



**Second Report of
KSV Kofman Inc.
as Receiver and Receiver and Manager of
DragonWave Inc.**

September 29, 2017

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COURT FILE NO: CV-17-579715-00CL

ONTARIO

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

COMERICA BANK

APPLICANT

- AND -

DRAGONWAVE INC.

RESPONDENT

**SECOND REPORT OF KSV KOFMAN INC.
AS RECEIVER AND RECEIVER AND MANAGER
OF DRAGONWAVE INC.**

SEPTEMBER 29, 2017

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") in its capacity as receiver and receiver and manager (the "Receiver") of the properties, assets and undertakings of DragonWave Inc. (the "Company").
2. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on July 31, 2017 (the "Receivership Order"), KSV was appointed Receiver. A copy of the Receivership Order is attached as Appendix "A".
3. The primary purpose of these receivership proceedings is to allow the Company's business to continue to operate on a going-concern basis while a Court-supervised sale process for the Company's business and assets is carried out by the Receiver in a stabilized environment.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company and these proceedings;
 - b) summarize the pre-filing sale and investor solicitation efforts undertaken by the Company and its advisors and the results of a subsequent Court-approved sale process ("Sale Process") carried out by the Receiver in accordance with a Court order made on August 14, 2017 (the "Sale Process Approval Order");
 - c) summarize a transaction for substantially all of the Company's business and assets (the "Recommended Transaction") pursuant to an Asset Purchase Agreement dated September 28, 2017 (the "APA") between the Receiver and Transform-X, Inc. or its designee (the "Purchaser");
 - d) set out the basis on which the Receiver supports the Recommended Transaction;
 - e) set out the Receiver's recommendation regarding distributions to Comerica Bank (the "Agent") as agent for Comerica Bank and Export Development Canada (jointly, the "Senior Lenders"), including from the proceeds of the Recommended Transaction;
 - f) provide an overview of the Receiver's activities since its first report to Court dated August 10, 2017 (the "First Report");
 - g) discuss the fees and disbursements of the Receiver and its counsel, Cassels Brock & Blackwell LLP ("CBB"), and seek approval of same; and
 - h) Recommend that this Honourable Court make an order:
 - approving the APA and the Recommended Transaction;
 - authorizing and ratifying the execution by the Receiver of the APA and all other ancillary documents and agreements required to complete the Recommended Transaction, including the filing of articles of amendment to change the name of the Company to 3517667 Canada Inc. following completion of the Recommended Transaction;
 - vesting in the Purchaser the Receiver's and the Company's right, title and interest in and to the Purchased Assets (as defined in the APA), free and clear of all liens, charges, security interests and encumbrances other than the Permitted Encumbrances (as defined in the APA);
 - sealing the Confidential Appendices to this Report until further Court order;

- authorizing the Receiver to make distributions to the Agent, including from the proceeds of the Recommended Transaction, without further Court order until the Company's indebtedness to the Senior Lenders is repaid in full;
- approving the fees and disbursements of the Receiver and CBB as set out in the affidavits filed by KSV and CBB in the accompany motion materials; and
- approving the First Report, this Report and the activities described therein.

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are in US dollars.

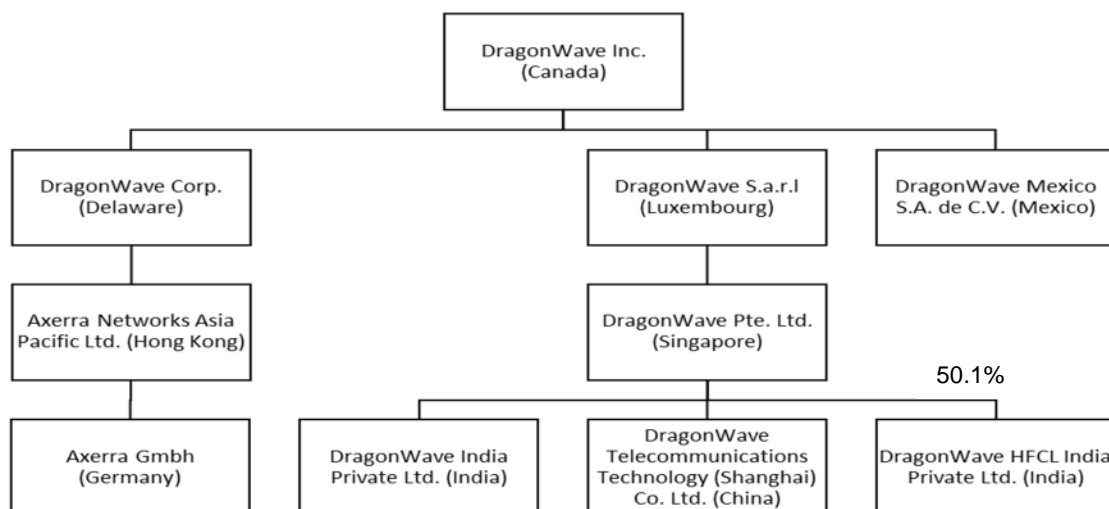
1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon the Company's unaudited financial information, the Company's books and records and discussions with the Company's management. The Receiver has not performed an audit or other verification of such information. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the Company's financial information is encouraged to perform its own diligence and any reliance placed by any party on the information herein shall not be considered sufficient for any purpose whatsoever.
2. An examination of the Company's financial projections or other financial analyses referenced in this Report as outlined in the Chartered Professional Accountant Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Receiver expresses no opinion or form of assurance on whether the projected financial results will be achieved.

2.0 Background

1. The Company was incorporated in 2000 under the *Canada Business Corporations Act*. The Company is a provider of high capacity wireless ethernet equipment used in internet protocol (IP) networks - it develops, markets and sells proprietary microwave radio frequency networking equipment designed to wirelessly transmit broadband voice, video and other data. The Company's ethernet links are designed to function as a wireless extension to existing fiber and global optic core telecommunications networks. This wireless extension allows wireless service providers, government agencies and other organizations to meet increasing internet bandwidth requirements.

2. The Company's head office and registered office is located at 411 Leggett Drive, Suite 600, Ottawa, Ontario. As at the date of this Report, the Company's employee headcount was 113 and its foreign subsidiaries (discussed below) employed 23 individuals. The Company's workforce is not unionized and it does not maintain a registered pension plan.
3. Prior to the receivership proceedings, the Company's shares traded on the Toronto Stock Exchange (the "TSX") and the NASDAQ Capital Market ("NASDAQ") under the symbol DRWI. Trading of the Company's shares on the TSX was suspended on July 20, 2017. On July 31, 2017, the Continued Listing Committee of the TSX advised the Company that its common shares would be delisted effective at the close of market on August 30, 2017. In addition, NASDAQ issued a notice to the Company dated July 31, 2017 indicating its decision to delist the Company's common shares and to suspend trading in the common shares effective August 2, 2017.
4. The Company operates a worldwide business and holds numerous direct and indirect foreign subsidiaries, as reflected in its corporate chart below. The foreign subsidiaries are not subject to these receivership proceedings – each has continued to operate in the normal course in their respective jurisdictions.



5. Further information about the Company, its background and copies of materials filed in the receivership proceedings is available on the Receiver's website at <http://www.ksvadvisory.com/insolvency-cases/dragonwave-inc>.

3.0 The Senior Lenders

1. As at the date of the Receivership Order, the Company's indebtedness under a revolving credit agreement with the Senior Lenders dated as of June 1, 2012, as amended, totalled approximately \$17.2 million, plus interest and fees which continue to accrue.

2. Since the commencement of the receivership proceedings, a further \$1.5 million was funded by the Senior Lenders as a result of a letter of credit having been drawn by Chubb/Westchester Fire Insurance Company (the “Chubb L/C”). The Senior Lenders’ exposure includes one additional letter of credit in the amount of approximately \$500,000 that remains issued and outstanding as at the date of this Report.
3. The Senior Lenders are the Company’s senior secured creditors (and the only registered secured creditors, other than two equipment lessors, Dell Financial Services Canada Limited (“Dell”)¹ and Ford Credit Canada Limited) and are the only parties with an economic interest in the net sale proceeds.

4.0 Funding of these Proceedings

1. To the extent required, the Receivership Order authorizes the Receiver to borrow up to C\$500,000 pursuant to Receiver’s Certificates. These advances, if any, would be granted a charge on the assets of the Company subject only to the Receiver’s Charge (as defined in the Receivership Order). The Receiver has not required any borrowings to date as the cash on deposit in the Company’s bank accounts on the date of the Receivership Order has been sufficient to fund the Company’s normal course operations.
2. As at the date of this Report, there is limited cash available to fund the Company’s continuing operating losses. As detailed in Section 7.2 of this Report, the Company’s lack of liquidity is one of the many factors contributing to the need to urgently complete a going-concern transaction at this time.

5.0 Pre-Filing Marketing Processes

1. As a result of its liquidity and other issues, since early 2016, the Company had been formally pursuing restructuring, refinancing, sale and other strategic alternatives. These processes were required to be carried out by the Company pursuant to the terms of various forbearance agreements between the Company and the Senior Lenders. In this regard:
 - in early 2016, CIBC Capital Markets (“CIBC”) was engaged to review strategic and financial alternatives that may be available, including a potential sale of the Company, debt or equity financing, business combination, joint venture or strategic alliance; and
 - in May, 2017, the Company engaged Alvarez and Marsal Canada ULC (“Alvarez”) to, *inter alia*, explore potential going concern transactions and a sale process.

¹ Dell’s registration relates to sundry, leased computer equipment which lease was bought out by the Company in 2014.

2. In respect of the Company's pre-filing efforts to canvass the market, the Receiver understands that:
 - 43 parties were approached to participate in the CIBC and/or Alvarez processes;
 - 16 parties executed confidentiality agreements and performed diligence on the Company, including reviewing information in a data room and/or attending meetings with management; and
 - One party submitted a highly conditional offer to acquire substantially all of the Company's business and assets. This offer, including the value and conditions precedent, was unacceptable to the Senior Lenders.
3. Based on the foregoing, notwithstanding an extensive canvassing by both CIBC and Alvarez of going concern solutions, no viable transaction acceptable to the Senior Lenders to refinance, restructure or sell the Company resulted from those pre-filing marketing efforts.

6.0 Sale Process

1. The Receiver's focus from the outset of these proceedings was to expeditiously seek Court approval of the Sale Process while, concurrently, maintaining the Company's operations in a stabilized environment. Two weeks following its appointment, the Sale Process Approval Order was made, a copy of which is attached as Appendix "B".
2. Prior to formalizing and seeking Court approval of the Sale Process, the Receiver engaged extensively with a potential stalking horse bidder; however, given the complexity of the proposed transaction, the level of unsolicited interest expressed by other parties and the need to conduct a timely sale process, the Receiver, after consulting with the Senior Lenders, sought the Court's approval of the Sale Process without a stalking horse. The prospective stalking horse bidder was provided the opportunity to, and ultimately did, participate in the Sale Process.
3. The Receiver commenced the Sale Process immediately following its approval. An overview of the Sale Process is as follows:
 - The Receiver prepared an interest solicitation letter that was circulated to 116 acquisition targets, including parties that were approached by the Company, CIBC and/or Alvarez in their pre-filing sale efforts and parties that had contacted the Receiver on an unsolicited basis within days of its appointment;
 - Attached to the solicitation letter was a confidentiality agreement ("CA") and a Sale Process acknowledgment ("Acknowledgment") that interested parties were required to sign in order to obtain access to an online data room set up by the Receiver. The CA and Acknowledgement were executed by 28 prospective going-concern purchasers;

- Following execution of the CA and Acknowledgement, prospective purchasers were provided an opportunity to commence diligence. Over the course of the Sale Process, the Receiver facilitated all due diligence requests submitted by interested parties, including by updating the data room with current financial and other information, as required;
- Interested parties were also provided an opportunity to attend at the Company's head office for a management meeting. In total, seven management meetings were conducted in person or by phone. A representative of the Receiver was in attendance at each of these meetings;
- Prospective purchasers were provided with the opportunity to meet with the Company's key suppliers, including Jabil Circuit, Inc. ("Jabil"), the Company's contract manufacturer pursuant to a Manufacturing Services Agreement dated August 12, 2013, as amended. Maintaining the Jabil relationship was a priority for substantially all bidders who performed diligence, several of whom met with Jabil representatives in person or by phone, with a representative of the Receiver in attendance at each meeting;
- The data room included a form of offer in the form of an asset purchase agreement. Prospective purchasers were requested to submit offers in the form of this agreement together with a blacklined version of their offer against the form of offer;
- Offers were required to be submitted to the Receiver by 5:00 pm (Eastern time) on September 15, 2017 (the "Initial Offer Deadline"); and
- Among other items, bids were required to be submitted with a cash deposit in an amount equal to 15% of the purchase price.

6.1 Sale Process Results

1. A summary of the Sale Process results is as follows:
 - a) Four offers were submitted on the Initial Offer Deadline of September 15, 2017. One of the four offers (not the Purchaser's) was submitted approximately two hours after the 5:00 pm deadline on September 15, 2017. Each of the four offers required significant clarification, including for the purpose of quantifying their value.
 - b) On September 19, 2017, after consulting with the Senior Lenders, the Receiver and its legal counsel convened conference calls with certain bidders and their respective legal counsel to review the offers and highlight the areas that required clarification and additional information. On September 20, 2017, the Receiver sent a letter to each such bidder requesting, *inter alia*, that bidders provide additional information and clarification in respect of their offers and submit final offers by 12:00 pm (Eastern time) on September 22, 2017. A copy of the form of the Receiver's September 20th letter to bidders is attached as Appendix "C".

- c) All bidders that were requested to submit revised and final bids did so on September 22, 2017. One of these offers (not the Purchaser's) was submitted approximately four hours after the 12:00 pm deadline on September 22, 2017. A fifth bidder (not the Purchaser) also submitted an offer on September 22, 2017 – this party had not submitted an offer on the Initial Offer Deadline.
 - d) After analyzing the revised offers submitted on September 22, 2017, the Receiver determined that the Purchaser's offer was for the greatest value and was superior to the other offers submitted for various reasons, including limited closing risk, maximizing employment for substantially all of the Company's existing workforce and the other reasons set out in Section 7.1 of this Report.
 - e) From September 22, 2017 to September 28, 2017, the Receiver worked with the Senior Lenders, the Purchaser and their respective advisors to settle the definitive APA.
 - f) On September 28, 2017, the Purchaser's offer was accepted, subject to Court approval.
2. A summary of the offers is provided in Confidential Appendix "1". The Receiver's rationale for its request that this information be sealed at this time is provided in Section 7.3 of this Report.

7.0 Recommended Transaction²

1. The key terms and conditions of the APA are summarized below.
- a) **Purchaser:** The Purchaser is an entity with several ownership interests in operating technology companies. The Receiver understands that the Company's business and assets are synergistic to the Purchaser's other interests. The Purchaser has confirmed that it has the financial wherewithal to complete the Recommended Transaction.
 - b) **Purchase Price:** The Purchase Price is comprised of cash consideration plus the Assumed Liabilities. The amount is to remain confidential for the reasons set out in Section 7.3 below. The Purchase Price is subject to a working capital adjustment based on the book value of accounts receivable and inventory as at the Closing Date and certain minimum thresholds set out in the APA. The APA requires an estimate to be prepared between five and 10 days prior to the Closing Date and a final adjustment is to occur within fifteen days following the Closing Date.
 - c) **Deposit:** The Purchaser submitted a deposit representing 15% of the Purchase Price, which remains on deposit in the Receiver's trust account.

² Defined terms in this section of the Report have the meanings provided to them in the APA.

- d) **Purchased Assets:** Substantially all of the Company's business and assets, including the Company's shares of its foreign subsidiaries, 50.1% interest in an Indian joint-venture, DragonWave HFCL India Private Limited, accounts receivable, inventory, equipment, patents, intellectual property, customer information and Assumed Contracts.
- e) **Excluded Assets:** The material excluded assets include cash in the Company's bank accounts, any award that may result from the ongoing Indian arbitration proceedings³, the account receivable associated therewith and the anticipated refund that may be received from the Chubb L/C.
- f) **Employees:** At least five days prior to the Closing Date, the Purchaser shall offer employment to the employees it is interested in retaining. The Purchaser has advised that it intends to retain substantially all of the existing employees. In this regard, the APA provides that employment offers shall be made to at least 85% of the Company's workforce. The Purchaser is assuming the Company's accrued vacation pay obligation for the Transferred Employees.
- g) **Closing Date:** The Closing Date shall be no later than October 20, 2017 or such other date as agreed by the parties.
- h) **Material Conditions:** The material conditions precedent to closing are:
- obtaining Third Party Consents for the Assumed Contracts (which are limited to the Company's real property leases). The Receiver understands that obtaining these consents is not expected to delay closing given, *inter alia*, the Company's books and records reflect that there are no amounts owing to the counterparties of the Assumed Contracts. Any cure costs that are required to be paid under the limited Assumed Contracts will reduce the Purchase Price to be paid by the Purchaser on closing. These costs, if any, are expected to be minimal;
 - the purchaser entering into the Key Replacement Contract. The Receiver has been in regular communication with the Key Contract Counterparty and its legal counsel. Based on these discussions, and on discussions with the Purchaser on this issue, it appears that this condition will be satisfied within the five Business Day time period;
 - there shall not have been any material adverse change in the Company's operations which might materially and adversely affect the Purchaser's ability to carry on the operations after the Closing Date substantially as the Business is presently being conducted by the Receiver. The Receiver is not aware of any such material adverse change as at the date of this Report; and
 - the Court shall have issued a Sale Approval and Vesting Order.

³ In January 2016, an arbitration claim against the Company was filed by Bharti Airtel, a customer based in India, regarding a dispute over inventory shipped in June, 2015. Bharti Airtel is claiming approximately \$6.4 million against the Company. The Company filed a substantial counter-claim (for an amount significantly exceeding Bharti Airtel's claim) for, *inter alia*, damages. The arbitration proceeding is presently ongoing before an Indian Tribunal.

- i) **Other:** The APA is consistent with standard insolvency transactions, i.e. completed on an “as is, where is” basis with minimal representations or warranties by the Receiver. In addition, the APA requires that, if so authorized by the Court, the Receiver change the Company’s name following completion of the Recommended Transaction. The Receiver is seeking Court approval to do so.
- 2. A redacted version of the APA is attached as Appendix “D”. An unredacted version is filed as Confidential Appendix “2”. The basis for sealing the unredacted version of the APA is provided in Section 7.3 below.

7.1 Recommendation

- 1. The Receiver believes the Recommended Transaction is appropriate for the following reasons:
 - a) the Sale Process was carried out in accordance with the terms of the Sale Process Approval Order. In the Receiver’s view, the Sale Process was commercially reasonable, including timelines, breadth of the canvassing of the market and information made available to interested parties, including information in the data room, and the availability of management for meetings, conference calls and head office visits;
 - b) in the Receiver’s view, the duration of the Sale Process - while expedited - was sufficient to allow interested parties to perform diligence and submit offers. This is particularly the case given the extent of the Company’s pre-filing canvassing of the market. In addition, none of the offers submitted on the Initial Offer Deadline were conditional on additional due diligence;
 - c) the value of the Recommended Transaction materially exceeds the value of the other offers submitted in the Sale Process;
 - d) the Recommended Transaction is expected to preserve employment for substantially all 136 employees, while the other offers contemplated significant headcount reductions;
 - e) the Senior Lenders have consented to the Recommended Transaction notwithstanding that they are projected to incur a substantial shortfall on amounts owing to them by the Company;
 - f) the Receiver does not believe that further time spent marketing the Company’s business and assets will result in a superior transaction. Moreover, there is no funding available for an extended sale process and the Senior Lenders are not willing to fund any process that puts at risk the Recommended Transaction;
 - g) the Receiver is of the view that the conditions in the APA do not present significant “closing risk”. In addition, the other offers submitted in the Sale Process were no less conditional than the Recommended Transaction;

- h) the Purchaser's offer is expected to include the Company's shares of all of its foreign subsidiaries. If foreign subsidiaries were to be excluded, additional cost and delay may result;
 - i) the Recommended Transaction has been extensively negotiated and thoughtfully structured with a view to maximizing the value of the Company's business and assets. In this regard, it provides an opportunity to generate further recoveries for the Senior Lenders as the refund of any surplus in the Chubb L/C and any award that may result from the Indian arbitration proceedings are Excluded Assets;
 - j) the value of the Recommended Transaction substantially exceeds the liquidation value of the Company's assets. The Receiver has prepared a liquidation analysis which is provided in Confidential Appendix "3"; and
 - k) the Receiver understands that the acquisition provides the Purchaser with a platform and other synergistic opportunities for the Purchaser's other technology operating entities. Accordingly, the Purchaser appears incentivized to complete the Recommended Transaction. This was evidenced by the Purchaser addressing several points of clarification between its initial and revised offers submitted on September 15, 2017 and September 22, 2017, respectively, including revising terms and conditions that enhanced the value of its offer.
2. Based on the foregoing, the Receiver recommends that this Honourable Court approve the Recommended Transaction.

7.2 Urgency

1. In the Receiver's view, there is significant urgency to complete a transaction at this time for the following reasons:
- a) Lack of liquidity - the Company is projected to require additional funding before the end of October. The Senior Lenders have agreed to allow their collateral to fund the Company's ongoing operating losses until the completion of the Sale Process. The Receiver does not have access to additional funding - absent an imminent closing of a transaction, the Company's operations would need to be discontinued.
 - b) Inventory purchasing needs to ramp up quickly so that customer sales orders can be met. The Company currently has a significant backlog and requires access to substantial working capital to meet customer requirements.

- c) The Company has been subject to forbearance agreements and operating without sufficient liquidity since at least early 2016. The Company's value largely depends on maintaining its customer relationships and skilled workforce – employees require clarity on their future employment prospects. In this regard, several of the Company's employees resigned earlier in these proceedings. Completing a going concern transaction will provide employees and customers with certainty that the Company's business will continue to operate under new, well-capitalized ownership.
- d) Many of the Company's major customers are located in foreign jurisdictions, including India, China, Mexico and Saudi Arabia. The majority of these customers are not familiar with Canadian insolvency proceedings and require certainty in respect of the Company's ability to meet delivery dates and honour warranty obligations for new shipments. Certain new sales activity has been hindered or delayed as major customers wait for the outcome of the Sale Process.

7.3 Sealing

1. The Receiver recommends that the offer summary, APA and liquidation analysis be filed with the Court on a confidential basis and remain sealed until further Court order as the availability of this information to other parties may negatively impact any future offers for the Company's business and assets if the Recommended Transaction does not close for any reason. The Receiver does not believe that any stakeholder will be prejudiced if the information is sealed.

8.0 Distributions to the Agent

1. The Senior Lenders are the Company's principal secured creditors. As at the date of this Report, the Senior Lenders are owed approximately US\$18.7 million (including a \$1.5 million draw on the Chubb L/C in mid-August, 2017) plus interest and costs which continue to accrue.
2. CBB provided an opinion⁴ dated August 15, 2017 which, subject to the standard assumptions and qualifications contained therein, concluded that the security granted by the Company, as registered under the Ontario *Personal Property Security Act*, creates a valid and perfected security interest in the Company's business and assets situated in Ontario.
3. The Receiver is not aware of any other secured creditors or any claim that ranks or may rank in priority to the Senior Lenders, other than any amounts secured by the Receiver's Charge. In this regard, all payroll obligations are current, the Company's accrued vacation pay obligation is either being assumed by the Purchaser or will be funded from the proceeds of the Recommended Transaction and the Company is in an HST refundable position on a monthly basis.

⁴ A copy of the security opinion will be made available to the Court should the Court wish to review it.

4. Based on the foregoing, the Receiver recommends that this Honourable Court issue an order authorizing and directing the Receiver to make distributions to the Agent, including from the proceeds generated from the Recommended Transaction and any subsequent realizations from excluded assets, up to the amount of the Company's indebtedness owing to the Senior Lenders, without further Court order.
5. Subject to the amount of cash on deposit in the Company's bank accounts on the closing date of the Recommended Transaction, should it receive Court approval, the Receiver will determine if a holdback is required from the proceeds of the Recommended Transaction prior to making the first distribution to the Agent. The Receiver will consult with the Senior Lenders in its quantification of the required holdback, as required.

9.0 Overview of the Receiver's Activities

1. The Receiver is seeking approval of its First Report and the activities described therein. A copy of the First Report, without appendices, is attached as Appendix "E".
2. Since the date of the First Report (August 10, 2017), the Receiver's activities have included:
 - Carrying out the Receiver's duties and responsibilities in accordance with the Receivership Order, including overseeing the Company's operations;
 - Dealing with cash management issues, including controlling receipts and disbursements in accordance with the Receivership Order and paying post-filing expenses from the receivership accounts;
 - Attending at the Company's premises on a near daily basis;
 - Reviewing operational issues with management, including the daily issuance of purchase orders, employee matters and customer issues;
 - Assisting the Company to prepare and revise multiple cash flow projections and other financial analyses and reporting to the Senior Lenders thereon;
 - Monitoring the Company's funding requirements on a daily basis;
 - Corresponding with the Company and legal counsel in connection with the Chubb L/C and related matters;
 - Corresponding extensively with key stakeholders in these proceedings, including the Senior Lenders, the Company's employees, customers, suppliers and landlord;

- Carrying out the Sale Process on the basis detailed in this Report, including dealing extensively with prospective purchasers to facilitate diligence, reviewing and analyzing the offers submitted in the Sale Process and negotiating the APA and all aspects of the Recommended Transaction with the Purchaser;
- Corresponding with Jabil and its legal counsel on operational and Sale Process matters;
- Corresponding with the Company's Indian counsel in connection with ongoing arbitration proceedings in India;
- Corresponding extensively with legal counsel to the Receiver and the Senior Lenders on receivership matters generally;
- Drafting this Report; and
- Addressing all other matters pertaining to the administration of these receivership proceedings.

10.0 Professional Fees

1. The fees and disbursements (excluding HST) of the Receiver from the commencement of these proceedings until August 31, 2017 and those of its legal counsel, CBB, for the period ended September 22, 2017, total approximately \$208,552 and \$85,887, respectively. The fees of the Receiver and CBB include activities undertaken prior to the date of the Receivership Order, all of which were incurred in connection with the preparation and planning for these receivership proceedings.
2. Detailed invoices in respect of the fees and disbursements of the Receiver and CBB for the referenced billing periods are provided in appendices to the affidavits filed by KSV and CBB in the accompanying motion materials.
3. The average hourly rate for KSV and CBB for the referenced billing periods was \$413.13 and \$605.36, respectively.
4. The Receiver is of the view that the hourly rates charged by CBB are consistent with the rates charged by corporate law firms practicing in the area of insolvency in the Toronto market and that the fees charged are reasonable and appropriate in the circumstances.

11.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 1(h) of this Report.

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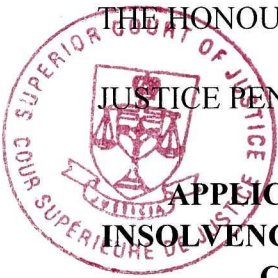
All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc".

**KSV KOFMAN INC.
IN ITS CAPACITY AS RECEIVER AND
RECEIVER AND MANAGER OF DRAGONWAVE INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST



THE HONOURABLE MR.

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MONDAY, THE 31ST

JUSTICE PENNY

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DAY OF JULY, 2017

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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. 1990, c. C.43, AS AMENDED

COMERICA BANK

Applicant

- and -

DRAGONWAVE INC.

Respondent

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Kofman Inc. as receiver and receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of DragonWave Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of David Ferree sworn July 26, 2017 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, no one else on the service list appearing although duly served as appears from the affidavit of service of Caitlin Fell sworn July 27, 2017 and on reading the consent of KSV Kofman Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV Kofman Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
 - (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$300,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
 - (m) to oversee, manage, settle, instruct local counsel and deal generally with any litigation or arbitration proceedings involving the Debtor, including the ongoing dispute with Bharti Airtel Limited;
 - (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
 - (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to assign the Debtor into bankruptcy;
- (r) to make or cause to be made such an appraisal and investigation of the affairs and Property of the Debtor as to enable the Receiver to examine any disposition or transfer of the Debtor's Property prior to the date here;
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have, including, but not limited to, any rights to pass unanimous shareholders declarations or agreements; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant

immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that Royal Bank of Canada, HSBC Bank and any other banks holding bank accounts in the name of DragonWave Inc. shall provide KSV Kofman Inc., in its capacity as Receiver, with immediate access to, and full authorization over, such bank accounts.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and

providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's 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 Receiver's 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 Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

9. NO PROCEEDINGS AGAINST THE RECEIVER

10. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

11. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

12. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment,

(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 THE RECEIVER

13. THIS COURT ORDERS that 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 Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

14. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 the Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

15. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided

for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

16. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

17. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the 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 Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

19. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

20. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

22. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

23. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

24. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

26. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

27. 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://ksvadvisory.com/dragonwave-inc>.

28. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is 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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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.

SEALING

29. THIS COURT ORDERS that Confidential Affidavit of David Ferree be and is hereby sealed until further Order of the Court.

GENERAL

30. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

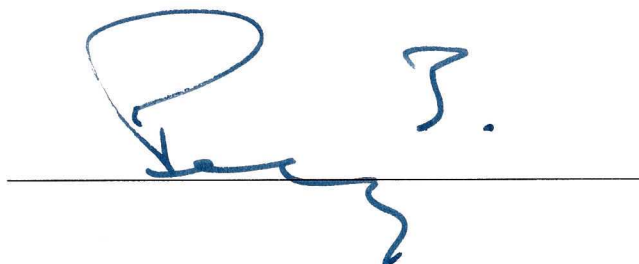
32. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, India, and Luxembourg to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All 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 or to assist the Receiver and its agents in carrying out the terms of this Order.

33. 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.

34. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

35. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party

likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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LE / DANS LE REGISTRE NO:

JUL 31 2017

PER / PAR:



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

36. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an action having Court file number ____-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

37. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

38. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

39. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

40. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

41. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

42. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:


COMERICA BANK
Applicant and

DRAGONWAVE NC.
Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

McMILLAN LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON, M5J 2T3

Caitlin Fell LSUC# 60091H
email: Caitlin.Fell@mcmillan.ca
Tel: 416-865-7841
Fax: 416-865-7048

Lawyers for the Applicant

Appendix “B”

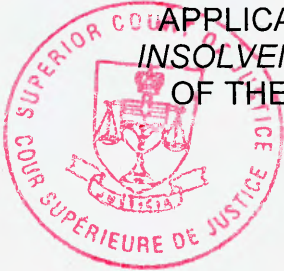
**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE
2SJ JUSTICE MORAWETZ

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MONDAY, THE 14TH
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.

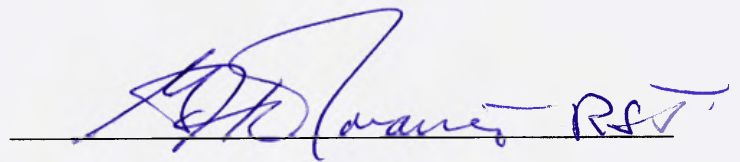
4. THIS COURT ORDERS that the Receiver shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the Sale Process, except to the extent of such losses, claims, damages 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.



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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.

Appendix “C”



ksv advisory inc.

150 King Street West, Suite 2308

Toronto, Ontario, M5H 1J9

T +1 416 932 6030

F +1 416 932 6266

dsieradzki@ksvadvisory.com
ksvadvisory.com

September 20, 2017

DELIVERED BY EMAIL

Dear :

Re: DragonWave Inc. (the "Company")

We are writing in our capacity as Court-appointed receiver and receiver and manager (the "Receiver") of the Company's property, assets and undertaking.

Thank you for the offer submitted in the Company's Court-approved sale process. The Receiver is writing to request that bidders submit a final offer no later than 12:00 p.m. (EST) on September 22, 2017. The Receiver is hopeful that your revised offer will address the clarification points discussed on our September 19th conference call so that a successful bidder can be selected as soon as possible.

Should you have any questions, please contact the undersigned.

Yours very truly,

**KSV KOFMAN INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND
RECEIVER AND MANAGER OF DRAGONWAVE INC.
AND NOT IN ITS PERSONAL CAPACITY**

Per: David Sieradzki

DS:rk

cc:

Appendix “D”

ASSET PURCHASE AGREEMENT

KSV KOFMAN INC. solely in its capacity as court-appointed receiver and receiver and manager of the assets, properties and undertakings of DragonWave Inc. and not in its personal capacity (the “Seller”)

- and -

**TRANSFORM-X, INC.
(the “Purchaser”)**

September 28, 2017

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THIS ASSET PURCHASE AGREEMENT is made the 28th day of September, 2017

BY AND AMONG:

KSV KOFMAN INC. solely in its capacity as court-appointed receiver and receiver and manager of the assets, properties and undertakings of DragonWave Inc. and not in its personal capacity,

(hereinafter referred to as "**Seller**"),

- and -

TRANSFORM-X, INC.

a corporation existing under the laws of the State of Arizona,

(hereinafter referred to as "**Purchaser**").

RECITALS:

- A. KSV Kofman Inc. was appointed as receiver and receiver and manager of the assets, properties and undertakings of DragonWave Inc. (the "**Company**") by order (the "**Receivership Order**") of the Honourable Mr. Justice Penny of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated July 31, 2017;
- B. By order (the "**Sale Process Approval Order**") dated August 14, 2017, the Honourable RSJ Morawetz approved the Sale Process (as defined below);
- C. The Company operates a business providing and servicing high capacity wireless ethernet equipment used in internet protocol networks and develops, markets and sells proprietary microwave radio frequency networking equipment designed to wirelessly transmit broadband voice, video and other data (the "**Business**");
- D. Subject to approval of the Court, Seller has agreed to sell, transfer and assign to Purchaser and Purchaser has agreed to purchase substantially all of Company's assets used in connection with, and assume certain liabilities and obligations of the Company in relation to the Business upon the terms and subject to the conditions set forth herein; and

THEREFORE in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties (as defined herein) hereby agree as follows:

ARTICLE 1
DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 **Definitions**

Whenever used in this Agreement the following words and terms shall have the meanings set out below:

“Acquired Subsidiaries” means the subsidiaries of the Company listed in Schedule 1.1(d), unless the shares of any such subsidiary (or its parent subsidiary) become Excluded Assets pursuant to Section 2.2(f);

“Affiliate” of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of such Person, whether through the ownership of voting securities or otherwise;

“Agreement” means this asset purchase agreement, including all appendices, schedules, and all amendments or restatements, as permitted, and references to **“Article”**, **“Section”**, **“Appendix”** or **“Schedule”** mean the specified Article or Section of, Appendix or Schedule to, this Agreement;

“Approval and Vesting Order” means an order of the Court, in form and substance satisfactory to Purchaser and Seller, and obtained on a motion made on notice to such Persons as Purchaser and Seller determine, acting reasonably, to be sought by Seller approving this Agreement and the Transaction and vesting in and to Purchaser the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances), which order shall be substantially in the form attached at Schedule 1.1(c) subject to such amendments as Seller and Purchaser may mutually agree acting reasonably;

“Assumed Contracts” means [REDACTED]

“Assumed Liabilities” has the meaning set out in Section 2.3;

“Assumed Real Property Leases” has the meaning set out in Section 2.1(d);

“Authorization” means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Authority related to the Purchased Assets or the Business;

“Bharti Trade Receivable” means the trade account receivable owing by Bharti Airtel Limited in the amount of \$4,707,018, as reflected on Interim Trade Receivables List;

“Bharti Litigation” has the meaning set out in Section 2.2(e);

“Books and Records” has the meaning set out in Section 2.1(k);

“Business” has the meaning set out in the recitals;

“Business Day” means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

“Cash Purchase Price” has the meaning set out in Section 3.1;

“Closing” means the successful completion of the Transaction pursuant to the terms of this Agreement;

“Closing Date” means the date that is four Business Days following the date on which all of the conditions in Sections 6.4 and 6.5 have been satisfied or waived, except for those conditions that by their nature can only be satisfied on the Closing Date, or such earlier or later date as agreed to by the Parties;

“Closing Inventory” means the inventory included in the Purchased Assets on the Closing Date, determined in accordance with Section 3.1(c);

“Closing Trade Receivables” means the trade accounts receivable included in the Purchased Assets on the Closing Date, determined in accordance with Section 3.1(c);

“Closing Time” means 10:00 a.m. (Toronto time) on the Closing Date, or such other time on the Closing Date as Seller and Purchaser may agree;

“Company” has the meaning set out in the recitals;

“Contracts” means all contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which the Company or Seller is a party, by which the Company or Seller is bound or under which the Company or Seller has, or will have, any rights or benefits, whether actual or contingent (in each case, whether written or oral, express or implied) relating to the Purchased Assets and/or the Business, as same may be amended and/or restated, and including any and all related quotations, orders, proposals, tenders or bookings which remain open for acceptance, warranties, guarantees and documents ancillary thereto relating to the Business;

“Court” has the meaning set out in the recitals;

“Cure Costs” means, in respect of any Assumed Contract, the amount, if any, that must be paid at Closing or otherwise satisfied, as agreed between the applicable counterparty and Seller to obtain a Third Party Consent, including payments to cure monetary defaults owing under such Assumed Contract;

“Deposit” has the meaning set out in Section 3.2(a);

“Employees” means any and all (a) employees or independent contractors of the Company who are actively at work (including full-time, part-time or temporary employees), and (b) employees or independent contractors of the Company who are on lay-off or other leaves of absence (including pregnancy leave, parental leave, disability leave, sickness leave, workers' compensation and other statutory leaves);

“Encumbrances” means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, statutory deemed trust, license, forbearance from suit, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege or any contract to create any of the foregoing;

“Estimated Closing Inventory” is defined in Section 3.1(c)(i);

“Estimating Closing Trade Receivables” is defined in Section 3.1(c)(i);

“ETA” means Part IX of the *Excise Tax Act* (Canada);

“Excluded Assets” has the meaning set out in Section 2.2;

“Excluded Contracts” has the meaning set out in Section 2.2(d);

“Excluded Liabilities” has the meaning set out in Section 2.4;

“Final Closing Inventory” is defined in Section 3.1(c)(ii);

“Final Closing Trade Receivables” is defined in Section 3.1(c)(ii);

“Governmental Authority” means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, body, board, tribunal or dispute settlement panel or other law or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

“HST” means all Taxes payable under the ETA, including goods and services Taxes and any harmonized sales Taxes in applicable provinces, or under any provincial legislation similar to the ETA, and any reference to a specific provision of the ETA or any such provincial legislation shall refer to any successor provision thereto of like or similar effect;

“Intellectual Property” has the meaning set out in Section 2.1(f);

“Interim Inventory List” means the list of inventory provided by Seller to Purchaser in an Excel file by email on September 12, 2017;

“Interim Trade Receivables List” means the list of trade accounts receivable provided by Seller to Purchaser in an Excel file by email on September 22, 2017;

“Inventory Locations” means the locations identified in Schedule 2.1(a);

“ITA” means the *Income Tax Act* (Canada);

“Key Counterparty” means, in respect of a Contract listed in Schedule 1.1(f), the counterparty to such Contract;

“Key Replacement Contact” means, in respect of each Contract listed in Schedule 1.1(f), an agreement between Purchaser and the applicable Key Counterparty providing for the amendment and assignment, or the termination and replacement, of such Contract effective as of the Closing Time, in form and content satisfactory to Purchaser in its sole discretion;

“Law” means any federal, provincial, county, territorial, district, municipal, local, foreign, supranational or international law, statute, ordinance, regulation, by-law, rule, code, treaty or rule of common law or otherwise of, or any order, judgment, injunction, decree or similar authority enacted, issued, promulgated, enforced or entered by, any Governmental Authority;

“Leased Premises Locations” means the locations identified on Schedule 1.1(b);

“Lenders” means the lenders from time to time party to the Revolving Facility;

“Licenses” means all license agreements as set out in the spreadsheet titled “Copy of RD SW tools budget Sept 2017.xlsx” delivered by Seller to Purchaser via email dated September 20, 2015 at 4:53 p.m. EST.

“Minimum Closing Inventory” means [REDACTED], being the total value of the inventory set out in the Interim Inventory List;

“Minimum Closing Trade Receivables” means [REDACTED], being the total value of the trade accounts receivable set out in the Interim Trade Receivables List excluding the Bharti Trade Receivable of \$4,707,018;

“Parties” means Seller and Purchaser and **“Party”** means any one of them;

“Permitted Encumbrances” means the Encumbrances listed in Schedule 1.1(a);

“Person” means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

“Purchase Price” has the meaning set out in Section 3.1;

“Purchased Assets” has the meaning set out in Section 2.1;

“Purchased Shares” has the meaning set out in Section 2.1(n);

“Purchaser” has the meaning set out in the recitals;

“Receiver’s Certificate” means the certificate delivered by Seller to Purchaser at the Closing Time, to be filed with the Court by the Seller without delay thereafter, certifying that all conditions of Closing have been satisfied or waived by the applicable Parties;

“Revolving Facility” means the revolving credit facility 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;

“Sale Process” means the sales process substantially in the form attached as Appendix “A” to the Sale Process Approval Order;

“Sales Process Approval Order” has the meaning set out in the Recitals;

“Seller” has the meaning set out in the recitals;

“Software” means any computer program, operating system, application, system, firmware or software of any nature, point-of-entry system, peripherals, and data whether operational, active, under development or design, nonoperational or inactive, including all object code, source code, comment code, algorithms, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen designs, reports, designs, concepts, visual expressions, technical manuals, tests scripts, user manuals and other documentation therefor, whether in machine-readable form, virtual machine-readable form, programming language, modeling language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature, and all databases necessary or appropriate in connection with the operation or use of any such computer program, operating system, application, system, firmware or software;

“Successful Bid” has the meaning set out in the Sales Process Approval Order;

“Tax” and **“Taxes”** means any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by,

income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education, employment and all social security taxes, all surtaxes, all customs, duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, and other government pension plan premiums or contributions;

“Termination Date” means October 20, 2017, or such other date as Seller and Purchaser may agree, acting reasonably;

“Third Party Consents” means such consents, approvals and/or authorizations as may be required for the assignment of the Assumed Contracts to Purchaser, as determined by and in form and content satisfactory to Purchaser, acting reasonably;

“Transaction” means the transaction of purchase and sale contemplated by this Agreement;

“Transfer Taxes” has the meaning set out in Section 5.1;

“Transferred Employees” has the meaning set out in Section 4.1; and

“Westchester LOC” has the meaning set out in Section 2.2(f).

1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **Currency** – All references to dollar amounts are to lawful currency of the United States of America unless otherwise stated;
- (b) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (c) **Including** – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”;
- (d) **No Strict Construction** – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party;
- (e) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders;
- (f) **Time Periods** – Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day; and
- (g) **Legislation** – A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or re-enactment thereof, any legislative provision substituted therefore and all regulations and statutory instruments issued thereunder or pursuant thereto.

1.3 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant hereto and thereto, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of Agreement except as specifically set forth in this Agreement.

1.4 Schedules

The schedules to this Agreement, listed below, are an integral part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule 1.1(a)	- Permitted Encumbrances
Schedule 1.1(b)	- Leased Premises Locations
Schedule 1.1(c)	- Approval and Vesting Order
Schedule 1.1(d)	- Acquired Subsidiaries
Schedule 1.1(e)	- Assumed Contracts
Schedule 1.1(f)	- Key Replacement Contracts
Schedule 2.1(a)	- Inventory Locations
Schedule 2.1(b)	- Equipment, Fixtures, Furniture, Computers and Software
Schedule 2.1(f)(i)	- Patents
Schedule 2.1(f)(ii)	- Copyrights and Trademarks
Schedule 2.1(g)	- Business and Domain Names
Schedule 2.1(n)	- Purchased Shares
Schedule 2.2(a)	- Excluded Assets

1.5 Conflict

In the event of any conflict between the provisions of the body of this Agreement and the Appendices and Schedules, the provisions of the body of this Agreement shall prevail.

1.6 Recitals

The Recitals to this Agreement are an integral part of this Agreement.

ARTICLE 2 **PURCHASE AND SALE**

2.1 Purchase and Sale of Purchased Assets

Subject to the provisions of this Agreement, at the Closing Time, Seller shall transfer, sell, convey, assign and deliver unto Purchaser, and Purchaser shall purchase, acquire and accept from Seller all right, title and interest of each of Seller and the Company in and to all of the property and assets used in or relating to the Business and all of the other property, assets and undertaking of the Company other than Excluded Assets (collectively, the **"Purchased Assets"**). For greater certainty, unless otherwise an Excluded Asset, Purchased Assets shall include all right, title and interest of each of the Company and Seller in and to the following:

- (a) Inventory. All inventories and supplies of any kind or nature, including: inventory manufactured by the Company or purchased from third party vendors; raw materials, work-in-process, packaging materials and finished goods; and the inventory located at each of the Inventory Locations;
- (b) Equipment, Fixtures and Furniture. All vehicles, equipment, fixtures, furniture, displays and signage owned or leased by the Company, including but not limited to the equipment, fixtures and furniture listed on Schedule 2.1(b);
- (c) Computers and Software. All computer hardware and Software owned by or licensed to the Company and used in connection with the Business, including but not limited to the computers and Software listed on Schedule 2.1(b);
- (d) Leased Real Property. All rights of the Company as lessee of real property for the Leased Premises Locations and all leasehold improvements related thereto (collectively, the **"Assumed Real Property Leases"**);
- (e) Contracts. All Contracts, including the Assumed Contracts and the Licenses.
- (f) Intellectual Property. All intellectual property of any nature relating to the Business owned by the Company, including customer lists, supplier lists, trademarks, proposed trademarks, certification marks, distinguishing guises, industrial designs and design patents, copyrights, works of authorship and the benefit of waivers of moral rights, formulae, processes, research data, technical expertise, confidential information, know-how, trade secrets, inventions (whether patentable or not), patent rights, patent applications and registrations, patent continuations, continuations-in-part, reissues, extensions or patents, whether domestic or foreign and whether registered or unregistered, and all applications for registration in respect thereof, including but not limited to the intellectual property listed on Schedules 2.1(f)(i) and 2.1(f)(ii) (collectively, the **"Intellectual Property"**);
- (g) Business and Domain Names. All trade names, business names and domain names related to the Business or owned or used by the Company, including the domain names and business names listed on Schedule 2.1(g) and any derivation thereof or any trademarks or trade names incorporating such business names;
- (h) Goodwill. The goodwill of the Business, together with the exclusive right of Purchaser to represent itself as carrying on the Business in continuation of and in succession to the Company, including all choses in action where Company is the plaintiff or moving party and other intangibles relating to the Business that do not form part of the Intellectual Property;

- (i) Prepaid Expenses and Deposits. All prepaid expenses and all deposits, including any deposits and prepaid rent made in connection with the Assumed Real Property Leases;
- (j) Authorizations. All Authorizations, owned, held or used by the Company in connection with the Business to the extent that they are transferable;
- (k) Books and Records. All books and records including customer lists, sales records, price lists and catalogues, sales literature, advertising material, manufacturing data, production records, employee manuals, personnel records, supply records, inventory records and correspondence files (together with, in the case of any such information which is stored electronically, the media on which the same is stored) but for greater certainty, excluding corporate and Tax records in respect of Seller (collectively, the **"Books and Records"**);
- (l) Receivables. All accounts receivable relating to the Business or otherwise;
- (m) Taxes. The right to receive any refund of Taxes paid by the Company;
- (n) Purchased Shares. All shares of any subsidiary or other entity owned by the Company (the **"Purchased Shares"**) including but not limited to those Purchased Shares listed on Schedule 2.1(n); and
- (o) Express Consents – Canada's Anti-Spam Law. All express consents obtained by the Company or Seller under applicable privacy and anti-spam Laws from any person to (i) send or cause to be sent an electronic message to such person, or (ii) alter or cause to be altered the transmission data in an electronic message so that the message is delivered to a destination other than or in addition to that specified by such person.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement, the Purchased Assets shall not include the following (collectively, the **"Excluded Assets"**):

- (a) the property and assets described in Schedule 2.2(a);
- (b) All cash on hand, cash equivalents, bank deposits, cash floats and petty cash of the Company;
- (c) the rights of Seller under this Agreement and each other document and agreement contemplated to be delivered by Purchaser to Seller hereby and thereby;
- (d) the rights of the Company or Seller under the Contracts listed in Schedule 2.2(a) (collectively, the **"Excluded Contracts"**);
- (e) the rights of the Company or Seller in respect of the claims asserted in the arbitration proceedings commenced in New Delhi, India by Bharti Airtel Limited against the Company dated September 5, 2016 (the **"Bharti Litigation"**) including the Bharti Trade Receivable claimed by the Company and the proceeds of any other crossclaims or counterclaims asserted by the Company therein;
- (f) the rights of the Company or Seller in respect of the letter of credit dated July 31, 2014 issued by Comerica Bank (the **"Westchester LOC"**) in favour of any refund

or return of amounts drawn by Westchester Fire Insurance Company pursuant to the Westchester LOC;

- (g) all Books and Records required by Law to be retained by Seller, including personnel records, corporate minute books and Tax records (provided that the Seller will provide a copy of such Books and Records to Purchaser to the extent not prohibited by Law and they are otherwise reasonably associated with the Purchased Assets or reasonably necessary to carry on the Business); and
- (h) any other property or assets that the Purchaser elects to exclude from the Purchased Assets by written notice to Seller delivered not less than five days prior to the Closing Date.

2.3 Assumed Liabilities

On the terms and subject to the conditions of this Agreement, Purchaser agrees, effective at the Closing Time to assume and be responsible for and thereafter honour, perform, discharge and pay as and when due the following obligations and liabilities of the Company (collectively, the "**Assumed Liabilities**") pursuant to and in accordance with the assumption agreement contemplated by Section 6.3(c):

- (a) subject to subsection 2.5(a), all debts, liabilities and obligations under the Assumed Contracts accrued from and after the Closing Time;
- (b) subject to and in accordance with Section 2.5 and Subsection 3.2(b), Cure Costs in respect of the Assumed Contracts;
- (c) any Transfer Taxes payable by Purchaser pursuant to Section 5.1;
- (d) the liabilities and obligations owing to Transferred Employees that the Purchaser has agreed to assume pursuant to Section 4.2; and
- (e) any other obligations and liabilities expressly assumed under this Agreement.

2.4 Excluded Liabilities

Other than the Assumed Liabilities, Purchaser shall not assume and shall not be liable for any debts, liabilities or obligations of the Company or Seller (the "**Excluded Liabilities**") which, for greater certainty, shall include:

- (a) all debts, liabilities and obligations related to any Excluded Assets, including any Excluded Contracts;
- (b) all debts, liabilities and obligations arising from the ownership or use of the Purchased Assets prior to the Closing Date, other than those that are specified as liabilities and obligations to be assumed by Purchaser under Section 2.3;
- (c) all debts, liabilities and obligations of the Company or Seller in respect of any actions, causes of action, arbitrations, litigation proceedings, lawsuits, court proceedings or proceedings before any Governmental Authority or arbitration tribunal against the Company or Seller or arising from the Company's or Seller's ownership or use of the Purchased Assets or conduct of the Business prior to the Closing Time;

- (d) any Taxes payable or remittable by Seller or the Company, other than Transfer Taxes payable by Purchaser pursuant to Section 5.1;
- (e) Encumbrances, other than Permitted Encumbrances; and
- (f) other than Assumed Liabilities in respect of Transferred Employees, all liabilities and obligations of Seller, the Company or/and any of the Company's Affiliates, to the Employees.

2.5 Third Party Consents and Cure Costs

- (a) Notwithstanding anything contained in this Agreement or elsewhere, Purchaser will not assume and will have no obligation to discharge any debt, liability or obligation under any Contract which is not assignable or assumable in whole or in part without a Third Party Consent, including but not limited to the Assumed Contracts, unless such Third Party Consent as applicable, has been obtained.
- (b) Until the Closing Date, Seller shall use commercially reasonable efforts to obtain all Third Party Consents required for the assignment of the Assumed Contracts, and Purchaser shall provide its reasonable cooperation to assist the Seller in obtaining any such Third Party Consents.
- (c) Any Cure Costs required to be paid or otherwise satisfied to obtain a Third Party Consent will be the responsibility of Purchaser, subject to the terms of this Agreement. To the extent Cure Costs are required to be paid at the Closing Time, Purchaser will pay such Cure Costs by certified cheque, bank draft or wire transfer payable to the applicable counterparty, and any other Cure Costs will be satisfied in the manner contemplated in the applicable Third Party Consent.

ARTICLE 3 PURCHASE PRICE AND ALLOCATION

3.1 Purchase Price

- (a) The purchase price for the Purchased Assets, exclusive of all applicable Transfer Taxes, shall be (i) the amount of [REDACTED] (the "Cash Purchase Price") plus (ii) the amount of the Assumed Liabilities (collectively, the "Purchase Price"), subject to adjustment in accordance with Section 3.1(c).
- (b) The Purchase Price shall be allocated as agreed between the Seller and the Purchaser, acting reasonably. Seller and Purchaser will make and file all tax returns, elections and filings on a basis consistent with the agreed allocation and will not take a position contrary thereto.
- (c) The Purchase Price has been determined on the basis that the Purchased Assets will include Closing Inventory and Closing Trade Receivables not less than the Minimum Closing Inventory and the Minimum Closing Trade Receivables, respectively, at the Time of Closing. The Purchase Price will be subject to the following adjustments:
 - (i) No sooner than 10 days and not less than 5 days prior to the Closing Date, Seller will deliver to Purchaser a statement of Seller's good faith estimate of the amount of Closing Inventory and Closing Trade Receivables that it reasonably believes will be included in the Purchased

Assets (the “**Estimated Closing Inventory**” and “**Estimated Closing Trade Receivables**”, respectively). If the Estimated Closing Inventory is less than the Minimum Closing Inventory, the Cash Purchase Price (and the amount to be paid by Purchaser pursuant to Section 3.2(c)) will be reduced by such difference on a dollar-for-dollar basis. If the Estimated Closing Trade Receivables is less than the Minimum Closing Trade Receivables, the Cash Purchase Price (and the amount to be paid by Purchaser pursuant to Section 3.2(c)) will be reduced by such difference on a dollar-for-dollar basis.

- (ii) Within 15 days after the Closing Date, Purchaser will deliver to Seller a statement of Purchaser’s good faith calculation of the amount of Closing Inventory and Closing Trade Receivables included in the Purchased Assets. If requested by Seller, Purchaser will allow Seller to review its working papers and calculations. If Seller disputes Purchaser’s calculation of the Closing Inventory or Closing Trade Receivables included in the Purchased Assets, it must provide written notice of its dispute to Purchaser within 10 days after receipt of Purchaser’s calculation. If Seller does not dispute Purchaser’s calculation by giving written notice within the 10-day period, Purchaser’s calculation will be final. If Seller has given written notice of a dispute within the 10-day period and the Parties cannot resolve the dispute within 10 days thereafter, either Party may thereafter apply to Court for a resolution of the dispute (subject to any agreement between the Parties regarding a different dispute resolution procedure). The amount of Closing Inventory and Closing Trade Receivables included in the Purchased Assets, as determined in accordance with this Section 3.1(c)(ii), will be the “**Final Closing Inventory**” and “**Final Closing Trade Receivables**”, respectively.
- (iii) Subject to and in accordance with Section 3.1(c)(iv):
 - (A) If the Final Closing Inventory is less than the Minimum Closing Inventory but greater than the Estimated Closing Inventory, Purchaser will pay the difference between the Final Closing Inventory and Estimated Closing Inventory to Seller on a dollar-for-dollar basis.
 - (B) If the Final Closing Inventory is less than the Estimated Closing Inventory, Seller will pay the difference to Purchaser on a dollar-for-dollar basis.
 - (C) If the Final Closing Trade Receivables is less than the Minimum Closing Trade Receivables but greater than the Estimated Closing Trade Receivables, Purchaser will pay the difference between the Final Closing Trade Receivables and the Estimated Closing Receivables to Seller on a dollar-for-dollar basis.
 - (D) If the Final Closing Trade Receivables is less than the Estimated Closing Trade Receivables, Seller will pay the difference to Purchaser on a dollar-for-dollar basis.

- (iv) Any payment to be made pursuant to Section 3.1(c)(iii) will be made within five days after the payment amount has been determined by bank draft, certified cheque or wire transfer. If each of Seller and Purchaser is required to make a payment to the other, the two payments will be netted such that the Party owing the greater amount will pay the net amount. The final Purchase Price will be treated as having been increased by the amount of any payment by the Purchaser or decreased by the amount of any payment by Seller pursuant to this Section 3.1(c)(iv).
- (v) The estimates and calculations required in this Section 3.1(c) will be prepared on a basis consistent with the manner in which the Interim Inventory List and Interim Trade Receivables List were prepared, including the type and nature of inventory and trade accounts receivable included (and not included) thereon and the basis upon which such inventory and trade accounts receivable were valued, and otherwise in accordance with generally accepted accounting principles.

3.2 Satisfaction of Purchase Price

The Purchaser shall pay the Purchase Price as follows:

- (a) By paying the amount of [REDACTED] by wire, certified cheque or bank draft payable to the Seller on the date of this Agreement, as a deposit (together with the interest earned thereon from time to time, the “**Deposit**”), which amount will be held by the Seller in trust for Purchaser and credited toward the Purchase Price on Closing, unless otherwise returned to Purchaser or released to Seller in accordance with Section 10.2(b);
- (b) by paying or otherwise satisfying, in accordance with Section 2.5(c), the Cure Costs;
- (c) by paying to Seller on Closing an amount equal to the Cash Purchase Price (i) less the sum of the Deposit and the Cure Costs, (ii) plus applicable Transfer Taxes (including any applicable HST), if any, and (iii) as may be adjusted pursuant to Section 3.1(c)(i), in the manner provided in Section 6.3(a); and
- (d) by assumption of the Assumed Liabilities, other than the Cure Costs, effective as at the Closing Time.

ARTICLE 4 EMPLOYEE MATTERS

4.1 Offers to Employees

- (a) Conditional upon the Closing and with effect as of the Closing Date (or such later date on which those Transferred Employees who are on leave return to active service), Purchaser shall offer employment to those Employees that it wishes to employ following the Closing at its sole discretion, provided that offers shall be made to not less than 85% of Company’s Employees as at the date of this Agreement, such conditional offers to be made at least five days prior to the Closing Date and on terms and conditions of employment to be determined by Purchaser at its sole discretion. Purchaser shall only be required to recognize such Employees’ past service with the Company for purposes of any minimum standards imposed by applicable employment standards legislation and not for

purposes of any notice of termination, pay in lieu of notice, severance pay or any other payment or damages at common law. The Employees who accept Purchaser's offer of employment are collectively referred to as herein as the **"Transferred Employees"**.

- (b) No later than five days prior to the Closing Date, Purchaser shall deliver to Seller a list of Employees to whom Purchaser intends to make an offer of employment in accordance with Section 4.1(a). No later than the Closing Date, Seller shall take any necessary steps to terminate the employment of the Employees identified on the list with effect immediately prior to the Closing Time and make payment of (or arrangements to pay, satisfactory to the Purchaser acting reasonably), at the Closing Time or on the first payday following the Closing Time if the Closing Time does not fall on such payday, all outstanding wages (not including vacation pay) owed by Seller or the Company to such Employees.

4.2 Employee Liability

Conditional upon the Closing and with effect as of the Closing Date, Purchaser shall assume and be responsible for:

- (a) all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation and benefits relating to the employment of all Transferred Employees earned as of or after the Closing Date;
- (b) all liabilities for vacation pay relating to the employment of all Transferred Employees arising from or related to employment of the Transferred Employees to the extent that Seller has disclosed such liability to Purchaser in respect of each Transferred Employee by written notice delivered not less than five days prior to the Closing Date and the aggregate amount does not exceed \$746,208;
- (c) all severance payments, payments for notice of termination or payments in lieu of notice of termination, damages for wrongful dismissal and all related costs in respect of any termination by Purchaser of the employment of any Transferred Employee from and after the Closing Date, provided that Purchaser is not hereby agreeing to assume or be responsible for any such obligations that relate to the period prior to the Closing Date except to the extent required by minimum standards imposed by applicable employment legislation in relation to the Transferred Employees;
- (d) all liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the Transferred Employees from and after the Closing Date; and
- (e) all employment-related claims, penalties, contributions, premiums and assessments in respect of Transferred Employees arising out of matters which occur from and after the Closing Date.

ARTICLE 5 **TAX MATTERS**

5.1 Transfer Taxes

All amounts payable by Purchaser to Seller pursuant to this Agreement do not include any value-added, sales, use, consumption, multi-staged, personal property, customs,

excise, stamp, land transfer, or similar taxes, duties, or charges, (collectively “**Transfer Taxes**”) and all Transfer Taxes are the responsibility of and for the account of Purchaser. If Seller is required by Law or by administration thereof to collect any applicable Transfer Taxes from Purchaser, then Purchaser shall pay such Transfer Taxes to Seller at the Closing Time, unless Seller agrees that Purchaser qualifies for an exemption from any such applicable Transfer Taxes, in which case Purchaser shall, in lieu of payment of such applicable Transfer Taxes to Seller, deliver to Seller such certificates, elections, or other documentation required by Law or the administration thereof to substantiate and effect the exemption claimed by Purchaser. Where Seller is not required by Law or by administration thereof to collect applicable Transfer Taxes, Purchaser shall pay such Transfer Taxes directly to the appropriate taxing authority and shall provide evidence of such payment to Seller upon request. Purchaser shall, at all times, indemnify and hold harmless Seller, its directors, officers, and employees against and in respect of any and all amounts assessed by any taxing authority in respect of any failure on the part of Purchaser to pay applicable Transfer Taxes, including all taxes, interest, and penalties assessed and including all reasonable legal and professional fees incurred by Seller, its directors, officers, and employees as a consequence of or in relation to any such assessment. Notwithstanding anything else in this Agreement, this indemnity shall survive the Closing Time until 30 days following the expiry of the statutory assessment period under applicable law and shall not be subject to any caps or thresholds.

5.2 ETA Elections

Notwithstanding Section 5.1, Purchaser and Seller shall, on the Closing Date, elect jointly under section 167 of the ETA and under any similar provision of any applicable provincial legislation, in the form prescribed for the purposes of each such provision, in respect of the sale and transfer of the Purchased Assets hereunder, and Purchaser shall file such elections with Canada Revenue Agency and any other applicable Governmental Authorities within the time and in the manner required by applicable Laws, and provide Seller with proof of receipt by Canada Revenue Agency or such other applicable Governmental Authority of the receipt, to the extent obtained, of such elections. Purchaser shall indemnify and hold Seller harmless from and against any HST and any penalty or interest in respect thereof that may be payable by or assessed against Seller as a result of or in connection with Seller’s failure to collect the applicable HST on the sale of the Purchased Assets hereunder, including any such HST, penalties and interest arising as a result of any failure or refusal by any Governmental Authority to accept any such election or on the basis that any such election was inapplicable, invalid or not properly made. Notwithstanding anything else in this Agreement, this indemnity shall survive the Closing Time until 30 days following the expiry of the statutory assessment period under the ETA and shall not be subject to any caps or thresholds.

5.3 Other Tax Elections

Purchaser and Seller shall execute and deliver such other Tax elections and forms as they may mutually agree upon.

ARTICLE 6

CLOSING AND CLOSING CONDITIONS

6.1 Closing

Subject to compliance with the terms and conditions hereof, the transfer of possession of the Purchased Assets shall be deemed to take effect as at the Closing Time, or such other date and time as may be agreed upon by the Parties. The Closing shall take place at

the offices of Cassels Brock & Blackwell LLP, counsel for the Seller, Suite 2100, 40 King Street West, Toronto, Ontario M5H 3C2.

6.2 Seller's Deliveries

On or before the Closing Time, Seller shall deliver or cause to be delivered to Purchaser (in the case of any documents, in form and content satisfactory to Seller and Purchaser, each acting reasonably):

- (a) the Purchased Assets, other than, if available to Seller, the share certificates representing the Purchased Shares and the minute books of the Acquired Subsidiaries, shall be delivered *in situ* wherever located as of the Closing Time;
- (b) if available to Seller, the share certificates representing the Purchased Shares and the minute books of the Acquired Subsidiaries;
- (c) customary deeds, assignments, bills of sale and other conveyancing documents, to be settled between counsel for Seller and counsel for Purchaser, sufficient to transfer the various categories of Purchased Assets on an "as is where is" basis consistent with the terms of this Agreement and the Approval and Vesting Order;
- (d) specific assignments of all the right, title and interest in favour of Purchaser, the Company or its predecessors-in-title in and to the Intellectual Property as may be required for registration or recordal purposes;
- (e) the Third Party Consents in respect of the Assumed Contracts;
- (f) a copy of the issued and entered Approval and Vesting Order;
- (g) a certificate by a senior officer of Seller certifying that the representations and warranties of Seller set out herein are true and correct in all material respects at the Closing Time (unless they are expressed to be made only as of an earlier fixed date, in which case they need be true and correct only as of such earlier date);
- (h) releases in favour of Purchaser and the Acquired Subsidiaries (i) from the Lenders of all guarantees, security and claims against or with respect to each of the Acquired Subsidiaries, (ii) from any Person that could have a claim for contribution or indemnity arising from any guarantee or other obligation to the Lenders in respect of the Company's or any Acquired Subsidiary's obligations to the Lenders in connection with the Revolving Credit Agreement or otherwise, or confirmation from the Lenders that no further guarantees exist in respect of the Company's or any Acquired Subsidiary's obligations to the Lenders, and (iii) from or on behalf of the Company (and from any subsidiary of the Company that is not an Acquired Subsidiary if the shares of a subsidiary become Excluded Assets), of all claims of any nature, in each case in form and substance satisfactory to the Lenders and Purchaser, each acting reasonably;
- (i) an acknowledgement dated the Closing Date that each of the conditions precedent in Section 6.5 has been fulfilled, performed or waived as of the Closing Time;
- (j) an executed copy of the Receiver's Certificate;

- (k) the elections referred to in Sections 5.2 and 5.3; and
- (l) any other documents required to give effect to this Agreement in form and substance satisfactory to the Parties, each acting reasonably.

6.3 Purchaser's Deliveries

On or before the Closing Time, Purchaser shall deliver or caused to be delivered to Seller (in the case of any documents, in form and content satisfactory to Seller and Purchaser, each acting reasonably):

- (a) payment of the portion of the Cash Purchase Price to be paid at Closing in accordance with Section 3.2(c), which shall be paid to the Seller by cash payment by way of certified cheque or bank draft to the order of the Seller or by wire transfer in immediately available funds to an account which shall be designated by the Seller to the Purchaser;
- (b) customary deeds, assignments, bills of sale and other conveyancing documents to be settled between counsel for Seller and counsel for Purchaser, sufficient to transfer the various categories of Purchased Assets on an "as is where is" basis consistent with the terms of this Agreement and the Vesting Order;
- (c) an assumption agreement providing for Purchaser's assumption of the Assumed Liabilities;
- (d) a certificate by a senior officer of Purchaser certifying that the representations and warranties of Purchaser set out herein are true and correct at the Closing Time and attaching certified copies of the articles of incorporation and by-laws of Purchaser and the resolution of Purchaser's directors or shareholders approving the subject matter of this Agreement;
- (e) an acknowledgement dated the Closing Date that each of the conditions precedent in Section 6.4 has been fulfilled, performed or waived as of the Closing Time;
- (f) a receipt for the Purchased Assets;
- (g) payment of all Transfer Taxes (if any) payable pursuant to Section 5.1;
- (h) the elections referred to in Sections 5.2 and 5.3; and
- (i) any other documents required pursuant to this Agreement in form and substance satisfactory to the Parties, each acting reasonably.

6.4 Conditions of Closing in Favour of Purchaser

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of Purchaser to be performed or fulfilled at or prior to the Closing Time and which may be waived in whole or in part by Purchaser at any time:

- (a) Representations and Warranties. The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects at the Closing Time (unless they are expressed to be made only as of an earlier fixed date, in which case they need be true and correct only as of such earlier date);

- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by Seller at or before the Closing Time shall have been complied with or performed in all material respects;
- (c) Approval and Vesting Order. The Approval and Vesting Order shall have been issued, and the operation and effect of such order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom) at the Closing Time;
- (d) Third Party Consents for Assumed Contracts. Seller shall have obtained a Third Party Consent in respect of the assignment to Purchaser of each Assumed Contract;
- (e) Key Replacement Contract. Purchaser shall have entered into the Key Replacement Contract with the applicable counterparty thereto, on terms satisfactory to Purchaser in its sole discretion no later than five Business Days following the day on which Purchaser is notified that its offer has been accepted as a Successful Bid pursuant to the Sale Process Approval Order, and such agreement will become effective in accordance with its terms as of the Closing Time;
- (f) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby;
- (g) Injunctions. There shall be in effect no injunction against closing the Transactions entered by a court of competent jurisdiction;
- (h) No Material Damage. No damage by fire or other hazard to the whole or any material part of the Purchased Assets shall have occurred prior to the Closing Time;
- (i) No Material Change. Except as specifically permitted pursuant to this Agreement, since the date of this Agreement there shall not have been any change, event or occurrence that has had, or that would reasonably be expected to have, a material adverse effect on the Purchased Assets, the Assumed Liabilities, or the condition (financial or otherwise), operations or results of operations of the Business or which might materially and adversely affect the ability of Purchaser to carry on the Business after the Closing Time substantially as the Business is presently being conducted by Seller; and
- (j) Documents. Seller shall have delivered the documents referred to in Section 6.2.

If any of the foregoing conditions in this Section 6.4 has not been fulfilled by the Termination Date, Purchaser may terminate this Agreement by written notice to Seller. However, Purchaser may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

6.5 Conditions of Closing in Favour of Seller

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of Seller, to be performed or fulfilled at or prior to the Closing Time and which may be waived in whole or in part by Seller at any time:

- (a) Representations and Warranties. The representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects at the Closing Time (unless they are expressed to be made only as of an earlier fixed date, in which case they need be true and correct only as of such earlier date);
- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by Purchaser at or before the Closing Time shall have been complied with or performed in all material respects;
- (c) Key Replacement Contract. No later than five Business Days following the day on which Purchaser is notified in writing by Seller that its offer has been accepted as a Successful Bid pursuant to the Sale Process Approval Order, Seller shall receive written confirmation from Purchaser that the condition set out in Section 6.4(e) has been satisfied or waived.
- (d) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby;
- (e) Approval and Vesting Order. The Approval and Vesting Order shall have been issued, and the operation and effect of such order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom) at the Closing Time;
- (f) Injunctions. There shall be in effect no injunction against closing the Transaction entered by a court of competent jurisdiction; and
- (g) Documents. Purchaser shall have made the payments and delivered the documents referred to in Section 6.3.

If any of the foregoing conditions in this Section 6.5 has not been fulfilled by the Termination Date, Seller may terminate this Agreement by written notice to Purchaser. However, Seller may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages in accordance with Section 10.2, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

6.6 Receiver's Certificate

The Closing shall be deemed to have occurred upon delivery by Seller of an executed copy of the Receiver's Certificate to Purchaser.

6.7 Possession of Assets and Risk of Loss

- (a) The Purchased Assets shall be at the risk of Seller until the Closing Time. If before the Closing Time, all or a material part of the Purchased Assets is lost, damaged or destroyed then Purchaser may terminate this Agreement forthwith upon written notice to Seller to such effect.

- (b) At the Closing Time, the Purchaser shall take possession of the Purchased Assets where situated at the Closing Time, subject to Section 6.2(b). The Purchaser acknowledges that Seller has no obligation to deliver physical possession of the Purchased Assets to the Purchaser, other than, if available to the Seller, the share certificates representing the Purchased Shares and the minute books of the Acquired Subsidiaries. The Purchaser shall promptly notify the Seller of any Excluded Assets which may come into the possession or control of the Purchaser, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Seller where situated, or to such other Person as the Seller may direct in writing and, for greater certainty, title shall not be deemed to vest to the Purchaser in respect of any Excluded Assets.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of Seller

Seller hereby represents and warrants to the Purchaser as follows and acknowledges that Purchaser is relying on such representation and warranty in connection with its purchase of the Purchased Assets:

- (a) The execution, delivery and performance by Seller of this Agreement, subject to issuance of the Approval and Vesting Order:
 - (i) is within the powers of Seller;
 - (ii) has been duly authorized, executed and delivered by Seller;
 - (iii) constitutes legal, valid and binding obligations of the Seller; and
 - (iv) will not result in the violation of any applicable Law.
- (b) Other than the Approval and Vesting Order and the Third Party Consents, there is no requirement for Seller to make any filing with, give any notice to or obtain any certificate, registration or Authorization as a condition to the lawful consummation of the transactions contemplated by this Agreement.
- (c) Seller is not a non-resident of Canada for the purposes of the ITA.
- (d) Seller is a registrant for purposes of the ETA whose registration number is 875503724 RT0001.
- (e) Since its appointment, to the best of Seller's knowledge Seller has timely paid all maintenance fees and other amounts and taken all other action to maintain, in good standing, the Intellectual Property and all Software licenses in favour of the Company as licensee.

7.2 Representations and Warranties of Purchaser

Purchaser represents and warrants to Seller as follows and acknowledges and confirms that Seller is relying on such representations and warranties in connection with its sale of the Purchased Assets:

- (a) Purchaser is a corporation duly formed and existing under the laws of the State of Arizona and has the power and authority to enter into, and to perform its obligations under, this Agreement.
- (b) The execution, delivery and performance by Purchaser of this Agreement:
 - (i) has been duly authorized by all necessary corporate action;
 - (ii) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and
 - (iii) will not result in the violation of any applicable Law.
- (c) This Agreement has been duly executed and delivered by Purchaser.
- (d) Other than the Approval and Vesting Order and the Third Party Consents, there is no requirement for Purchaser to make any filing with, give any notice to or obtain any certificate, registration or Authorization as a condition to the lawful consummation of the transactions contemplated by this Agreement.
- (e) Purchaser is a WTO investor for purposes of the *Investment Canada Act*.
- (f) Purchaser, or its assignee pursuant to Section 12.3, will become registered on or prior to Closing for purposes of the ETA.
- (g) There are no actions, suits, appeals, claims, applications, orders, investigations, proceedings, grievances, arbitrations or alternative dispute resolution processes in progress, pending, or to Purchaser's knowledge, threatened against Purchaser that could prohibit, restrict or seek to enjoin the Transaction.

ARTICLE 8 COVENANTS OF THE PARTIES

8.1 Covenants of Seller

Seller covenants and agrees with Purchaser as follows:

- (a) until the earlier of the Termination of this Agreement and the Closing Time:
 - (i) Seller shall furnish Purchaser and its representatives reasonable access to the Business and business of the Acquired Subsidiaries and the Purchased Assets at all times during normal business hours, as well as such information within the possession or control of Seller regarding the Business and business of the Acquired Subsidiaries as Purchaser and its representatives may reasonably request;

- (ii) Seller will, except as consented to in writing by Purchaser or as relates solely to Excluded Assets:
 - (A) carry on the Business in the usual and ordinary course, consistent with the way it has been carried on since appointment of Seller, and use reasonable commercial efforts to preserve intact the Business and the Purchased Assets and to promote and preserve for Purchaser the goodwill of suppliers, customers and others having business relations with the Company;
 - (B) refrain from disclaiming any Contracts;
 - (C) refrain from the sale of any assets of any kind other than Inventory in the ordinary course of business;
 - (D) maintain the Purchased Assets in the same state of repair, order and conditions as they are on the date hereof, reasonable wear and tear excepted;
 - (E) refrain from causing or accepting any distributions (whether by way of dividends, return of capital, repayment of debt or otherwise) from the Acquired Subsidiaries outside of the ordinary course, which for greater certainty does not prevent the daily or near-daily transfers by the Seller from the bank accounts of the Acquired Subsidiaries of any accounts receivable collections collected by the Acquired Subsidiaries in the ordinary course of business;
- (iii) maintain the Books and Records in the usual and ordinary course, consistent with past practice and record all transactions on a basis consistent with that practice; and
- (iv) to the best of the Seller's knowledge, pay all maintenance fees and other accounts, and take all actions, necessary to maintain the Intellectual Property in good standing.
- (b) upon acceptance and execution of this Agreement by Seller, Seller will apply to Court for approval of this Agreement and the Transaction at a hearing to be scheduled on a date mutually satisfactory to Seller and Purchaser providing for a reasonable period of notice to those served. Seller will provide Purchaser with draft court materials and an opportunity to provide comments on them before they are served and filed. Seller will provide to Purchaser its proposed service list for its motion and will add to the service list and serve its motion on any other any Person reasonably requested by Purchaser. The copy of this Agreement included in Seller's court materials that is made public will be redacted in a manner mutually satisfactory to Seller and Purchaser (with an unredacted copy provided to the Court confidentially with a request for a sealing order).
- (c) if so authorized by the Court, within ten days after the Closing Date, Seller will cause the Company to have changed its name to its numbered corporation name and agrees not to allow or cause the Company to further change its name, or adopt or use any trademark, domain name or trade name, to one that includes "DragonWave" or any name similar to it.

- (d) Seller shall use commercially reasonable efforts to fulfill the conditions set out in Section 6.4 of this Agreement and shall cooperate with Purchaser in its efforts to cause the satisfaction of the conditions set out in Section 6.5 of this Agreement.

8.2 General Covenants of Purchaser

Purchaser covenants and agrees with Seller as follows:

- (a) for a period of six years following the Closing Date, Purchaser covenants to use reasonable care to preserve the Books and Records and to permit Seller and its representatives and successors and assigns and any trustee in bankruptcy access to any such Books and Records that contain information relating to the period prior to the Closing Time, as Seller and its representatives and successors and assigns and any trustee in bankruptcy may reasonably request; and
- (b) Purchaser shall use commercially reasonable efforts to fulfill the conditions set out in Section 6.5 of this Agreement and shall cooperate with Seller in its efforts to cause the satisfaction of the conditions set out in Section 6.4 of this Agreement.

ARTICLE 9 CONFIDENTIALITY

9.1 Confidentiality

The provisions of any existing confidentiality agreement between the Purchaser and the Company remain in full force and effect, except as provided herein. The Parties will cooperate and consult with one another, to the extent reasonably practical, with respect to the issuance of any press release or other public statement regarding this Agreement and the Transaction. From and after the Closing Time, Seller will not disclose to any Person or use for any purpose confidential information relating to the Purchased Assets, the Business or the business of the Acquired Subsidiaries and will hold such confidential information in strict confidence.

ARTICLE 10 TERMINATION

10.1 Termination

- (a) This Agreement may be terminated at any time prior to the Closing Time:
 - (i) by mutual written agreement of Seller and Purchaser;
 - (ii) by Purchaser as provided in Section 6.4 or by Seller as provided in Section 6.5, in each case provided that the terminating Party has not breached its obligations under the Agreement in such a manner as to cause a closing condition not to be fulfilled;
 - (iii) by Purchaser as provided in Section 6.7; or
 - (iv) by Purchaser or Seller if a material breach of any representation, covenant or other provision of this Agreement has been committed by the other Party and such breach has not be cured or waived within three Business Days following the date that the non-breaching Party notifies the other Party of such breach.

10.2 Effect of Termination

- (a) If this Agreement is terminated pursuant to, or due to the occurrence of any of the events set out in Section 10.1, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for and subject to the provisions of Section 9.1 and this Section 10.2.
- (b) If this Agreement is terminated at any time other than as a result of a breach by the Purchaser, the Seller shall promptly return the Deposit in full to the Purchaser in the same currency in which it was paid (without adjusting for currency gains or losses). If this Agreement is terminated as a result of a breach by the Purchaser, the Seller shall be entitled, as its sole and exclusive remedy, to retain the Deposit in full satisfaction of any damage claim that the Seller may have against the Purchaser. Under no circumstance shall any of the Parties or their respective directors, officers, employees, managers, Affiliates or agents or their respective directors, officers and employees be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the Transaction.

ARTICLE 11 **AS IS WHERE IS**

11.1 Acquisition of Assets on “As Is, Where Is” Basis

Purchaser acknowledges that Seller is selling the Purchased Assets on an “as is, where is” basis as they shall exist on the Closing Date and that, as of the date of this Agreement, Purchaser has had an opportunity to conduct any and all due diligence regarding Seller, the Purchased Assets, the Business and the Assumed Liabilities and that it has relied solely on its own independent review, investigation, and/or inspection of any documents regarding Seller, the Purchased Assets, the Business and the Assumed Liabilities other than the representations contained in Section 7.1. Any information provided by Seller to Purchaser describing the Purchased Assets, the Business and the Assumed Liabilities has been prepared solely for the convenience of prospective purchasers and is not warranted to be complete, accurate or correct. Unless specifically stated herein, Purchaser acknowledges 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 Seller, the Business, the Purchased Assets or Assumed Liabilities or the completeness of any information provided in connection therewith or in any instrument furnished in connection with this Agreement including, without limitation, the respective rights, titles and interests of Seller, if any, in the Purchased Assets other than the representations contained in Section 7.1. This Section 11.1 shall not merge on the Closing Date and is deemed incorporated by reference in all documents delivered pursuant to the terms of this Agreement.

ARTICLE 12
GENERAL

12.1 Disputes

Any dispute arising out of or in connection with this Agreement shall be submitted to and finally resolved by a motion brought before the Court.

12.2 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or email:

- (a) in the case of a notice to Seller at:

KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto ON M5H 1J9

Attention: David Sieradzki
Email: dsieradzki@ksvadvisory.com

with a copy (which shall not constitute notice) to:

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

Attention: Jane Dietrich
Email: jdietrich@casselsbrock.com

- (b) in the case of a notice to Purchaser at:

Transform-X, Inc.
6969 East Sunrise Drive, Suite 100
Tucson AZ 85750
United States of America

Attention: Daniel Hodges
Email: dhodges@transform-x.com

with a copy (which shall not constitute notice) to:

McCarthy Tétrault LLP
66 Wellington St W
Toronto ON M5K 1E6

Attention: James Gage
Email: jgage@mccarthy.ca

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt.

However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.

12.3 Assignment

Neither Party shall assign this Agreement or any rights or obligations arising under this Agreement without the prior written consent of the other Party except that Purchaser (the "assignor") shall be entitled to assign its rights under this Agreement to any Affiliate of Purchaser (the "assignee") without the prior written consent of Seller upon written notice to Seller, in which event the assignee will become the Purchaser hereunder and the assignor will be released from its obligations hereunder except the obligation to pay the Purchase Price.

12.4 Time of the Essence

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

12.5 Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

12.6 Amendment

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

12.7 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing Date provided that the reasonable costs and expenses of any actions taken after Closing Date at the request of a Party shall be the responsibility of the requesting Party.

12.8 Survival

The representations and warranties of the Parties contained in this Agreement shall merge on Closing and the covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

12.9 Personal Information

Purchaser hereby acknowledges that it is aware, and that it will advise its representatives, that privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (Canada), applies to certain information that may be disclosed to the Purchaser and its representatives pursuant to this Agreement and/or the Transaction. The

Purchaser agrees to comply, and cause its representatives to comply, with such privacy legislation in connection with any such information disclosed to it or any of them.

12.10 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Except as otherwise provided in this Agreement, each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties and their successors and permitted assigns, and no Person other than the Parties and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

12.11 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

12.12 Governing Law

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

12.13 Execution and Delivery

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile or other electronic means and all such counterparts and facsimiles (or other electronic deliveries) shall together constitute one and the same agreement.

[Remainder of page intentionally left blank]

IN WITNESS OF WHICH the Parties have executed this Agreement as of the date first written above.

**KSV KOFMAN INC. solely in its capacity
as court-appointed receiver and receiver
and manager of the assets, properties
and undertakings of DragonWave Inc.
and not in its personal capacity**

By: 

Name: DAVID SIERADZKI
Title: MANAGING DIRECTOR

TRANSFORM-X, INC.

By: _____


Name:
Title:

IN WITNESS OF WHICH the Parties have executed this Agreement as of the date first written above.

**KSV KOFMAN INC. solely in its capacity
as court-appointed receiver and receiver
and manager of the assets, properties
and undertakings of DragonWave Inc.
and not in its personal capacity**

By: _____
Name:
Title:

TRANSFORM-X, INC.

By:  _____
Name:
Title:

SCHEDULE 1.1(A)

Permitted Encumbrances

1. The lease between the Company and Ford Credit Canada relating to a Ford E150 vehicle and in respect of which registration no. 20150519 0905 1529 5269 (File No. 706182786) has been made by Ford Credit Canada in the Ontario Personal Property Security Registry in favour of Ford Credit Canada as Secured Party
2. 36-month term lease between the Company and Test Equity Inc., relating to test equipment located at Jabil Circuit, Inc. premises in Penang, Malaysia

SCHEDULE 1.1(B)

Leased Premises Locations

1. 411 Leggett Drive – 600, Kanata ON, Canada
2. 411 Leggett Drive – 710, Kanata ON, Canada
3. 411 Leggett Drive – storage, Ottawa ON, Canada
4. 362 Terry Fox Drive – 112, Kanata ON, Canada
5. 362 Terry Fox Drive – 100, Kanata ON, Canada
6. 362 Terry Fox Drive – 109, Kanata ON, Canada
7. 362 Terry Fox Drive – 110, Kanata ON, Canada
8. 362 Terry Fox Drive – 115, Kanata ON, Canada

SCHEDULE 1.1(C)

Approval and Vesting Order

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

THE HONOURABLE

JUSTICE

)
)
)
)

•, THE •

DAY OF •, 2017

B E T W E E N :

COMERICA BANK

Applicant

- and -

DRAGONWAVE INC.

Respondent

**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. 1990, C. c.43, as amended**

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Kofman Inc. (“**KSV**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of DragonWave Inc. (the “**Debtor**”) for an order (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Asset Purchase Agreement**”) between the Receiver and [**Transform-X Inc.**] (the “**Purchaser**”) dated September •, 2017 and appended to the Second Report of the Receiver dated September •, 2017 (the “**Second Report**”), and vesting in the Purchaser the Debtor’s and the Receiver’s right, title and interest in and to the Purchased Assets as defined in the Asset Purchase Agreement, (ii) authorizing the Receiver on behalf of the Debtor pursuant to section 100 of the Canada Business Corporations Act (the “**CBCA**”) to file articles of amendment changing the name of the Debtor to 3517667 Canada Inc., (iii) approving a distribution of funds in the hands of the Receiver from time to time, including without limitation,

the Net Proceeds, to Comerica Bank (“**Comerica**”) as agent (the “**Agent**”) for Comerica and Export Development Canada (“**EDC**”) as the Receiver determines is appropriate in its sole discretion; (iv) approving the First Report of the Receiver dated August 10, 2017 (the “**First Report**”), the Second Report and the activities of the Receiver as set out therein; (v) approving the fees and expenses of the KSV as Receiver and Cassels Brock & Blackwell LLP (“**Cassels**”) as counsel to the Receiver as set out in the affidavit of David Sieradzki sworn September ●, 2017 (the “**Sieradzki Affidavit**”) and the affidavit of Joseph Bellissimo sworn September ●, 2017 (the “**Bellissimo Affidavit**”); and (vi) sealing and treating as confidential Confidential Appendices ● to the Second Report pending filing of the Receiver’s Certificate (as defined below) or further order of the Court was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver, Comerica, EDC and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ● sworn ● filed:

1. THIS COURT ORDERS that the time for service of this motion 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 have the meanings given to them in the Asset Purchase Agreement.
3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Asset Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as agreed between the Purchaser and Receiver, after consultation with Comerica and EDC. The Receiver 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.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver’s Certificate**”), all of the Receiver’s and the Debtor’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, pledge, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, title retention agreement, license, forbearance from suit, adverse claim, 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 Penny dated July 31, 2017; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”); and, for greater certainty, 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.

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 (the “**Net Proceeds**”) shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’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 Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, upon delivery of the Receiver’s Certificate to the Purchaser, the Receiver (or its legal counsel or agents) is hereby empowered and authorized to forthwith complete all necessary filings and other steps required to discharge all registrations against the Purchased Assets in respect of Encumbrances registered pursuant to any intellectual property registry system, and shall forthwith after completion of same deliver to the Purchaser evidence that all such discharges have been completed.

8. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those 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 Debtor.

9. 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 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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 and shall not be void or voidable by creditors of the Debtor, 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.

NAME CHANGE

10. THIS COURT ORDERS AND DECLARES that following the filing of the Receiver's Certificate, the Receiver is authorized, pursuant to section 100 of the CBCA to file articles of amendment ("**Articles of Amendment**") to change the Debtor's name to 3517667 Canada Inc., and that the Debtor is not required to hold any meeting of its shareholders to consider the change of its name, nor pass a special resolution pursuant to the CBCA in order to give effect to the change of its name.

11. THIS COURT ORDERS AND DIRECTS the Director appointed pursuant to the CBCA to issue a Certificate of Amendment to effect the change of the Debtor's name to its numbered corporation name, upon receipt from the Receiver of the Articles of Amendment.

DISTRIBUTIONS

12. THIS COURT ORDERS that the Receiver be and is hereby authorized, as the Receiver determines is appropriate in its sole discretion, to distribute any funds in its hands from time to time, including without limitations the Net Proceeds, or any portion thereof, to the Agent without further Order of this Court.

13. THIS COURT Orders and declares that that any distributions, disbursements or payments made under this Order shall not constitute a "distribution" of property or money by the Receiver for the purposes of section 107 of the Corporations Tax Act (Ontario), section 117 of the Taxation Act, 2007 (Ontario), section 159 of the Income Tax Act (Canada), section 270 of the Excise Tax Act (Canada), or any other similar federal, provincial or territorial tax legislation (collectively, the "Tax Statutes"), and the Receiver shall not incur any liability under the Tax Statutes in respect of such distributions, disbursements or payments made by it and is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of such distributions made by it in accordance with this Order and any claims of this nature are hereby forever barred.

APPROVAL OF ACTIVITIES AND FEES

14. THIS COURT ORDERS and declares that the First Report, the Second Report and the activities of the Receiver as set out therein be and are hereby approved.

15. THIS COURT ORDERS and declares that the fees and expenses of KSV as Receiver and Casssels as counsel to the Receiver as set out in the Sieradzki Affidavit and the Bellissimo Affidavit be and are hereby approved.

SEALING

16. THIS COURT ORDERS AND DECLARES that Confidential Appendices • to the Second Report be and are hereby sealed and shall be treated as confidential until the filing of the Receiver's Certificate or further order of this Court.

GENERAL

17. 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 Purchaser, 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 Purchaser and to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Purchaser, the Receiver and their respective agents in carrying out the terms of this Order.

Schedule A – Form of Receiver’s Certificate

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

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

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. 1990, C. c.43, AS AMENDED

COMERICA BANK

Plaintiff

- and -

DRAGONWAVE INC.

Defendant

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (the “Court”) dated July 31, 2017, KSV Kofman Inc. was appointed as the receiver (the “Receiver”) of the undertaking, property and assets of DragonWave Inc. (the “Debtor”).

B. Pursuant to an Order of the Court dated August 14, 2017, the Court approved the agreement of purchase and sale made as of September ●, 2017 (the “Asset Purchase Agreement”) between the Receiver and [Transform-X Inc.] (the “Purchaser”) and provided for the vesting in the Purchaser of the Debtor’s and Receiver’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 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 the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and, to the extent provided for under the Asset Purchase Agreement the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to Closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at «time» on «date».

KSV Kofman Inc., solely in its capacity as court-appointed Receiver of the undertaking, property and assets of DragonWave Inc., and not in its personal capacity

Per: _____
Name: »
Title: »

COMERICA BANK DRAGONWAVE INC.
Applicant and Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at TORONTO

APPROVAL AND VESTING ORDER

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.

SCHEDULE 1.1(D)

Acquired Subsidiaries

1. DragonWave Corp.
2. DragonWave S.a.r.l.
3. DragonWave Mexico S.A. de C.V.
4. Axerra Networks Asia Pacific Ltd.
5. DragonWave Pte Ltd.
6. Axerra Gmbh
7. DragonWave India Private Ltd.
8. DragonWave Telecommunications Technology (Shanghai Co. Ltd.)
9. DragonWave HFCL India Private Ltd.
10. All other direct and indirect subsidiaries of the Company

SCHEDULE 1.1(E)

Assumed Contracts

1. 

SCHEDULE 1.1(F)

Key Replacement Contract

1. 

SCHEDULE 2.1(A)

Inventory Locations

1. DragonWave Inc. premises at 411 Leggett Drive, Ottawa ON, Canada
2. DragonWave Inc. premises at 362 Terry Fox Drive, Kanata ON, Canada
3. DragonWave – OFFSITE, 359 Terry Fox Drive, Suite 120, Kanata, ON K2K 2E7
4. DragonWave Inc. affiliated premises at 4F, Block C, Hi-Tech Building, 900 Yishan Road, Shanghai 200233, China
5. Flexus Electronics, 95 Hines Road, Bays 1, 2, & 3, Kanata, ON, K2K 2M5
6. Jabil Penang, Plant 1, Phase 4, 56 Hilir Sungai Kluang 1
7. Jabil Penang, Plant 2, Lebuhr Kampung Jawa
8. Lloyd Douglas Solutions Inc. premises at 130 Iber Rd, Stittsville, ON
9. Orange Logistics Centres, 205 Maple Crk Crt., Ottawa, ON K0A 1L0
10. Panalpina Czech s.r.o. premises at Karlovarska Business Park, Na Hurce 1077/4a, 161 00 Prague 6 – Ruzyně, Czech Republic
11. Panalpina Transport (Malaysia) Sdn Bhd premises at PTD 149225 Jalan Kampung Maju Jaya, Kawasan Kampung Maju Jaya, 81300 Skudai, Johor Darul Takzim, Malaysia
12. Plexus Corp. premises at One Plexus Way, P.O. Box 156, Neenah WI 54957-0156

SCHEDULE 2.1(B)

Equipment, Furniture, Fixtures, Computers and Software

1. As set out in the spreadsheet titled "DW_Capital Assets.xlsx" delivered by the Seller to the Purchaser via email dated September 12, 2017 at 2:44 p.m. EST
2. All other equipment, furniture, fixtures, computers and software owned by the Company wherever located.

SCHEDULE 2.1(F)(I)

Patents

1. As set out in the spreadsheet titled "Updated Dragonwave_Patent Application Status Summary August 22 2017.xls" as uploaded by the Seller to the dataroom at 9:54:39 a.m. EST on August 22, 2017.
2. All other patents owned or licensed by the Company or its subsidiaries as licensee wherever registered or filed.

SCHEDULE 2.1(F)(II)**Copyrights and Trademarks****Trademarks**

	Owner	Trademark	Jurisdiction	Registration Number	Registration Date
1.	DragonWave Inc.	DRAGONWAVE	Canada	TMA585382	July 16, 2003
			US	3503574	September 23, 2008
2.	DragonWave Inc.	HORIZON	Canada	TMA745742	August 19, 2009
			US	3606664	April 14, 2009
3.	DragonWave Inc.	AIRPAIR	Canada	TMA563401	June 13, 2002
			US	3789058	May 18, 2010
4.	DragonWave Inc.	DRAGONWAVE FUSION	Canada	1508595	December 20, 2010
				(Application Number)	(Filing Date)
			US	85/199691	November 11, 2011
				(Application Number)	(Filing Date)
5.	DragonWave Inc.	AVENUE	US	85/470939	December 16, 2010
				(Application Number)	(Filing Date)
6.	DragonWave Corp.	AXERRA	US	76170413	May 7, 2002
			EC	002133916	March 6, 2005
7.	DragonWave Corp.	AXERRA NETWORKS	US	76178717	May 11, 2004
			EC	002134013	March 6, 2001
8.	DragonWave Corp.	AXN	US	76170415	May 13, 2003
9.	DragonWave Corp.	HPCR	US	78661350	April 3, 2007
10.	DragonWave Corp.	THE PSEUDO-WIRE COMPANY	US	78444507	February 28, 2006
11.	DragonWave Corp.	UNLOCK THE POWER OF YOUR IP NETWORK	US	76211745	March 30, 2004

Owner	Trademark	Jurisdiction	Registration Number	Registration Date
12.	All other trademarks owned or licensed by the Company and/or its subsidiaries as licensee wherever registered or filed			

Copyrights

All copyrights owned or licensed by the Company and/or its subsidiaries as licensee wherever created, registered or filed.

SCHEDULE 2.1(G)

Business and Domain Names

Business Names

[None]

Domain Names

1. www.dragonwaveinc.com
2. All other domain names registered, owned or used by the Company or its subsidiaries wherever registered or filed, including but not limited to such domain names registered with ICANN.

SCHEDULE 2.1(N)

Purchased Shares

1. All shares of DragonWave Corp. owned by the Company
2. All shares of DragonWave S.a.r.l. owned by the Company
3. All shares of DragonWave Mexico S.A. de C.V. owned by the Company
4. All other shares owned by the Company

SCHEDULE 2.2(A)

Excluded Assets

All supply contracts for inventory, supplies or equipment to which the Company is a party as purchaser.

Appendix “E”



**First Report of
KSV Kofman Inc.
as Receiver and Receiver and Manager of
DragonWave Inc.**

August 10, 2017

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Appendices

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COURT FILE NO: CV-17-579715-00CL

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

COMERICA BANK

APPLICANT

- AND -

DRAGONWAVE INC.

RESPONDENT

**FIRST REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND RECEIVER AND MANAGER
OF DRAGONWAVE INC.**

AUGUST 10, 2017

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") in its capacity as receiver and receiver and manager (the "Receiver") of the properties, assets and undertakings of DragonWave Inc. (the "Company").
2. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on July 31, 2017 (the "Receivership Order"), KSV was appointed Receiver. A copy of the Receivership Order is attached as Appendix "A".
3. The primary purpose of these receivership proceedings is to allow the Company's business to continue to operate on a going-concern basis while a Court-supervised sale process for the Company's business and assets is carried out by the Receiver in a stabilized environment ("Sale Process").

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) Provide background information about the Company and these proceedings, including the basis on which it is contemplated that these receivership proceedings will be funded;
 - b) Summarize the pre-filing sale and investor solicitation efforts undertaken by the Company and its advisors since early 2016;
 - c) Summarize the proposed Sale Process pursuant to which the Company's business and assets would be marketed for sale;
 - d) Provide an overview of the Receiver's activities since its appointment on July 31, 2017; and
 - e) Recommend that this Honourable Court issue an Order (the "Proposed Order") approving the Sale Process and authorizing and directing the Receiver to conduct the Sale Process on the basis detailed in Schedule "A" to the Proposed Order.

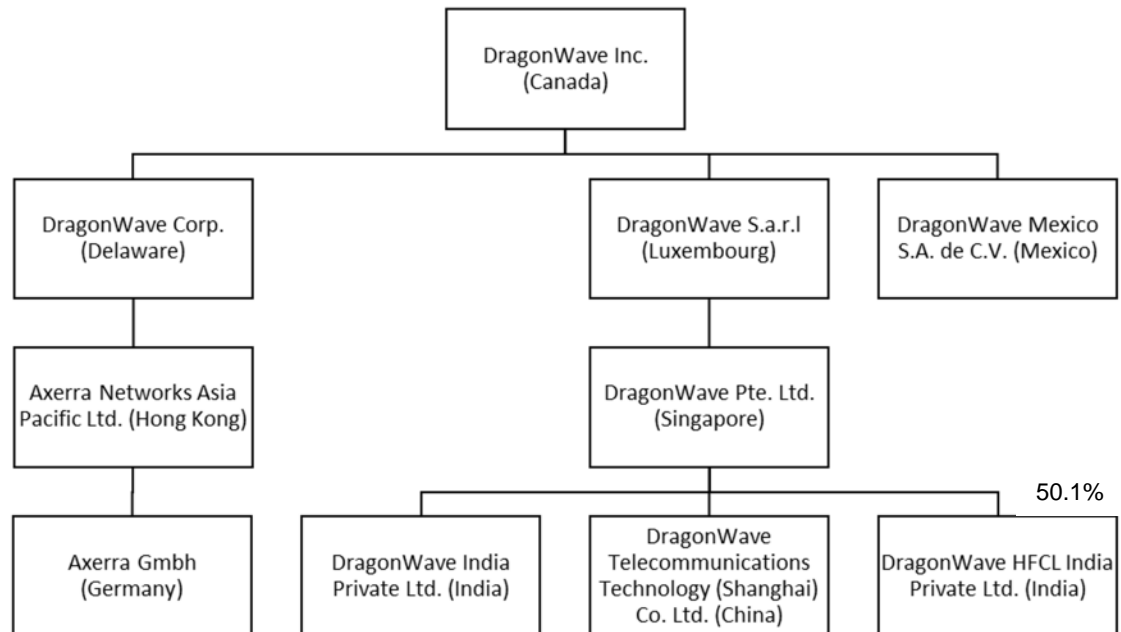
1.2 Currency

1. Unless otherwise noted, all currency references in this Report are in US dollars.

2.0 Background

1. The Company was incorporated in 2000 under the *Canada Business Corporations Act*. The Company is a provider of high capacity wireless ethernet equipment used in internet protocol (IP) networks - it develops, markets and sells proprietary microwave radio frequency networking equipment designed to wirelessly transmit broadband voice, video and other data. The Company's ethernet links are designed to function as a wireless extension to existing fiber and global optic core telecommunications networks. This wireless extension allows wireless service providers, government agencies and other organizations to meet increasing internet bandwidth requirements.
2. The Company's head office and registered office is located at 411 Leggett Drive, Suite 600, Ottawa, Ontario. As at August 9, 2017, the Company's employee headcount was 124 and its foreign subsidiaries (discussed below) employed 27 individuals. The Company's workforce is not unionized and it does not maintain a pension plan.
3. Until recently, the Company's shares traded on the Toronto Stock Exchange (the "TSX") and the NASDAQ Capital Market ("NASDAQ") under the symbol DRWI. Trading of the Company's shares on the TSX was suspended on July 20, 2017. On July 31, 2017, the Continued Listing Committee of the TSX advised the Company that its common shares would be delisted effective at the close of market on August 30, 2017. In addition, NASDAQ issued a notice to the Company dated July 31, 2017 indicating its decision to delist the Company's common shares and to suspend trading in the common shares effective August 2, 2017.

4. The Company operates a worldwide business and holds numerous direct and indirect foreign subsidiaries, as reflected in its corporate chart below. The foreign subsidiaries are not subject to these receivership proceedings – each is continuing to operate their respective businesses in the normal course.



5. Further information about the Company, its background and copies of materials filed in the receivership proceedings is available on the Receiver's website at <http://www.ksvadvisory.com/insolvency-cases/dragonwave-inc.>

3.0 Creditors

3.1 The Senior Lenders

1. As at the date of the Receivership Order, the Company's indebtedness under a Revolving Credit Agreement dated as of June 1, 2012, as amended (the "Credit Agreement") with Comerica Bank ("Comerica") in its capacity as agent (the "Agent") and each of Comerica and Export Development Canada as lenders (jointly, the "Senior Lenders") totalled approximately \$17.2 million, plus interest and fees which continue to accrue.
2. The Senior Lenders have also issued approximately \$2 million in Letters of Credit under the Credit Agreement. As at the date of this Report, the Receiver understands that a letter of credit in the amount of \$1.5 million was drawn upon and is in the process of being funded by the Senior Lenders.

3. The Company has been in default under the Credit Agreement for over two years. Over that time, the Company and the Agent entered into five forbearance agreements. The Senior Lenders are the Company's senior secured creditors (and the only registered secured creditors, other than two equipment lessors, Dell Financial Services Canada Limited and Ford Credit Canada Limited) and appear to be the only parties with an economic interest in these proceedings, as detailed in the affidavits and other documents filed by the Agent as part of its receivership application materials.

3.2 Unsecured Creditors

1. According to the Company's accounts payable listing, unsecured obligations totaled approximately \$17.7 million as at the date of the Receivership Order. Trade creditors are principally comprised of third party manufacturers and inventory suppliers.

4.0 Funding of these Proceedings

1. The Senior Lenders have committed to fund the Company's operations over the course of these proceedings, provided that the contemplated Sale Process is approved by this Court and provided that the Sale Process is conducted on an expedited basis.
2. To the extent required, the Receivership Order authorizes the Receiver to borrow up to C\$500,000 pursuant to Receiver's Certificates. These advances, if any, would be granted a charge on the assets of the Company subject only to the Receiver's Charge (as defined in the Receivership Order). As at the date of this Report, the Receiver has not required any borrowings as the cash on deposit in the Company's bank accounts as at the date of the Receivership Order (approximately \$1.3 million) has been, and is projected to continue to be, sufficient to fund the Company's normal course operations until the completion of the Sale Process.

5.0 Pre-Filing Marketing Processes

1. As a result of its liquidity and other issues, since early 2016, the Company has been formally pursuing restructuring, refinancing, sale or other strategic alternatives. In this regard:
 - in early 2016, CIBC Capital Markets ("CIBC") was engaged to review all strategic and financial alternatives that may be available, including a potential sale of the Company, debt or equity financing, business combination, joint venture or strategic alliance; and
 - in May, 2017, the Company engaged Alvarez and Marsal Canada ULC ("Alvarez") to, *inter alia*, explore potential going concern transactions and a sale process.
2. In respect of the Company's pre-filing efforts to canvass the market, the Receiver understands that:
 - 43 parties were approached to participate in the CIBC and/or Alvarez processes; and

- 16 parties executed confidentiality agreements and performed diligence on the Company, including reviewing information in a data room and/or attending meetings with management.
3. Notwithstanding an extensive canvassing by both CIBC and Alvarez of going concern solutions, no viable transaction acceptable to the Senior Lenders to refinance, restructure or sell the Company resulted from those efforts.

6.0 Sale Process

1. A copy of the Sale Process is attached as Schedule “A” to the Proposed Order. A summary of the proposed Sale Process is as follows:
- Immediately following the making of the Proposed Order, the Receiver would distribute an interest solicitation letter detailing this opportunity to prospective purchasers identified by the Receiver, including those parties that were approached by the Company, CIBC and/or Alvarez in their pre-filing sale efforts. The Receiver has also been contacted by numerous parties on an unsolicited basis since its appointment – these parties have all been included in the Receiver’s prospective purchaser listing;
 - Attached to the interest solicitation letter will be a form of confidentiality agreement (“CA”) and an acknowledgment of the Sale Process (the “Acknowledgment”). Upon execution of the CA and Acknowledgment, prospective purchasers will be provided with the opportunity to commence diligence, including reviewing information in an online data room (the “Data Room”) to be maintained by the Receiver;
 - The Receiver is of the view that the information necessary to submit a bid for the Company’s business and assets will either be in the Data Room or is available in the public domain. As such, it does not intend to incur the cost and time to prepare a comprehensive confidential information memorandum. The Company’s senior management team and the Receiver will be available to meet with interested parties throughout the Sale Process, as required;
 - The Receiver will facilitate diligence efforts by, *inter alia*, arranging site visits and meetings between key employees and interested parties, provided that such meetings are supervised by the Receiver, and the Receiver is of the view that such prospective purchasers are *bona fide*, in the Receiver’s sole discretion;
 - Prospective purchasers will have access to a form of offer, in the form of an asset purchase agreement (“APA”) that will be available in the Data Room. Prospective purchasers will be requested to submit offers in the form of the APA together with a blacklined version of their offer against the APA;
 - Offers will be required to be submitted to the Receiver by 5:00 pm (Eastern time) on September 15, 2017, being one month from the return date of the motion for approval of the Sale Process;

- Among other items, bids will be required to be submitted with a cash deposit in an amount equal to 15% of the purchase price, provide 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;
- The Receiver will have the right to extend or amend the Sale Process as it considers appropriate, in consultation with the Senior Lenders and with the consent of Comerica; however, the Receiver would seek the Court's approval to materially amend or terminate the Sale Process; and
- Subject to Court approval and the number and complexity of offers submitted on the offer deadline, the Receiver's objective is to complete a transaction on or around September 29, 2017. The following table sets out the anticipated Sale Process timeline:

Milestone	Timeline
Motion for approval of Sale Process	August 14, 2017
Offer deadline under Sale Process	September 15, 2017
Sale Approval Motion	September 27, 2017
Target closing date of a transaction	September 29, 2017

6.1 Sale Process Recommendation

1. The Receiver recommends that this Court issue an Order approving the Sale Process for the following reasons:
 - a) In the Receiver's view, the Sale Process is commercially reasonable;
 - b) Prior to formalizing the Sale Process, the Receiver engaged extensively with a potential stalking horse bidder; however, given the complexity of the proposed transaction, the level of unsolicited interest expressed by other parties and the need to conduct a timely sale process, the Receiver, after consulting with the Senior Lenders, decided to seek the Court's approval of the Sale Process without a stalking horse;
 - c) In the Receiver's view, the duration of the Sale Process - while expedited - is sufficient to allow interested parties to perform diligence and submit offers. This is particularly the case given the extent of the Company's pre-filing canvassing of the market. Many of the parties that will be contacted by the Receiver during the Sale Process are familiar with this opportunity given their participation in the Company's pre-filing process and, accordingly, should not require a prolonged diligence period to determine whether they are prepared to submit an offer;

- d) An expedited Sale Process is required for the following reasons:
- The Company operates in a highly competitive industry in which customers require certainty, including in respect of the Company's service and warranty obligations. There is urgency to complete a transaction in order to preserve the Company's customer and highly-skilled employee base, being two of the Company's principal assets;
 - The global nature of the Company's projects and operations. In this regard, certain of the Company's key stakeholders, including major customers and suppliers, are located in various foreign jurisdictions, including India, China, Mexico and Saudi Arabia. These parties are not necessarily familiar with the implications of a Canadian receivership proceeding - an expedited sale process will assist these stakeholders to understand that the outcome of the Sale Process is expected by the end of September, 2017; and
 - The Company is projected to generate operating losses during the receivership period. The Senior Lenders have agreed to allow their collateral to fund these losses for a limited period provided the Proposed Order is granted;
- e) The Receiver does not have access to funding for a prolonged period - absent funding, the Company's operations would be discontinued; and
- f) Subject to the Receiver's security review¹, it appears that the Senior Lenders are the Company's principal secured creditors and likely the only stakeholders with an economic interest in the Sale Process. The Senior Lenders have consented to the Sale Process, including its timelines.

7.0 Overview of the Receiver's Activities

1. The Receiver's activities since the commencement of these proceedings have included the following:
 - Reviewing and commenting on all Court materials filed in the context of the receivership application;
 - Carrying out the Receiver's duties and responsibilities in accordance with the Receivership Order, including overseeing the Company's operations in Canada;
 - Opening receivership bank accounts, transferring funds from the Company's bank accounts and controlling receipts and disbursements in accordance with the Receivership Order;

¹ The Receiver's legal counsel is in the process of preparing an opinion on the validity and enforceability of the Senior Lenders' security.

- Dealing with employee issues in accordance with the Receivership Order, including convening employee meetings at the Company's premises immediately following its appointment, discussing with employees the terms of their ongoing retention with the Company and addressing issues resulting from the CEO's resignation on August 1, 2017;
- Attending at the Company's premises on a near daily basis;
- Dealing with cash management issues, including paying post-filing expenses from the receivership accounts;
- Assisting the Company to prepare cash flow and other financial projections and analyses and reporting to the Senior Lenders thereon;
- Monitoring the Company's funding requirements on a daily basis;
- Corresponding extensively with key stakeholders in these proceedings, including the Agent and the Company's employees, customers, suppliers and landlord;
- Negotiating post-filing supply arrangements with the Company's key suppliers, including Jabil Inc., the Company's most significant supplier and largest known unsecured creditor;
- Carrying out certain of the Company's reporting obligations in accordance with securities legislation, including issuing press releases, filing material change reports and other US filings with the SEC;
- Preparing for the Sale Process, including in respect of a potential offer to be used in the Sale Process, drafting all Sale Process materials and compiling information for the Data Room;
- Corresponding with the Company's Indian counsel in connection with ongoing arbitration proceedings in India involving the Company;
- Corresponding extensively with legal counsel to the Receiver and the Agent on receivership matters generally;
- Placing on its website copies of materials filed in these proceedings and carrying out the Receiver's duties in accordance with the "E-Service Protocol";
- Preparing and circulating, to all known creditors and the office of the Superintendent of Bankruptcy, the Notice and Statement of the Receiver as required under Subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
- Drafting this Report; and
- Addressing all other matters pertaining to the administration of these receivership proceedings.

8.0 Service and Notice of this Motion

1. In order to provide as much notice as possible to the Service List, the Receiver's legal counsel sent a letter to the Service List on August 9, 2017 which, *inter alia*, advised that the Receiver's motion to seek approval of a sale process is scheduled to be heard on August 14, 2017 (the "August 9th Letter") and that the motion materials in connection therewith would be served and filed later that week. A copy of the August 9th Letter is attached as Appendix "B".
2. On August 9, 2017, the Receiver posted on its website the August 9th Letter.

9.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 (1)(e) of this Report.

* * *

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc." in a cursive, stylized font.

**KSV KOFMAN INC.
IN ITS CAPACITY AS RECEIVER AND
RECEIVER AND MANAGER OF
DRAGONWAVE INC.
AND NOT IN ITS PERSONAL CAPACITY**

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

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

**APPENDICES 1 & 3 TO THE SECOND REPORT OF THE RECEIVER DATED
SEPTEMBER 29, 2017**

Please find attached unredacted copies of Appendices 1 & 3 to the Second Report
of the Receiver dated September 29, 2017, to be filed in the public record as per the
Endorsement of Regional Senior Justice Morawetz dated October 6, 2017

October 25, 2017

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

Ben Goodis LSUC# 70303H
Tel: 416.869.5312

Fax: 416.640.3199
bgoodis@casselsbrock.com

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

APPENDIX 1

DragonWave Inc.
Summary of Offers
unaudited; US\$

<u>Offeror</u>	<u>Note</u>	<u>Estimated Net Recoveries</u>
The Purchaser	1	4,484,000
Bidder A	1	4,127,000
Bidder B	2	unknown
Bidder C	3	unknown
Bidder D	4	unknown

Notes:

1. The comparative analysis which compares the estimated net value of the Purchaser's offer to the offer submitted by Bidder A is on the following page.
2. Bidder B submitted an offer to purchase the Company's intellectual property ("IP") with contingent future consideration of up to \$5 million based on 50% of future net realizations on the IP.
3. Bidder C submitted an offer of \$10,000 to purchase select pieces of machinery and equipment.
4. Bidder D submitted an offer on September 22, 2017, one week after the bid deadline. The offer contemplated a purchase price of \$7 million; however, its offer was highly conditional, including on securing financing to complete the transaction and completing further diligence. The offer also required further clarification on several deal points which could potentially materially impair the value of this bid. Accordingly, the estimated net recovery from Bidder D's offer is reflected as unknown given its lack of clarity and material conditions. It should also be noted that Bidder D commenced its diligence on September 20, 2017 and submitted its offer two days later. Based on the foregoing, the offer submitted by Bidder D was not considered credible and/or a realistic option in the circumstances.

DragonWave Inc.
Offer Comparison
 unaudited; US\$

	Note	The Purchaser		Bidder A	
		Low	High	Low	High
Purchase price consideration (cash)	1	4,250,000	4,250,000	4,000,000	4,000,000
<u>Less:</u>					
Residual vacation pay liability	2	(112,000)	-	(448,000)	(298,000)
Cure costs	3	(15,000)	(5,000)	-	-
Working capital adjustment	4	(400,000)	-	-	-
<u>Add:</u>					
Letter of credit surplus	5	750,000	1,000,000	750,000	1,000,000
Proceeds from Bharti arbitration	6	-	-	-	-
Total estimated recoveries before costs to complete		4,473,000	5,245,000	4,302,000	4,702,000
Less: Estimated costs to completion	7	(500,000)	(250,000)	(500,000)	(250,000)
Estimated funds available for distribution to the Lenders		3,973,000	4,995,000	3,802,000	4,452,000
Midpoint			4,484,000		4,127,000
Differential			357,000		(357,000)

Notes:

1. Represents the cash purchase price in the offers submitted on September 22, 2017, of which both parties have paid a 15% deposit.
2. The Purchaser's offer contemplates transferring at least 85% of employees and assuming the corresponding vacation pay obligation. Bidder A intends to assume/transfer 50 to 87 employees. Accordingly, the residual vacation liability to be funded by the estate when the non-transferred employees are terminated is estimated at 40% of the total vacation liability on the high end and 60% on the low end of Bidder A's offer analysis.
3. The only cure costs that would result in a reduction to the purchase price in either offer relate to the Purchaser's costs of obtaining a third party consent from the Company's landlord. Since the real property leases are current, this analysis assumes a range of \$5,000 to \$15,000 for this potential deduction to consider the costs that might be incurred to obtain the required consent.
4. The Purchaser's offer contemplates a downward adjustment to the extent that accounts receivable and inventory at the closing date are lower than the present book values. For the purpose of this analysis, the adjustment is estimated to range from \$nil to \$400,000. It should be noted that this adjustment, if any, will likely arise as a result of accounts receivable being collected prior to closing. For the purpose of this analysis, no such positive adjustment for pre-closing collections are considered. As a result, there may be "upside" in the value of the Purchaser's offer.
5. Both offers contemplate that any surplus to be received from a \$1.5 million letter of credit funded in August would flow to the Lenders. As at the date of this analysis, claims totaling approximately \$420,000 have been made in respect of the project in question which would need to be funded from the \$1.5 million in the insurer's possession. According to the Company, there are no other claims that would require funding. For the purpose of this analysis, the range used was \$750,000 to \$1 million. The timing of receipt of this surplus from the insurer is uncertain at this time.
6. The Purchaser's offer excludes the ongoing Bharti arbitration proceedings in India. Accordingly, any award that may result therefrom would flow to the Lenders. Bidder A's offer contemplates that Bidder A would be entitled to 25% of any award and contribute to 25% of any costs that may need to be funded to bring the matter to completion. For the purpose of this analysis, no value has been attributed to the Bharti arbitration
7. Represents an estimate for a holdback from the transaction proceeds for potential costs to completion, including for professional fees to completion of the receivership proceedings and any additional costs that may need to be funded to continue the Bharti arbitration post-closing of a transaction.

APPENDIX 3

ASSET PURCHASE AGREEMENT

KSV KOFMAN INC. solely in its capacity as court-appointed receiver and receiver and manager of the assets, properties and undertakings of DragonWave Inc. and not in its personal capacity (the "Seller")

- and -

**TRANSFORM-X, INC.
(the "Purchaser")**

September 28, 2017

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2017 **THIS ASSET PURCHASE AGREEMENT** is made the 28th day of September,

BY AND AMONG:

KSV KOFMAN INC. solely in its capacity as court-appointed receiver and receiver and manager of the assets, properties and undertakings of DragonWave Inc. and not in its personal capacity,

(hereinafter referred to as "**Seller**"),

- and -

TRANSFORM-X, INC.
a corporation existing under the laws of
the State of Arizona,

(hereinafter referred to as "**Purchaser**").

RECITALS:

- A. KSV Kofman Inc. was appointed as receiver and receiver and manager of the assets, properties and undertakings of DragonWave Inc. (the "**Company**") by order (the "**Receivership Order**") of the Honourable Mr. Justice Penny of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated July 31, 2017;
- B. By order (the "**Sale Process Approval Order**") dated August 14, 2017, the Honourable RSJ Morawetz approved the Sale Process (as defined below);
- C. The Company operates a business providing and servicing high capacity wireless ethernet equipment used in internet protocol networks and develops, markets and sells proprietary microwave radio frequency networking equipment designed to wirelessly transmit broadband voice, video and other data (the "**Business**");
- D. Subject to approval of the Court, Seller has agreed to sell, transfer and assign to Purchaser and Purchaser has agreed to purchase substantially all of Company's assets used in connection with, and assume certain liabilities and obligations of the Company in relation to the Business upon the terms and subject to the conditions set forth herein;
and

THEREFORE in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties (as defined herein) hereby agree as follows:

ARTICLE 1
DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions

Whenever used in this Agreement the following words and terms shall have the meanings set out below:

"Acquired Subsidiaries" means the subsidiaries of the Company listed in Schedule 1.1(d), unless the shares of any such subsidiary (or its parent subsidiary) become Excluded Assets pursuant to Section 2.2(f);

"Affiliate" of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of such Person, whether through the ownership of voting securities or otherwise;

"Agreement" means this asset purchase agreement, including all appendices, schedules, and all amendments or restatements, as permitted, and references to **"Article"**, **"Section"**, **"Appendix"** or **"Schedule"** mean the specified Article or Section of, Appendix or Schedule to, this Agreement;

"Approval and Vesting Order" means an order of the Court, in form and substance satisfactory to Purchaser and Seller, and obtained on a motion made on notice to such Persons as Purchaser and Seller determine, acting reasonably, to be sought by Seller approving this Agreement and the Transaction and vesting in and to Purchaser the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances), which order shall be substantially in the form attached at Schedule 1.1(c) subject to such amendments as Seller and Purchaser may mutually agree acting reasonably;

"Assumed Contracts" means the Assumed Real Property Leases and the other Contracts, if any, listed in Schedule 1.1(e);

"Assumed Liabilities" has the meaning set out in Section 2.3;

"Assumed Real Property Leases" has the meaning set out in Section 2.1(d);

"Authorization" means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Authority related to the Purchased Assets or the Business;

"Bharti Trade Receivable" means the trade account receivable owing by Bharti Airtel Limited in the amount of \$4,707,018, as reflected on Interim Trade Receivables List;

"Bharti Litigation" has the meaning set out in Section 2.2(e);

"Books and Records" has the meaning set out in Section 2.1(k);

"Business" has the meaning set out in the recitals;

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

"Cash Purchase Price" has the meaning set out in Section 3.1;

"Closing" means the successful completion of the Transaction pursuant to the terms of this Agreement;

"Closing Date" means the date that is four Business Days following the date on which all of the conditions in Sections 6.4 and 6.5 have been satisfied or waived, except for those conditions that by their nature can only be satisfied on the Closing Date, or such earlier or later date as agreed to by the Parties;

"Closing Inventory" means the inventory included in the Purchased Assets on the Closing Date, determined in accordance with Section 3.1(c);

"Closing Trade Receivables" means the trade accounts receivable included in the Purchased Assets on the Closing Date, determined in accordance with Section 3.1(c);

"Closing Time" means 10:00 a.m. (Toronto time) on the Closing Date, or such other time on the Closing Date as Seller and Purchaser may agree;

"Company" has the meaning set out in the recitals;

"Contracts" means all contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which the Company or Seller is a party, by which the Company or Seller is bound or under which the Company or Seller has, or will have, any rights or benefits, whether actual or contingent (in each case, whether written or oral, express or implied) relating to the Purchased Assets and/or the Business, as same may be amended and/or restated, and including any and all related quotations, orders, proposals, tenders or bookings which remain open for acceptance, warranties, guarantees and documents ancillary thereto relating to the Business;

"Court" has the meaning set out in the recitals;

"Cure Costs" means, in respect of any Assumed Contract, the amount, if any, that must be paid at Closing or otherwise satisfied, as agreed between the applicable counterparty and Seller to obtain a Third Party Consent, including payments to cure monetary defaults owing under such Assumed Contract;

"Deposit" has the meaning set out in Section 3.2(a);

"Employees" means any and all (a) employees or independent contractors of the Company who are actively at work (including full-time, part-time or temporary employees), and (b) employees or independent contractors of the Company who are on lay-off or other leaves of absence (including pregnancy leave, parental leave, disability leave, sickness leave, workers' compensation and other statutory leaves);

"Encumbrances" means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, statutory deemed trust, license, forbearance from suit, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege or any contract to create any of the foregoing;

"Estimated Closing Inventory" is defined in Section 3.1(c)(i);

"Estimating Closing Trade Receivables" is defined in Section 3.1(c)(i);

"ETA" means Part IX of the *Excise Tax Act* (Canada);

"Excluded Assets" has the meaning set out in Section 2.2;

"Excluded Contracts" has the meaning set out in Section 2.2(d);

"Excluded Liabilities" has the meaning set out in Section 2.4;

"Final Closing Inventory" is defined in Section 3.1(c)(ii);

"Final Closing Trade Receivables" is defined in Section 3.1(c)(ii);

"Governmental Authority" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, body, board, tribunal or dispute settlement panel or other law or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"HST" means all Taxes payable under the ETA, including goods and services Taxes and any harmonized sales Taxes in applicable provinces, or under any provincial legislation similar to the ETA, and any reference to a specific provision of the ETA or any such provincial legislation shall refer to any successor provision thereto of like or similar effect;

"Intellectual Property" has the meaning set out in Section 2.1(f);

"Interim Inventory List" means the list of inventory provided by Seller to Purchaser in an Excel file by email on September 12, 2017;

"Interim Trade Receivables List" means the list of trade accounts receivable provided by Seller to Purchaser in an Excel file by email on September 22, 2017;

"Inventory Locations" means the locations identified in Schedule 2.1(a);

"ITA" means the *Income Tax Act* (Canada);

"Key Counterparty" means, in respect of a Contract listed in Schedule 1.1(f), the counterparty to such Contract;

"Key Replacement Contact" means, in respect of each Contract listed in Schedule 1.1(f), an agreement between Purchaser and the applicable Key Counterparty providing for the amendment and assignment, or the termination and replacement, of such Contract effective as of the Closing Time, in form and content satisfactory to Purchaser in its sole discretion;

"Law" means any federal, provincial, county, territorial, district, municipal, local, foreign, supranational or international law, statute, ordinance, regulation, by-law, rule, code, treaty or rule of common law or otherwise of, or any order, judgment, injunction, decree or similar authority enacted, issued, promulgated, enforced or entered by, any Governmental Authority;

"Leased Premises Locations" means the locations identified on Schedule 1.1(b);

"Lenders" means the lenders from time to time party to the Revolving Facility;

"Licenses" means all license agreements as set out in the spreadsheet titled "Copy of RD SW tools budget Sept 2017.xlsx" delivered by Seller to Purchaser via email dated September 20, 2015 at 4:53 p.m. EST.

"Minimum Closing Inventory" means \$15,314,589, being the total value of the inventory set out in the Interim Inventory List;

"Minimum Closing Trade Receivables" means \$9,235,222, being the total value of the trade accounts receivable set out in the Interim Trade Receivables List excluding the Bharti Trade Receivable of \$4,707,018;

"Parties" means Seller and Purchaser and **"Party"** means any one of them;

"Permitted Encumbrances" means the Encumbrances listed in Schedule 1.1(a);

"Person" means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative;

"Purchase Price" has the meaning set out in Section 3.1;

"Purchased Assets" has the meaning set out in Section 2.1;

"Purchased Shares" has the meaning set out in Section 2.1(n);

"Purchaser" has the meaning set out in the recitals;

"Receiver's Certificate" means the certificate delivered by Seller to Purchaser at the Closing Time, to be filed with the Court by the Seller without delay thereafter, certifying that all conditions of Closing have been satisfied or waived by the applicable Parties;

"Revolving Facility" means the revolving credit facility 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;

"Sale Process" means the sales process substantially in the form attached as Appendix "A" to the Sale Process Approval Order;

"Sales Process Approval Order" has the meaning set out in the Recitals;

"Seller" has the meaning set out in the recitals;

"Software" means any computer program, operating system, application, system, firmware or software of any nature, point-of-entry system, peripherals, and data whether operational, active, under development or design, nonoperational or inactive, including all object code, source code, comment code, algorithms, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen designs, reports, designs, concepts, visual expressions, technical manuals, tests scripts, user manuals and other documentation therefor, whether in machine-readable form, virtual machine-readable form, programming language, modeling language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature, and all databases necessary or appropriate in connection with the operation or use of any such computer program, operating system, application, system, firmware or software;

"Successful Bid" has the meaning set out in the Sales Process Approval Order;

"Tax" and **"Taxes"** means any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by,

income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, excise, withholding, business, franchising, property, development, occupancy, payroll, health, social services, education, employment and all social security taxes, all surtaxes, all customs, duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, and other government pension plan premiums or contributions;

"Termination Date" means October 20, 2017, or such other date as Seller and Purchaser may agree, acting reasonably;

"Third Party Consents" means such consents, approvals and/or authorizations as may be required for the assignment of the Assumed Contracts to Purchaser, as determined by and in form and content satisfactory to Purchaser, acting reasonably;

"Transaction" means the transaction of purchase and sale contemplated by this Agreement;

"Transfer Taxes" has the meaning set out in Section 5.1;

"Transferred Employees" has the meaning set out in Section 4.1; and

"Westchester LOC" has the meaning set out in Section 2.2(f).

1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **Currency** – All references to dollar amounts are to lawful currency of the United States of America unless otherwise stated;
- (b) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (c) **Including** – Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation";
- (d) **No Strict Construction** – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party;
- (e) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders;
- (f) **Time Periods** – Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day; and
- (g) **Legislation** – A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or re-enactment thereof, any legislative provision substituted therefore and all regulations and statutory instruments issued thereunder or pursuant thereto.

1.3 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant hereto and thereto, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of Agreement except as specifically set forth in this Agreement.

1.4 Schedules

The schedules to this Agreement, listed below, are an integral part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule 1.1(a)	- Permitted Encumbrances
Schedule 1.1(b)	- Leased Premises Locations
Schedule 1.1(c)	- Approval and Vesting Order
Schedule 1.1(d)	- Acquired Subsidiaries
Schedule 1.1(e)	- Assumed Contracts
Schedule 1.1(f)	- Key Replacement Contracts
Schedule 2.1(a)	- Inventory Locations
Schedule 2.1(b)	- Equipment, Fixtures, Furniture, Computers and Software
Schedule 2.1(f)(i)	- Patents
Schedule 2.1(f)(ii)	- Copyrights and Trademarks
Schedule 2.1(g)	- Business and Domain Names
Schedule 2.1(n)	- Purchased Shares
Schedule 2.2(a)	- Excluded Assets

1.5 Conflict

In the event of any conflict between the provisions of the body of this Agreement and the Appendices and Schedules, the provisions of the body of this Agreement shall prevail.

1.6 Recitals

The Recitals to this Agreement are an integral part of this Agreement.

ARTICLE 2 **PURCHASE AND SALE**

2.1 Purchase and Sale of Purchased Assets

Subject to the provisions of this Agreement, at the Closing Time, Seller shall transfer, sell, convey, assign and deliver unto Purchaser, and Purchaser shall purchase, acquire and accept from Seller all right, title and interest of each of Seller and the Company in and to all of the property and assets used in or relating to the Business and all of the other property, assets and undertaking of the Company other than Excluded Assets (collectively, the **"Purchased Assets"**). For greater certainty, unless otherwise an Excluded Asset, Purchased Assets shall include all right, title and interest of each of the Company and Seller in and to the following:

- (a) Inventory. All inventories and supplies of any kind or nature, including: inventory manufactured by the Company or purchased from third party vendors; raw materials, work-in-process, packaging materials and finished goods; and the inventory located at each of the Inventory Locations;
- (b) Equipment, Fixtures and Furniture. All vehicles, equipment, fixtures, furniture, displays and signage owned or leased by the Company, including but not limited to the equipment, fixtures and furniture listed on Schedule 2.1(b);
- (c) Computers and Software. All computer hardware and Software owned by or licensed to the Company and used in connection with the Business, including but not limited to the computers and Software listed on Schedule 2.1(b);
- (d) Leased Real Property. All rights of the Company as lessee of real property for the Leased Premises Locations and all leasehold improvements related thereto (collectively, the **"Assumed Real Property Leases"**);
- (e) Contracts. All Contracts, including the Assumed Contracts and the Licenses.
- (f) Intellectual Property. All intellectual property of any nature relating to the Business owned by the Company, including customer lists, supplier lists, trademarks, proposed trademarks, certification marks, distinguishing guises, industrial designs and design patents, copyrights, works of authorship and the benefit of waivers of moral rights, formulae, processes, research data, technical expertise, confidential information, know-how, trade secrets, inventions (whether patentable or not), patent rights, patent applications and registrations, patent continuations, continuations-in-part, reissues, extensions or patents, whether domestic or foreign and whether registered or unregistered, and all applications for registration in respect thereof, including but not limited to the intellectual property listed on Schedules 2.1(f)(i) and 2.1(f)(ii) (collectively, the **"Intellectual Property"**);
- (g) Business and Domain Names. All trade names, business names and domain names related to the Business or owned or used by the Company, including the domain names and business names listed on Schedule 2.1(g) and any derivation thereof or any trademarks or trade names incorporating such business names;
- (h) Goodwill. The goodwill of the Business, together with the exclusive right of Purchaser to represent itself as carrying on the Business in continuation of and in succession to the Company, including all choses in action where Company is the plaintiff or moving party and other intangibles relating to the Business that do not form part of the Intellectual Property;

- (i) Prepaid Expenses and Deposits. All prepaid expenses and all deposits, including any deposits and prepaid rent made in connection with the Assumed Real Property Leases;
- (j) Authorizations. All Authorizations, owned, held or used by the Company in connection with the Business to the extent that they are transferable;
- (k) Books and Records. All books and records including customer lists, sales records, price lists and catalogues, sales literature, advertising material, manufacturing data, production records, employee manuals, personnel records, supply records, inventory records and correspondence files (together with, in the case of any such information which is stored electronically, the media on which the same is stored) but for greater certainty, excluding corporate and Tax records in respect of Seller (collectively, the "**Books and Records**");
- (l) Receivables. All accounts receivable relating to the Business or otherwise;
- (m) Taxes. The right to receive any refund of Taxes paid by the Company;
- (n) Purchased Shares. All shares of any subsidiary or other entity owned by the Company (the "**Purchased Shares**") including but not limited to those Purchased Shares listed on Schedule 2.1(n); and
- (o) Express Consents – Canada's Anti-Spam Law. All express consents obtained by the Company or Seller under applicable privacy and anti-spam Laws from any person to (i) send or cause to be sent an electronic message to such person, or (ii) alter or cause to be altered the transmission data in an electronic message so that the message is delivered to a destination other than or in addition to that specified by such person.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement, the Purchased Assets shall not include the following (collectively, the "**Excluded Assets**");

- (a) the property and assets described in Schedule 2.2(a);
- (b) All cash on hand, cash equivalents, bank deposits, cash floats and petty cash of the Company;
- (c) the rights of Seller under this Agreement and each other document and agreement contemplated to be delivered by Purchaser to Seller hereby and thereby;
- (d) the rights of the Company or Seller under the Contracts listed in Schedule 2.2(a) (collectively, the "**Excluded Contracts**");
- (e) the rights of the Company or Seller in respect of the claims asserted in the arbitration proceedings commenced in New Delhi, India by Bharti Airtel Limited against the Company dated September 5, 2016 (the "**Bharti Litigation**") including the Bharti Trade Receivable claimed by the Company and the proceeds of any other crossclaims or counterclaims asserted by the Company therein;
- (f) the rights of the Company or Seller in respect of the letter of credit dated July 31, 2014 issued by Comerica Bank (the "**Westchester LOC**") in favour of any refund

or return of amounts drawn by Westchester Fire Insurance Company pursuant to the Westchester LOC;

- (g) all Books and Records required by Law to be retained by Seller, including personnel records, corporate minute books and Tax records (provided that the Seller will provide a copy of such Books and Records to Purchaser to the extent not prohibited by Law and they are otherwise reasonably associated with the Purchased Assets or reasonably necessary to carry on the Business); and
- (h) any other property or assets that the Purchaser elects to exclude from the Purchased Assets by written notice to Seller delivered not less than five days prior to the Closing Date.

2.3 Assumed Liabilities

On the terms and subject to the conditions of this Agreement, Purchaser agrees, effective at the Closing Time to assume and be responsible for and thereafter honour, perform, discharge and pay as and when due the following obligations and liabilities of the Company (collectively, the "**Assumed Liabilities**") pursuant to and in accordance with the assumption agreement contemplated by Section 6.3(c):

- (a) subject to subsection 2.5(a), all debts, liabilities and obligations under the Assumed Contracts accrued from and after the Closing Time;
- (b) subject to and in accordance with Section 2.5 and Subsection 3.2(b), Cure Costs in respect of the Assumed Contracts;
- (c) any Transfer Taxes payable by Purchaser pursuant to Section 5.1;
- (d) the liabilities and obligations owing to Transferred Employees that the Purchaser has agreed to assume pursuant to Section 4.2; and
- (e) any other obligations and liabilities expressly assumed under this Agreement.

2.4 Excluded Liabilities

Other than the Assumed Liabilities, Purchaser shall not assume and shall not be liable for any debts, liabilities or obligations of the Company or Seller (the "**Excluded Liabilities**") which, for greater certainty, shall include:

- (a) all debts, liabilities and obligations related to any Excluded Assets, including any Excluded Contracts;
- (b) all debts, liabilities and obligations arising from the ownership or use of the Purchased Assets prior to the Closing Date, other than those that are specified as liabilities and obligations to be assumed by Purchaser under Section 2.3;
- (c) all debts, liabilities and obligations of the Company or Seller in respect of any actions, causes of action, arbitrations, litigation proceedings, lawsuits, court proceedings or proceedings before any Governmental Authority or arbitration tribunal against the Company or Seller or arising from the Company's or Seller's ownership or use of the Purchased Assets or conduct of the Business prior to the Closing Time;

- (d) any Taxes payable or remittable by Seller or the Company, other than Transfer Taxes payable by Purchaser pursuant to Section 5.1;
- (e) Encumbrances, other than Permitted Encumbrances; and
- (f) other than Assumed Liabilities in respect of Transferred Employees, all liabilities and obligations of Seller, the Company or/and any of the Company's Affiliates, to the Employees.

2.5 Third Party Consents and Cure Costs

- (a) Notwithstanding anything contained in this Agreement or elsewhere, Purchaser will not assume and will have no obligation to discharge any debt, liability or obligation under any Contract which is not assignable or assumable in whole or in part without a Third Party Consent, including but not limited to the Assumed Contracts, unless such Third Party Consent as applicable, has been obtained.
- (b) Until the Closing Date, Seller shall use commercially reasonable efforts to obtain all Third Party Consents required for the assignment of the Assumed Contracts, and Purchaser shall provide its reasonable cooperation to assist the Seller in obtaining any such Third Party Consents.
- (c) Any Cure Costs required to be paid or otherwise satisfied to obtain a Third Party Consent will be the responsibility of Purchaser, subject to the terms of this Agreement. To the extent Cure Costs are required to be paid at the Closing Time, Purchaser will pay such Cure Costs by certified cheque, bank draft or wire transfer payable to the applicable counterparty, and any other Cure Costs will be satisfied in the manner contemplated in the applicable Third Party Consent.

ARTICLE 3
PURCHASE PRICE AND ALLOCATION

3.1 Purchase Price

- (a) The purchase price for the Purchased Assets, exclusive of all applicable Transfer Taxes, shall be (i) the amount of \$4,250,000 (the "Cash Purchase Price") plus (ii) the amount of the Assumed Liabilities (collectively, the "Purchase Price"), subject to adjustment in accordance with Section 3.1(c).
- (b) The Purchase Price shall be allocated as agreed between the Seller and the Purchaser, acting reasonably. Seller and Purchaser will make and file all tax returns, elections and filings on a basis consistent with the agreed allocation and will not take a position contrary thereto.
- (c) The Purchase Price has been determined on the basis that the Purchased Assets will include Closing Inventory and Closing Trade Receivables not less than the Minimum Closing Inventory and the Minimum Closing Trade Receivables, respectively, at the Time of Closing. The Purchase Price will be subject to the following adjustments:
 - (i) No sooner than 10 days and not less than 5 days prior to the Closing Date, Seller will deliver to Purchaser a statement of Seller's good faith estimate of the amount of Closing Inventory and Closing Trade Receivables that it reasonably believes will be included in the Purchased

Assets (the "**Estimated Closing Inventory**" and "**Estimated Closing Trade Receivables**", respectively). If the Estimated Closing Inventory is less than the Minimum Closing Inventory, the Cash Purchase Price (and the amount to be paid by Purchaser pursuant to Section 3.2(c)) will be reduced by such difference on a dollar-for-dollar basis. If the Estimated Closing Trade Receivables is less than the Minimum Closing Trade Receivables, the Cash Purchase Price (and the amount to be paid by Purchaser pursuant to Section 3.2(c)) will be reduced by such difference on a dollar-for-dollar basis.

- (ii) Within 15 days after the Closing Date, Purchaser will deliver to Seller a statement of Purchaser's good faith calculation of the amount of Closing Inventory and Closing Trade Receivables included in the Purchased Assets. If requested by Seller, Purchaser will allow Seller to review its working papers and calculations. If Seller disputes Purchaser's calculation of the Closing Inventory or Closing Trade Receivables included in the Purchased Assets, it must provide written notice of its dispute to Purchaser within 10 days after receipt of Purchaser's calculation. If Seller does not dispute Purchaser's calculation by giving written notice within the 10-day period, Purchaser's calculation will be final. If Seller has given written notice of a dispute within the 10-day period and the Parties cannot resolve the dispute within 10 days thereafter, either Party may thereafter apply to Court for a resolution of the dispute (subject to any agreement between the Parties regarding a different dispute resolution procedure). The amount of Closing Inventory and Closing Trade Receivables included in the Purchased Assets, as determined in accordance with this Section 3.1(c)(ii), will be the "**Final Closing Inventory**" and "**Final Closing Trade Receivables**", respectively.
- (iii) Subject to and in accordance with Section 3.1(c)(iv):
 - (A) If the Final Closing Inventory is less than the Minimum Closing Inventory but greater than the Estimated Closing Inventory, Purchaser will pay the difference between the Final Closing Inventory and Estimated Closing Inventory to Seller on a dollar-for-dollar basis.
 - (B) If the Final Closing Inventory is less than the Estimated Closing Inventory, Seller will pay the difference to Purchaser on a dollar-for-dollar basis.
 - (C) If the Final Closing Trade Receivables is less than the Minimum Closing Trade Receivables but greater than the Estimated Closing Trade Receivables, Purchaser will pay the difference between the Final Closing Trade Receivables and the Estimated Closing Receivables to Seller on a dollar-for-dollar basis.
 - (D) If the Final Closing Trade Receivables is less than the Estimated Closing Trade Receivables, Seller will pay the difference to Purchaser on a dollar-for-dollar basis.

- (iv) Any payment to be made pursuant to Section 3.1(c)(iii) will be made within five days after the payment amount has been determined by bank draft, certified cheque or wire transfer. If each of Seller and Purchaser is required to make a payment to the other, the two payments will be netted such that the Party owing the greater amount will pay the net amount. The final Purchase Price will be treated as having been increased by the amount of any payment by the Purchaser or decreased by the amount of any payment by Seller pursuant to this Section 3.1(c)(iv).
- (v) The estimates and calculations required in this Section 3.1(c) will be prepared on a basis consistent with the manner in which the Interim Inventory List and Interim Trade Receivables List were prepared, including the type and nature of inventory and trade accounts receivable included (and not included) thereon and the basis upon which such inventory and trade accounts receivable were valued, and otherwise in accordance with generally accepted accounting principles.

3.2 Satisfaction of Purchase Price

The Purchaser shall pay the Purchase Price as follows:

- (a) By paying the amount of \$637,500 by wire, certified cheque or bank draft payable to the Seller on the date of this Agreement, as a deposit (together with the interest earned thereon from time to time, the "**Deposit**"), which amount will be held by the Seller in trust for Purchaser and credited toward the Purchase Price on Closing, unless otherwise returned to Purchaser or released to Seller in accordance with Section 10.2(b);
- (b) by paying or otherwise satisfying, in accordance with Section 2.5(c), the Cure Costs;
- (c) by paying to Seller on Closing an amount equal to the Cash Purchase Price (i) less the sum of the Deposit and the Cure Costs, (ii) plus applicable Transfer Taxes (including any applicable HST), if any, and (iii) as may be adjusted pursuant to Section 3.1(c)(i), in the manner provided in Section 6.3(a); and
- (d) by assumption of the Assumed Liabilities, other than the Cure Costs, effective as at the Closing Time.

ARTICLE 4 EMPLOYEE MATTERS

4.1 Offers to Employees

- (a) Conditional upon the Closing and with effect as of the Closing Date (or such later date on which those Transferred Employees who are on leave return to active service), Purchaser shall offer employment to those Employees that it wishes to employ following the Closing at its sole discretion, provided that offers shall be made to not less than 85% of Company's Employees as at the date of this Agreement, such conditional offers to be made at least five days prior to the Closing Date and on terms and conditions of employment to be determined by Purchaser at its sole discretion. Purchaser shall only be required to recognize such Employees' past service with the Company for purposes of any minimum standards imposed by applicable employment standards legislation and not for

purposes of any notice of termination, pay in lieu of notice, severance pay or any other payment or damages at common law. The Employees who accept Purchaser's offer of employment are collectively referred to as herein as the "Transferred Employees".

- (b) No later than five days prior to the Closing Date, Purchaser shall deliver to Seller a list of Employees to whom Purchaser intends to make an offer of employment in accordance with Section 4.1(a). No later than the Closing Date, Seller shall take any necessary steps to terminate the employment of the Employees identified on the list with effect immediately prior to the Closing Time and make payment of (or arrangements to pay, satisfactory to the Purchaser acting reasonably), at the Closing Time or on the first paydate following the Closing Time if the Closing Time does not fall on such paydate, all outstanding wages (not including vacation pay) owed by Seller or the Company to such Employees.

4.2 Employee Liability

Conditional upon the Closing and with effect as of the Closing Date, Purchaser shall assume and be responsible for:

- (a) all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation and benefits relating to the employment of all Transferred Employees earned as of or after the Closing Date;
- (b) all liabilities for vacation pay relating to the employment of all Transferred Employees arising from or related to employment of the Transferred Employees to the extent that Seller has disclosed such liability to Purchaser in respect of each Transferred Employee by written notice delivered not less than five days prior to the Closing Date and the aggregate amount does not exceed \$746,208;
- (c) all severance payments, payments for notice of termination or payments in lieu of notice of termination, damages for wrongful dismissal and all related costs in respect of any termination by Purchaser of the employment of any Transferred Employee from and after the Closing Date, provided that Purchaser is not hereby agreeing to assume or be responsible for any such obligations that relate to the period prior to the Closing Date except to the extent required by minimum standards imposed by applicable employment legislation in relation to the Transferred Employees;
- (d) all liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the Transferred Employees from and after the Closing Date; and
- (e) all employment-related claims, penalties, contributions, premiums and assessments in respect of Transferred Employees arising out of matters which occur from and after the Closing Date.

ARTICLE 5 **TAX MATTERS**

5.1 Transfer Taxes

All amounts payable by Purchaser to Seller pursuant to this Agreement do not include any value-added, sales, use, consumption, multi-staged, personal property, customs,

excise, stamp, land transfer, or similar taxes, duties, or charges, (collectively "Transfer Taxes") and all Transfer Taxes are the responsibility of and for the account of Purchaser. If Seller is required by Law or by administration thereof to collect any applicable Transfer Taxes from Purchaser, then Purchaser shall pay such Transfer Taxes to Seller at the Closing Time, unless Seller agrees that Purchaser qualifies for an exemption from any such applicable Transfer Taxes, in which case Purchaser shall, in lieu of payment of such applicable Transfer Taxes to Seller, deliver to Seller such certificates, elections, or other documentation required by Law or the administration thereof to substantiate and effect the exemption claimed by Purchaser. Where Seller is not required by Law or by administration thereof to collect applicable Transfer Taxes, Purchaser shall pay such Transfer Taxes directly to the appropriate taxing authority and shall provide evidence of such payment to Seller upon request. Purchaser shall, at all times, indemnify and hold harmless Seller, its directors, officers, and employees against and in respect of any and all amounts assessed by any taxing authority in respect of any failure on the part of Purchaser to pay applicable Transfer Taxes, including all taxes, interest, and penalties assessed and including all reasonable legal and professional fees incurred by Seller, its directors, officers, and employees as a consequence of or in relation to any such assessment. Notwithstanding anything else in this Agreement, this indemnity shall survive the Closing Time until 30 days following the expiry of the statutory assessment period under applicable law and shall not be subject to any caps or thresholds.

5.2 ETA Elections

Notwithstanding Section 5.1, Purchaser and Seller shall, on the Closing Date, elect jointly under section 167 of the ETA and under any similar provision of any applicable provincial legislation, in the form prescribed for the purposes of each such provision, in respect of the sale and transfer of the Purchased Assets hereunder, and Purchaser shall file such elections with Canada Revenue Agency and any other applicable Governmental Authorities within the time and in the manner required by applicable Laws, and provide Seller with proof of receipt by Canada Revenue Agency or such other applicable Governmental Authority of the receipt, to the extent obtained, of such elections. Purchaser shall indemnify and hold Seller harmless from and against any HST and any penalty or interest in respect thereof that may be payable by or assessed against Seller as a result of or in connection with Seller's failure to collect the applicable HST on the sale of the Purchased Assets hereunder, including any such HST, penalties and interest arising as a result of any failure or refusal by any Governmental Authority to accept any such election or on the basis that any such election was inapplicable, invalid or not properly made. Notwithstanding anything else in this Agreement, this indemnity shall survive the Closing Time until 30 days following the expiry of the statutory assessment period under the ETA and shall not be subject to any caps or thresholds.

5.3 Other Tax Elections

Purchaser and Seller shall execute and deliver such other Tax elections and forms as they may mutually agree upon.

ARTICLE 6

CLOSING AND CLOSING CONDITIONS

6.1 Closing

Subject to compliance with the terms and conditions hereof, the transfer of possession of the Purchased Assets shall be deemed to take effect as at the Closing Time, or such other date and time as may be agreed upon by the Parties. The Closing shall take place at

the offices of Cassels Brock & Blackwell LLP, counsel for the Seller, Suite 2100, 40 King Street West, Toronto, Ontario M5H 3C2.

6.2 Seller's Deliveries

On or before the Closing Time, Seller shall deliver or cause to be delivered to Purchaser (in the case of any documents, in form and content satisfactory to Seller and Purchaser, each acting reasonably):

- (a) the Purchased Assets, other than, if available to Seller, the share certificates representing the Purchased Shares and the minute books of the Acquired Subsidiaries, shall be delivered *in situ* wherever located as of the Closing Time;
- (b) if available to Seller, the share certificates representing the Purchased Shares and the minute books of the Acquired Subsidiaries;
- (c) customary deeds, assignments, bills of sale and other conveyancing documents, to be settled between counsel for Seller and counsel for Purchaser, sufficient to transfer the various categories of Purchased Assets on an "as is where is" basis consistent with the terms of this Agreement and the Approval and Vesting Order;
- (d) specific assignments of all the right, title and interest in favour of Purchaser, the Company or its predecessors-in-title in and to the Intellectual Property as may be required for registration or recordal purposes;
- (e) the Third Party Consents in respect of the Assumed Contracts;
- (f) a copy of the issued and entered Approval and Vesting Order;
- (g) a certificate by a senior officer of Seller certifying that the representations and warranties of Seller set out herein are true and correct in all material respects at the Closing Time (unless they are expressed to be made only as of an earlier fixed date, in which case they need be true and correct only as of such earlier date);
- (h) releases in favour of Purchaser and the Acquired Subsidiaries (i) from the Lenders of all guarantees, security and claims against or with respect to each of the Acquired Subsidiaries, (ii) from any Person that could have a claim for contribution or indemnity arising from any guarantee or other obligation to the Lenders in respect of the Company's or any Acquired Subsidiary's obligations to the Lenders in connection with the Revolving Credit Agreement or otherwise, or confirmation from the Lenders that no further guarantees exist in respect of the Company's or any Acquired Subsidiary's obligations to the Lenders, and (iii) from or on behalf of the Company (and from any subsidiary of the Company that is not an Acquired Subsidiary if the shares of a subsidiary become Excluded Assets), of all claims of any nature, in each case in form and substance satisfactory to the Lenders and Purchaser, each acting reasonably;
- (i) an acknowledgement dated the Closing Date that each of the conditions precedent in Section 6.5 has been fulfilled, performed or waived as of the Closing Time;
- (j) an executed copy of the Receiver's Certificate;

- (k) the elections referred to in Sections 5.2 and 5.3; and
- (l) any other documents required to give effect to this Agreement in form and substance satisfactory to the Parties, each acting reasonably.

6.3 Purchaser's Deliveries

On or before the Closing Time, Purchaser shall deliver or caused to be delivered to Seller (in the case of any documents, in form and content satisfactory to Seller and Purchaser, each acting reasonably):

- (a) payment of the portion of the Cash Purchase Price to be paid at Closing in accordance with Section 3.2(c), which shall be paid to the Seller by cash payment by way of certified cheque or bank draft to the order of the Seller or by wire transfer in immediately available funds to an account which shall be designated by the Seller to the Purchaser;
- (b) customary deeds, assignments, bills of sale and other conveyancing documents to be settled between counsel for Seller and counsel for Purchaser, sufficient to transfer the various categories of Purchased Assets on an "as is where is" basis consistent with the terms of this Agreement and the Vesting Order;
- (c) an assumption agreement providing for Purchaser's assumption of the Assumed Liabilities;
- (d) a certificate by a senior officer of Purchaser certifying that the representations and warranties of Purchaser set out herein are true and correct at the Closing Time and attaching certified copies of the articles of incorporation and by-laws of Purchaser and the resolution of Purchaser's directors or shareholders approving the subject matter of this Agreement;
- (e) an acknowledgement dated the Closing Date that each of the conditions precedent in Section 6.4 has been fulfilled, performed or waived as of the Closing Time;
- (f) a receipt for the Purchased Assets;
- (g) payment of all Transfer Taxes (if any) payable pursuant to Section 5.1;
- (h) the elections referred to in Sections 5.2 and 5.3; and
- (i) any other documents required pursuant to this Agreement in form and substance satisfactory to the Parties, each acting reasonably.

6.4 Conditions of Closing in Favour of Purchaser

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of Purchaser to be performed or fulfilled at or prior to the Closing Time and which may be waived in whole or in part by Purchaser at any time:

- (a) Representations and Warranties. The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects at the Closing Time (unless they are expressed to be made only as of an earlier fixed date, in which case they need be true and correct only as of such earlier date);

- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by Seller at or before the Closing Time shall have been complied with or performed in all material respects;
- (c) Approval and Vesting Order. The Approval and Vesting Order shall have been issued, and the operation and effect of such order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom) at the Closing Time;
- (d) Third Party Consents for Assumed Contracts. Seller shall have obtained a Third Party Consent in respect of the assignment to Purchaser of each Assumed Contract;
- (e) Key Replacement Contract. Purchaser shall have entered into the Key Replacement Contract with the applicable counterparty thereto, on terms satisfactory to Purchaser in its sole discretion no later than five Business Days following the day on which Purchaser is notified that its offer has been accepted as a Successful Bid pursuant to the Sale Process Approval Order, and such agreement will become effective in accordance with its terms as of the Closing Time;
- (f) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby;
- (g) Injunctions. There shall be in effect no injunction against closing the Transactions entered by a court of competent jurisdiction;
- (h) No Material Damage. No damage by fire or other hazard to the whole or any material part of the Purchased Assets shall have occurred prior to the Closing Time;
- (i) No Material Change. Except as specifically permitted pursuant to this Agreement, since the date of this Agreement there shall not have been any change, event or occurrence that has had, or that would reasonably be expected to have, a material adverse effect on the Purchased Assets, the Assumed Liabilities, or the condition (financial or otherwise), operations or results of operations of the Business or which might materially and adversely affect the ability of Purchaser to carry on the Business after the Closing Time substantially as the Business is presently being conducted by Seller; and
- (j) Documents. Seller shall have delivered the documents referred to in Section 6.2.

If any of the foregoing conditions in this Section 6.4 has not been fulfilled by the Termination Date, Purchaser may terminate this Agreement by written notice to Seller. However, Purchaser may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

6.5 Conditions of Closing in Favour of Seller

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of Seller, to be performed or fulfilled at or prior to the Closing Time and which may be waived in whole or in part by Seller at any time:

- (a) Representations and Warranties. The representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects at the Closing Time (unless they are expressed to be made only as of an earlier fixed date, in which case they need be true and correct only as of such earlier date);
- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by Purchaser at or before the Closing Time shall have been complied with or performed in all material respects;
- (c) Key Replacement Contract. No later than five Business Days following the day on which Purchaser is notified in writing by Seller that its offer has been accepted as a Successful Bid pursuant to the Sale Process Approval Order, Seller shall receive written confirmation from Purchaser that the condition set out in Section 6.4(e) has been satisfied or waived.
- (d) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby;
- (e) Approval and Vesting Order. The Approval and Vesting Order shall have been issued, and the operation and effect of such order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom) at the Closing Time;
- (f) Injunctions. There shall be in effect no injunction against closing the Transaction entered by a court of competent jurisdiction; and
- (g) Documents. Purchaser shall have made the payments and delivered the documents referred to in Section 6.3.

If any of the foregoing conditions in this Section 6.5 has not been fulfilled by the Termination Date, Seller may terminate this Agreement by written notice to Purchaser. However, Seller may waive compliance with any condition in whole or in part if it sees fit to do so, without prejudice to its rights of termination in the event of non-fulfilment of any other condition, in whole or in part, or to its rights to recover damages in accordance with Section 10.2, if any, for the breach of any representation, warranty, covenant or condition contained in this Agreement.

6.6 Receiver's Certificate

The Closing shall be deemed to have occurred upon delivery by Seller of an executed copy of the Receiver's Certificate to Purchaser.

6.7 Possession of Assets and Risk of Loss

- (a) The Purchased Assets shall be at the risk of Seller until the Closing Time. If before the Closing Time, all or a material part of the Purchased Assets is lost, damaged or destroyed then Purchaser may terminate this Agreement forthwith upon written notice to Seller to such effect.

- (b) At the Closing Time, the Purchaser shall take possession of the Purchased Assets where situated at the Closing Time, subject to Section 6.2(b). The Purchaser acknowledges that Seller has no obligation to deliver physical possession of the Purchased Assets to the Purchaser, other than, if available to the Seller, the share certificates representing the Purchased Shares and the minute books of the Acquired Subsidiaries. The Purchaser shall promptly notify the Seller of any Excluded Assets which may come into the possession or control of the Purchaser, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Seller where situated, or to such other Person as the Seller may direct in writing and, for greater certainty, title shall not be deemed to vest to the Purchaser in respect of any Excluded Assets.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of Seller

Seller hereby represents and warrants to the Purchaser as follows and acknowledges that Purchaser is relying on such representation and warranty in connection with its purchase of the Purchased Assets:

- (a) The execution, delivery and performance by Seller of this Agreement, subject to issuance of the Approval and Vesting Order:
 - (i) is within the powers of Seller;
 - (ii) has been duly authorized, executed and delivered by Seller;
 - (iii) constitutes legal, valid and binding obligations of the Seller; and
 - (iv) will not result in the violation of any applicable Law.
- (b) Other than the Approval and Vesting Order and the Third Party Consents, there is no requirement for Seller to make any filing with, give any notice to or obtain any certificate, registration or Authorization as a condition to the lawful consummation of the transactions contemplated by this Agreement.
- (c) Seller is not a non-resident of Canada for the purposes of the ITA.
- (d) Seller is a registrant for purposes of the ETA whose registration number is 875503724 RT0001.
- (e) Since its appointment, to the best of Seller's knowledge Seller has timely paid all maintenance fees and other amounts and taken all other action to maintain, in good standing, the Intellectual Property and all Software licenses in favour of the Company as licensee.

7.2 Representations and Warranties of Purchaser

Purchaser represents and warrants to Seller as follows and acknowledges and confirms that Seller is relying on such representations and warranties in connection with its sale of the Purchased Assets:

- (a) Purchaser is a corporation duly formed and existing under the laws of the State of Arizona and has the power and authority to enter into, and to perform its obligations under, this Agreement.
- (b) The execution, delivery and performance by Purchaser of this Agreement:
 - (i) has been duly authorized by all necessary corporate action;
 - (ii) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and
 - (iii) will not result in the violation of any applicable Law.
- (c) This Agreement has been duly executed and delivered by Purchaser.
- (d) Other than the Approval and Vesting Order and the Third Party Consents, there is no requirement for Purchaser to make any filing with, give any notice to or obtain any certificate, registration or Authorization as a condition to the lawful consummation of the transactions contemplated by this Agreement.
- (e) Purchaser is a WTO investor for purposes of the *Investment Canada Act*.
- (f) Purchaser, or its assignee pursuant to Section 12.3, will become registered on or prior to Closing for purposes of the ETA.
- (g) There are no actions, suits, appeals, claims, applications, orders, investigations, proceedings, grievances, arbitrations or alternative dispute resolution processes in progress, pending, or to Purchaser's knowledge, threatened against Purchaser that could prohibit, restrict or seek to enjoin the Transaction.

ARTICLE 8 COVENANTS OF THE PARTIES

8.1 Covenants of Seller

Seller covenants and agrees with Purchaser as follows:

- (a) until the earlier of the Termination of this Agreement and the Closing Time:
 - (i) Seller shall furnish Purchaser and its representatives reasonable access to the Business and business of the Acquired Subsidiaries and the Purchased Assets at all times during normal business hours, as well as such information within the possession or control of Seller regarding the Business and business of the Acquired Subsidiaries as Purchaser and its representatives may reasonably request;

- (ii) Seller will, except as consented to in writing by Purchaser or as relates solely to Excluded Assets:
 - (A) carry on the Business in the usual and ordinary course, consistent with the way it has been carried on since appointment of Seller, and use reasonable commercial efforts to preserve intact the Business and the Purchased Assets and to promote and preserve for Purchaser the goodwill of suppliers, customers and others having business relations with the Company;
 - (B) refrain from disclaiming any Contracts;
 - (C) refrain from the sale of any assets of any kind other than Inventory in the ordinary course of business;
 - (D) maintain the Purchased Assets in the same state of repair, order and conditions as they are on the date hereof, reasonable wear and tear excepted;
 - (E) refrain from causing or accepting any distributions (whether by way of dividends, return of capital, repayment of debt or otherwise) from the Acquired Subsidiaries outside of the ordinary course, which for greater certainty does not prevent the daily or near-daily transfers by the Seller from the bank accounts of the Acquired Subsidiaries of any accounts receivable collections collected by the Acquired Subsidiaries in the ordinary course of business;
- (iii) maintain the Books and Records in the usual and ordinary course, consistent with past practice and record all transactions on a basis consistent with that practice; and
- (iv) to the best of the Seller's knowledge, pay all maintenance fees and other accounts, and take all actions, necessary to maintain the Intellectual Property in good standing.
- (b) upon acceptance and execution of this Agreement by Seller, Seller will apply to Court for approval of this Agreement and the Transaction at a hearing to be scheduled on a date mutually satisfactory to Seller and Purchaser providing for a reasonable period of notice to those served. Seller will provide Purchaser with draft court materials and an opportunity to provide comments on them before they are served and filed. Seller will provide to Purchaser its proposed service list for its motion and will add to the service list and serve its motion on any other any Person reasonably requested by Purchaser. The copy of this Agreement included in Seller's court materials that is made public will be redacted in a manner mutually satisfactory to Seller and Purchaser (with an unredacted copy provided to the Court confidentially with a request for a sealing order).
- (c) if so authorized by the Court, within ten days after the Closing Date, Seller will cause the Company to have changed its name to its numbered corporation name and agrees not to allow or cause the Company to further change its name, or adopt or use any trademark, domain name or trade name, to one that includes "DragonWave" or any name similar to it.

- (d) Seller shall use commercially reasonable efforts to fulfill the conditions set out in Section 6.4 of this Agreement and shall cooperate with Purchaser in its efforts to cause the satisfaction of the conditions set out in Section 6.5 of this Agreement.

8.2 General Covenants of Purchaser

Purchaser covenants and agrees with Seller as follows:

- (a) for a period of six years following the Closing Date, Purchaser covenants to use reasonable care to preserve the Books and Records and to permit Seller and its representatives and successors and assigns and any trustee in bankruptcy access to any such Books and Records that contain information relating to the period prior to the Closing Time, as Seller and its representatives and successors and assigns and any trustee in bankruptcy may reasonably request; and
- (b) Purchaser shall use commercially reasonable efforts to fulfill the conditions set out in Section 6.5 of this Agreement and shall cooperate with Seller in its efforts to cause the satisfaction of the conditions set out in Section 6.4 of this Agreement.

ARTICLE 9 CONFIDENTIALITY

9.1 Confidentiality

The provisions of any existing confidentiality agreement between the Purchaser and the Company remain in full force and effect, except as provided herein. The Parties will cooperate and consult with one another, to the extent reasonably practical, with respect to the issuance of any press release or other public statement regarding this Agreement and the Transaction. From and after the Closing Time, Seller will not disclose to any Person or use for any purpose confidential information relating to the Purchased Assets, the Business or the business of the Acquired Subsidiaries and will hold such confidential information in strict confidence.

ARTICLE 10 TERMINATION

10.1 Termination

- (a) This Agreement may be terminated at any time prior to the Closing Time:
 - (i) by mutual written agreement of Seller and Purchaser;
 - (ii) by Purchaser as provided in Section 6.4 or by Seller as provided in Section 6.5, in each case provided that the terminating Party has not breached its obligations under the Agreement in such a manner as to cause a closing condition not to be fulfilled;
 - (iii) by Purchaser as provided in Section 6.7; or
 - (iv) by Purchaser or Seller if a material breach of any representation, covenant or other provision of this Agreement has been committed by the other Party and such breach has not be cured or waived within three Business Days following the date that the non-breaching Party notifies the other Party of such breach.

10.2 Effect of Termination

- (a) If this Agreement is terminated pursuant to, or due to the occurrence of any of the events set out in Section 10.1, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for and subject to the provisions of Section 9.1 and this Section 10.2.
- (b) If this Agreement is terminated at any time other than as a result of a breach by the Purchaser, the Seller shall promptly return the Deposit in full to the Purchaser in the same currency in which it was paid (without adjusting for currency gains or losses). If this Agreement is terminated as a result of a breach by the Purchaser, the Seller shall be entitled, as its sole and exclusive remedy, to retain the Deposit in full satisfaction of any damage claim that the Seller may have against the Purchaser. Under no circumstance shall any of the Parties or their respective directors, officers, employees, managers, Affiliates or agents or their respective directors, officers and employees be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the Transaction.

**ARTICLE 11
AS IS WHERE IS**

11.1 Acquisition of Assets on "As Is, Where Is" Basis

Purchaser acknowledges that Seller is selling the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date and that, as of the date of this Agreement, Purchaser has had an opportunity to conduct any and all due diligence regarding Seller, the Purchased Assets, the Business and the Assumed Liabilities and that it has relied solely on its own independent review, investigation, and/or inspection of any documents regarding Seller, the Purchased Assets, the Business and the Assumed Liabilities other than the representations contained in Section 7.1. Any information provided by Seller to Purchaser describing the Purchased Assets, the Business and the Assumed Liabilities has been prepared solely for the convenience of prospective purchasers and is not warranted to be complete, accurate or correct. Unless specifically stated herein, Purchaser acknowledges 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 Seller, the Business, the Purchased Assets or Assumed Liabilities or the completeness of any information provided in connection therewith or in any instrument furnished in connection with this Agreement including, without limitation, the respective rights, titles and interests of Seller, if any, in the Purchased Assets other than the representations contained in Section 7.1. This Section 11.1 shall not merge on the Closing Date and is deemed incorporated by reference in all documents delivered pursuant to the terms of this Agreement.

ARTICLE 12
GENERAL

12.1 Disputes

Any dispute arising out of or in connection with this Agreement shall be submitted to and finally resolved by a motion brought before the Court.

12.2 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or email:

- (a) in the case of a notice to Seller at:

KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto ON M5H 1J9

Attention: David Sieradzki
Email: dsieradzki@ksvadvisory.com

with a copy (which shall not constitute notice) to:

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

Attention: Jane Dietrich
Email: jdietrich@casselsbrock.com

- (b) in the case of a notice to Purchaser at:

Transform-X, Inc.
6969 East Sunrise Drive, Suite 100
Tucson AZ 85750
United States of America

Attention: Daniel Hodges
Email: dhodges@transform-x.com

with a copy (which shall not constitute notice) to:

McCarthy Tétrault LLP
66 Wellington St W
Toronto ON M5K 1E6

Attention: James Gage
Email: jgage@mccarthy.ca

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt.

However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.

12.3 Assignment

Neither Party shall assign this Agreement or any rights or obligations arising under this Agreement without the prior written consent of the other Party except that Purchaser (the "assignor") shall be entitled to assign its rights under this Agreement to any Affiliate of Purchaser (the "assignee") without the prior written consent of Seller upon written notice to Seller, in which event the assignee will become the Purchaser hereunder and the assignor will be released from its obligations hereunder except the obligation to pay the Purchase Price.

12.4 Time of the Essence

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

12.5 Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns.

12.6 Amendment

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

12.7 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing Date provided that the reasonable costs and expenses of any actions taken after Closing Date at the request of a Party shall be the responsibility of the requesting Party.

12.8 Survival

The representations and warranties of the Parties contained in this Agreement shall merge on Closing and the covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

12.9 Personal Information

Purchaser hereby acknowledges that it is aware, and that it will advise its representatives, that privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (Canada), applies to certain information that may be disclosed to the Purchaser and its representatives pursuant to this Agreement and/or the Transaction. The

Purchaser agrees to comply, and cause its representatives to comply, with such privacy legislation in connection with any such information disclosed to it or any of them.

12.10 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Except as otherwise provided in this Agreement, each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties and their successors and permitted assigns, and no Person other than the Parties and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum.

12.11 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

12.12 Governing Law

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

12.13 Execution and Delivery

This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile or other electronic means and all such counterparts and facsimiles (or other electronic deliveries) shall together constitute one and the same agreement.

[Remainder of page intentionally left blank]

IN WITNESS OF WHICH the Parties have executed this Agreement as of the date first written above.

**KSV KOFMAN INC. solely in its capacity
as court-appointed receiver and receiver
and manager of the assets, properties
and undertakings of DragonWave Inc.
and not in its personal capacity**

By: 

Name: DAVID SIERADZKI

Title: MANAGING DIRECTOR

TRANSFORM-X, INC.

By: _____

Name: _____

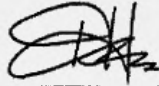
Title: _____

IN WITNESS OF WHICH the Parties have executed this Agreement as of the date first written above.

**KSV KOFMAN INC. solely in its capacity
as court-appointed receiver and receiver
and manager of the assets, properties
and undertakings of DragonWave Inc.
and not in its personal capacity**

By: _____
Name:
Title:

TRANSFORM-X, INC.

By:  _____
Name:
Title:

SCHEDULE 1.1(A)

Permitted Encumbrances

1. The lease between the Company and Ford Credit Canada relating to a Ford E150 vehicle and in respect of which registration no. 20150519 0905 1529 5269 (File No. 706182786) has been made by Ford Credit Canada in the Ontario Personal Property Security Registry in favour of Ford Credit Canada as Secured Party
2. 36-month term lease between the Company and Test Equity Inc., relating to test equipment located at Jabil Circuit, Inc. premises in Penang, Malaysia

SCHEDULE 1.1(B)

Leased Premises Locations

1. 411 Leggett Drive – 600, Kanata ON, Canada
2. 411 Leggett Drive – 710, Kanata ON, Canada
3. 411 Leggett Drive – storage, Ottawa ON, Canada
4. 362 Terry Fox Drive – 112, Kanata ON, Canada
5. 362 Terry Fox Drive – 100, Kanata ON, Canada
6. 362 Terry Fox Drive – 109, Kanata ON, Canada
7. 362 Terry Fox Drive – 110, Kanata ON, Canada
8. 362 Terry Fox Drive – 115, Kanata ON, Canada

SCHEDULE 1.1(C)

Approval and Vesting Order

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

THE HONOURABLE

JUSTICE

)
)
)
)

•, THE •

DAY OF •, 2017

B E T W E E N :

COMERICA BANK

Applicant

- and -

DRAGONWAVE INC.

Respondent

**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. 1990, C. c.43, as amended**

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Kofman Inc. (“KSV”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of DragonWave Inc. (the “**Debtor**”) for an order (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Asset Purchase Agreement**”) between the Receiver and [Transform-X Inc.] (the “**Purchaser**”) dated September •, 2017 and appended to the Second Report of the Receiver dated September •, 2017 (the “**Second Report**”), and vesting in the Purchaser the Debtor’s and the Receiver’s right, title and interest in and to the Purchased Assets as defined in the Asset Purchase Agreement, (ii) authorizing the Receiver on behalf of the Debtor pursuant to section 100 of the Canada Business Corporations Act (the “**CBCA**”) to file articles of amendment changing the name of the Debtor to 3517667 Canada Inc., (iii) approving a distribution of funds in the hands of the Receiver from time to time, including without limitation,

the Net Proceeds, to Comerica Bank ("**Comerica**") as agent (the "**Agent**") for Comerica and Export Development Canada ("**EDC**") as the Receiver determines is appropriate in its sole discretion; (iv) approving the First Report of the Receiver dated August 10, 2017 (the "**First Report**"), the Second Report and the activities of the Receiver as set out therein; (v) approving the fees and expenses of the KSV as Receiver and Cassels Brock & Blackwell LLP ("**Cassels**") as counsel to the Receiver as set out in the affidavit of David Sieradzki sworn September •, 2017 (the "**Sieradzki Affidavit**") and the affidavit of Joseph Bellissimo sworn September •, 2017 (the "**Bellissimo Affidavit**"); and (vi) sealing and treating as confidential Confidential Appendices • to the Second Report pending filing of the Receiver's Certificate (as defined below) or further order of the Court was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and on hearing the submissions of counsel for the Receiver, Comerica, EDC and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of • sworn • filed:

1. THIS COURT ORDERS that the time for service of this motion 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 have the meanings given to them in the Asset Purchase Agreement.
3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Asset Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as agreed between the Purchaser and Receiver, after consultation with Comerica and EDC. The Receiver 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.
4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Receiver's and the Debtor'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, pledge, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, title retention agreement, license, forbearance from suit, adverse claim, 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 Penny dated July 31, 2017; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”); and, for greater certainty, 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.

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 (the “**Net Proceeds**”) shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’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 Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

7. THIS COURT ORDERS that, upon delivery of the Receiver’s Certificate to the Purchaser, the Receiver (or its legal counsel or agents) is hereby empowered and authorized to forthwith complete all necessary filings and other steps required to discharge all registrations against the Purchased Assets in respect of Encumbrances registered pursuant to any intellectual property registry system, and shall forthwith after completion of same deliver to the Purchaser evidence that all such discharges have been completed.

8. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those 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 Debtor.

9. 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 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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 and shall not be void or voidable by creditors of the Debtor, 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.

NAME CHANGE

10. THIS COURT ORDERS AND DECLARES that following the filing of the Receiver's Certificate, the Receiver is authorized, pursuant to section 100 of the CBCA to file articles of amendment ("**Articles of Amendment**") to change the Debtor's name to 3517667 Canada Inc., and that the Debtor is not required to hold any meeting of its shareholders to consider the change of its name, nor pass a special resolution pursuant to the CBCA in order to give effect to the change of its name.

11. THIS COURT ORDERS AND DIRECTS the Director appointed pursuant to the CBCA to issue a Certificate of Amendment to effect the change of the Debtor's name to its numbered corporation name, upon receipt from the Receiver of the Articles of Amendment.

DISTRIBUTIONS

12. THIS COURT ORDERS that the Receiver be and is hereby authorized, as the Receiver determines is appropriate in its sole discretion, to distribute any funds in its hands from time to time, including without limitations the Net Proceeds, or any portion thereof, to the Agent without further Order of this Court.

13. THIS COURT Orders and declares that that any distributions, disbursements or payments made under this Order shall not constitute a "distribution" of property or money by the Receiver for the purposes of section 107 of the Corporations Tax Act (Ontario), section 117 of the Taxation Act, 2007 (Ontario), section 159 of the Income Tax Act (Canada), section 270 of the Excise Tax Act (Canada), or any other similar federal, provincial or territorial tax legislation (collectively, the "Tax Statutes"), and the Receiver shall not incur any liability under the Tax Statutes in respect of such distributions, disbursements or payments made by it and is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of such distributions made by it in accordance with this Order and any claims of this nature are hereby forever barred.

APPROVAL OF ACTIVITIES AND FEES

14. THIS COURT ORDERS and declares that the First Report, the Second Report and the activities of the Receiver as set out therein be and are hereby approved.

15. THIS COURT ORDERS and declares that the fees and expenses of KSV as Receiver and Casssels as counsel to the Receiver as set out in the Sieradzki Affidavit and the Bellissimo Affidavit be and are hereby approved.

SEALING

16. THIS COURT ORDERS AND DECLARES that Confidential Appendices • to the Second Report be and are hereby sealed and shall be treated as confidential until the filing of the Receiver's Certificate or further order of this Court.

GENERAL

17. 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 Purchaser, 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 Purchaser and to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Purchaser, the Receiver and their respective agents in carrying out the terms of this Order.

Schedule A – Form of Receiver’s Certificate

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

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

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. 1990, C. c.43, AS AMENDED

COMERICA BANK

Plaintiff

- and -

DRAGONWAVE INC.

Defendant

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (the “Court”) dated July 31, 2017, KSV Kofman Inc. was appointed as the receiver (the “Receiver”) of the undertaking, property and assets of DragonWave Inc. (the “Debtor”).

B. Pursuant to an Order of the Court dated August 14, 2017, the Court approved the agreement of purchase and sale made as of September ●, 2017 (the “Asset Purchase Agreement”) between the Receiver and [Transform-X Inc.] (the “Purchaser”) and provided for the vesting in the Purchaser of the Debtor’s and Receiver’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 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 the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and, to the extent provided for under the Asset Purchase Agreement the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to Closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at «time» on «date».

KSV Kofman Inc., solely in its capacity as court-appointed Receiver of the undertaking, property and assets of DragonWave Inc., and not in its personal capacity

Per: _____

Name: »

Title: »

COMERICA BANK DRAGONWAVE INC.
Applicant and Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at TORONTO

APPROVAL AND VESTING ORDER

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.

SCHEDULE 1.1(D)

Acquired Subsidiaries

1. DragonWave Corp.
2. DragonWave S.a.r.l.
3. DragonWave Mexico S.A. de C.V.
4. Axerra Networks Asia Pacific Ltd.
5. DragonWave Pte Ltd.
6. Axerra Gmbh
7. DragonWave India Private Ltd.
8. DragonWave Telecommunications Technology (Shanghai Co. Ltd.)
9. DragonWave HFCL India Private Ltd.
10. All other direct and indirect subsidiaries of the Company

SCHEDULE 1.1(E)

Assumed Contracts

1. All lease agreements in respect of the leased premises listed in Schedule 1.1(b)

SCHEDULE 1.1(F)

Key Replacement Contract

1. Manufacturing Services Agreement between Jabil Circuit, Inc. and the Company dated August 12, 2013 as amended

SCHEDULE 2.1(A)

Inventory Locations

1. DragonWave Inc. premises at 411 Leggett Drive, Ottawa ON, Canada
2. DragonWave Inc. premises at 362 Terry Fox Drive, Kanata ON, Canada
3. DragonWave – OFFSITE, 359 Terry Fox Drive, Suite 120, Kanata, ON K2K 2E7
4. DragonWave Inc. affiliated premises at 4F, Block C, Hi-Tech Building, 900 Yishan Road, Shanghai 200233, China
5. Flexus Electronics, 95 Hines Road, Bays 1, 2, & 3, Kanata, ON, K2K 2M5
6. Jabil Penang, Plant 1, Phase 4, 56 Hilir Sungai Kluang 1
7. Jabil Penang, Plant 2, Lebuhraya Kampung Jawa
8. Lloyd Douglas Solutions Inc. premises at 130 Iber Rd, Stittsville, ON
9. Orange Logistics Centres, 205 Maple Crk Crt., Ottawa, ON K0A 1L0
10. Panalpina Czech s.r.o. premises at Karlovarska Business Park, Na Hurce 1077/4a, 161 00 Prague 6 – Ruzyně, Czech Republic
11. Panalpina Transport (Malaysia) Sdn Bhd premises at PTD 149225 Jalan Kampung Maju Jaya, Kawasan Kampung Maju Jaya, 81300 Skudai, Johor Darul Takzim, Malaysia
12. Plexus Corp. premises at One Plexus Way, P.O. Box 156, Neenah WI 54957-0156

SCHEDULE 2.1(B)

Equipment, Furniture, Fixtures, Computers and Software

1. As set out in the spreadsheet titled "DW_Capital Assets.xlsx" delivered by the Seller to the Purchaser via email dated September 12, 2017 at 2:44 p.m. EST
2. All other equipment, furniture, fixtures, computers and software owned by the Company wherever located.

SCHEDULE 2.1(F)(I)

Patents

1. As set out in the spreadsheet titled "Updated Dragonwave_Patent Application Status Summary August 22 2017.xls" as uploaded by the Seller to the dataroom at 9:54:39 a.m. EST on August 22, 2017.
2. All other patents owned or licensed by the Company or its subsidiaries as licensee wherever registered or filed.

SCHEDULE 2.1(F)(II)

Copyrights and Trademarks

Trademarks

	Owner	Trademark	Jurisdiction	Registration Number	Registration Date
1.	DragonWave Inc.	DRAGONWAVE	Canada	TMA585382	July 16, 2003
			US	3503574	September 23, 2008
2.	DragonWave Inc.	HORIZON	Canada	TMA745742	August 19, 2009
			US	3606664	April 14, 2009
3.	DragonWave Inc.	AIRPAIR	Canada	TMA563401	June 13, 2002
			US	3789058	May 18, 2010
4.	DragonWave Inc.	DRAGONWAVE FUSION	Canada	1508595	December 20, 2010
				(Application Number)	(Filing Date)
			US	85/199691	November 11, 2011
				(Application Number)	(Filing Date)
5.	DragonWave Inc.	AVENUE	US	85/470939	December 16, 2010
				(Application Number)	(Filing Date)
6.	DragonWave Corp.	AXERRA	US	76170413	May 7, 2002
			EC	002133916	March 6, 2005
7.	DragonWave Corp.	AXERRA NETWORKS	US	76178717	May 11, 2004
			EC	002134013	March 6, 2001
8.	DragonWave Corp.	AXN	US	76170415	May 13, 2003
9.	DragonWave Corp.	HPCR	US	78661350	April 3, 2007
10.	DragonWave Corp.	THE PSEUDO-WIRE COMPANY	US	78444507	February 28, 2006
11.	DragonWave Corp.	UNLOCK THE POWER OF YOUR IP NETWORK	US	76211745	March 30, 2004

Owner	Trademark	Jurisdiction	Registration Number	Registration Date
12. All other trademarks owned or licensed by the Company and/or its subsidiaries as licensee wherever registered or filed				

Copyrights

All copyrights owned or licensed by the Company and/or its subsidiaries as licensee wherever created, registered or filed.

SCHEDULE 2.1(G)

Business and Domain Names

Business Names

[None]

Domain Names

1. www.dragonwaveinc.com
2. All other domain names registered, owned or used by the Company or its subsidiaries wherever registered or filed, including but not limited to such domain names registered with ICANN.

SCHEDULE 2.1(N)

Purchased Shares

1. All shares of DragonWave Corp. owned by the Company
2. All shares of DragonWave S.a.r.l. owned by the Company
3. All shares of DragonWave Mexico S.A. de C.V. owned by the Company
4. All other shares owned by the Company

SCHEDULE 2.2(A)

Excluded Assets

All supply contracts for inventory, supplies or equipment to which the Company is a party as purchaser.

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

**APPENDICES 1 & 3 TO THE SECOND REPORT OF THE
RECEIVER DATED SEPTEMBER 29, 2017**

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

Benjamin Goodis LSUC# 70303H
Tel: 416.869.5312
Fax: 416.640.3199
bgoodis@casselsbrock.com

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

**SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
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OCT 26 2017

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