



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

October 22, 2018

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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

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

OCTOBER 22, 2018

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 3517667 Canada Inc. (formerly, 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 was to allow the Company's business to continue to operate substantially in the normal course while a Court-supervised sale process for the Company's business and assets was 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, including the completion of a going-concern transaction (the “Transaction”) for substantially all of the Company’s business and assets with Transform-X, Inc. (the “Purchaser”);
 - b) provide an overview of the Receiver’s efforts to arrange for the release of the remaining funds (the “L/C Funds”) held by Chubb/Westchester Fire Insurance Company (“Chubb”) of approximately \$986,000 (before deductions for unpaid bond premiums and legal fees) which are presently being held by Chubb as security for obligations of Chubb in respect of Annual Performance Bond No. K09087011 and Labor and Material Payment Bond No. K09087011 (the “Bonds”), including the Receiver’s proposed course of action to resolve this matter, being the final outstanding issue in these proceedings;
 - c) provide an overview of the Receiver’s activities since its second report to Court dated September 29, 2017 (the “Second Report”);
 - d) discuss the fees and disbursements of the Receiver and its counsel, Cassels Brock & Blackwell LLP (“CBB”), and seek approval of same;
 - e) recommend that the Receiver be discharged of its duties and obligations under the Receivership Order subject to filing a certificate with the Court confirming that all outstanding receivership matters have been completed (the “Discharge Certificate”); and
 - f) recommend that this Honourable Court make an order (the “Proposed Discharge Order”):
 - releasing Chubb from any liabilities in respect of the Bonds and directing Chubb to pay to the Receiver on or around December 28, 2018 approximately \$833,000 plus any further amounts held by Chubb which remain unused less any Preserved Claims (as defined in the Proposed Discharge Order);
 - approving the form of advertisement, substantially in the form attached to the Proposed Discharge Order, to be published during the week of November 19, 2018 in The USA Today (national edition) in connection with any Bond Claims (as defined below) and declaring December 20, 2018 as the claims bar date (“Claims Bar Date”) for any such claims to be submitted to the Receiver;
 - discharging the Receiver upon the filing of the Discharge Certificate;
 - releasing the Receiver from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting as Receiver, save and except for its gross negligence or willful misconduct;

- approving the fees and disbursements of the Receiver and CBB as set out in the affidavits filed by KSV and CBB in the accompanying motion materials;
- approving an accrual of \$20,000 (the “Fee Accrual”) to cover the fees and disbursements of the Receiver and CBB incurred or to be incurred until the filing of the Discharge Certificate; and
- approving this Report and the Receiver’s activities described herein.

1.2 Currency

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

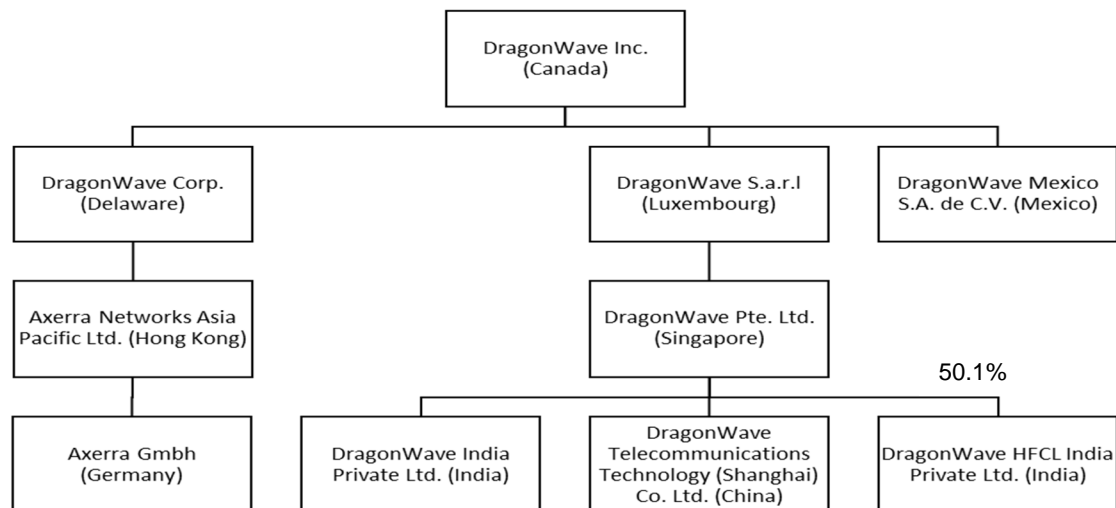
1.3 Restrictions

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 former management now employed by the Purchaser. 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.

2.0 Background

1. The Company was incorporated in 2000 under the *Canada Business Corporations Act*. The Company was a provider of high capacity wireless ethernet equipment used in internet protocol (IP) networks - it developed, marketed and sold proprietary microwave radio frequency networking equipment designed to wirelessly transmit broadband voice, video and other data.
2. The Company’s head office and registered office was located at 411 Leggett Drive, Suite 600, Ottawa, Ontario. As at the date of receivership, the Company’s employee headcount was approximately 125 and its foreign subsidiaries (discussed below) employed approximately 25 individuals. The Company’s workforce was not unionized and it did not maintain a registered pension plan. All of the Company’s former employees have been terminated or assumed by the Purchaser as part of the Transaction.
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 date of receivership), 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 operated a worldwide business and held numerous direct and indirect foreign subsidiaries, as reflected in the corporate chart below. The foreign subsidiaries were not subject to these receivership proceedings – prior to being sold, each continued to operate substantially 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 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 \$18.7 million (including the \$1.5 million draw on the Chubb L/C (as defined below) in mid-August, 2017), plus interest and costs which continue to accrue.
2. The Senior Lenders' exposure includes one additional letter of credit in the amount of approximately \$190,500 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 ("Ford")²).

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

² Ford's registration relates to a motor vehicle lease which was transferred to the Purchaser pursuant to the terms of the Transaction.

4. The Senior Lenders will incur a substantial shortfall on their advances to the Company and, accordingly, there will not be any funds available for distribution to the Company's other creditors.
5. At the same time that the Court approved the Transaction, the Court also authorized a distribution by the Receiver of any funds in the Receiver's hands from time to time (including, without limitation, the net proceeds of the Transaction) or any portion thereof to the Agent, in an amount not to exceed the amount owing by the Company to the Agent or Senior Lenders.

4.0 The Transaction

1. At the outset of these proceedings, the Receiver carried out a Court-approved sale process pursuant to a Court order made on August 14, 2017.
2. On October 6, 2017, the Court approved the Transaction pursuant to an approval and vesting order made on that date (the "Sale Approval and Vesting Order"). The Transaction included the Company's equity interest in its foreign subsidiaries. The Transaction was completed on October 24, 2017. A copy of the Sale Approval and Vesting Order is attached as Appendix "B". A copy of the Receiver's Certificate (as defined in the Sale Approval and Vesting Order) is attached as Appendix "C".
3. Since the completion of the Transaction, the Receiver has fulfilled its post-closing obligations and addressed other sundry administrative issues, including taking steps to document the transfer of shares in the foreign subsidiaries as required. As at the date of this Report, the final outstanding matter in these proceedings is resolving the issues related to the Bonds, including obtaining the L/C Funds and making a final distribution to the Agent in accordance with paragraph 11 of the Sale Approval and Vesting Order.

5.0 The Bonds

5.1 Background

1. The Bonds were provided as required under a Master Construction Service Agreement ("MCSA") dated January 10, 2014 between DragonWave Corporation ("DragonWave Corp."), a former US subsidiary of the Company, and Sprint/United Management Company ("Sprint"), a former customer of DragonWave Corp. and the Company. A letter of credit in the amount of \$1.5 million (the "Chubb L/C") was issued by Comerica to Chubb under the Company's Credit Agreement to stand as security for any obligations of Chubb under the Bonds.
2. In August of 2017, Chubb called upon the Chubb L/C, and thereafter held the proceeds of the Chubb L/C as security for its obligations under the Bonds.

3. Under the labor and material payment Bond, Chubb was potentially liable for claims by claimants – being persons having a direct contract with the Company or a subcontractor of the Company – for labor, material or both used or reasonably required for use in the performance of the MCSA. Provided, however, that to make a claim under the labor and material payment Bond, claimants must have provided written notice of such claim to any two of the Company, Sprint or Chubb within 90 days after such claimant did, or performed the last of, the work or labour or furnished the last of the materials.
4. Further, under the terms of the labor and material payment Bond, no claims were to be made following one year from the date on which the Company last performed work on the MCSA (provided that if any limitation embodied in the bond was contrary to any law controlling the construction of such bond, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law).
5. The Sprint project sites serviced by the Company and DragonWave Corp. under the MCSA were located throughout the US. DragonWave Corp. and its Subcontractors serviced over 6,000 orders placed by Sprint under the MCSA. All work under the MCSA ceased on the granting of the Receivership Order (July 31, 2017).
6. In order to identify potential claimants under the labor and material payment Bond (the “Subcontractors”) for service work performed by DragonWave Corp. on Sprint projects (the “Bond Claims”), the Receiver worked with the Company to identify any parties that may have *bona fide* Bond Claims. The Receiver’s process included:
 - working with the Company’s operations group to compile a complete list of Subcontractors, being fourteen parties in total;
 - working with the Company’s finance group to identify which of the Subcontractors had pre-filing balances owing to them;
 - working with the Company’s finance group to identify the portion of the outstanding pre-filing balances owing to Subcontractors related to work completed on Sprint projects (i.e. covered by the Bonds);
 - discussions with the Subcontractors to request claims be provided in respect of pre-filing work performed on Sprint projects; and
 - reconciling any claims received to the Company’s books and records and investigating any discrepancies with the Subcontractors.
7. In total, eight Bond Claims totalling approximately \$470,000 were identified, reconciled and ultimately approved for payment. The Receiver worked with Chubb to provide it with the necessary approvals to make the payments from the Chubb L/C funds to seven of the eight claimants. The eighth Bond Claim was for a nominal amount and was paid directly from funds in the Receiver’s bank account. Accordingly, all known Bond Claims have been paid in full and each of the claimants provided a release in a form acceptable to Chubb. According to the Company’s books and records, there are no further Bond Claims and no other Subcontractor has asserted any Bond Claim or provided notice of any Bond Claim in accordance with the provisions of the labor and material payment Bond.

8. In anticipation of this motion, the Receiver sent a letter on September 18, 2018 to each of the Subcontractors that did not assert a Bond Claim. Copies of those letters are attached as Appendix “D”. As at the date of this Report, one party responded to confirm that there are no amounts outstanding. The Receiver also intends to serve each Subcontractor with a copy of the Receiver’s Motion Record.
9. Under the annual performance Bond, Chubb was potentially liable for claims by Sprint in the event Sprint declared the Company to be in default under the MCSA. In that event, Sprint was to provide Chubb with a written statement setting out the particular facts of the default no later than 30 days from the date of such default.
10. The original term of the annual performance Bond was from August 11, 2014 until August 11, 2015 with renewals to be made for additional one-year periods by the issuance of a Continuation Certificate by Chubb.

5.2 Correspondence with Chubb

1. Since the closing of the Transaction on October 24, 2017, the Receiver has been working with Chubb and its legal counsel in an effort to arrange for the release of the balance of the Chubb L/C funds.
2. Chubb has been unwilling to release the balance of the Chubb L/C funds until it is satisfied that it has no exposure under the Bonds.
3. The Receiver, CBB, Chubb and its legal counsel discussed various alternative solutions to satisfy Chubb’s concerns.
4. With respect to the annual performance Bond, a form of release to be executed by Sprint (the “Release”) was determined to be the most cost-effective option; however, as discussed below, Sprint and Chubb were unable to settle an acceptable form of Release.
5. On October 8, 2018, Chubb’s legal counsel provided an accounting of the L/C funds. The statement reflected that \$986,282.74 remains on deposit with Chubb. The Receiver, with the consent of the Senior Lenders, has agreed that \$833,000 plus any further amounts held by Chubb which remain unused less any Preserved Claims that are ultimately determined to be payable is an appropriate amount to be remitted to the Receiver – the amount is net of the agreed, pro-rated bond premiums payable to Chubb and its legal costs.
6. At Chubb’s request, the Receiver agreed to publish an advertisement in The USA Today (national edition) during the week of November 19, 2018, subject to Court approval. The advertisement would provide an additional and final 30 days’ notice for any potential Bond Claims to be asserted. Accordingly, the Proposed Discharge Order provides that any Bond Claim would be forever barred/released if it is not filed with the Receiver prior to the Claims Bar Date. The publication cost will be paid from the funds in the Receiver’s account.

5.3 Correspondence with Sprint

1. The Receiver attempted to contact Sprint multiple times for the purpose of discussing the Chubb L/C, including to request that Sprint confirm any unpaid Bond Claims according to its books and records and to settle an acceptable form of Release.
2. From the outset, Sprint was not responsive to the Receiver's requests. Accordingly, CBB sent a letter dated February 1, 2018 to Sprint on the Receiver's behalf ("CBB's February 1 Letter") regarding, *inter alia*, the Receiver's previous requests for confirmation from Sprint in respect of unpaid Bond Claims and a form of Release requested by Chubb. A copy of CBB's February 1 Letter is attached as Appendix "E". In addition, on February 7, 2018, the Receiver sent Sprint the form of Release.
3. On March 13, 2018, a former Company employee retained by the Purchaser informed the Receiver that Sprint had advised him that the Release had been forwarded to Sprint's internal legal department for further review and confirmed that no amounts were owing.
4. On March 14, 2018, the same former Company employee forwarded to the Receiver an email from Sprint noting, *inter alia*, that the Release, subject to wording, "would likely work".
5. On March 19, 2018, the Receiver, CBB and Sprint attended a conference call and discussed, *inter alia*, Sprint's concerns regarding the draft Release. This was the first time Sprint directly responded to the Receiver and CBB on this matter.
6. Following the March 19, 2018 conference call, the Receiver and CBB took steps to bring this matter to conclusion, including:
 - amending the draft Release (the "Amended Draft Release") and sending the Amended Draft Release to Sprint on March 20, 2018;
 - reviewing comments on the Amended Draft Release provided by Sprint ("Sprint's Draft Release") on March 24, 2018;
 - reviewing Chubb's comments on Sprint's Draft Release provided by Chubb on April 4, 2018 and forwarding same to Sprint on that date (the "April 4 Correspondence"); and
 - following up with Sprint multiple times regarding the April 4 Correspondence, including on April 10, April 24, May 1, May 8 and June 19, 2018.
7. Sprint has not responded to any of the Receiver's follow-up attempts. Accordingly, CBB sent a letter dated June 26, 2018 to Sprint ("CBB's June 26 Letter") regarding, *inter alia*, the Receiver's intention to seek a Court order if Sprint does not respond by July 15, 2018. A copy of CBB's June 26 Letter is attached as Appendix "F".
8. As at the date of this Report, Sprint has not responded to CBB's June 26 Letter.

5.4 The Original Bonds

1. In connection with the Proposed Discharge Order, Chubb has requested that the original copies of the Bonds be returned for cancellation. The Receiver notes that in the comments included by Sprint as part of Sprint's Draft Release, Sprint indicated that original copies of the Bonds have not been located by Sprint.
2. At the request of Chubb, on August 17, 2018, the Receiver sent to Sprint a draft letter to be executed by Sprint confirming that, *inter alia*, should the Bonds ever be located, Sprint undertakes to deliver for cancellation the Bonds to Chubb and that Sprint releases any claim it may have under the Bonds. A copy of the Bond Delivery Letter is attached as Appendix "G".
3. As at the date of this Report, Sprint has not provided an executed copy of the Bond Delivery Letter.

5.5 Recommendation

1. The Receiver recommends that this Court make an order, *inter alia*, releasing Chubb from any liability vis-à-vis the Bonds and directing Chubb to pay to the Receiver \$833,000 plus any further amounts held by Chubb which remain unused less any Preserved Claims on December 28, 2018 for the following reasons:
 - notwithstanding the Receiver's efforts, Sprint and Chubb were unable to settle, on a consensual basis, the terms of a Release;
 - Sprint has not been responsive to the Receiver or CBB since March, 2018 and the Receiver is concerned that, absent a Court order, these proceedings will be unnecessarily protracted and further costs will be incurred without any certainty of concluding the L/C Funds issue in a manner that is acceptable to Chubb and/or Sprint;
 - the Senior Lenders, who will incur a substantial shortfall on their advances to the Company, are anxious to bring these proceedings to completion – this one issue has been the sole outstanding issue in these proceedings since the closing of the Transaction on October 24, 2017;
 - the Receiver has worked with all parties to identify any Bond Claims. In this regard, all known Bond Claims have been paid in full and the time for asserting Bond Claims has passed;
 - the amount to be remitted by Chubb to the Receiver has been negotiated and considers unpaid bond premiums through December, 2018 and Chubb's legal costs. The Receiver, Chubb and the Senior Lenders agreed to this amount prior to service of the Receiver's motion materials; and
 - the publication of the advertisement in The USA Today (national edition) and providing a further 30 days until the Claims Bar Date for any potential Bond Claims to be filed is, in the Receiver's view, a reasonable step to bring finality to the issue and to confirm that there are no further Bond Claims.

2. The Receiver has served a copy of this Motion Record on Sprint, Chubb and the Subcontractors, being the only known claimants and potential claimants under the Bonds according to the Company's books and records.

6.0 Assets Under Administration

1. As at the date of this Report, the only known assets subject to the receivership are:
(a) the L/C Funds, which total approximately \$986,000 (after payment of all known Bond Claims and Chubb's legal fees through early August, 2018); and (b) the funds on deposit in the receivership bank accounts as at October 19, 2018, which total approximately \$70,000.

7.0 Distributions

1. Pursuant to paragraph 11 of the Sale Approval and Vesting Order, the Receiver has distributed \$3.5 million to the Senior Lenders since the completion of the Transaction.
2. Upon receipt of the L/C Funds from Chubb, the Receiver intends to make a final distribution to the Senior Lenders, which will be comprised of the balance of funds remaining in the Receiver's bank account, net of the Fee Accrual, and the L/C Funds recovered from Chubb.

8.0 Receiver's Discharge

1. Prior to completing its administration, the Receiver intends to:
 - publish the advertisement and address any Preserved Claims that may be received;
 - collect from Chubb the L/C Funds as contemplated by the Proposed Discharge Order;
 - pay any outstanding post-filing expenses from the cash on deposit in the receivership account, which would be comprised of professional fees and the cost of the publication in The USA Today of the advertisement re Bond Claims;
 - pay a final distribution to the Senior Lenders in accordance with the Sale Approval and Vesting Order; and
 - prepare and file the Receiver's final report as required under Section 246 of the BIA.
2. Once the Receiver has completed these activities, it intends to file the Discharge Certificate as its duties and responsibilities under the Receivership Order and other orders made in these proceedings will have been completed. Dealing with the discharge in this manner will avoid the costs of a subsequent motion in these proceedings solely for the purpose of seeking the Receiver's discharge. The Receiver believes this is appropriate in these circumstances, particularly given the shortfall the Senior Lenders will incur and the few sundry items to deal with once the Chubb matter is resolved.

9.0 Overview of the Receiver's Activities

1. The Receiver is seeking approval of this Report and the activities described herein.
2. Since the date of the Second Report (September 29, 2017), the Receiver's activities have included:

Pre-Closing Activities related to the Transaction

- attending at the Company's premises on a near daily basis through to the closing of the Transaction;
- reviewing operational issues with management, including the daily issuance of purchase orders, employee matters and customer issues;
- monitoring the Company's funding requirements on a regular basis;
- corresponding extensively with the Purchaser and its legal counsel regarding all aspects of the Transaction;
- attending conference calls with the Purchaser and the Company's key suppliers to facilitate the Purchaser's diligence;
- reviewing and commenting on all closing documents in connection with the Transaction;
- executing the closing documents in connection with the Transaction in accordance with the Sale Approval and Vesting Order; and
- corresponding with the Company regarding final payroll administration, including the payout of any accrued vacation obligations not assumed by the Purchaser.

Post-Closing Activities related to the Transaction

- corresponding with terminated employees regarding their severance and termination claims;
- dealing with issues related to the Company's foreign subsidiaries and the sale of the Company's equity interest in those entities to the Purchaser;
- corresponding with the Purchaser regarding cut-off issues, closing adjustments and transitional matters in connection with the Transaction;
- reviewing the Company's cash receipts and corresponding with the Purchaser in respect thereof to reconcile pre and post-closing accounts receivable collections; and
- corresponding with the Company's foreign tax advisors in Czech Republic, Malaysia and United Kingdom regarding the Transaction and its implications in those jurisdictions.

Other Receivership Matters

- carrying out the Receiver's duties and responsibilities in accordance with the Receivership Order;
- 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;
- paying to the Senior Lenders two interim distributions totaling \$3.5 million in accordance with the Sale Approval and Vesting Order;
- corresponding with key stakeholders in these proceedings, including the Senior Lenders, the Company's former employees, customers, shareholders, creditors and/or their respective legal counsel regarding the status of the receivership proceedings;
- corresponding extensively with the Company, the Senior Lenders, Chubb, Sprint and legal counsel in connection with the Chubb L/C and related matters detailed in this Report;
- corresponding with the Company's Subcontractors regarding their Claims;
- corresponding with the Company's Indian counsel in connection with the completion of arbitration proceedings in India;
- preparing the Company's monthly sales tax returns;
- preparing two Interim Reports of the Receiver pursuant to Sections 246(2) of the BIA;
- 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 for the period from September 1, 2017 to August 31, 2018 and those of its legal counsel, CBB, for the period from September 23, 2017 to August 31, 2018, total approximately \$290,000 and \$86,000, respectively.
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 \$432.87 and \$510.69, 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.
5. The Receiver is also of the view that the Fee Accrual is reasonable and appropriate in the circumstances as it provides for the estimated fees incurred and to be incurred by the Receiver and CBB prior to the filing of the Discharge Certificate. To the extent there is any surplus in the Fee Accrual following the filing of the Discharge Certificate, the Receiver will distribute those funds to the Senior Lenders in accordance with the Sale Approval and Vesting Order.

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(f) of this Report.

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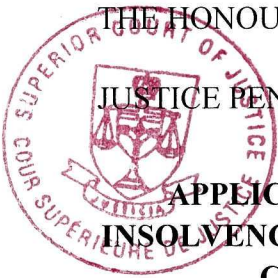
All of which is respectfully submitted,

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

)

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.

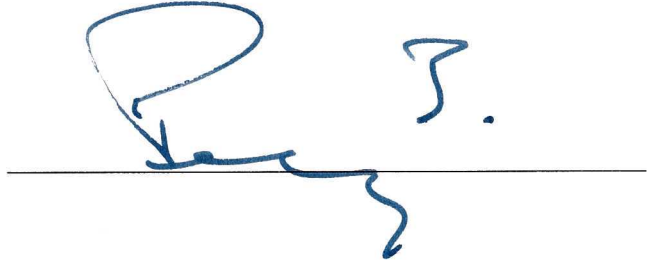
32. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, India, and Luxembourg to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All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

A handwritten signature in blue ink, appearing to be "R. J.", is written over a horizontal line. The signature is stylized, with a large "R" and a smaller "J" followed by a period.

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

JUL 31 2017

PER / PAR:

A handwritten signature in blue ink, appearing to be "JL", is written next to the "PER / PAR:" label.

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

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Tel: 416-865-7841
Fax: 416-865-7048

Lawyers for the Applicant

Appendix “B”

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

THE HONOURABLE

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)
)

FRIDAY, THE 6TH

REGIONAL SENIOR JUSTICE
MORAWETZ

DAY OF OCTOBER, 2017

BETWEEN :

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 and receiver and manager (the “**Receiver**”) of the assets, undertakings and properties 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 DragonWave-X Canada, Inc. (the “**Purchaser**”) dated September 28, 2017 and appended to the Second Report of the Receiver dated September 29, 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 the 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 29, 2017 (the "**Sieradzki Affidavit**") and the affidavit of Joseph Bellissimo sworn September 28, 2017 (the "**Bellissimo Affidavit**"); and (vi) sealing and treating as confidential the Confidential Appendices to the Second Report pending further order of the Court was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report, the Sieradzki Affidavit, and the Bellissimo Affidavit, and on hearing the submissions of counsel for the Receiver, ~~Comerica~~, Westchester Fire Insurance Company & ACE INA Insurance, Jabil Inc. and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Benjamin Goodis sworn October 4, 2017 filed:

Nokia Solutions and Networks B.V.

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.


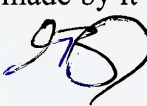
NAME CHANGE

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.

DISTRIBUTIONS

11. 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 limitation the Net Proceeds, or any portion thereof, to the Agent without further Order of this Court, in an amount not to exceed the amount owing by the Debtor to the Agent, Comerica and EDC.

 12. ~~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

13. 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.

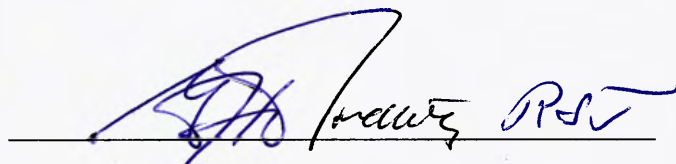
14. THIS COURT ORDERS and declares that the fees and expenses of KSV as Receiver and Cassels as counsel to the Receiver as set out in the Sieradzki Affidavit and the Bellissimo Affidavit be and are hereby approved.

SEALING

15. THIS COURT ORDERS AND DECLARES that the Confidential Appendices to the Second Report be and are hereby sealed and shall be treated as confidential until further order of this Court.

GENERAL

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



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

OCT 06 2017

PER / PAR:



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 and receiver and manager (the “Receiver”) of the assets, undertakings and properties of DragonWave Inc. (the “Debtor”).

B. Pursuant to an Order of the Court dated October 6, 2017, the Court approved the agreement of purchase and sale made as of September 28, 2017 (the “Asset Purchase Agreement”) between the Receiver and DragonWave-X Canada, 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 assets, undertakings and properties of DragonWave Inc., and not in its personal capacity

Per: _____

Name: »

Title: »

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

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.

Appendix “C”

**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 and receiver and manager (the "Receiver") of the assets, undertakings and properties of DragonWave Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated October 6, 2017, the Court approved the agreement of purchase and sale made as of September 28, 2017 (the "Asset Purchase Agreement") between the Receiver and DragonWave-X Canada, 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 4:55pm on October 24, 2017.

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

Per: 

Name: DAVID SIERADZKI

Title: MANAGING DIRECTOR



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**

RECEIVER'S CERTIFICATE

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.

Appendix “D”



David Sieradzki
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 18, 2018

DELIVERED BY COURIER AND E-MAIL (stephen@ezwireless.us)

EZ Wireless
9655 SW Sunshine Court
Suite E1000
Beaverton, Oregon 97005

Attention: Stephen Weggelaar

Dear Sirs:

Re: Confirmation of Amounts Owning in respect of Work Preformed Prior to July 31, 2017 for 3517667 Canada Inc. (formerly, DragonWave Inc.) (or its subsidiary DragonWave Corp.) in respect of Sprint/United Management Company Projects

Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on July 31, 2017 (the "Receivership Order"), KSV Kofman Inc. was appointed receiver and receiver and manager (the "Receiver") of the properties, assets and undertakings of 3517667 Canada Inc. (formerly, DragonWave Inc.) (the "Company").

According to the Company's books and records, DragonWave Corp., a subsidiary of the Company, engaged you to perform services on projects for Sprint/United Management Company ("Sprint") prior to the appointment of the Receiver on July 31, 2017 (the "Relevant Work"). The Company's books and records show that all amounts owing to you in respect of the Relevant Work have been paid in full and that no such amounts remain outstanding.

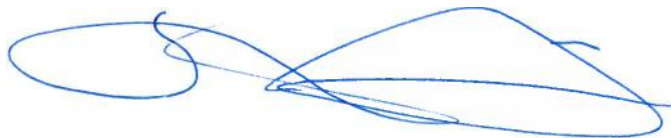
However, if you are of the view that you remain owed any amounts by the Company (or DragonWave Corp.) for work performed on Sprint projects prior to July 31, 2017, please contact the undersigned as soon as possible, and in no event later than October 1, 2018, failing which any claim by you for such amounts purportedly owing as against the Company, DragonWave, Sprint, or any bonding company that has provided a labour and material bond to the Company or DragonWave may be forever barred and extinguished by order of the Ontario Superior Court of Justice as described below.

The Company had previously obtained a labor and material payment bond (the "Bond") from Westchester Fire Insurance Company/Chubb ("Chubb") which may provide payment for any amounts outstanding in respect of the Relevant Work. However, as the Receiver is not aware of any remaining amounts outstanding in respect of the Relevant Work, it is the Receiver's intention to bring a motion (the "Motion") to the Court seeking an Order declaring, among other things, that Chubb has no further liability under the Bond and that all persons, including you, are barred from asserting any claims against Chubb in respect of the Bond.

Should you have any questions regarding the above, or believe that you are owed amounts by the Company or DragonWave Corp. for work performed on Sprint projects prior to July 31, 2017, please contact the undersigned as soon as possible. The Receiver intends to bring the Motion to the Court following October 1, 2018.

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**

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

Per: David Sieradzki

DS:rk



David Sieradzki
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 18, 2018

DELIVERED BY COURIER AND E-MAIL (pcappiello@futuretechllc.com)

Future Tech
355 Satellite Blvd.
#350
Suwanee, GA 30024

Attention: Peter Cappiello

Dear Sirs:

Re: Confirmation of Amounts Owning in respect of Work Preformed Prior to July 31, 2017 for 3517667 Canada Inc. (formerly, DragonWave Inc.) (or its subsidiary DragonWave Corp.) in respect of Sprint/United Management Company Projects

Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on July 31, 2017 (the "Receivership Order"), KSV Kofman Inc. was appointed receiver and receiver and manager (the "Receiver") of the properties, assets and undertakings of 3517667 Canada Inc. (formerly, DragonWave Inc.) (the "Company").

According to the Company's books and records, DragonWave Corp., a subsidiary of the Company, engaged you to perform services on projects for Sprint/United Management Company ("Sprint") prior to the appointment of the Receiver on July 31, 2017 (the "Relevant Work"). The Company's books and records show that all amounts owing to you in respect of the Relevant Work have been paid in full and that no such amounts remain outstanding.

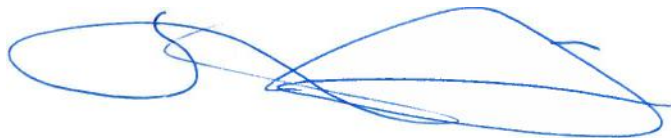
However, if you are of the view that you remain owed any amounts by the Company (or DragonWave Corp.) for work performed on Sprint projects prior to July 31, 2017, please contact the undersigned as soon as possible, and in no event later than October 1, 2018, failing which any claim by you for such amounts purportedly owing as against the Company, DragonWave, Sprint, or any bonding company that has provided a labour and material bond to the Company or DragonWave may be forever barred and extinguished by order of the Ontario Superior Court of Justice as described below.

The Company had previously obtained a labor and material payment bond (the "Bond") from Westchester Fire Insurance Company/Chubb ("Chubb") which may provide payment for any amounts outstanding in respect of the Relevant Work. However, as the Receiver is not aware of any remaining amounts outstanding in respect of the Relevant Work, it is the Receiver's intention to bring a motion (the "Motion") to the Court seeking an Order declaring, among other things, that Chubb has no further liability under the Bond and that all persons, including you, are barred from asserting any claims against Chubb in respect of the Bond.

Should you have any questions regarding the above, or believe that you are owed amounts by the Company or DragonWave Corp. for work performed on Sprint projects prior to July 31, 2017, please contact the undersigned as soon as possible. The Receiver intends to bring the Motion to the Court following October 1, 2018.

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**

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned below the typed name.

Per: David Sieradzki

DS:rk



David Sieradzki
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 18, 2018

DELIVERED BY COURIER AND E-MAIL (mfisher@heartlandsolutions.us)

Heartland Solutions Corp.
10277 Leases Corner Court
Camby, Indiana 46113

Attention: Mark Fisher

Dear Sirs:

Re: Confirmation of Amounts Owning in respect of Work Preformed Prior to July 31, 2017 for 3517667 Canada Inc. (formerly, DragonWave Inc.) (or its subsidiary DragonWave Corp.) in respect of Sprint/United Management Company Projects

Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on July 31, 2017 (the "Receivership Order"), KSV Kofman Inc. was appointed receiver and receiver and manager (the "Receiver") of the properties, assets and undertakings of 3517667 Canada Inc. (formerly, DragonWave Inc.) (the "Company").

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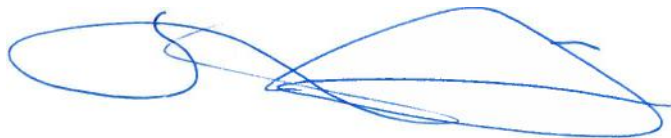
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Should you have any questions regarding the above, or believe that you are owed amounts by the Company or DragonWave Corp. for work performed on Sprint projects prior to July 31, 2017, please contact the undersigned as soon as possible. The Receiver intends to bring the Motion to the Court following October 1, 2018.

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**

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

Per: David Sieradzki

DS:rk



David Sieradzki
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 18, 2018

DELIVERED BY COURIER AND E-MAIL (clarence.rivera@RUC-COM.com)

RUC-COM
225 Corinna Court
Hurst, TX 76053

Attention: Clarence Rivera

Dear Sirs:

Re: Confirmation of Amounts Owning in respect of Work Preformed Prior to July 31, 2017 for 3517667 Canada Inc. (formerly, DragonWave Inc.) (or its subsidiary DragonWave Corp.) in respect of Sprint/United Management Company Projects

Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on July 31, 2017 (the "Receivership Order"), KSV Kofman Inc. was appointed receiver and receiver and manager (the "Receiver") of the properties, assets and undertakings of 3517667 Canada Inc. (formerly, DragonWave Inc.) (the "Company").

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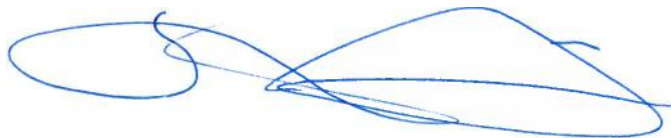
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Should you have any questions regarding the above, or believe that you are owed amounts by the Company or DragonWave Corp. for work performed on Sprint projects prior to July 31, 2017, please contact the undersigned as soon as possible. The Receiver intends to bring the Motion to the Court following October 1, 2018.

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**

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned below the typed name.

Per: David Sieradzki

DS:rk



David Sieradzki
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 18, 2018

DELIVERED BY COURIER AND E-MAIL (Calvin.Yetter@tetrattech.com and us@tetrattech.com)

Tetra Tech
1576 Sherman Street
Denver, CO 80203

Attention: Manager

Dear Sirs:

Re: Confirmation of Amounts Owning in respect of Work Preformed Prior to July 31, 2017 for 3517667 Canada Inc. (formerly, DragonWave Inc.) (or its subsidiary DragonWave Corp.) in respect of Sprint/United Management Company Projects

Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on July 31, 2017 (the "Receivership Order"), KSV Kofman Inc. was appointed receiver and receiver and manager (the "Receiver") of the properties, assets and undertakings of 3517667 Canada Inc. (formerly, DragonWave Inc.) (the "Company").

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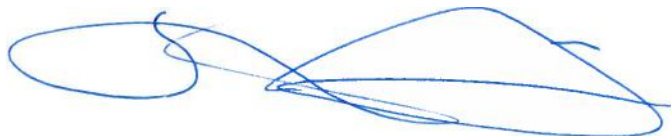
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Yours very truly,

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

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

Per: David Sieradzki

DS:rk



David Sieradzki
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 18, 2018

DELIVERED BY COURIER AND E-MAIL (mike.pollitt@totalcommsystems.com)

Total Comm Systems
493C Blue Eagle Avenue
Harrisburg, PA 17112

Attention: Mike Pollitt

Dear Sirs:

Re: Confirmation of Amounts Owning in respect of Work Preformed Prior to July 31, 2017 for 3517667 Canada Inc. (formerly, DragonWave Inc.) (or its subsidiary DragonWave Corp.) in respect of Sprint/United Management Company Projects

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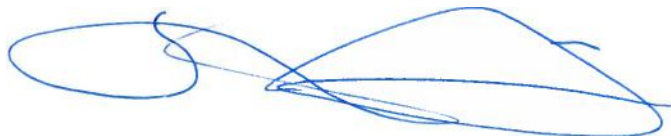
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Yours very truly,

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

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned below the typed name.

Per: David Sieradzki

DS:rk

Appendix “E”



February 1, 2018

By E-mail

jdietrich@casselsbrock.com

Sprint / United Management Company

tel: 416.860.5223

fax: 416.640.3144

Attention: Christopher Love, Manager, Network Sourcing
Christopher.C.Love@sprint.com

Dear Mr. Love:

Re: 3517667 Canada Inc. (formerly known as DragonWave Inc.) (the "Company")

We are counsel for KSV Kofman Inc. in its capacity as Court-appointed receiver and receiver and manager (the "**Receiver**") of the properties, assets and undertakings of the Company pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) dated July 31, 2017 (the "**Receivership Order**"). We understand that David Sieradzki of the Receiver and former employees of the Company now employed by the purchaser have been attempting to contact you for several months now, unfortunately with no response.

A copy of the Receivership Order, and other materials in the court proceedings, can be found on the Receiver's website at: <http://www.ksvadvisory.com/insolvency-cases/dragonwave-inc/>.

As you know, the Company had arranged for two bonds (the "**Bonds**") to be issued by Westchester Fire Insurance Company ("**Westchester**") in favour of Sprint/United Management Company ("**Sprint**") in connection with certain claims under the Master Construction Service Agreement (the "**MCSA**") between DragonWave Corporation and Sprint.

Westchester is in possession of certain security in respect of the Bonds (the "**Security**"). All claims filed to-date by subcontractors against the Bonds have been paid in full by Westchester. Based on the Company's books and records and additional information that the Receiver has obtained, the remaining Security held by Westchester at this time exceeds any possible claims under the Bonds. In order to move forward to complete the receivership and make distributions to the Company's secured creditors, the Receiver has been asking Sprint for confirmation that it has no further claims under the Bonds. Westchester currently requires a release from Sprint in order to conclude this matter.

To date, Sprint has not advised the Receiver or Westchester of any claims under the MCSA which remain unpaid. The time for notifying Westchester of any additional claims under the Bonds has now passed. As such, we fail to see why Sprint has, to date, failed to respond to the Receiver's inquiries.



If there is someone else at Sprint that we should be directing our inquiries to, and to direct the form of release that will be required, please let us know. Otherwise, we look forward to discussing the above with you as soon as possible. We would ask that you respond or make yourself available for a call on this matter on or prior to February 6, 2018.

Yours truly,

A handwritten signature in blue ink, appearing to read "Jane Dietrich", with a long, sweeping horizontal line extending to the right.

Jane Dietrich
Partner

JOD/sw

cc: David Sieradzki

Appendix “F”



June 26, 2018

By E-mail

Sprint / United Management Company

jdietrich@casselsbrock.com

tel: 416.860.5223

fax: 416.640.3144

Attention: Christopher Love, Manager, Network Sourcing
Christopher.C.Love@sprint.com

Dear Mr. Love:

Re: 3517667 Canada Inc. (formerly known as DragonWave Inc.) (the "Company")

As you are aware, we are counsel for KSV Kofman Inc. in its capacity as Court-appointed receiver and receiver and manager (the "**Receiver**") of the properties, assets and undertakings of the Company pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated July 31, 2017 (the "**Receivership Order**").

This letter is further to our correspondence dated February 1, 2018 (the "**February 1, 2018 Letter**") (a copy of which is attached) as well as our telephone discussion and various follow up communications since that time. Defined terms not otherwise defined herein have the meaning provided to them in the February 1, 2018 Letter.

Specifically, following the February 1, 2018 Letter, on February 7, 2018, the Receiver directly sent to you a form of release requested by Westchester. After multiple follow up emails, on March 13, 2018, we received an email from Scott Silvey (a former employee of the Company, now employed by DragonWave-X), stating that you had advised him that you were considering the requested release with your internal legal group at Sprint. The next day, on March 14, 2018, we were provided with a copy of an email exchange between Scott Silvey and Robin Hoffarth of Sprint where it was noted by Scott Silvey that all subcontractor payments have been fully satisfied and where Robin Hoffarth noted that, a release, subject to its wording, would likely work. A copy of that email correspondence is attached for your reference.

On March 19, 2018, we had a call among myself, the Receiver, you, Scott Silvey and other members of Sprint, including internal legal representation. On that call, we discussed the form of release and following that call (still on March 19, 2018) we provided you with a revised form of release. After some back and forth, on March 23, 2018, you provided us with a revised form of release that we provided to Westchester for comments.

On April 4, 2018, after receiving comments from Westchester, we sent to you a further revised form of release for your review and execution if acceptable.

Despite repeated follow-up attempts from David Sieradzki of the Receiver's office, including follow-up emails on April 10, 2018, April 24, 2018, May 1, 2018, May 8, 2018 and June 19, 2018, you have not responded to the April 4, 2018 correspondence.



As we advised in the February 1, 2018 Letter, your response (or lack thereof) is preventing the Receiver from moving forward to complete the receivership proceedings and make distributions to the Company's secured creditors. As the time for making any claims under the Bonds has long since passed and Sprint has not indicated that they are aware of any subcontractors who remain unpaid, we do not understand Sprint's failure to respond to the Receiver.

As we have inquired in the past, if there is someone else at Sprint, including Sprint's internal or external legal counsel, that we should be directing our inquiries to, please let us know. Otherwise, we look forward to discussing the above with you as soon as possible in order to bring this matter to conclusion.

We are also enclosing with this letter the form of release that is acceptable to Westchester, a copy of which has been provided to you in numerous emails since the April 4, 2018 correspondence referred to above. Should you fail to respond by July 15, 2018, the Receiver will have no option but to seek an order of the Court, among other things, declaring that Sprint has no further recourse of any nature or kind whatsoever against Westchester in respect of the Bonds or in relation to the Company/Receiver, and any such claims that Sprint may have be forever released and barred.

In that respect, should you wish to be notified of such a hearing through Canadian counsel, please provide such contact information prior to July 15, 2018 as well. Otherwise, we will send any future Court materials to your attention, since you have been the Receiver's principal contact at Sprint since the Receiver's appointment on July 31, 2017.

We look forward to hearing from you so we can expeditiously conclude this matter.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Jane Dietrich', with a long, sweeping horizontal line extending to the right.

Jane Dietrich
Partner

JOD/sw

cc: David Sieradzki



February 1, 2018

By E-mail

Sprint / United Management Company

jdietrich@casselsbrock.com

tel: 416.860.5223

fax: 416.640.3144

Attention: Christopher Love, Manager, Network Sourcing
Christopher.C.Love@sprint.com

Dear Mr. Love:

Re: 3517667 Canada Inc. (formerly known as DragonWave Inc.) (the "Company")

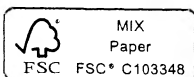
We are counsel for KSV Kofman Inc. in its capacity as Court-appointed receiver and receiver and manager (the "**Receiver**") of the properties, assets and undertakings of the Company pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) dated July 31, 2017 (the "**Receivership Order**"). We understand that David Sieradzki of the Receiver and former employees of the Company now employed by the purchaser have been attempting to contact you for several months now, unfortunately with no response.

A copy of the Receivership Order, and other materials in the court proceedings, can be found on the Receiver's website at: <http://www.ksvadvisory.com/insolvency-cases/dragonwave-inc/>.

As you know, the Company had arranged for two bonds (the "**Bonds**") to be issued by Westchester Fire Insurance Company ("**Westchester**") in favour of Sprint/United Management Company ("**Sprint**") in connection with certain claims under the Master Construction Service Agreement (the "**MCSA**") between DragonWave Corporation and Sprint.

Westchester is in possession of certain security in respect of the Bonds (the "**Security**"). All claims filed to-date by subcontractors against the Bonds have been paid in full by Westchester. Based on the Company's books and records and additional information that the Receiver has obtained, the remaining Security held by Westchester at this time exceeds any possible claims under the Bonds. In order to move forward to complete the receivership and make distributions to the Company's secured creditors, the Receiver has been asking Sprint for confirmation that it has no further claims under the Bonds. Westchester currently requires a release from Sprint in order to conclude this matter.

To date, Sprint has not advised the Receiver or Westchester of any claims under the MCSA which remain unpaid. The time for notifying Westchester of any additional claims under the Bonds has now passed. As such, we fail to see why Sprint has, to date, failed to respond to the Receiver's inquiries.





Page 2

If there is someone else at Sprint that we should be directing our inquiries to, and to direct the form of release that will be required, please let us know. Otherwise, we look forward to discussing the above with you as soon as possible. We would ask that you respond or make yourself available for a call on this matter on or prior to February 6, 2018.

Yours truly,

A handwritten signature in black ink, appearing to read 'Jane Dietrich', with a long horizontal flourish extending to the right.

Jane Dietrich
Partner

JOD/sw

cc: David Sieradzki

From: Hoffarth, Robin [CTO] [<mailto:Robin.J.Hoffarth@sprint.com>]
Sent: March 14, 2018 2:33 PM
To: Scott Silvey (DWX - US/Atlanta) <Scott.Silvey@dragonwavex.com>; Chad Humeniuk (DWX - CA/Ottawa) <chumeniuk@dragonwavex.com>
Cc: David Sieradzki <dsieradzki@ksvadvisory.com>
Subject: RE: 3517667 Canada Inc. (formerly known as DragonWave Inc.)

Seems to me if the wording limits the release to only paying for contractors for work during a specific period of time, with start & end, that would likely work.

Thanks, Robin
303-472-6319

From: Scott Silvey (DWX - US/Atlanta) [<mailto:Scott.Silvey@dragonwavex.com>]
Sent: Wednesday, March 14, 2018 12:15 PM
To: Hoffarth, Robin [CTO] <Robin.J.Hoffarth@sprint.com>; Chad Humeniuk (DWX - CA/Ottawa) <chumeniuk@dragonwavex.com>
Cc: David Sieradzki <dsieradzki@ksvadvisory.com>
Subject: RE: 3517667 Canada Inc. (formerly known as DragonWave Inc.)
Importance: High

What if the wording was changed to reflect the following...see attached.

Sprints (valid) concern is that the original documents release DragonWave from ANY obligation from the MCSA. We need Sprint to release the funds related ONLY to the payments to the subcontractor, which have been fully satisfied. I have attempted to re-word this to reflect that. Whether either part will accept this or not...let's see.

Scott

From: Hoffarth, Robin [CTO] [<mailto:Robin.J.Hoffarth@sprint.com>]
Sent: Wednesday, March 14, 2018 9:33 AM

To: Scott Silvey (DWX - US/Atlanta) <Scott.Silvey@dragonwavex.com>; Chad Humeniuk (DWX - CA/Ottawa) <chumeniuk@dragonwavex.com>
Subject: FW: 3517667 Canada Inc. (formerly known as DragonWave Inc.)

See Chris' comments below

Thanks, Robin
303-472-6319

From: Love, Chris [FIN]
Sent: Wednesday, March 14, 2018 6:43 AM
To: Hoffarth, Robin [CTO] <Robin.J.Hoffarth@sprint.com>
Subject: RE: 3517667 Canada Inc. (formerly known as DragonWave Inc.)

Robin,

The feedback from our Legal team is that we cannot sign these documents because they represent a complete release of any claim related to the MCSA, which is too broad.

If you can tighten up the language so that it is only applicable to the payment bond, I might be able to get some maneuvering room.

Cheers,
Christopher Love
Manager, Network Sourcing
Office of the CPO
913.315.1240 – Office & Wireless
Christopher.C.Love@sprint.com



From: Hoffarth, Robin [CTO]
Sent: Tuesday, March 13, 2018 10:16 AM
To: Love, Chris [FIN] <Christopher.C.Love@sprint.com>
Subject: FW: 3517667 Canada Inc. (formerly known as DragonWave Inc.)

Chris,

Dragonwave has worked to get all the GC paid from their bond. They would like someone from Sprint to sign off that this is complete. Are you the person to do that?

Robin Hoffarth
Manager, Microwave Engineering
O: 720-420-6809 | M: 303-472-6319
Robin.j.hoffarth@sprint.com

From: Scott Silvey (DWX - US/Atlanta) [<mailto:Scott.Silvey@dragonwavex.com>]
Sent: Tuesday, March 13, 2018 9:11 AM
To: Hoffarth, Robin [CTO] <Robin.J.Hoffarth@sprint.com>
Cc: Chad Humeniuk (DWX - CA/Ottawa) <chumeniuk@dragonwavex.com>
Subject: FW: 3517667 Canada Inc. (formerly known as DragonWave Inc.)

Robin...no certain where to go with this next...All contractors have been paid and confirmed via email to Chris Love. Someone needs to sign off on the release of the bond so KSV can recover their money from the Bond company. Any suggestions?

Thanks for your help
Scott

From: Scott Silvey (DWX - US/Atlanta)
Sent: Monday, March 12, 2018 10:12 AM
To: Christopher Love (Christopher.C.Love@sprint.com) <Christopher.C.Love@sprint.com>
Cc: bob rodriguez (robert.D.Rodriguez@sprint.com) <robert.D.Rodriguez@sprint.com>; Chad Humeniuk (DWX - CA/Ottawa) <chumeniuk@dragonwavex.com>; 'David Sieradzki' <dsieradzki@ksvadvisory.com>
Subject: FW: 3517667 Canada Inc. (formerly known as DragonWave Inc.)

Chris,
Could we get someone at Sprint to sign off on the attached. The receiver is anxious to get the balance of the bond money they paid out back. I do understand that all outstanding obligations that were subject to our MCSA have been paid to all subcontractors.

Thanks in advance for your help.

Scott Silvey

From: David Sieradzki [<mailto:dsieradzki@ksvadvisory.com>]
Sent: Wednesday, February 07, 2018 7:25 PM
To: christopher.c.love@sprint.com
Cc: Dietrich, Jane <jdietrich@casselsbrock.com>; Jonathan Joffe <jjoffe@ksvadvisory.com>
Subject: RE: 3517667 Canada Inc. (formerly known as DragonWave Inc.)

Chris – we have still not heard from you. I am attaching the release documents provided by the insurer as referenced in our letter of February 1, 2018. We would appreciate a response so we can advance this matter.

David

David Sieradzki
KSV Advisory Inc.
Managing Director
T +1 416 932 6030
M +1 416 428 7211

From: Waugh, Stephanie [<mailto:swaugh@casselsbrock.com>]
Sent: February 1, 2018 2:22 PM
To: christopher.c.love@sprint.com
Cc: Dietrich, Jane <jdietrich@casselsbrock.com>; David Sieradzki <dsieradzki@ksvadvisory.com>
Subject: 3517667 Canada Inc. (formerly known as DragonWave Inc.)

Please see the attached correspondence from Jane Dietrich.

Thank you,



Stephanie Waugh • Legal Assistant

Direct: +1 416 860 6487 • swaugh@casselsbrock.com

2100 Scotia Plaza, 40 King Street West, Toronto, Ontario, Canada M5H 3C2

www.casselsbrock.com

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This e-mail may contain Sprint proprietary information intended for the sole use of the recipient(s). Any use by others is prohibited. If you are not the intended recipient, please contact the sender and delete all copies of the message.

MUTUAL RELEASE

THIS MUTUAL RELEASE ("this Release") is entered into on the latest date set forth in the notary acknowledgments by SPRINT/UNITED MANAGEMENT COMPANY ("Obligee") and WESTCHESTER FIRE INSURANCE COMPANY ("Surety").

WHEREAS, at the request of Principal, Dragonwave Corp. ("**DragonWave**") Surety issued an Annual Performance Bond No. K09087011 and a Labor and Material Payment Bond No. K09087011 (collectively "Bond") in favor of Obligee related to the Master Construction Services Agreement dated January 10, 2014 between the Obligee and DragonWave (the "Agreement"); and

WHEREAS, Obligee has agreed to release Surety, and Surety has agreed to release Obligee, from any and all causes of action, liens, and claims relating to and arising out of the Bond issued to Principal and the Agreement by execution of this Release.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, Obligee and Surety agree as follows:

1. Release. Obligee hereby releases and forever discharges Surety and its predecessors, successors, assigns, representatives, servants, employees, agents, and officers, and Surety hereby releases and forever discharges Obligee and its predecessors, successors, assigns, representatives, servants, employees, agents, and officers from any and all claims, demands, lawsuits, causes of action, liens, debts, obligations, damages, and/or loss of every kind and nature whatsoever which Surety or Obligee had, has, or may have, arising directly or indirectly out of or in any way relating to the Bond and the Agreement. Obligee acknowledges that this release is intended to constitute a release in favour of the Surety of all claims with respect to the Bond and the Agreement, whether known or unknown, existing or not, as of the date of this Release. Obligee further acknowledges that this Release is limited to the Bond and the Agreement and that this Mutual Release has no effect in respect of other dealings between the Obligee and the Surety unrelated to the Bond and the Agreement.

2. Return of Bond. Contemporaneously with the execution of this Release, Obligee will return the original executed Bond to Surety marked "RELEASED AND VOID", provided Obligee is in possession of the original executed Bond. If located, the original Bond will be sent to Surety at: Chubb Surety Claims, 436 Walnut Street, WA10A, Philadelphia, Pennsylvania 19106, Attn: Douglas J. Wills. Regardless if returned, the parties agree that the Bond is released, is null and void, and of no further force or effect.

3. Authority; Binding Effect. The individuals signing this Release on behalf of Surety and Obligee are duly authorized and empowered to enter into same. This

My Commission Expires:

Notary Public

WESTCHESTER FIRE INSURANCE COMPANY

STATE OF _____)
)
COUNTY OF _____)

WITNESS my hand, at office in _____, _____, this
_____ day of April, 2018.

4 of 3

Appendix “G”

TO BE TYPED ON SPRINT/UNITED MANAGEMENT COMPANY LETTERHEAD

August __, 2018

Douglas J. Wills, Esq.

Assistant Vice President and Surety Claims Manager, Surety Claims

CHUBB

436 Walnut Street, WA10A,

Philadelphia, Pennsylvania 19106

E dwills@chubb.com

Dear Sir:

Re
Contract: Master Construction Services Agreement dated January 10, 2014
Principal: Dragonwave Corp.
Obligee: SPRINT/UNITED MANAGEMENT COMPANY
(“Sprint”)
Surety: WESTCHESTER FIRE INSURANCE COMPANY
(the “Surety”)
Bonds: Annual Performance Bond No. K09087011 and a Labor and Material Payment Bond No. K09087011 (the “Bonds”)

Sprint represents and warrants to the Surety as follows:

1. DaragonWave delivered the original Bonds to Sprint as issued by the Surety
2. Sprint has made a diligent search of all of its records and files but has been unable to locate the original executed Bonds;
3. Sprint undertakes to immediately deliver up for cancellation the Bonds to the Surety (at this address) if the Bonds are ever located.
4. Sprint releases any claim it may have under the Bonds.

Yours truly,

SPRINT/UNITED MANAGEMENT COMPANY

Name:

Address:

I have authority to bind