of DMS (each, an “Opportunity”). The SSP shall apply to each of the Opportunities and the related processes and transactions, including without limitation, the Top Aces Transaction, Great Slave Transaction, Air Tindi Transaction and Discovery Mining Transaction.
2. Any sales pursuant to this SSP will be without surviving representations or warranties of any kind, nature, or description by the Monitor, the Companies or any of their respective directors, officers, agents, advisors or other representatives unless otherwise agreed in a definitive agreement.
3. All of the Debtor’s right, title and interest in and to any of the Property or other assets to be sold pursuant to any Transactions will be sold free and clear of the pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon as set out in the Court order approving such sale unless specifically permitted to continue pursuant to the terms of the Accepted Bid.

**Timeline**

4. The following table sets out the key milestones and deadlines under the SSP, which may be extended or amended by the Monitor in its discretion by up to two weeks without Court approval:

Milestone	Deadline (Top Aces SSP)	Deadline (GSH SSP)	Deadline (ATL SSP)	Deadline (DMS SSP)
Commencement SSP	April 4, 2018	April 4, 2018	April 4, 2018	April 4, 2018
Bid Deadline	May 21, 2018	June 4, 2018	June 4, 2018	June 4, 2018
Auction	May 31, 2018	June 14, 2018	June 14, 2018	June 14, 2018

Closing Date Deadline	July 31, 2018	July 31, 2018	July 31, 2018	July 31, 2018
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**Solicitation of Interest: Notice of the SSP**

5. The Debtor will issue a press release providing notice of the SSP and any such other relevant information as the Debtor and Monitor consider appropriate (a “**Notice**”) with Canada Newswire for designated dissemination in Canada and such other jurisdictions as the Monitor, in consultation with the Debtor, considers appropriate.
6. The Monitor shall be entitled, but not obligated, to arrange for a Notice to be published in *The Globe and Mail* (National Edition), and any other newspaper or industry journal as the Monitor considers appropriate, if any, if it believes that such advertisement would be useful in the circumstances.
7. The Monitor, with the assistance of the Companies and their Representatives, has prepared:
  - (a) a list of potential financial bidders who may be interested in a Top Aces Transaction and a list of potential financial and strategic bidders who may be interested in any or all of the Northern Transactions (collectively, “**Potential Bidders**”);
  - (b) Teaser Letters describing the Opportunities, outlining the processes under the Top Aces SSP and Northern SSP, respectively, and inviting recipients of the Teaser Letters to express their interest pursuant to the applicable SSP;
  - (c) a form of NDA; and
  - (d) CIMs describing the Opportunities, which will be made available by the Monitor to Bidders (as defined below).
8. The Monitor, with the assistance of the Companies and their Representatives, has established Data Rooms in respect of the SSPs, which Data Rooms may continue to be updated from time to time during the SSP.
9. The Monitor and its Representatives may consult with, or seek the assistance or cooperation of, the Companies with respect to any matter relating to this SSP and the conduct thereof, including, without limitation, the activities described in paragraphs 6 to 8 above. The Companies and their Representatives shall cooperate fully with the Monitor and its Representatives and provide such assistance as is reasonably requested by the Monitor in connection with the SSP.
10. The Monitor will send the applicable Teaser Letter(s) and applicable form or forms of NDA to all applicable Potential Bidders as soon as reasonably practicable after the granting of the SSP Order and to any other party who requests a copy of a Teaser Letter and NDA or who is identified by the Debtor or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

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### Delivery of CIMs

11. Any party who wishes to participate in one or more of the SSPs (an “Interested Party”), including any Potential Bidder, must provide to the Monitor:
  - (a) a NDA executed by it, and a letter setting forth the identity of the Interested Party, the contact information for such Interested Party and full disclosure of the direct and indirect principals of the Interested Party;
  - (b) an acknowledgment of the applicable SSP or SSPs in which the Interested Party wishes to participate, in the form attached hereto as Schedule “B”; and
  - (c) such form of financial disclosure and credit quality support or enhancement that allows the Monitor to make a reasonable determination as to the Interested Party’s financial and other capabilities to consummate a Sale Proposal.
12. If it is determined by the Monitor, in its reasonable business judgment, that an Interested Party: (i) has delivered the documents contemplated in paragraph 11 above; and (ii) has the financial capability based on the availability of financing, experience and other considerations, to be able to consummate a sale pursuant to the SSP or SSPs in which the Interested Party is interested, then such Interested Party will be deemed to be a “Bidder”. For greater certainty, the Monitor may, in its reasonable business judgment, determine that an Interested Party may be deemed a Bidder in one SSP but not another.
13. The Monitor will provide each Bidder with a copy of the applicable CIM(s) and access to any corresponding Data Rooms. Bidders and Qualified Bidders (as defined below) must rely solely on their own independent review, investigation and/or inspection of all information and of the Property in connection with their participation in any of the SSPs and any transaction they enter into with the Debtor. The Companies, the Monitor and their respective directors, officers, agents and advisors make no representation or warranty whatsoever as to the information (including, without limitation, with respect to its accuracy or completeness) (i) contained in any of the CIMs or the Data Rooms; (ii) provided through the due diligence process or otherwise made available pursuant to any of the SSPs; or (iii) otherwise made available to a Potential Bidder, Interested Party, Bidder or Qualified Bidder, except to the extent expressly contemplated in any definitive documentation duly executed and delivered by the Successful Bidder (as defined below) duly executed by the applicable Company and approved by the Court.
14. At any time during the SSP, the Monitor may, in its reasonable business judgment, eliminate a Bidder from any of the SSPs, in which case such party will no longer be a Bidder for the purposes of such SSP, provided however, this provision does not apply to either of the Stalking Horse Bidders. For greater certainty, the Monitor may, in its reasonable business judgment, eliminate a Bidder participating in multiple SSPs from one SSP but not other SSPs.
15. None of the Companies nor any of their Representatives or affiliates shall meet or communicate with a Potential Bidder, Interested Party, Bidder or Qualified Bidder (including the Stalking Horse Bidders in respect of the Stalking Horse Bids) regarding

any Transaction or Opportunity without (a) first informing and obtaining the consent of the Monitor, and (b) allowing the Monitor the right and opportunity to participate in such meeting, management presentation or communication. In the event a disagreement arises between the Companies and the Monitor with respect to any matters related directly or indirectly to this SSP, the Monitor, unless otherwise ordered by the Court, shall have the sole authority to make a final decision with respect to such matters.

- 16. Neither the Companies nor their Representatives or affiliates shall communicate the identities of any Interested Parties or information in respect of any bids or transaction documents to representatives of either of the Stalking Horse Bidders, whether in that capacity or any other capacity, unless and until the identities of the Qualified Bidders are exchanged with all other Qualified Bidders at Auction. For greater certainty, the foregoing provision is not intended to prevent or restrict the Companies or their Representatives from meeting or communicating with either of the Stalking Horse Bidders or any party related thereto regarding matters that do not relate to the SSP.
- 17. The Monitor, with the Companies' assistance, shall afford each Bidder such access to applicable due diligence materials and information pertaining to the applicable SSP or SSPs as the Monitor deems appropriate in its reasonable business judgment. Due diligence access may include management presentations, access to the Data Room(s), on-site inspections, and other matters which a Bidder may reasonably request and which the Monitor deems appropriate. The Monitor will designate one or more representatives to coordinate all reasonable requests for additional information and due diligence access from each Bidder and the manner in which such requests must be communicated. Neither the Debtor nor the Monitor will be obligated to furnish any information relating to the Property to any person other than to Bidders. For the avoidance of doubt, selected due diligence materials may be withheld from certain Bidders if the Monitor determines such information to represent proprietary or sensitive competitive information.

**Formal Offers and Determination of Qualified Bids**

- 18. Bidders will be able to refer to template Purchase Agreements (which will be based on the Stalking Horse Agreements) placed in the Data Rooms.
- 19. Bidders that wish to make a formal offer within one or more of the SSPs (a "**Sale Proposal**") must submit such Sale Proposal to the Monitor so as to be received by the Monitor not later than 5:00 PM (Toronto Time) on (a) May 21, 2018 with respect to the Top Aces SSP, and (b) June 4, 2018 with respect to the Northern SSP (the "**Bid Deadline**"). All Sale Proposals in respect of the applicable transactions must be in the form of a duly authorized and executed Purchase Agreement with any changes disclosed in a comparison against the template Purchase Agreement, if applicable, and delivered by email and/or hard copy to each of the persons specified in Schedule "C" hereto. Bidders who wish to submit a Sale Proposal for the assets of any or all of GSH, ATL and/or DMS may submit any such Sale Proposal in a separate form of asset purchase agreement reflecting terms consistent with an insolvency transaction, including without surviving representations and warranties. For greater certainty, Bidders must submit a separate



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Purchase Agreement or asset purchase agreement for each SSP in which the Bidder is making a Sale Proposal.

20. The Monitor, in consultation with the Debtor, may modify the Bid Deadline with respect to some or all of the SSPs. Any such modification shall be communicated to all Bidders for the applicable SSP in writing and posted on the Monitor's Website.
21. In order to be considered a "**Final Bid**", a Sale Proposal shall include the following terms (collectively, the "**Final Bid Criteria**"):
  - (a) Subject to subsection (b) below, that the bid is binding and irrevocable until the earlier of (i) 30 days after the Bid Deadline and (ii) approval by the Court of the Accepted Bid (the "**Bid Termination Date**");
  - (b) include an acknowledgement that if such Final Bid is selected by the Monitor as the Backup Bid at the Auction, such Final Bid shall remain binding, irrevocable and open for acceptance by the Debtor until the closing of the transaction with the Successful Bidder;
  - (c) include a refundable cash deposit in the form of a wire transfer (to a bank account specified by the Monitor) or such other form of deposit as is acceptable to the Monitor, payable to the Monitor, in trust, in an amount equal to 15% (the "**Deposit**") of the purchase price contemplated by the Bidder's Final Bid;
  - (d) provide contact information (including an email address) for the Bidder and disclose the identity of each entity (including its ultimate shareholders and/or sponsors) that will be bidding for the Property or otherwise participating in a Final Bid and the complete terms of any such participation;
  - (e) include written evidence of a firm, irrevocable commitment for financing or other evidence of an ability to consummate the proposed transaction or transactions comprising the Final Bid, that will allow the Monitor to make a determination as to the Bidder's financial and other capabilities to consummate the proposed transaction;
  - (f) include acknowledgments and representations of the Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property, the Companies or otherwise prior to making its bid; (ii) it has relied solely upon its own independent review, investigation and/or inspection of the Property (including, without limitation, any documents in connection therewith) in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the Companies or the completeness of any information provided in connection therewith, except as expressly contemplated in any definitive documentation duly executed by the Successful Bidder and the applicable Company and approved by the Court;

- (g) include written evidence, in form and substance reasonably satisfactory to the Monitor, of authorization and approval from the Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Final Bid;
  - (h) provides value to the creditors and other stakeholders of the Companies (having regard to the relative priority of creditor claims) that is equal to or greater than the value of the applicable Stalking Horse Agreement;
  - (i) describes the specific Property to be acquired by the Bidder;
  - (j) details of any liabilities to be assumed by the Bidder;
  - (k) not be subject to further due diligence;
  - (l) not be subject to financing;
  - (m) include a description of any regulatory or other third-party approvals required for the Bidder to consummate the proposed transaction, and the time period within which the Bidder expects to receive such regulatory and/or third-party approvals, and those actions the Bidder will take to ensure receipt of such approvals as promptly as possible;
  - (n) include a description of any desired arrangements with respect to transition services that may be required from any of the Companies in connection with the sale transaction;
  - (o) not be subject to any conditions precedent except those that are customary in a transaction of this nature;
  - (p) not be conditional upon approval by the Court of any bid protection, such as a break-up fee, termination fee, expense reimbursement or similar type of payment;
  - (q) be received by the Bid Deadline; and
  - (r) contemplate closing the transaction set out therein on or before July 31, 2018 (the "**Closing Date Deadline**").
22. The Monitor may, if it deems appropriate or desirable in the circumstances, modify or amend the Final Bid Criteria.
23. Following the Bid Deadline, the Monitor will determine if each Sale Proposal delivered to the Monitor meets the Final Bid Criteria, provided that each Sale Proposal may be negotiated among the Monitor and the applicable Bidder and may be amended, modified or varied to improve such Sale Proposal as a result of such negotiations. The Monitor shall be under no obligation to negotiate identical terms with, or extend identical terms to, each Bidder.

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24. The Monitor may make any modification to the SSP it considers appropriate in the circumstance and, where it considers such modification to be material, it may seek Court approval of such modification on notice to parties in the CCAA Proceeding. For greater certainty, the extension of any deadline by up to two weeks shall not be considered material.
25. If a Sale Proposal meets the Final Bid Criteria, as determined by the Monitor in its sole discretion, such Final Bid will be deemed to be a **“Qualified Bid”** and the Bidder in respect of each such Qualified Bid shall be a **“Qualified Bidder”** in respect of the applicable SSP. The Monitor may waive strict compliance with any one or more of the Final Bid Criteria and deem such non-compliant Sale Proposal to be a Qualified Bid, provided that doing so shall not constitute a waiver by the Monitor of the Final Bid Criteria or an obligation on the part of the Monitor to designate any other Sale Proposal as a Qualified Bid.

#### **Selection of Successful Bidders**

26. Within five (5) Business Days of the applicable Bid Deadline, or at such later time as the Monitor may deem appropriate, the Monitor will advise each Bidder if its Sale Proposal is a Qualified Bid (the **“Notification Date”**) with respect to the applicable SSP.
27. Each Stalking Horse Bidder is, and is deemed to be, a Qualified Bidder in respect of the applicable SSP and each Stalking Horse Agreement is, and is deemed to be, a Qualified Bid for all purposes in connection with the applicable SSP.
28. If one or more Qualified Bids (in addition to the Stalking Horse Agreement) for a particular SSP is received by the Bid Deadline, all Qualified Bidders for such SSP (including the applicable Stalking Horse Bidder) shall proceed to an Auction to be held on the applicable auction date (set out in the Auction Procedures below), which shall proceed according to the Auction Procedures to identify the Successful Bidder. The Monitor, in consultation with the Debtor, may postpone or delay the commencement of an Auction with respect to either or both of the SSPs in accordance with the Auction Procedures.
29. If no Qualified Bid for a SSP other than the applicable Stalking Horse Agreement is received by the Bid Deadline, an Auction for such SSP will not be held and that Stalking Horse Bidder will be declared to be the Successful Bidder with respect to the applicable Transaction. The **“Accepted Bid”** for a SSP will be either (i) the applicable Stalking Horse Agreement if no other Qualified Bid for such SSP is received by the Bid Deadline or so designated by the Monitor; or (ii) in the event of an Auction, the superior bid as determined by the Monitor pursuant to the Auction Procedures. The party that submitted the Accepted Bid for a SSP is referred to herein as the **“Successful Bidder”** with respect to such SSP.
30. Within seven (7) Business Days of the selection of an Accepted Bid for a Transaction (or as soon as reasonably possible thereafter), the Debtor shall file an Approval Motion. All of the Qualified Bids for the particular Transaction and SSP other than the Accepted Bid

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and the Backup Bid shall be deemed rejected by the Monitor on and as of the date of approval of the applicable Accepted Bid by the Court.

31. All Deposits received by the Monitor in connection with the SSP will be retained by the Monitor in trust in one or more separate bank accounts. Any Deposit held by the Monitor with respect to the Accepted Bid (plus accrued interest, if any) will be non-refundable (other than as may be provided for in the Purchase Agreement that constitutes the Accepted Bid) and will be applied to the purchase price to be paid by the Successful Bidder upon closing of the transaction under the Accepted Bid. The Deposits (plus applicable interest, if any) of Bidders not selected as Qualified Bidders will be returned to such Bidders within three (3) Business Days of the Notification Date. The Deposits (plus applicable interest, if any) of Qualified Bidders (other than the Backup Bidder) not selected as the Successful Bidder will be returned to such parties within three (3) Business Days of the Bid Termination Date. The Deposit of the Backup Bidder, if any, will be returned to such Backup Bidder upon the Closing of the Transaction with the Successful Bidder, together with applicable interest, if any.
32. If the Successful Bidder for any Transaction fails to close the transaction contemplated by the Accepted Bid by the Closing Date Deadline or such other date as may otherwise be mutually agreed upon among one or more of the Companies, the Monitor and the Successful Bidder, the Monitor shall be authorized but not required to: (a) direct any Company that is a party to such Accepted Bid to exercise such rights and remedies as are available to the applicable Company under the Accepted Bid including, if applicable, deeming that the Successful Bidder has breached its obligations pursuant to the Accepted Bid and that the Successful Bidder has forfeited its Deposit to the applicable Company; (b) designate the Backup Bidder as the Successful Bidder and direct the applicable Company to close the Transaction under the Backup Bid; or (c) take such other steps as it deems advisable, including seeking further advice and directions from the Court. The Companies reserve their right to seek all available remedies, including damages or specific performance, in respect of any defaulting Successful Bidder (including any Backup Bidder designated as a Successful Bidder).

#### **Confidentiality and Access to Information**

33. Each Potential Bidder, Interested Party, Bidder or Qualified Bidder (including the Stalking Horse Bidder) shall not be permitted to receive any confidential or competitive information that is not made generally available to all participants in the SSP, including the number or identity of Potential Bidders, Bidders, Qualified Bidders, and Qualified Bids; the details of any bids, Sale Proposals or Final Bids submitted; or the details or existence of any confidential discussions or correspondence among the Companies, the Monitor and any Bidder in connection with the SSP.
34. In addition, the Monitor may consult with any other parties with a material interest (as determined in the Monitor's sole discretion) in the CCAA Proceeding regarding the status and material information and developments relating to the SSP to the extent considered appropriate by the Monitor and taking into account, among other things, whether such party is a Bidder, Qualified Bidder, or other participant or prospective participant in the

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SSP; provided that such parties may be required to enter into confidentiality arrangements satisfactory to the Monitor. For greater certainty, the Stalking Horse Bidders or their Representatives or affiliates shall not be entitled to any information regarding the status of the SSP unless such information is provided to all Qualified Bidders in the process.

**Supervision of the SSP**

35. The Monitor will oversee, in all respects, the conduct of the SSP and, without limitation, the Monitor will participate in the SSP in the manner set out herein and in the SSP Order. All discussions or inquiries to the Companies regarding the SSP shall be directed to the Monitor. Under no circumstances should Representatives of the Companies be contacted directly or indirectly in respect of the SSP, including diligence requests, without the prior written consent of the Monitor. Any such unauthorized contact or communication could result in exclusion from the SSP. For greater certainty, the foregoing provision is not intended to prevent or restrict the Companies or their affiliates and Representatives from meeting or communicating with any Stalking Horse Bidder, in a capacity other than as a Stalking Horse Bidder, or any party related thereto regarding matters that do not relate to the SSP.
36. Other than as specifically set forth in the Stalking Horse Agreements or in a definitive agreement between the applicable Company and a Successful Bidder, the SSP does not, and will not be interpreted to, create any contractual or other legal relationship among the Companies, the Monitor, any Potential Bidder, Interested Party, Bidder, Qualified Bidder, the Successful Bidder, or any other party.
37. Subject to the terms of the Initial Order or other Court order and any entitlement of the Stalking Horse Bidder to a Stalking Horse Expense Reimbursement, participants in the SSP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Final Bid, participation in the SSP, Auction, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

## SCHEDULE "A"- REFERENCES AND DEFINITIONS

In this document, unless the context otherwise required, words importing the singular include the plural and vice versa. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Initial Order. Except where otherwise expressly provided, all dollar reference amounts are to Canadian dollars.

The terms below shall have the following meaning given to them:

- (a) **"Accepted Bid"** has the meaning given to it in paragraph 29;
- (b) **"Air Tindi Transaction"** means the transaction contemplated by the ATL Stalking Horse Agreement or any other transaction under the ATL Stalking Horse Agreement or any superior bid pursuant to the process set out herein;
- (c) **"Approval Motion"** means the Debtor's motion or motions to be filed with the Court seeking one or more orders to approve the Accepted Bids;
- (d) **"ATL"** means Air Tindi Ltd.;
- (e) **"ATL Property"** has the meaning given to it in the Introduction;
- (f) **"ATL Shares"** means 1870 issued and outstanding Class A common shares in the capital of ATL, being 100% of the issued and outstanding shares of ATL;
- (g) **"ATL SSP"** means the sale and solicitation process to solicit bids for the ATL Property as set out herein;
- (h) **"ATL Stalking Horse Agreement"** means the stalking horse agreement between the Debtor and the Northern Stalking Horse Bidder dated as of March 21, 2018, as the same may be amended, modified, improved or changed pursuant to the terms of this SSP, for the purchase and sale of the ATL Property;
- (i) **"Auction"** means an auction conducted pursuant to this SSP pursuant to the Auction Procedures;
- (j) **"Auction Location"** has the meaning given to it in paragraph 1 of the Auction Procedures;
- (k) **"Auction Procedures"** mean the auction procedures set out in Schedule "D" hereto;
- (l) **"Backup Bid"** has the meaning given to it in paragraph 13 of the Auction Procedures;

- (m) **“Backup Bidder”** has the meaning given to it in paragraph 13 of the Auction Procedures;
- (n) **“Bid Deadline”** has the meaning given to it in paragraph 19;
- (o) **“Bid Termination Date”** has the meaning given to it in paragraph 21(a);
- (p) **“Bidder”** has the meaning given to it in paragraph 12;
- (q) **“Business Day”** means any day, other than Saturday or Sunday, on which the principal commercial banks in Toronto are open for commercial banking business during normal banking hours;
- (r) **“CCAA”** has the meaning given to it in the Introduction;
- (s) **“CCAA Proceeding”** has the meaning given to it in the Introduction;
- (t) **“Clairvest”** means Clairvest Group Inc. and all of its affiliates including certain funds managed by Clairvest Group Inc. and Mr. G. John Krediet;
- (u) **“Closing Date Deadline”** has the meaning given to it in paragraph 21(r);
- (v) **“CIM”** means a confidential information memorandum to be prepared in connection with the SSP with respect to such Company’s Property and business;
- (w) **“Companies”** means the Debtor, Top Aces, Top Aces Holdco, GSH, ATL and DMS, and **“Company”** means any of them;
- (x) **“Court”** has the meaning given to it in the Introduction;
- (y) **“Credit Bid”** means a bid that provides for all or part of the consideration to be paid to be satisfied by way of a credit bid of secured indebtedness of the Debtor;
- (z) **“Data Rooms”** means the electronic data rooms to be established in connection with the SSP;
- (aa) **“Deposit”** has the meaning given to it in paragraph 21(c);
- (bb) **“Debtor”** has the meaning given to it in the Introduction;
- (cc) **“Discovery Mining Transaction”** means the transaction contemplated by the DMS Stalking Horse Agreement or any other transaction under the DMS Stalking Horse Agreement or any superior bid pursuant to the process set out herein;
- (dd) **“DMS”** means Discovery Mining Services Ltd.

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- (ee) “**DMS Property**” has the meaning given to it in the Introduction;
- (ff) “**DMS Shares**” means 22,883,047 issued and outstanding Class A common shares in the capital of DMS, being 100% of the issued and outstanding shares of DMS;
- (gg) “**DMS SSP**” means the sale and solicitation process to solicit bids for the DMS Property as set out herein;
- (hh) “**DMS Stalking Horse Agreement**” means the stalking horse agreement between the Debtor and the Northern Stalking Horse Bidder dated as of March 21, 2018 as the same may be amended, modified, improved or changed pursuant to the terms of this SSP for the purchase and sale of the DMS Property;
- (ii) “**Final Bid**” has the meaning given to it in paragraph 19;
- (jj) “**Final Bid Criteria**” has the meaning given to it in paragraph 20;
- (kk) “**Great Slave Transaction**” means the transaction contemplated by the GSH Stalking Horse Agreement or any other transaction under the GSH Stalking Horse Agreement or any superior bid pursuant to the process set out herein;
- (ll) “**GSH**” means Great Slave Helicopters Ltd.;
- (mm) “**GSH Property**” has the meaning given to it in the Introduction;
- (nn) “**GSH Shares**” means (i) 157,891,795 issued and outstanding Class A common shares; (ii) 1,111 issued and outstanding Class D common shares; (iii) 40,000,000 issued and outstanding Class E common shares; (iv) 7,624 issued and outstanding Class F Preferred shares; (v) 11,072 issued and outstanding Class G Preferred shares; and (vi) 14,400 issued and outstanding Class H Preferred shares, in each case of the capital of GSH, being 100% of the issued and outstanding shares of GSH;
- (oo) “**GSH SSP**” means the sale and solicitation process to solicit bids for the GSH Property as set out herein;
- (pp) “**GSH Stalking Horse Agreement**” means the stalking horse agreement between the Debtor and the Northern Stalking Horse Bidder dated as of March 21, 2018 as the same may be amended, modified, improved or changed pursuant to the terms of this SSP for the purchase and sale of the GSH Property;
- (qq) “**Initial Order**” has the meaning given to it in the Introduction;
- (rr) “**Interested Party**” has the meaning given to it in paragraph 11;
- (ss) “**Potential Bidders**” has the meaning given to it in paragraph 6;



- (tt) **“Leading Bid”** has the meaning given to it in paragraph 11 of the Auction Procedures;
- (uu) **“Monitor”** has the meaning given to it in the Introduction;
- (vv) **“Monitor’s Website”** means the Monitor’s website at [www.ksvadvisory.com/insolvency-cases/discovery-air](http://www.ksvadvisory.com/insolvency-cases/discovery-air).
- (ww) **“NDA”** a non-disclosure agreement to be used in connection with the solicitation of bids in this SSP;
- (xx) **“Northern SSP”** means collectively the GSH SSP, ATL SSP and DMS SSP;
- (yy) **“Northern Transactions”** means the Great Slave Transaction, Air Tindi Transaction and Discovery Mining Transaction;
- (zz) **“Northern Stalking Horse Bidder”** means 10671541 Canada Inc.;
- (aaa) **“Northern Stalking Horse Agreements”** means the GSH Stalking Horse Agreement, ATL Stalking Horse Agreement and DMS Stalking Horse Agreement;
- (bbb) **“Notice”** has the meaning given to it in paragraph 6;
- (ccc) **“Notification Date”** has the meaning given to it in paragraph 26;
- (ddd) **“Opportunity”** has the meaning given to it in paragraph 1;
- (eee) **“Overbid”** has the meaning given to it in paragraph 9 of the Auction Procedures;
- (fff) **“Property”** means the Top Aces Property, GSH Property, ATL Property and/or DMS Property as the context may require;
- (ggg) **“Purchase Agreements”** means the template forms of purchase agreements to be placed in the Data Rooms upon which Bidders are to make Sale Proposals;
- (hhh) **“Qualified Bid”** has the meaning given to it in paragraph 25;
- (iii) **“Qualified Bidder”** has the meaning given to it in paragraph 25;
- (jjj) **“Representatives”** means, with respect to a particular party, such party’s directors, officers, employees, partners, principals, advisors (including legal and financial advisors) and agents provided that with respect to the Companies, “Representatives” shall not include any individual who is an employee, director, officer, partner, principal or advisor to Clairvest.

- (kkk) **“Sale Proposal”** has the meaning given to it in paragraph 19;
- (lll) **“SSP”** means the sale and solicitation processes contemplated herein, including without limitation, the Top Aces SSP, GSH SSP, ATL SSP or DMS SSP, or any one of them as the context may require;
- (mmm) **“SSP Order”** has the meaning given to it in the Introduction;
- (nnn) **“Stalking Horse Agreements”** means, collectively, the Top Aces Stalking Horse Agreement and the Northern Stalking Horse Agreements.
- (ooo) **“Stalking Horse Bidder”** means the Top Aces Stalking Horse Bidder and the Northern Stalking Horse Bidder;
- (ppp) **“Starting Bid”** has the meaning given to it in paragraph 7 of the Auction Procedures;
- (qqq) **“Subsequent Bid”** has the meaning given to it in paragraph 4 of the Auction Procedures;
- (rrr) **“Successful Bidder”** has the meaning given to it in paragraph 29;
- (sss) **“Teaser Letter”** means the process summary letters to be prepared by the Monitor, in consultation with the Companies, in connection with the SSP;
- (ttt) **“Top Aces”** means Top Aces Inc. (formerly known as Discovery Air Defence Services Inc.);
- (uuu) **“Top Aces Holdco”** means Top Aces Holdings Inc.;
- (vvv) **“Top Aces Holdco Shares”** means 253.83602 issued and outstanding Class A common shares in the capital of Top Aces Holdco, being 100% of the issued and outstanding shares of Top Aces Holdco owned by the Debtor;
- (www) **“Top Aces Property”** has the meaning given to it in the Introduction;
- (xxx) **“Top Aces SSP”** means the sale and solicitation process to solicit bids for the Top Aces Property as set out herein;
- (yyy) **“Top Aces Stalking Horse Agreement”** means the stalking horse agreement between the Debtor and the Top Aces Stalking Horse Bidder dated as of March 21, 2018 as the same may be amended, modified, improved or changed pursuant to the terms of this SSP for the purchase and sale of the Top Aces Property;
- (zzz) **“Top Aces Stalking Horse Bidder”** means, collectively, CEP IV Co-Investment Limited Partnership, Clairvest Equity Partners IV Limited Partnership, Clairvest

Equity Partnership IV-A Limited Partnership, DA Holdings Limited Partnership and G. John Krediet.

- (aaaa) **“Top Aces Transaction”** means the transaction contemplated by the Top Aces Stalking Horse Agreement or any other transaction under the Top Aces Stalking Horse Agreement or any superior bid pursuant to the process set out herein;
- (bbbb) **“Transactions”** means the Top Aces Transaction, Great Slave Transaction, Air Tindi Transaction and/or Discovery Mining Transaction.

**SCHEDULE "B"**

**Acknowledgement of the Sale and Solicitation Process**

**TO:** Discovery Air Inc.

**AND TO:** KSV Kofman Inc. in its capacity as monitor in the CCAA proceedings of Discovery Air Inc.

**RE:** Sale and Solicitation Process in respect of the following Transaction(s) [*check all that apply*]:

- Top Aces Transaction
  - Great Slave Transaction
  - Air Tindi Transaction
  - Discovery Mining Transaction
- 

The undersigned hereby acknowledges receipt of the sale and solicitation process approved by the Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) dated April 4, 2018 (the "SSP") and that compliance with the terms and provisions of the SSP is required in order to participate in the SSP and for any Final Bid (as defined in the SSP) to be considered by the Monitor.

This \_\_\_ day of \_\_\_\_\_, 2018.

**[Insert Interested Party name]**

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

Email Address:

**SCHEDULE "C" – ADDRESSES FOR NOTICES**

**KSV Kofman Inc.**

**Court-Appointed Monitor in Discovery Air Inc.'s CCAA proceedings**

150 King Street West  
Suite 2308, Box 42  
Toronto ON M5H 1J9

Attention: Bobby Kofman & David Sieradzki

Email: [bkofman@ksvadvisory.com](mailto:bkofman@ksvadvisory.com) / [dsieradzki@ksvadvisory.com](mailto:dsieradzki@ksvadvisory.com)

**-with copies to-**

**Goldman Sloan Nash & Haber LLP**

**Lawyers for the Debtor**

1600-480 University Avenue  
Toronto, ON M5G 1V2

Attention: Mario Forte and Jennifer Stam

Email: [forte@gsnh.com](mailto:forte@gsnh.com) / [stam@gsnh.com](mailto:stam@gsnh.com)

**Goodmans LLP**

**Lawyers for the Monitor**

Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto ON M5H 2S7

Attention: L. Joseph Latham and Bradley Wiffen

Email: [jlatham@goodmans.ca](mailto:jlatham@goodmans.ca) / [bwiffen@goodmans.ca](mailto:bwiffen@goodmans.ca)

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### SCHEDULE "D" - AUCTION PROCEDURES

1. The Auctions, if any, shall be conducted by the Monitor, at the offices of Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, ON, M5H 2S7 or such other location as the Monitor may choose in advance of the commencement of an Auction (the "Auction Location") commencing at 10:00 a.m. (Toronto time) on the following dates:

- Top Aces SSP: May 21, 2018
- Northern SSP: June 14, 2018

No later than 24 hours prior to the scheduled date of the Auction, the Monitor shall communicate any change in the Auction Location from the offices of Goodmans LLP to another location to all applicable Qualified Bidders in writing (including by e-mail) and post notice of such change in location at the offices of Goodmans LLP and on the Monitor's Website.

2. To the extent that the Monitor is to conduct multiple Auctions, it may choose to conduct such Auctions concurrently or consecutively in its discretion. Any delay or postponement of the commencement of an Auction shall be communicated in accordance with paragraph 27 of the SSP.

3. Unless otherwise ordered by the Court or consented to in writing by the Monitor, only the authorized representatives and professional advisors of the Monitor, the Companies and the applicable Qualified Bidders (including, for certainty, the applicable Stalking Horse Bidder) invited to an Auction shall be eligible to attend an Auction and make any Subsequent Bid (as defined below) at an Auction. Administrative personnel, including without limitation, a court reporter or similar official, will also attend an Auction at the invitation of the Monitor.

4. At an Auction, all applicable Qualified Bidders (including, for certainty, a Stalking Horse Bidder) shall be permitted to increase their Qualified Bids in accordance with the procedures set forth herein (each, a "Subsequent Bid"). All Subsequent Bids presented during an Auction shall be made and received in one room on an open basis. All Qualified Bidders participating in an Auction shall be entitled to be present for all bidding with the understanding that the true identity of each participating Qualified Bidder shall be fully disclosed to all other Qualified Bidders and that all material terms of each Subsequent Bid presented during an Auction will be fully disclosed to all Qualified Bidders throughout an Auction.

5. In order to participate in an Auction and submit a Subsequent Bid(s), all Qualified Bidders must have at least one individual representative with authority to bind

such Qualified Bidder present in person at the Auction Location during the Auction.

6. All proceedings at an Auction shall be transcribed by a person(s) designated by the Monitor.
7. At least two (2) days prior to an Auction, the Monitor will advise all Qualified Bidders for the applicable SSP which of the Qualified Bids (including a Stalking Horse Agreement) the Monitor has determined in its reasonable business judgment, after consultation with its advisors and the Companies, constitutes the superior Qualified Bid (the "**Starting Bid**").
8. The Starting Bid will be deemed to be the first bid at the Auction and bidding at the Auction will continue, in one or more rounds of bidding, so long as during each round, at least one Subsequent Bid is submitted by a Qualified Bidder that, in the reasonable business judgement of the Monitor (i) improves upon the then Leading Bid (as herein defined) and (ii) meets the Overbid requirement.
9. The first round of bidding at an Auction in respect of the following processes and transactions shall commence in increments to be established by the Monitor and communicated to all Qualified Bidders no later than 2 days prior to the commencement of the applicable Auction (each an "**Overbid**"). The Monitor in its sole discretion shall be entitled to change the amount of the applicable Overbid at the commencement of or in subsequent rounds of bidding at the Auction.
10. Credit Bids will be permitted at an Auction, provided that the validity of such secured indebtedness has been confirmed by the Monitor in its sole satisfaction prior to commencement of such Auction. Bidding shall continue until such time as the superior bid in any Auction is determined by the Monitor, in its reasonable business judgment, after consultation with its advisors. The Monitor, in its sole discretion, shall have the right to modify the bidding increments at the commencement of any round of the Auction. Insofar as a Subsequent Bid (including any Subsequent Bid by a Stalking Horse Bidder) includes a Credit Bid or the assumption of liabilities, the Monitor shall determine the value of the consideration provided by such Subsequent Bid presented at the Auction, and in making such determination shall take into account the amount and priority of any Credit Bid and any liabilities to be assumed by a Qualified Bidder.
11. After the first round of bidding and between each subsequent round of bidding, the Monitor shall announce the Subsequent Bid that the Monitor has determined in its reasonable business judgment, after consultation with its advisors, to be the superior bid (the "**Leading Bid**"). At the commencement of the Auction, the Starting Bid shall be the Leading Bid. A round of bidding will conclude after each participating Qualified Bidder has had an opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.

12. If no Qualified Bidder submits a Subsequent Bid (as determined by the Monitor) after a period of 30 minutes following the Monitor's acceptance of a Subsequent Bid as the Leading Bid, and provided that the Monitor chooses not to adjourn the subject Auction, the Leading Bid shall be the Accepted Bid, whereupon such Auction will be concluded. The Monitor shall have the right, but not the obligation, to extend the time period to submit a Subsequent Bid.
13. If an Auction is conducted, the Monitor shall determine, in its reasonable business judgment after consultation with its advisors, the next best Qualified Bid after the Accepted Bid (the "**Backup Bid**"). The Qualified Bidder that has submitted the Backup Bid will be designated as the "**Backup Bidder**". The Backup Bidder shall be required to keep its last submitted Subsequent Bid, or if it has not made a Subsequent Bid, its Qualified Bid (the "**Backup Bid**") open and irrevocable until the closing of the transaction with the Successful Bidder pursuant to the terms of the SSP.
14. At or during an Auction, the Monitor, after consultation with its advisors, may employ and announce additional procedural rules that are fair and reasonable under the circumstances for conducting such Auction; provided, however, that such rules are (a) not inconsistent with the SSP or these Auction Procedures, the CCAA, the SSP Order, or any other order of the Court entered in connection with the SSP or Auction Procedures and (b) disclosed to each Qualified Bidder at or during the Auction.



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")

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

Proceeding commenced at Toronto

**SSP APPROVAL ORDER**

**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2  
Fax: 416-597-6477

**Mario Forte (LSUC#: 27293F)**  
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**Jennifer Stam (LSUC#: #46735J)**  
Tel: 416.597.5017  
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Lawyers for the Applicant

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**TAB 7**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR. ) FRIDAY, THE 22<sup>ND</sup>  
 )  
JUSTICE HAINEY ) DAY OF JUNE, 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

**APPROVAL AND VESTING ORDER  
(Top Aces)**

THIS MOTION, made by Discovery Air Inc. (the "Applicant") for an order approving the sale transaction (the "Transaction") contemplated by an asset purchase agreement (the "Sale Agreement") between the Applicant and CEP IV Co-Investment Limited Partnership, Clairvest Equity Partners IV Limited Partnership, Clairvest Equity Partners IV-A Limited Partnership, DA Holdings Limited Partnership and G. John Krediet (collectively, the "Purchasers") dated March 21, 2018, and appended to the affidavit of Paul Bernards, sworn June 15, 2018, and vesting in the Purchasers the Applicant's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), 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 June 15, 2018, and the Exhibits thereto (the "**Bernards Affidavit**"), the Fourth Report of KSV Kofman Inc. ("**KSV**"), in its capacity as Monitor (the "**Monitor**") dated June 15, 2018 (the "**Fourth Report**"), filed, and on hearing the submissions of counsel for the Applicant, the Monitor, and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ■ sworn ■, 2018, filed:

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

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Applicant is hereby authorized and approved, with such minor amendments as the Applicant and the Purchasers, with the consent of the Monitor, may agree upon pursuant to the Sale Agreement. The Applicant, with the consent of the Monitor, is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchasers.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchasers substantially in the form attached as Schedule "A" hereto (the "Monitor's Certificate"), all of the Applicant's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchasers, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated March 21, 2018 (the "Initial Order"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registry system in any provinces or territories in Canada, including, without limitation, under the Civil Code of Quebec; and (iii) any Excluded Liabilities (as defined in the Sale Agreement) (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "B" or the Assumed Liabilities (as defined in the Sale Agreement)). This Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that all counterparties to any Contract (as defined in the Sale Agreement) to which Top Aces Holdings Inc. or Top Aces Inc. is a party or beneficiary, are

prohibited from exercising any right or remedy under such Contract, including, without limitation, any rights of termination, that arise as a result of, or otherwise relate to, the Transaction, the insolvency of the Applicant, the commencement of the Applicant's proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") or any relief granted in such proceedings.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to them in a manner which is in all material respects identical to the prior use of such information by the Applicant.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

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the vesting of the Purchased Assets in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, 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.

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant and 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 the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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**Schedule "A" - Form of Monitor's Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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 CERTIFICATE  
(Top Aces)**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated March 21, 2018, KSV Kofman Inc. was appointed as the monitor (the "Monitor") of Discovery Air Inc. (the "Applicant").

B. Pursuant to an Order of the Court dated ■, 2018, the Court approved the agreement of purchase and sale made as of March 21, 2018 (the "Sale Agreement") between the Applicant and CEP IV Co-Investment Limited Partnership, Clairvest Equity Partners IV Limited Partnership, Clairvest Equity Partnership IV-A Limited Partnership, DA Holdings Limited Partnership and G. John Krediet (collectively, the "Purchasers") and provided for the vesting in the Purchasers of the Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchasers of a certificate confirming: (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 6 of the Sale Agreement

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have been satisfied or waived by the Applicant and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchasers have paid and the Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchasers; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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

Per: \_\_\_\_\_  
Name:  
Title:



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### **Schedule "B" – Permitted Encumbrances**

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

1. Encumbrances imposed by Applicable Law that rank in priority as at the Closing Date to the Encumbrances created by or resulting from the Clairvest Security Documents, including, but not limited to: (i) any applicable Encumbrances in favour of mechanics, labourers, workmen, builders, contractors, suppliers of goods or services, or other similar Encumbrances incidental to construction, maintenance or repair operations; and (ii) any applicable purchase money security interests under applicable personal property security legislation.
2. Other than for any restrictions in respect of the Transaction, any transfer restrictions on the TA Holdings Shares or the TA Shares.

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

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**  
**(TOP ACES)**

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**Jennifer Stam (LSUC#: #46735J)**  
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Lawyers for the Applicant

# TAB 8



Holdings Limited Partnership and G. John Krediet (collectively, the "Purchasers") dated [DATE] March 21, 2018, and appended to the Report of the Receiver dated [DATE] (the "Report"), affidavit of Paul Bernards, sworn June 15, 2018, and vesting in the Purchaser Purchasers the Debtor Applicant's right, title and interest in and to the assets described Purchased Assets (as defined in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report Notice of Motion of the Applicant, the affidavit of Paul Bernards sworn June 15, 2018, and the Exhibits thereto (the "Bernards Affidavit"), the Fourth Report of KSV Kofman Inc. ("KSV"), in its capacity as Monitor (the "Monitor") dated June 15, 2018 (the "Fourth Report"), filed, and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING] Applicant, the Monitor, and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE], 2018, filed<sup>1</sup>:

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

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement by the Receiver<sup>3</sup> Applicant is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver Applicant and the Purchasers, with the consent of the Monitor, may agree upon pursuant to the Sale Agreement. The Applicant, with the consent of the Monitor, is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser Purchasers.

<sup>1</sup> This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

<sup>2</sup> In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

<sup>3</sup> In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

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3. 2.—THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver~~Monitor~~'s certificate to the Purchaser~~Purchasers~~ substantially in the form attached as Schedule "A" hereto (the "~~Receiver~~"Monitor's Certificate"), all of the Debtor~~Applicant's~~ right, title and interest in and to the Purchased Assets ~~described in the Sale Agreement [and listed on Schedule B hereto]~~<sup>4</sup> shall vest absolutely in the Purchaser~~Purchasers~~, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice [NAME] Hainey dated [DATE] March 21, 2018 (the "Initial Order"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registry system; and (iii) those Claims listed on Schedule C hereto in any provinces or territories in Canada, including, without limitation, under the Civil Code of Quebec; and (iii) any Excluded Liabilities (as defined in the Sale Agreement) (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) ~~and, for greater certainty, this "B" or the Assumed Liabilities (as defined in the Sale Agreement))~~. This Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. 3.—THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*<sup>6</sup>, the Land Registrar is hereby directed to enter the

<sup>4</sup> To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

<sup>5</sup> The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).

~~Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto, all counterparties to any Contract (as defined in the Sale Agreement) to which Top Aces Holdings Inc. or Top Aces Inc. is a party or beneficiary, are prohibited from exercising any right or remedy under such Contract, including, without limitation, any rights of termination, that arise as a result of, or otherwise relate to, the Transaction, the insolvency of the Applicant, the commencement of the Applicant's proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") or any relief granted in such proceedings.~~

~~5. 4-~~ THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver~~'~~Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

~~6. 5-~~ THIS COURT ORDERS AND DIRECTS the Receiver~~'~~Monitor to file with the Court a copy of the Receiver~~'~~Monitor's Certificate, forthwith after delivery thereof.

~~7. 6-~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver~~'~~Applicant is authorized and permitted to disclose and transfer to the Purchaser~~'~~Purchasers all human resources and payroll information in the Company~~'~~Applicant's records pertaining to the Debtor~~'~~Applicant's past and current employees, including personal information of those employees listed on Schedule "•" to the Sale Agreement. ~~The Purchaser.~~ The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to ~~it~~them in a

<sup>7</sup> ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

<sup>8</sup> ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

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manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~Applicant.

8. ~~7.~~ THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the ~~Debtor~~Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the ~~Debtor~~Applicant;

the vesting of the Purchased Assets in the ~~Purchaser~~Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Applicant and shall not be void or voidable by creditors of the ~~Debtor~~Applicant, 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.

~~8. — THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the ~~Receiver~~Applicant and ~~its~~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 ~~Receiver~~Applicant and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver and its~~Applicant and the Monitor ~~and their respective~~ agents in carrying out the terms of this Order.



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**Schedule "A—" - Form of Receiver~~Monitor~~'s Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

~~BETWEEN:-~~

~~PLAINTIFF~~

Plaintiff

~~—and—~~

~~DEFENDANT~~

Defendant

**RECEIVER~~MONITOR~~'S CERTIFICATE  
(Top Aces)**

**RECITALS**

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ March 21, 2018, KSV Kofman Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ (the "Debtor" monitor (the "Monitor") of Discovery Air Inc. (the "Applicant")).

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B. Pursuant to an Order of the Court dated ~~[DATE]~~, 2018, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ March 21, 2018 (the "~~Sale Agreement~~") ~~between the Receiver [Debtor] and [NAME OF PURCHASER] (the "Purchaser")~~ between the Applicant and CEP IV Co-Investment Limited Partnership, Clairvest Equity Partners IV Limited Partnership, Clairvest Equity Partnership IV-A Limited Partnership, DA Holdings Limited Partnership and G. John Krediet (collectively, the "Purchasers") and provided for the vesting in the ~~Purchaser~~ Purchasers of the ~~Debtor~~ Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the ~~Receiver~~ Monitor to the ~~Purchaser~~ Purchasers of a certificate confirming: (i) the payment by the ~~Purchaser~~ Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section~~ Article 6 of the Sale Agreement have been satisfied or waived by the ~~Receiver~~ Applicant and the ~~Purchaser~~ Purchasers; and (iii) the Transaction has been completed to the satisfaction of the ~~Receiver~~ Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE ~~RECEIVER~~ MONITOR CERTIFIES the following:

1. The ~~Purchaser~~ Purchasers have paid and the ~~Receiver~~ Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in ~~section~~ Article 6 of the Sale Agreement have been satisfied or waived by the ~~Receiver~~ Applicant and the ~~Purchaser~~ Purchasers; and
3. The Transaction has been completed to the satisfaction of the ~~Receiver~~ Monitor.
4. This Certificate was delivered by the ~~Receiver~~ Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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~~[NAME OF RECEIVER]~~ **KSV KOFMAN**  
**INC.**, in its capacity as Receiver of the  
~~undertaking, property and assets of~~  
~~[DEBTOR]~~ **Monitor of Discovery Air Inc.**, and  
not in its personal capacity

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

Name:

Title:

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**Schedule “B—Purchased Assets” – Permitted Encumbrances**

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

1. Encumbrances imposed by Applicable Law that rank in priority as at the Closing Date to the Encumbrances created by or resulting from the Clairvest Security Documents, including, but not limited to: (i) any applicable Encumbrances in favour of mechanics, labourers, workmen, builders, contractors, suppliers of goods or services, or other similar Encumbrances incidental to construction, maintenance or repair operations; and (ii) any applicable purchase money security interests under applicable personal property security legislation.
2. Other than for any restrictions in respect of the Transaction, any transfer restrictions on the TA Holdings Shares or the TA Shares.

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. (the "APPLICANT")

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER  
(TOP ACES)

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Lawyers for the Applicant

Schedule C—Claims to be deleted and expunged from title to Real Property

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~~Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property~~

~~(unaffected by the Vesting Order)~~

Document comparison by Workshare 9.5 on June-15-18 1:27:35 PM

<b>Input:</b>	
Document 1 ID	file://U:\MForte\Discovery Air Inc. - CCAA Proceedings 100546.0001\Sale Approval Motion\Approval and Vesting Order\Model Order (Approval and Vesting).doc
Description	Model Order (Approval and Vesting)
Document 2 ID	file://U:\MForte\Discovery Air Inc. - CCAA Proceedings 100546.0001\Sale Approval Motion\Approval and Vesting Order\Approval and Vesting Order (TA).doc
Description	Approval and Vesting Order (TA)
Rendering set	Standard

<b>Legend:</b>	
<u>Insertion</u>	
<u>Deletion</u>	
<u>Moved from</u>	
<u>Moved to</u>	
<u>Style change</u>	
<u>Format change</u>	
<u>Moved deletion</u>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	154
Deletions	134



# TAB 9

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR. ) FRIDAY, THE 22<sup>ND</sup>  
 )  
JUSTICE HAINEY ) DAY OF JUNE, 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

**APPROVAL AND VESTING ORDER  
(Air Tindi)**

THIS MOTION, made by Discovery Air Inc. (the "Applicant") for an order approving the sale transaction (the "Transaction") contemplated by an asset purchase agreement (the "Sale Agreement") between the Applicant and 10671541 Canada Inc. (the "Purchaser") dated March 21, 2018, and appended to the affidavit of Paul Bernards, sworn June 15, 2018, and vesting in the Purchaser the Applicant's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), 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 June 15, 2018, and the Exhibits thereto (the "**Bernards Affidavit**"), the Fourth Report of KSV Kofman Inc. ("**KSV**"), in its capacity as Monitor (the "**Monitor**") dated June 15, 2018 (the "**Fourth Report**"), filed, and on hearing the submissions of counsel for the Applicant, the Monitor, and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ■ sworn ■, 2018, filed:

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

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Applicant is hereby authorized and approved, with such minor amendments as the Applicant and the Purchaser, with the consent of the Monitor, may agree upon pursuant to the Sale Agreement. The Applicant, with the consent of the Monitor, is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Monitor's Certificate"), all of the Applicant's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated March 21, 2018 (the "Initial Order"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registry system in any provinces or territories in Canada, including, without limitation, under the Civil Code of Quebec; and (iii) any Excluded Liabilities (as defined in the Sale Agreement) (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "B" or the Assumed Liabilities (as defined in the Sale Agreement)). This Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that all counterparties to any Contract (as defined in the Sale Agreement) to which Air Tindi Ltd. is a party or beneficiary, are prohibited from exercising any

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right or remedy under such Contract, including, without limitation, any rights of termination, that arise as a result of, or otherwise relate to, the Transaction, the insolvency of the Applicant, the commencement of the Applicant's proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") or any relief granted in such proceedings (including, without limitation, the extension of a limited stay of proceedings to the Non-Applicant Subsidiaries (as defined in the Initial Order).

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicant.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and

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- (c) any assignment in bankruptcy made in respect of the Applicant;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, 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.

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant and 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 the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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**Schedule "A" - Form of Monitor's Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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 CERTIFICATE  
(Air Tindi)**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Haaney of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated March 21, 2018, KSV Kofman Inc. was appointed as the monitor (the "Monitor") of Discovery Air Inc. (the "Applicant").

B. Pursuant to an Order of the Court dated ■, 2018, the Court approved the agreement of purchase and sale made as of March 21, 2018 (the "Sale Agreement") between the Applicant and 10671541 Canada Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

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C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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

Per: \_\_\_\_\_  
Name:  
Title:

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### **Schedule "B" – Permitted Encumbrances**

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

1. Encumbrances imposed by Applicable Law that rank in priority as at the Closing Date to the Encumbrances created by or resulting from the Clairvest Security Documents, including, but not limited to: (i) any applicable Encumbrances in favour of mechanics, labourers, workmen, builders, contractors, suppliers of goods or services, or other similar Encumbrances incidental to construction, maintenance or repair operations; and (ii) any applicable purchase money security interests under applicable personal property security legislation.
2. Other than for any restrictions in respect of the Transaction, any transfer restrictions on the TA Holdings Shares or the TA Shares.





**TAB 10**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE \_\_\_\_\_ MR. ) WEEKDAYFRIDAY, THE #22<sup>ND</sup> \_\_\_\_\_  
JUSTICE \_\_\_\_\_ HANEY ) DAY OF MONTHJUNE, 20YR2018

**B E T W E E N :-**

**PLAINTIFF**

Plaintiff

**-and-**

**DEFENDANT**

Defendant

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

**APPROVAL AND VESTING ORDER  
(Air Tindi)**

THIS MOTION, made by [RECEIVER'S NAME] in its capacity as the Court appointed receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor" Discovery Air Inc. (the "Applicant")) for an order approving the sale transaction (the "Transaction") contemplated by an asset purchase agreement of purchase and sale (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER] (the "Applicant and 10671541 Canada Inc. (the "Purchaser")") dated [DATE] March 21, 2018, and appended to the Report of the Receiver dated [DATE] (the "Report"), affidavit of Paul Bernards, sworn June 15,

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2018, and vesting in the Purchaser the ~~Debtor~~Applicant's right, title and interest in and to the assets ~~described~~Purchased Assets (as defined in the Sale Agreement (the "Purchased Assets")), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the ~~Report~~Notice of Motion of the Applicant, the affidavit of Paul Bernards sworn June 15, 2018, and the Exhibits thereto (the "Bernards Affidavit"), the Fourth Report of KSV Kofman Inc. ("KSV"), in its capacity as Monitor (the "Monitor") dated June 15, 2018 (the "Fourth Report"), filed, and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~Applicant, the Monitor, and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~[NAME] sworn ~~[DATE]~~[DATE], 2018, filed<sup>1</sup>:

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

2. ~~1.~~ THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement by the Receiver<sup>3</sup>Applicant is hereby authorized and approved, with such minor amendments as the Receiver ~~may deem necessary.~~ The ReceiverApplicant and the Purchaser, with the consent of the Monitor, may agree upon pursuant to the Sale Agreement. The Applicant, with the consent of the Monitor, is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. ~~2.~~ THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver~~Monitor's~~Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Receiver"Monitor's Certificate"), all of the ~~Debtor~~Applicant's right, title and

<sup>1</sup>This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

<sup>2</sup>In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

<sup>3</sup>In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

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interest in and to the Purchased Assets ~~described in the Sale Agreement [and listed on Schedule B hereto]~~<sup>4</sup> shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~ Hainey dated ~~[DATE]~~ March 21, 2018 (the "Initial Order"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registry system; and (iii) those Claims listed on Schedule C hereto in any provinces or territories in Canada, including, without limitation, under the Civil Code of Quebec; and (iii) any Excluded Liabilities (as defined in the Sale Agreement) (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) ~~and, for greater certainty, this "B" or the Assumed Liabilities (as defined in the Sale Agreement))~~. This Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. ~~3.~~ THIS COURT ORDERS that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]~~ ~~[Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]~~<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto all counterparties to any Contract (as

<sup>4</sup> To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

<sup>5</sup> The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).

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defined in the Sale Agreement) to which Air Tindi Ltd. is a party or beneficiary, are prohibited from exercising any right or remedy under such Contract, including, without limitation, any rights of termination, that arise as a result of, or otherwise relate to, the Transaction, the insolvency of the Applicant, the commencement of the Applicant's proceedings under the Companies' Creditors Arrangement Act (Canada) (the "CCAA") or any relief granted in such proceedings (including, without limitation, the extension of a limited stay of proceedings to the Non-Applicant Subsidiaries (as defined in the Initial Order).

5.     4-THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver'Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6.     5-THIS COURT ORDERS AND DIRECTS the Receiver'Monitor to file with the Court a copy of the Receiver'Monitor's Certificate, forthwith after delivery thereof.

7.     6-THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver'Applicant is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company'Applicant's records pertaining to the Debtor'Applicant's past and current employees, ~~including personal information of those employees listed on Schedule "●" to the Sale Agreement.~~ The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor'Applicant.

8.     7-THIS COURT ORDERS that, notwithstanding:

<sup>7</sup>The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

<sup>8</sup>This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the ~~Debtor~~Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the ~~Debtor~~Applicant;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Applicant and shall not be void or voidable by creditors of the ~~Debtor~~Applicant, 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.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the ~~Receiver~~Applicant and ~~its~~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 ~~Receiver~~Applicant and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver and its~~Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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**Schedule "A" - Form of Receiver Monitor's Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

~~BETWEEN:-~~

~~PLAINTIFF~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

**RECEIVER MONITOR'S CERTIFICATE  
(Air Tindi)**

**RECITALS**

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ March 21, 2018, KSV Kofman Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ (the "Debtor") monitor (the "Monitor") of Discovery Air Inc. (the "Applicant").



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B. Pursuant to an Order of the Court dated [~~DATE~~], 2018, the Court approved the agreement of purchase and sale made as of [~~DATE OF AGREEMENT~~] March 21, 2018 (the "~~Sale Agreement~~") between the Receiver [~~Debtor~~] and [~~NAME OF PURCHASER~~] (the "~~Applicant and 10671541 Canada Inc. (the~~ "Purchaser"") and provided for the vesting in the Purchaser of the ~~Debtor~~ Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ~~Article 6~~ Article 6 of the Sale Agreement have been satisfied or waived by the Receiver Applicant and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Receiver Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ~~Article 6~~ Article 6 of the Sale Agreement have been satisfied or waived by the Receiver Applicant and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver Monitor.
4. This Certificate was delivered by the Receiver Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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~~[NAME OF RECEIVER]~~ **KSV KOEMAN**  
**INC.**, in its capacity as Receiver of the  
~~undertaking, property and assets of~~  
~~[DEBTOR]~~ **Monitor of Discovery Air Inc.**, and  
not in its personal capacity

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

Name:

Title:

**Schedule "~~B—Purchased Assets~~" – Permitted Encumbrances**

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Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

1. Encumbrances imposed by Applicable Law that rank in priority as at the Closing Date to the Encumbrances created by or resulting from the Clairvest Security Documents, including, but not limited to: (i) any applicable Encumbrances in favour of mechanics, labourers, workmen, builders, contractors, suppliers of goods or services, or other similar Encumbrances incidental to construction, maintenance or repair operations; and (ii) any applicable purchase money security interests under applicable personal property security legislation.
2. Other than for any restrictions in respect of the Transaction, any transfer restrictions on the TA Holdings Shares or the TA Shares.

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. (the "APPLICANT")

Court File No.: CV-18-59430-0001

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

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER  
(Air Trade)**

**GOLDMAN SLOAN NASH & HABER LLP**

480 University Avenue, Suite 1600  
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Lawyers for the Applicant

Schedule C—Claims to be deleted and expunged from title to Real Property

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**Schedule D — Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property  
(unaffected by the Vesting Order)**

\_\_\_\_\_

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Document comparison by Workshare 9.5 on June-15-18 1:24:32 PM

<b>Input:</b>	
Document 1 ID	file://U:\MForte\Discovery Air Inc. - CCAA Proceedings 100546.0001\Sale Approval Motion\Approval and Vesting Order\Model Order (Approval and Vesting).doc
Description	Model Order (Approval and Vesting)
Document 2 ID	file://U:\MForte\Discovery Air Inc. - CCAA Proceedings 100546.0001\Sale Approval Motion\Approval and Vesting Order\Approval and Vesting Order (Air Tindi).doc
Description	Approval and Vesting Order (Air Tindi)
Rendering set	Standard

<b>Legend:</b>	
<u>Insertion</u>	
<del>Deletion</del>	
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Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	145
Deletions	126

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# TAB 11

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR. ) FRIDAY, THE 22<sup>ND</sup>  
 )  
JUSTICE HAINEY ) DAY OF JUNE, 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

**APPROVAL AND VESTING ORDER  
(Great Slave Helicopters)**

THIS MOTION, made by Discovery Air Inc. (the "Applicant") for an order approving the sale transaction (the "Transaction") contemplated by an asset purchase agreement (the "Sale Agreement") between the Applicant and 10671541 Canada Inc. (the "Purchaser") dated March 21, 2018, and appended to the affidavit of Paul Bernards, sworn June 15, 2018, and vesting in the Purchaser the Applicant's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), 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 June 15, 2018, and the Exhibits thereto (the "**Bernards Affidavit**"), the Fourth Report of KSV Kofman Inc. ("**KSV**"), in its capacity as Monitor (the "**Monitor**") dated June 15, 2018 (the "**Fourth Report**"), filed, and on hearing the submissions of counsel for the Applicant, the Monitor, and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ■ sworn ■, 2018, filed:



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

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Applicant is hereby authorized and approved, with such minor amendments as the Applicant and the Purchaser, with the consent of the Monitor, may agree upon pursuant to the Sale Agreement. The Applicant, with the consent of the Monitor, is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Monitor's Certificate"), all of the Applicant's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated March 21, 2018 (the "Initial Order"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registry system in any provinces or territories in Canada, including, without limitation, under the Civil Code of Quebec; and (iii) any Excluded Liabilities (as defined in the Sale Agreement) (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "B" or the Assumed Liabilities (as defined in the Sale Agreement)). This Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that all counterparties to any Contract (as defined in the Sale Agreement) to which Great Slave Helicopters Ltd. is a party or beneficiary, are prohibited from

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exercising any right or remedy under such Contract, including, without limitation, any rights of termination, that arise as a result of, or otherwise relate to, the Transaction, the insolvency of the Applicant, the commencement of the Applicant's proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") or any relief granted in such proceedings (including, without limitation, the extension of a limited stay of proceedings to the Non-Applicant Subsidiaries (as defined in the Initial Order).

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicant.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and

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- (c) any assignment in bankruptcy made in respect of the Applicant;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, 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.

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant and 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 the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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**Schedule "A" - Form of Monitor's Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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 CERTIFICATE  
(Great Slave Helicopters)**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated March 21, 2018, KSV Kofman Inc. was appointed as the monitor (the "Monitor") of Discovery Air Inc. (the "Applicant").

B. Pursuant to an Order of the Court dated ■, 2018, the Court approved the agreement of purchase and sale made as of March 21, 2018 (the "Sale Agreement") between the Applicant and 10671541 Canada Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

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C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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

Per: \_\_\_\_\_  
Name:  
Title:

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### **Schedule "B" – Permitted Encumbrances**

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

1. Encumbrances imposed by Applicable Law that rank in priority as at the Closing Date to the Encumbrances created by or resulting from the Clairvest Security Documents, including, but not limited to: (i) any applicable Encumbrances in favour of mechanics, labourers, workmen, builders, contractors, suppliers of goods or services, or other similar Encumbrances incidental to construction, maintenance or repair operations; and (ii) any applicable purchase money security interests under applicable personal property security legislation.
2. Other than for any restrictions in respect of the Transaction, any transfer restrictions on the TA Holdings Shares or the TA Shares.

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

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**  
(Great Slave Helicopters)

**GOLDMAN SLOAN NASH & HABER LLP**  
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Email: [stam@gsnh.com](mailto:stam@gsnh.com)

Lawyers for the Applicant

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# TAB 12



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE \_\_\_\_\_ MR. )  
 )  
JUSTICE \_\_\_\_\_ HAINEX )

WEEKDAY FRIDAY, THE # 22<sup>ND</sup> \_\_\_\_\_  
DAY OF MONTH JUNE, 20 YR 2018

~~BETWEEN:-~~

~~PLAINTIFF~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

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

**APPROVAL AND VESTING ORDER  
(Great Slave Helicopters)**

THIS MOTION, made by [~~RECEIVER'S NAME~~] in its capacity as the Court appointed receiver (the "Receiver") of the undertaking, property and assets of [~~DEBTOR~~] (the "~~Debtor~~" Discovery Air Inc. (the "Applicant")) for an order approving the sale transaction (the "~~Transaction~~") contemplated by an asset purchase agreement of purchase and sale (the "~~Sale Agreement~~") between the Receiver and [~~NAME OF PURCHASER~~] (the "Applicant and 10671541 Canada Inc. (the "Purchaser")") dated [~~DATE~~] March 21, 2018, and appended to the Report of the Receiver dated [~~DATE~~] (the "~~Report~~"), affidavit of Paul Bernards, sworn June 15,

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~~2018~~, and vesting in the Purchaser the ~~Debtor~~Applicant's right, title and interest in and to the assets ~~described~~Purchased Assets (as defined in the Sale Agreement (the "Purchased Assets")), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the ~~Report~~Notice of Motion of the Applicant, the affidavit of Paul Bernards sworn June 15, 2018, and the Exhibits thereto (the "Bernards Affidavit"), the Fourth Report of KSV Kofman Inc. ("KSV"), in its capacity as Monitor (the "Monitor") dated June 15, 2018 (the "Fourth Report"), filed, and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~Applicant, the Monitor, and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~[NAME] sworn ~~[DATE]~~[DATE], 2018, filed<sup>1</sup>:

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

2. ~~1.~~ THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement by the Receiver<sup>3</sup>Applicant is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The ReceiverApplicant and the Purchaser, with the consent of the Monitor, may agree upon pursuant to the Sale Agreement. The Applicant, with the consent of the Monitor, is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. ~~2.~~ THIS COURT ORDERS AND DECLARES that upon the delivery of a ReceiverMonitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Receiver"Monitor's Certificate"), all of the DebtorApplicant's right, title and

<sup>1</sup>This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

<sup>2</sup>In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

<sup>3</sup>In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

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interest in and to the Purchased Assets ~~described in the Sale Agreement [and listed on Schedule B hereto]~~<sup>4</sup> shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~ Hainey dated ~~[DATE]~~ March 21, 2018 (the "Initial Order"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registry system; and (iii) those Claims listed on Schedule C hereto in any provinces or territories in Canada, including, without limitation, under the Civil Code of Quebec; and (iii) any Excluded Liabilities (as defined in the Sale Agreement) (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) ~~and, for greater certainty, this "B" or the Assumed Liabilities (as defined in the Sale Agreement)).~~ This Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. ~~3.~~ THIS COURT ORDERS that ~~upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]~~<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto all counterparties to any Contract (as

<sup>4</sup> To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

<sup>5</sup> The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).

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defined in the Sale Agreement) to which Great Slave Helicopters Ltd. is a party or beneficiary, are prohibited from exercising any right or remedy under such Contract, including, without limitation, any rights of termination, that arise as a result of, or otherwise relate to, the Transaction, the insolvency of the Applicant, the commencement of the Applicant's proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") or any relief granted in such proceedings (including, without limitation, the extension of a limited stay of proceedings to the Non-Applicant Subsidiaries (as defined in the Initial Order).

5. 4.—THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver~~Monitor's~~ Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. 5.—THIS COURT ORDERS AND DIRECTS the Receiver~~Monitor~~ to file with the Court a copy of the Receiver~~Monitor's~~ Certificate, forthwith after delivery thereof.

7. 6.—THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver~~Applicant~~ is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company~~Applicant's~~ records pertaining to the Debtor~~Applicant's~~ past and current employees, ~~including personal information of those employees listed on Schedule "●" to the Sale Agreement.~~ The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor~~Applicant~~.

8. 7.—THIS COURT ORDERS that, notwithstanding:

<sup>7</sup> ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

<sup>8</sup> ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

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- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the ~~Debtor~~Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the ~~Debtor~~Applicant;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Applicant and shall not be void or voidable by creditors of the ~~Debtor~~Applicant, 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.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the ~~Receiver~~Applicant and ~~its~~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 ~~Receiver~~Applicant and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver and its~~Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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**Schedule "A" - Form of ReceiverMonitor's Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

~~BETWEEN:~~

~~PLAINTIFF~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

**RECEIVERMONITOR'S CERTIFICATE**  
**(Great Slave Helicopters)**

**RECITALS**

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ March 21, 2018, KSV Kofman Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ (the "Debtor") monitor (the "Monitor") of Discovery Air Inc. (the "Applicant").

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B. Pursuant to an Order of the Court dated [~~DATE~~], 2018, the Court approved the agreement of purchase and sale made as of [~~DATE OF AGREEMENT~~] March 21, 2018 (the "Sale Agreement") between the Receiver [~~Debtor~~] and [~~NAME OF PURCHASER~~] (the "Applicant and 10671541 Canada Inc. (the 'Purchaser')") and provided for the vesting in the Purchaser of the ~~Debtor~~ Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ~~•~~ Article 6 of the Sale Agreement have been satisfied or waived by the Receiver Applicant and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Receiver Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ~~•~~ Article 6 of the Sale Agreement have been satisfied or waived by the Receiver Applicant and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver Monitor.
4. This Certificate was delivered by the Receiver Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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~~[NAME OF RECEIVER]~~ KSV KOEMAN  
INC., in its capacity as Receiver of the  
~~undertaking, property and assets of~~  
~~[DEBTOR]~~ Monitor of Discovery Air Inc., and  
not in its personal capacity

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

Name:

Title:



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**Schedule "~~B—Purchased Assets~~" – Permitted Encumbrances**

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

1. Encumbrances imposed by Applicable Law that rank in priority as at the Closing Date to the Encumbrances created by or resulting from the Clairvest Security Documents, including, but not limited to: (i) any applicable Encumbrances in favour of mechanics, labourers, workmen, builders, contractors, suppliers of goods or services, or other similar Encumbrances incidental to construction, maintenance or repair operations; and (ii) any applicable purchase money security interests under applicable personal property security legislation.
2. Other than for any restrictions in respect of the Transaction, any transfer restrictions on the TA Holdings Shares or the TA Shares.

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. (the "APPLICANT")

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER  
(Great Slave Helicopters)

GOLDMAN SLOAN NASH & HABER LLP

480 University Avenue, Suite 1600

Toronto, Ontario M5G 1V2

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Lawyers for the Applicant

~~Schedule C - Claims to be deleted and expunged from title to Real Property~~

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**Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property  
(unaffected by the Vesting Order)**

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Document comparison by Workshare 9.5 on June-15-18 1:30:08 PM

<b>Input:</b>	
Document 1 ID	file://U:\MForte\Discovery Air Inc. - CCAA Proceedings 100546.0001\Sale Approval Motion\Approval and Vesting Order\Model Order (Approval and Vesting).doc
Description	Model Order (Approval and Vesting)
Document 2 ID	file://U:\MForte\Discovery Air Inc. - CCAA Proceedings 100546.0001\Sale Approval Motion\Approval and Vesting Order\Approval and Vesting Order (GSH).doc
Description	Approval and Vesting Order (GSH)
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Padding cell	

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Insertions	145
Deletions	126

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# TAB 13



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

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Applicant is hereby authorized and approved, with such minor amendments as the Applicant and the Purchaser, with the consent of the Monitor, may agree upon pursuant to the Sale Agreement. The Applicant, with the consent of the Monitor, is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "Monitor's Certificate"), all of the Applicant's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated March 21, 2018 (the "Initial Order"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registry system in any provinces or territories in Canada, including, without limitation, under the Civil Code of Quebec; and (iii) any Excluded Liabilities (as defined in the Sale Agreement) (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "B" or the Assumed Liabilities (as defined in the Sale Agreement)). This Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that all counterparties to any Contract (as defined in the Sale Agreement) to which Discovery Mining Services Ltd. is a party or beneficiary, are prohibited



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from exercising any right or remedy under such Contract, including, without limitation, any rights of termination, that arise as a result of, or otherwise relate to, the Transaction, the insolvency of the Applicant, the commencement of the Applicant's proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") or any relief granted in such proceedings (including, without limitation, the extension of a limited stay of proceedings to the Non-Applicant Subsidiaries (as defined in the Initial Order).

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicant.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and

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- (c) any assignment in bankruptcy made in respect of the Applicant;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, 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.

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicant and 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 the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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**Schedule "A" - Form of Monitor's Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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 CERTIFICATE  
(Discovery Mining Services)**

**RECITALS**

A. Pursuant to an Order of the Honourable Haaney of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated March 21, 2018, KSV Kofman Inc. was appointed as the monitor (the "Monitor") of Discovery Air Inc. (the "Applicant").

B. Pursuant to an Order of the Court dated ■, 2018, the Court approved the agreement of purchase and sale made as of March 21, 2018 (the "Sale Agreement") between the Applicant and 10671541 Canada Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

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C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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

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

Name:

Title:

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### **Schedule "B" – Permitted Encumbrances**

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

1. Encumbrances imposed by Applicable Law that rank in priority as at the Closing Date to the Encumbrances created by or resulting from the Clairvest Security Documents, including, but not limited to: (i) any applicable Encumbrances in favour of mechanics, labourers, workmen, builders, contractors, suppliers of goods or services, or other similar Encumbrances incidental to construction, maintenance or repair operations; and (ii) any applicable purchase money security interests under applicable personal property security legislation.
2. Other than for any restrictions in respect of the Transaction, any transfer restrictions on the TA Holdings Shares or the TA Shares.

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

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**  
(Discovery Mining Services)

**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2  
Fax: 416-597-6477

**Mario Forte (LSUC#: 27293F)**  
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**Jennifer Stam (LSUC#: #46735J)**  
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Email: [stam@gsnh.com](mailto:stam@gsnh.com)

Lawyers for the Applicant

# TAB 14

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE \_\_\_\_\_MR. ) WEEKDAYFRIDAY, THE #22<sup>ND</sup> \_\_\_\_\_  
JUSTICE \_\_\_\_\_HAINES ) DAY OF MONTHJUNE, 20YR2018

~~BETWEEN:-~~

~~PLAINTIFF~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

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

**APPROVAL AND VESTING ORDER  
(Discovery Mining Services)**

THIS MOTION, made by [~~RECEIVER'S NAME~~] in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of [~~DEBTOR~~] (the "~~Debtor~~"Discovery Air Inc. (the "Applicant")) for an order approving the sale transaction (the "~~Transaction~~")) contemplated by an asset purchase agreement of purchase and sale (the "Sale Agreement")) between the Receiver and [~~NAME OF PURCHASER~~] (the "Applicant and 10671541 Canada Inc. (the "Purchaser")") dated [~~DATE~~]March 21, 2018, and appended to the Report of the Receiver dated [~~DATE~~] (the "Report"),affidavit of Paul Bernards, sworn June 15,



2018, and vesting in the Purchaser the ~~Debtor~~Applicant's right, title and interest in and to the assets described Purchased Assets (as defined in the Sale Agreement (the "Purchased Assets")), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the ~~Report~~Notice of Motion of the Applicant, the affidavit of Paul Bernards sworn June 15, 2018, and the Exhibits thereto (the "**Bernards Affidavit**"), the Fourth Report of KSV Kofman Inc. ("**KSV**"), in its capacity as Monitor (the "**Monitor**") dated June 15, 2018 (the "**Fourth Report**"), filed, and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~Applicant, the Monitor, and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~■ sworn ~~[DATE]~~■, 2018, filed<sup>1</sup>:

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

2. ~~1.~~ THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement by the Receiver<sup>3</sup>Applicant is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. ~~The Receiver~~Applicant and the Purchaser, with the consent of the Monitor, may agree upon pursuant to the Sale Agreement. The Applicant, with the consent of the Monitor, is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. ~~2.~~ THIS COURT ORDERS AND DECLARES that upon the delivery of a ReceiverMonitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "~~Receiver~~"Monitor's Certificate"), all of the DebtorApplicant's right, title and

<sup>1</sup>This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

<sup>2</sup>In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

<sup>3</sup>In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

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interest in and to the Purchased Assets described in the Sale Agreement [and listed on Schedule B hereto]<sup>4</sup> shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice [NAME] Hainey dated [DATE] March 21, 2018 (the "Initial Order"); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registry system; and (iii) those Claims listed on Schedule C hereto in any provinces or territories in Canada, including, without limitation, under the Civil Code of Quebec; and (iii) any Excluded Liabilities (as defined in the Sale Agreement) (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this "B" or the Assumed Liabilities (as defined in the Sale Agreement)). This Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. ~~3-~~ THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*]<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto all counterparties to any Contract (as

<sup>4</sup> To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

<sup>5</sup> The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).

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defined in the Sale Agreement) to which Discovery Mining Services Ltd. is a party or beneficiary, are prohibited from exercising any right or remedy under such Contract, including, without limitation, any rights of termination, that arise as a result of, or otherwise relate to, the Transaction, the insolvency of the Applicant, the commencement of the Applicant's proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") or any relief granted in such proceedings (including, without limitation, the extension of a limited stay of proceedings to the Non-Applicant Subsidiaries (as defined in the Initial Order).

5. 4.—THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver~~Monitor~~'s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale<sup>8</sup>, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. 5.—THIS COURT ORDERS AND DIRECTS the Receiver~~Monitor~~ to file with the Court a copy of the Receiver~~Monitor~~'s Certificate, forthwith after delivery thereof.

7. 6.—THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver~~Applicant~~ is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company~~Applicant~~'s records pertaining to the Debtor~~Applicant~~'s past and current employees, ~~including personal information of those employees listed on Schedule "•" to the Sale Agreement.~~ The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor~~Applicant~~.

8. 7.—THIS COURT ORDERS that, notwithstanding:

<sup>7</sup>The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

<sup>8</sup>This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

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- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the ~~Debtor~~Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the ~~Debtor~~Applicant;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Applicant and shall not be void or voidable by creditors of the ~~Debtor~~Applicant, 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.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

9. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the ~~Receiver~~Applicant and ~~its~~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 ~~Receiver~~Applicant and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver and its~~Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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**Schedule "A" - Form of Receiver~~Monitor~~'s Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

~~BETWEEN:~~

~~PLAINTIFF~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

**RECEIVER~~MONITOR~~'S CERTIFICATE  
(Discovery Mining Services)**

**RECITALS**

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Hainey of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ March 21, 2018, KSV Kofman Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ (the "Debtor" monitor (the "Monitor") of Discovery Air Inc. (the "Applicant")).

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B. Pursuant to an Order of the Court dated ~~{[DATE]}~~, 2018, the Court approved the agreement of purchase and sale made as of ~~{[DATE OF AGREEMENT]}~~ March 21, 2018 (the "Sale Agreement") between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ (the "Applicant and 10671541 Canada Inc. (the 'Purchaser')") and provided for the vesting in the Purchaser of the ~~Debtor~~ Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ~~• Article 6~~ of the Sale Agreement have been satisfied or waived by the Receiver Applicant and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Receiver Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ~~• Article 6~~ of the Sale Agreement have been satisfied or waived by the Receiver Applicant and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver Monitor.
4. This Certificate was delivered by the Receiver Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

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~~[NAME OF RECEIVER]~~ **KSV KOEMAN**  
**INC.**, in its capacity as Receiver of the  
~~undertaking, property and assets of~~  
~~[DEBTOR]~~ **Monitor of Discovery Air Inc.**, and  
not in its personal capacity

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

Name:

Title:

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**Schedule "B—Purchased Assets" – Permitted Encumbrances**

Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

1. Encumbrances imposed by Applicable Law that rank in priority as at the Closing Date to the Encumbrances created by or resulting from the Clairvest Security Documents, including, but not limited to: (i) any applicable Encumbrances in favour of mechanics, labourers, workmen, builders, contractors, suppliers of goods or services, or other similar Encumbrances incidental to construction, maintenance or repair operations; and (ii) any applicable purchase money security interests under applicable personal property security legislation.
2. Other than for any restrictions in respect of the Transaction, any transfer restrictions on the TA Holdings Shares or the TA Shares.



**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. (the "APPLICANT")**

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

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

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER  
(Discovery Mining Services)**

**GOLDMAN SLOAN NASH & HABER LLP**  
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~~Schedule C — Claims to be deleted and expunged from title to Real Property~~

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**Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property  
(unaffected by the Vesting Order)**

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Document comparison by Workshare 9.5 on June-15-18 1:31:17 PM

<b>Input:</b>	
Document 1 ID	file://U:\MForte\Discovery Air Inc. - CCAA Proceedings 100546.0001\Sale Approval Motion\Approval and Vesting Order\Model Order (Approval and Vesting).doc
Description	Model Order (Approval and Vesting)
Document 2 ID	file://U:\MForte\Discovery Air Inc. - CCAA Proceedings 100546.0001\Sale Approval Motion\Approval and Vesting Order\Approval and Vesting Order (DMS).doc
Description	Approval and Vesting Order (DMS)
Rendering set	Standard

<b>Legend:</b>	
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Split/Merged cell	
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<b>Statistics:</b>	
	Count
Insertions	145
Deletions	126



# TAB 15

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) FRIDAY, THE 22<sup>ND</sup>  
 )  
JUSTICE HAINEY ) DAY OF JUNE, 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

**ORDER**

**(Stay Extension and Monitor's Reports, Activities and Fees)**

**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*, approving certain asset purchase agreements and vesting the assets in the purchasers, extending the stay of proceedings herein and approving the Monitor's Reports (defined below), activities, fees and disbursements 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 June 15, 2018, and the Exhibits thereto (the "**Bernards Affidavit**"), the Fourth Report of KSV Kofman Inc. ("**KSV**"), in its capacity as Monitor (the "**Monitor**") dated June 15, 2018 (the "**Fourth Report**") and the appendices attached thereto including the affidavit of Bobby Kofman, sworn June [15], 2018 (the "**Kofman Affidavit**") and the affidavit of Joseph Latham, sworn June 14, 2018 (the "**Latham Affidavit**"), filed, and on hearing the submissions of counsel for the Applicant, the Monitor, the Ad Hoc Committee of Holders of 8.375% Unsecured Debentures

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issued by Discovery Air Inc. [and Clairvest Group Inc.] and those other parties present, no one else appearing although duly served as appears from the Affidavit of Service of Katie Parent sworn June • , 2018, filed:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Fourth Report (including 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 third report of the Monitor dated April 24, 2018 and the Fourth Report (collectively the “**Monitor’s Reports**”) and the activities and conduct of the Monitor described in each such Monitor’s 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.

**STAY EXTENSION**

5. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 15 of the Initial Order made in these proceedings on March 21, 2018) be and is hereby extended to and including **[July 31]**, 2018.

**GENERAL**

6. **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

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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.

7. **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.

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**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")**

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

Proceeding commenced at Toronto

**ORDER  
(Stay Extension and Monitor's Reports, Activities  
and Fees)**

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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.

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

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceeding commenced TORONTO**

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**MOTION RECORD  
(Approval and Vesting Orders and Other Relief)  
(returnable June 22, 2018)**

**VOLUME 2 OF 2**

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