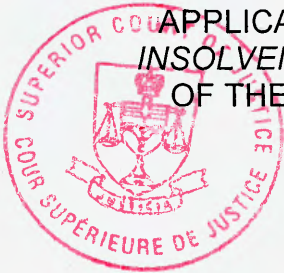


**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE )  
2SJ JUSTICE MORAWETZ )  
MONDAY, THE 14<sup>TH</sup>  
DAY OF AUGUST, 2017 )

B E T W E E N:



APPLICATION PURSUANT TO SECTION 243 OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101(1)  
OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1190, C. c.43, AS AMENDED

COMERICA BANK

Applicant

- and -

DRAGONWAVE INC.

Respondent

**ORDER  
(Sale Process Approval)**

THIS MOTION, made by KSV Kofman Inc. ("**KSV**"), in its capacity as Court-appointed receiver and receiver and manager (the "**Receiver**") pursuant to the section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101 of the *Courts of Justice Act* of all of the assets, undertakings and properties of the Respondent, for an

order approving the sale process substantially in the form attached hereto as **Schedule "A"** (the "**Sale Process**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the first report of the Receiver dated August [10], 2017 (the "**First Report**") and the Appendices thereto, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, and such other parties as were present, no one else appearing for any other party although duly served as appears from the affidavit of service of Monique Sassi sworn August 10, 2017, filed.

**SERVICE & DEFINITIONS**

*For the Hale Capital Partners L.P., for Jabil Inc.*

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 shall have the meaning ascribed to them under the Sale Process.

**APPROVAL OF SALE PROCESS**

3. THIS COURT ORDERS that the Sale Process attached hereto as Schedule "A" (subject to such non-material amendments as may be agreed to by the Receiver after consultation with Comerica and EDC) be and is hereby approved and the Receiver is hereby authorized and directed to take such steps as it deems necessary or advisable (subject to the terms of the Sale Process) to carry out the Sale Process, subject to prior approval of this Court being obtained before completion of any transaction(s) resulting from the Sale Process.

4. THIS COURT ORDERS that the Receiver 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 Sale Process, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or wilful misconduct of the Receiver, as applicable, as determined by the Court.

5. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is hereby authorized and permitted to disclose and transfer to each Interested Party and to their advisors, if requested by such Interested Parties, personal information of identifiable individuals, including, without limitation, all human resources and payroll information pertaining to the Company's past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale of the Assets and/or the Business ("**Sale**"). Each Interested Party to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of a Sale, shall be entitled to use the personal information provided to it that is related to the Assets and/or Business acquired pursuant to the Sale in a manner which is in all material respects identical to the prior use of such information by the Receiver, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## GENERAL

6. 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 or in any other jurisdiction, to give effect to this Order and to assist the Receiver 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, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist Receiver in carrying out the terms of this Order.

7. THIS COURT ORDERS that the Receiver 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 Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

AUG 14 2017

PER / PAR:

## SALE PROCESS

On July 31, 2017, on the application of Comerica Bank as agent for Comerica Bank (“**Comerica**”) and Export Development Bank Canada (“**EDC**”) as senior secured lenders of Dragonwave Inc. (the “**Company**”), the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) appointed KSV Kofman Inc. as receiver and receiver and manager (“**Receiver**”) over all of the assets, undertakings and properties of the Company pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*.

On August 14, 2017, the Court issued an order, which, among other things approved this sale process (the “**Sale Process**”).

The purpose of the Sale Process is to identify one or more purchasers of the Business and/or Assets (each as defined below) to make an offer (each a “**Bid**”) and to complete the transactions contemplated by any such offer. Set forth below are the procedures (the “**Sale Procedures**”) that shall govern the Sale Process and any transactions consummated as a result thereof.

### 1. Defined Terms

The following capitalized terms have the following meanings when used in this Sale Process:

“**Acknowledgment of the Sale Process**” means an acknowledgment of the Sale Process in the form attached as Schedule “A” hereto;

“**Agent**” means Comerica Bank as agent for Comerica and EDC under the Revolving Facility;

“**Assets**” means the assets, undertakings and property of the Company;

“**Bid**” means a bid submitted by an Interested Party pursuant to Section 7 hereof;

“**Bid Deadline**” has the meaning given to it in Section 5 hereof;

“**Bidder**” means a bidder submitting a Bid;

“**Business**” means the business of providing and servicing high capacity wireless ethernet equipment carried on by the Company used in internet protocol networks and developing, marketing and selling proprietary microwave radio frequency networking equipment designed to wirelessly transmit broadband voice, video and other data;

“**Business Day**” means any day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario, on which commercial banks in Toronto, Ontario are open for business;

**“Comerica”** has the meaning given to it in the introduction;

**“Company”** has the meaning given to it in the introduction;

**“Confidentiality Agreement”** means the confidentiality agreement, with terms satisfactory to the Receiver and its counsel, entered into between the Receiver and an Interested Party;

**“Court”** has the meaning given to it in the introduction;

**“Data Room”** means an electronic data room compiled by the Receiver containing financial, operational, corporate and other information, including confidential information, in respect of the Company, the Business and the Assets;

**“Deposit”** has the meaning given to it in Section 7(i);

**“Dollars”** or **“\$”** means United States dollars;

**“EDC”** has the meaning given to it in the introduction;

**“Form Purchase Agreement”** means the template agreement of purchase and sale posted in the Data Room;

**“Interested Party”** has the meaning given to it in Section 2;

**“Outside Date”** means September 29, 2017 or such other date as the Receiver and Successful Bidder(s) may agree, acting reasonably;

**“Participant Requirements”** has the meaning given to it in Section 6 hereof;

**“Purchase Price”** has the meaning given to it in Section 7(b);

**“Qualified Bid”** means a Bid that satisfies the conditions set out in Section 7 hereof;

**“Qualified Bidder”** means a bidder that submits a Qualified Bid;

**“Receiver”** has the meaning given to in the introduction;

**“Revolving Facility”** means the revolving credit facility made available by Comerica and EDC to the Company pursuant to the credit agreement dated as of June 1, 2012, with the Company as borrower and Comerica Bank as Agent for the lenders, as it may be amended, supplemented or otherwise modified from time to time;

**“Sale Process”** has the meaning given to it in the introduction;

**“Sale Procedures”** has the meaning given to it in the introduction;



“**Successful Bid**” has the meaning given to it in Section 8; and

“**Successful Bidder**” has the meaning given to it in Section 8.

2. **The Sale Procedures**

The Sale Process shall consist of one phase. Any interested party (an “**Interested Party**”) that meets the preliminary participant requirements set out herein, including having executed a Confidentiality Agreement and an Acknowledgment of the Sale Process, shall be provided with access to the Data Room in order to prepare and submit a Bid by the Bid Deadline.

The Receiver shall supervise the Sale Process. In the event that there is disagreement as to the interpretation or application of the Sale Procedures, the Court will have the jurisdiction to hear and resolve such dispute.

3. **“As Is, Where Is”**

The sale of the Business or any part of the Assets will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature or description by the Receiver, the Company, or any of their employees, officers, directors, agents or advisors, except to the extent set forth in the relevant definitive sale agreement with a Successful Bidder.

By participating in this process, each Interested Party is deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Business, the Assets or the Company prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or information regarding the Business, the Assets or the Company in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Business, the Assets or the Company or the completeness of any information provided in connection therewith, except as expressly stated in the terms of any definitive transaction documents.

4. **Access to Due Diligence Materials**

Only Interested Parties that satisfy the Participant Requirements will be eligible to receive access to the Data Room.

Upon the written consent of and under the supervision of the Receiver, Interested Parties that satisfy the Participant Requirements may be given permission to speak with representatives of the customers and/or suppliers of the Company.

The Receiver will be responsible for the coordination of all reasonable requests for additional information and due-diligence access from Interested Parties. The Receiver shall not be obligated to furnish any due diligence information after the Bid Deadline provided however that the Receiver may, but is not obligated to, provide further

information including, without limitation, financial information to the Successful Bidder. The Receiver is not responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the Assets and the Business.

5. **Bid Deadlines**

An Interested Party that wishes to make a Bid to acquire the Business or all, substantially all or any part of the Assets, must deliver an executed copy of a Bid to the Receiver, at the address specified in Schedule "B" hereto (including by email) so as to be received by it **not later than 5:00 p.m. (Eastern Time) on September 15, 2017**, or such other later date or time as may be agreed by the Receiver with the consent of Comerica and EDC (the "**Bid Deadline**").

6. **Participant Requirements.**

To participate in the Sale Process and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Receiver with the following prior to being provided access to the Data Room:

- (a) Confidentiality Agreement: an executed copy of the Confidentiality Agreement;
- (b) Acknowledgement of the Sale Process: an executed copy of the Acknowledgement of the Sale Process; and
- (c) Identification: Full written disclosure of the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the Bid, is involved in any way with the Bid or assisted with the Bid, and the complete terms of any such participation as well as evidence of corporate authority to sponsor or participate in the Bid.

(collectively, the "**Participant Requirements**")

7. **Qualified Bids**

In order for the Receiver to determine whether an Interested Party is a Qualified Bidder, the Interested Party must provide, in form and substance satisfactory to the Receiver, after consultation with Comerica and EDC, each of the following on or before the Bid Deadline at the address specified in Schedule "B" hereto (including by email):

- (a) Irrevocable Bid: A cover letter stating that the Bid is irrevocable until Court approval of the Successful Bid(s);
- (b) Purchase Agreement: a duly authorized and executed definitive purchase agreement together with:
  - (i) all completed schedules thereto substantially in the form of the Form Purchase Agreement containing the detailed terms and conditions of the proposed transaction, including identification of the Business or the Assets



proposed to be acquired, the obligations to be assumed, the purchase price for the Business or Assets proposed to be acquired (the “**Purchase Price**”), the payment method of the Purchase Price including whether it is to be satisfied by cash, credit bid, assumption of liabilities or other form of consideration and the detailed structure and financing of the proposed transaction; and

- (ii) a redline, if applicable, against the Form Purchase Agreement;
- (c) Proof of Financial Ability to Perform: written evidence upon which the Receiver may reasonably conclude that the Interested Party has the necessary financial ability to close the contemplated transaction on or before the Outside Date and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:
  - (i) evidence of the Interested Party’s internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction;
  - (ii) contact names and phone numbers for verification of financing sources; and
- (d) any such other form of financial disclosure or credit-quality support information or enhancement requested by and reasonably acceptable to the Receiver demonstrating that such Interested Party has the ability to close the contemplated transaction;
- (e) Unconditional Bid: Written confirmation that it is not conditioned on (i) the outcome of unperformed due diligence and/or (ii) obtaining financing;
- (f) Acknowledgment: An acknowledgement and representation that the Interested Party: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents regarding the Business and/or the Assets to be acquired, liabilities to be assumed or the Company in making its Bid; and (ii) did not rely upon any written or oral statements, representations, promises, warranties conditions or guaranties whatsoever, whether express or implied (by operation of law or otherwise) by the Receiver regarding the Business, Assets to be acquired, liabilities to be assumed, the Company or the completeness of any information provided in connection therewith, except as expressly provided in any definitive transaction documents;
- (g) Authorization: Evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the Interested Party’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Bid, and identification of any anticipated shareholder, regulatory or other approvals

outstanding, and the anticipated time frame and any anticipated impediments for obtaining such approvals;

- (h) Break or Termination Fee: Evidence that it does not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;
- (i) Deposit: a cash deposit (the “**Deposit**”) in an amount equal to 15% of the Purchase Price that shall be paid to the Receiver in trust, which Deposit shall be held and dealt with in accordance with the Sale Procedures;
- (j) Employees: If applicable, full details of the proposed number of employees of the Company who will become employees of the Bidder if determined to be the Successful Bidder and the proposed terms and conditions of employment to be offered to those employees; and
- (k) Other: Such other information as may reasonably be requested by the Receiver.

The Receiver, after consultation with Comerica and EDC, may waive any one or more minor and non-material violations of the requirements specified for Qualified Bids and deem such non-compliant Bids to be Qualified Bids.

## 8. Evaluation of Qualified Bids and Subsequent Actions

The Receiver, after consultation with Comerica and EDC, shall evaluate Qualified Bids on various grounds including, but not limited to, the Purchase Price, the treatment of employees, creditors and related implied recovery for creditors (in each case, as applicable), the assumed liabilities, the certainty of closing the transactions contemplated by the Qualified Bid on or before the Outside Date and any delay or other risks (including closing risks) in connection with the Qualified Bids.

Following such evaluation, the Receiver, with the consent of Comerica, may accept, subject to Court approval, one (or more than one, if for distinct and compatible transactions) of the Qualified Bids (each, a “**Successful Bid**” and the offeror(s) making such Successful Bid being a “**Successful Bidder**”) and take such steps as may be necessary to finalize definitive transaction documents for the Successful Bid(s) with Successful Bidder(s).

The Receiver shall be under no obligation to accept the highest or best offer or any offer or to select any Successful Bidder(s).

No later than one Business Day after the Bid Deadline, the Receiver shall advise the Qualified Bidders if its Successful Bid(s) has been accepted.

## **APPROVAL MOTION**

### **9. Approval Motion**

The Receiver shall use reasonable efforts to make a motion to the Court to approve the Successful Bid(s) as soon as practical following the determination by it of the Successful Bidder(s). The Receiver will be deemed to have accepted the Successful Bid(s) only when it has been approved by the Court. All Qualified Bids (other than the Successful Bid(s)) shall be deemed rejected by the Receiver on and as of the date of approval of the Successful Bid(s) by the Court.

## **MISCELLANEOUS**

### **10. Information From Interested Parties**

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

### **11. Deposits**

All Deposits shall be held by the Receiver in a single interest bearing account designated solely for such purpose. A Deposit paid by a Successful Bidder shall be dealt with in accordance with the definitive documents for the transactions contemplated by the Successful Bid. Deposits, and any interest earned thereon, paid by Bidders not selected as a Qualified Bidder shall be returned to such Bidder within three Business Days of being advised that it is not a Qualified Bidder. Deposits, and any interest thereon, paid by Qualified Bidders not selected as either a Successful Bidder shall be returned to such Qualified Bidders within three Business Days of Court approval of the Successful Bid.

### **12. Modifications and Termination**

The Receiver, with the consent of Comerica, shall have the right to adopt such other rules for the Sale Procedures (including rules that may depart from those set forth herein) that will better promote the sale of the Business or all or any part of the Assets under the Sale Procedures. The Receiver, with the consent of Comerica, shall apply to the Court if it wishes to materially modify or terminate the process set out in the Sale Procedures. For certainty, any amendments to the Bid Deadline or other dates set out in the Sale Procedures, shall not constitute a material modification but shall require the consent of Comerica.

### **13. Consultation with Comerica and EDC**

The Receiver, shall, as appropriate and as provided for in the Sale Procedures, consult with Comerica and EDC throughout the Sale Process.

**14. Other**

The Receiver shall not be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the Sale Process arising out of any agreement or arrangement entered into by the parties that submitted the Successful Bid(s). Any such claim shall be the sole liability of the parties that submitted such Successful Bid(s).

## SCHEDULE "A"

### Acknowledgement of the Sale Process

The undersigned hereby acknowledges receipt of the Sale Process approved by the Order of the Honourable Justice ● of the Ontario Superior Court of Justice (Commercial List) dated August 14, 2017 (the "**Sale Process**") and that compliance with the terms and provisions of the Sale Process is required in order to participate in the Sale Process and for any Bids to be considered by the Receiver.

This \_\_\_\_ day of \_\_\_\_\_, 2017.

[NAME]

By:

\_\_\_\_\_  
[Signing Officer]

**SCHEDULE "B"**  
**ADDRESS PARTICULARS**

**KSV Kofman Inc.**

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

**Attention:** David Sieradzki  
**Email:** dsieradzki@ksvadvisory.com



COMERICA BANK  
Applicant

and DRAGONWAVE INC.  
Respondent

Court File No. CV-17-579715-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER  
(Sale Process)**

**Cassels Brock & Blackwell LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

Jane O. Dietrich LSUC# 49302U  
Tel: 416.860.5223  
Fax: 416.640.3144  
jdietrich@casselsbrock.com

Monique Sassi LSUC# 63638L  
Tel: 416.860.6886  
Fax: 416.640.3005  
msassi@casselsbrock.com

Lawyers for KSV Kofman Inc., in its capacity as court  
appointed Receiver of the assets, properties and  
undertakings of Dragonwave Inc.