

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SKYLINK EXPRESS INC. (the "**Applicant**")

**MOTION RECORD
(returnable April 25, 2024)**

April 20, 2024

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TAB 1

Court File No. CV-24-00716267-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SKYLINK EXPRESS INC. (the "**Applicant**")

NOTICE OF MOTION

Skylink Express Inc. ("**Skylink**" or the "**Applicant**") will make a motion to a Judge of the Superior Court of Justice (Commercial List), on **Thursday, April 25, 2024 at 10:00 a.m.** or as soon after that time as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario. Please advise if you intend to join the motion by emailing Katie Parent at katie.parent@nortonrosefulbright.com.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR AN ORDER, among other things:

- 1 If necessary, abridging and validating the time for service and filing of this notice of motion and motion record;
- 2 Extending the Stay Period (defined below) up to and including to May 31, 2024;
- 3 Approving a forbearance agreement dated as of April 19, 2024 (the "**Forbearance Agreement**") among The Toronto-Dominion Bank (the "**Bank**"), Skylink and Momentum Decisive Solutions Canada Inc. ("**Momentum**");

4 Approving an escrow agreement dated as of April 19, 2024 (the “**Escrow Agreement**”) among Momentum, the Bank, the Monitor (defined below) and Norton Rose Fulbright Canada LLP (“**NRFC**”); and

5 Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1 On March 11, 2024, the Applicant obtained protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order of this Court (the “**Initial Order**”);

2 Pursuant to the Initial Order, the Court, among other things:

- (a) approved an initial stay of proceeding up to and including March 21, 2024 (the “**Stay Period**”);
- (b) appointed KSV Restructuring Inc. to act as the court-appointed Monitor (in such capacity, the “**Monitor**”) in these CCAA proceedings;
- (c) authorized the Applicant to obtain and borrow funds pursuant to a secured debtor-in-possession financing facility (“**DIP Facility**”) which was made available to the Applicant by its shareholder, Momentum, in the maximum initial amount of \$1.35 million;
- (d) granted the following priority charges:
 - (i) first, a charge in the maximum amount of \$350,000 (the “**Administration Charge**”) to secure payment of the fees and disbursements of the Monitor,

its counsel and counsel to the Applicant, incurred both before and during the CCAA proceedings;

- (ii) second, a charge to secure the obligations under the DIP Facility (the “**DIP Lender’s Charge**”); and
 - (iii) third, a charge in the maximum of \$480,000 (the “**Directors’ Charge**” and together with the Administration Charge and the DIP Lender’s Charge, the “**Charges**”) to indemnify the Applicant’s directors and officers for obligations and liabilities they may arise in such capacity post-filing;
- (e) none of the Charges rank in priority to the security held by the Bank in respect of its loan facility (the “**TD Loan Security**”);

3 On March 21, 2024 this Court granted the amended and restated initial order (the “**ARIO**”), which further extended the Stay Period up to and including April 26, 2024, increased the maximum principal amount the Applicant may borrow under the DIP Facility and increased the Directors’ Charge;

The Bank Receivership Application

4 Also on March 11, 2024, the Bank brought an application seeking an appointment of a receiver over the property of the Applicant (the “**Receivership Application**”);

5 The Receivership Application was adjourned to the return date on the basis that:

- (a) the Bank was not stayed pending the comeback hearing but agreed that its receivership application (Court File No. CV-24-00716192-00CL) is adjourned pending the comeback hearing;

- (b) the Bank agreed that the Applicant and Momentum could continue to use their bank accounts and Momentum will continue to have access to its line and FX facility;
- (c) the parties would work on a form of forbearance agreement;
- (d) the Administration Charge will be subordinated to the TD Loan Security;
- (e) Momentum agreed to post \$2 million of cash collateral in escrow to be held in trust with NRFC, subject to agreeing on the terms of an escrow agreement;
- (f) the parties agreed to work on the terms of an escrow agreement prior to the comeback hearing for the deposit of the cash collateral which will provide, among other things, that so long as the Applicant was continuing its restructuring, if it at any time misses a payment, the Bank could immediately access the full amount of the cash collateral to pay down its loan and the cash collateral will be held until the loan is repaid in full; and
- (g) the funding of the cash collateral by Momentum would be sourced through an injection of new capital and not from existing working capital;

6 Additionally, the Bank's operating line of credit was repaid in full immediately following the issuance of the Initial Order and has since been closed by the Bank;

7 The Applicant, Momentum and the Bank have now agreed on the terms of the Forbearance Agreement and Escrow Agreement, which agreements will permit the Applicant to continue its CCAA proceedings;

Extension of the Stay Period

8 As more fully described in the Affidavit of Kyle Dennhardt sworn April 20, 2024 (the “**Dennhardt Affidavit**”), the Applicant is party to a long-term feeder aircraft charter agreement (the “**UPS Contract**”) with United Parcel Service Canada Ltd (“**UPS**”);

9 UPS is the Applicant’s only meaningful customer;

10 One of the material goals of the Applicant’s restructuring was to negotiate amended terms of the UPS Contract with UPS;

11 The Applicant has been engaged in extensive discussions with UPS with respect to a restructuring of the UPS Contract which, to date, have been unsuccessful;

12 While the Applicant is continuing to review and consider whether there is a business model that would allow the Applicant and UPS to continue their longstanding relationship given where things stand, the Applicant will now also begin working on a transition plan with UPS as well as the development of a sale process for the Applicant’s business and assets;

13 In the meantime, the Applicant is requesting an extension of the Stay Period up to and including May 31, 2024 to provide sufficient time to work on its next steps which include the development of a transition plan and sale process and consultation with its applicable stakeholders;

14 The Applicant’s cash flow forecast, to be attached to the Second Report of the Monitor, to be filed (the “**Second Report**”), indicates that subject to standard assumptions, the Applicant will have sufficient funds to fund its liabilities under the cash flow during the proposed extension period;

15 The Applicant has acted, and continues to act, in good faith and with due diligence during the course of these CCAA proceedings;

16 The Monitor supports the proposed extension to the Stay Period;

Other Grounds

17 The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

18 Rules 1.04 and 37 of the *Rules of Civil Procedure* (Ontario); and

19 Such further and other grounds as counsel may advise and this Honourable Court may deem just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1 The Dennhardt Affidavit;

2 The affidavit of Kyle Dennhardt sworn March 8, 2024 (without exhibits);

3 The Second Report;

4 The ARIO; and

5 Such further and other evidence as counsel may advise and this Court may permit.

April 20, 2024

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Lawyers for the Applicant

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AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SKYLINK EXPRESS INC.

Court File No. CV-24-00716267-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

NOTICE OF MOTION

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TAB 2

Court File No. CV-24-00716267-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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**AFFIDAVIT OF KYLE DENNHARDT
(sworn April 20, 2024)**

I, Kyle Dennhardt, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Financial Officer of the Applicant, Skylink Express Inc. ("**Skylink**" or the "**Applicant**"). I am also the Chief Operating Officer of Momentum Decisive Solutions Canada Inc. ("**Momentum**"), the sole shareholder of the Applicant and have been with Momentum since 2016. As such, I have knowledge of the following matters, except where otherwise stated.
2. I swear this affidavit in support of the Applicant's motion for an order:
 - (a) Extending the Stay Period (defined below) up to and including to May 31, 2024;
 - (b) Approving a forbearance agreement dated as of April 19, 2024 (the "**Forbearance Agreement**") among The Toronto-Dominion Bank (the "**Bank**"), Skylink and Momentum; and
 - (c) Approving an escrow agreement dated as of April 19, 2024 (the "**Escrow Agreement**") among Momentum, the Bank, the Monitor (defined below) and Norton Rose Fulbright Canada LLP ("**NRFC**").

I. INTRODUCTION

3. The background and circumstances leading up to Skylink's CCAA are set out in my affidavit sworn March 8, 2024 (my "**March 8 Affidavit**") and therefore are not repeated herein.

The Initial Order and the ARIO

4. Pursuant to an application of the Applicant brought on March 11, 2024, the Applicant sought and obtained an initial order (the "**Initial Order**") granting it protection pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**"), which, among other things,

- (a) approved an initial stay of proceeding up to and including March 21, 2024 (the "**Stay Period**");
- (b) appointed KSV Restructuring Inc. as the court-appointed Monitor (in such capacity, the "**Monitor**") in these CCAA proceedings;
- (c) authorized the Applicant to obtain and borrow funds pursuant to a secured debtor-in-possession financing facility (the "**DIP Facility**") which was made available to the Applicant by its shareholder, Momentum, in the maximum initial amount of \$1.35 million;
- (d) granted the following priority charges:
 - (i) first, a charge in the maximum amount of \$350,000 (the "**Administration Charge**") to secure payment of the fees and disbursements of the Monitor, its counsel and counsel to the Applicant, incurred both before and during the CCAA proceedings;
 - (ii) second, a charge to secure the obligations under the DIP Facility (the "**DIP Lender's Charge**"); and

- (iii) third, a charge in the maximum of \$480,000 (the “**Directors’ Charge**” and together with the Administration Charge and the DIP Lender’s Charge, the “**Charges**”) to indemnify the Applicant’s directors and officers for obligations and liabilities they may arise in such capacity post-filing;

5. None of the Charges ranked in priority to the security held by the Bank in respect of its loan facility (the “**TD Loan Security**”) and the Bank was not affected by the stay of proceedings under the Initial Order. Additionally, the Bank’s operating line of credit was repaid in full immediately following the issuance of the Initial Order and has since been closed by the Bank.

6. The comeback hearing was scheduled for March 21, 2024. On March 21, 2024, the Court granted an amended and restated initial order (the “**ARIO**”), pursuant to which, among other things, the Stay Period was extended to April 26, 2024, the maximum available under the DIP Facility was increased to \$2.5 million and the Directors’ Charge was increased to \$970,000. The ARIO further provided that the Bank was not affected by the stay of proceedings.

The Bank Receivership Application

7. As set out in my March 8 Affidavit, the Bank is the Applicant’s senior secured lender and, at the date of the filing, was owed approximately \$13.8 million. Momentum also provided a limited recourse guarantee of the TD loan facility in the maximum amount of \$15,000,000 and provided security in connection with its guarantee.

8. Prior to the filing, on March 6, 2024, the Applicant met with the Bank to advise it of the Applicant’s intention to seek protection pursuant to the CCAA. On March 8, 2024, the Bank sent demand letters and a notice of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). On March 8, the Bank also served the Applicant

with an application (Court File No. CV-24-00716192-00CL) seeking an appointment of a receiver over the property of the Applicant (the “**Receivership Application**”).

9. At the initial hearing on March 11, 2024, the Applicant and the Bank advised that they had agreed to terms and a proposed endorsement (the “**Initial Order Endorsement**”) pursuant to which the Receivership Application would be adjourned. A copy of the Initial Order Endorsement is attached as Exhibit “A” hereto. Pursuant to the Initial Order Endorsement:

- (a) the Bank was not stayed pending the comeback hearing but agreed that the Receivership Application was adjourned pending the comeback hearing;
- (b) the Bank agreed that the Applicant and Momentum could continue to use their bank accounts and Momentum will continue to have access to its line and FX facility;
- (c) the parties would negotiate a forbearance agreement;
- (d) the Administration Charge will be subordinated to the TD Loan Security (as defined in the March 8 Affidavit);
- (e) Momentum agreed to post \$2 million of cash collateral (the “**Additional Cash Collateral**”) in escrow to be held in trust with NRFC, subject to agreeing on the terms of an escrow agreement and Court approval of the escrow agreement;
- (f) the parties agreed to work on the terms of an escrow agreement prior to the comeback for the deposit of the Additional Cash Collateral which will provide, among other things, that so long as the Applicant was continuing its restructuring, if it at any time misses a payment, the Bank could immediately access the full

amount of the cash collateral to pay down its loan and the Additional Cash Collateral will be held until the loan is repaid in full; and

- (g) the funding of the Additional Cash Collateral by Momentum would be sourced through an injection of new capital and not from existing working capital.

10. The terms of the proposed forbearance agreement and escrow agreement had not been finalized by the comeback motion and it was agreed that the Receivership Application would be further adjourned on the same terms as set out in the Initial Order Endorsement while the parties continued to finalize those documents.

II. STATUS OF DISCUSSIONS WITH UPS

11. As set out in my March 8 Affidavit, the Applicant's primary customer is United Parcel Service Canada Ltd. ("**UPS**"). One of the main goals of the Applicant in its restructuring was to renegotiate the terms of long-term feeder aircraft charter agreement (the "**UPS Contract**"), given the operating costs of performing under the UPS Contract exceed the revenue generated under it. It was clear from the outset that absent a restructuring of the terms of the UPS Contract, the Applicant's business would not be viable. Momentum had been funding losses for several years resulting largely from the terms of the UPS Contract and advised that, while it was prepared to continue to provide limited support to the Business (as defined in my March 8 Affidavit) for a short period of time during these proceedings, it was not prepared to continue to provide long term support of without immediately improving the economics of the UPS.

12. The relationship with UPS and Skylink dates back many years and I was optimistic that a negotiation would be successful. Immediately upon the granting of the Initial Order, we reached out to UPS to advise them of the filing, as well as to engage in discussions with respect to the UPS Contract. The Applicant has subsequently made several proposals to UPS with respect to different ways that the UPS Contract could be restructured. Unfortunately, as of the date of this

Affidavit, none of these proposals by the Applicant have been accepted by UPS. Any alternative proposed by UPS would not sufficient to allow Skylink to break even, much less profitability.

13. As discussed in further detail below, Skylink continues to explore all avenues for continuation with the UPS relationship, however, it also intends to work on a plan with UPS which would provide for a transition over an agreed on period of time.

III. FORBEARANCE AGREEMENT AND ESCROW AGREEMENT

14. The Applicant, Momentum and the Bank have now agreed on the terms of the Forbearance Agreement and Escrow Agreement.

- (a) Pursuant to the Forbearance Agreement, the Bank has agreed to forbear against enforcement on the TD Loan Security until the earlier of the expiration of the Say Period (as defined in therein) or the occurrence of an Event of Default following April 19, 2024 (the “**Forbearance Period**”) upon the terms and conditions set out in the Forbearance Agreement. The Applicant and Momentum have agreed to pay a \$100,000 forbearance fee (\$50,000 allocated to the Applicant and the other \$50,000 allocated to Momentum) in connection with the proposed Forbearance Agreement. A copy of the Forbearance Agreement is attached as Exhibit “B” hereto.

- (b) Pursuant to the Escrow Agreement, Momentum has agreed to post the Additional Cash Collateral in an escrow account with NRFC. NRFC has agreed to act as escrow agent (in such capacity, the “**Escrow Agent**”) under the Escrow Agreement. Under the Escrow Agreement, the Additional Cash Collateral is to be released:

- (i) as may be jointly instructed by Momentum and the Bank;
- (ii) to the Bank (or as it may direct), (A) upon receipt by the Escrow Agent of a written notice from the Bank and the Monitor confirming that there has been a non-payment of principal or interest or fees outstanding within 3 business days of when due while the CCAA proceedings are pending; or (B) upon receipt by the Escrow Agent of a written notice by the Monitor confirming that Skylink has filed an assignment in bankruptcy or has terminated the CCAA proceedings;
- (iii) back to Momentum (or as it may direct), (A) upon receipt by the Escrow Agent of a written notice from the Monitor confirming that the Bank has successfully appointed a receiver in respect of Skylink pursuant to the provisions of the BIA and/or the *Courts of Justice Act*, or (B) upon receipt by the Escrow Agent of a written notice signed by the Bank confirming that all amounts owing have been paid in full.

A copy of the Escrow Agreement is attached as Exhibit "C" hereto.

15. I believe that the approval of the Forbearance Agreement and the Escrow Agreement will facilitate the Applicant's intended next steps, which are discussed in greater detail below. The Bank has indicated that its support of the Applicant's extension is contingent on the approval of the Forbearance Agreement and Escrow Agreement.

IV. NEXT STEPS

16. Skylink had hoped to have made more progress on the negotiation on the UPS Contract by this stage. While the Applicant is continuing to review and consider whether there is a business model that would allow the Applicant and UPS to continue their longstanding

relationship given where things stand, the Applicant will now also begin working on a transition plan with UPS as well as the development of a sale process for the Applicant’s business and assets. The Applicant intends to continue on all paths items in conjunction with the Monitor, the Bank and, in respect of any transition plan, UPS as quickly as possible, with a view to returning to Court for further approvals on or before the end of May.

17. The Applicant is seeking an extension of the Stay Period up to and including May 31, 2024 to provide sufficient time to develop the transition plan and sale process and consult with its applicable stakeholders. I believe there is no prejudice in the request for the extension of the Stay Period up to the end of May. The Applicant has worked on a revised cash flow forecast with the Monitor, which I understand will be attached to the second report of the Monitor. The Applicant has been acting in good faith and with due diligence during this time and will continue to do so in the course of its CCAA proceedings.

V. CONCLUSION

18. For the reasons set out above, the Applicant respectfully requests that the proposed order be granted.

SWORN by Kyle Dennhardt at the City of Toronto, in the Province of Ontario, before me on April 20, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

}



Kyle Dennhardt

Katie Marie Parent, a Commissioner, etc.,
Province of Ontario,
for Norton Rose Fulbright Canada LLP /
S.E.N.C.R.L., s.r.l., Barristers and Solicitors.
Expires July 9, 2024

This is Exhibit "A" referred to in the Affidavit of Kyle Dennhardt sworn by Kyle Dennhardt at the City of Toronto, in the Province of Ontario, before me at the Town of Newmarket, in the Province of Ontario, on April 20, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

KATIE PARENT

Katie Marie Parent, a Commissioner, etc.,
Province of Ontario,
for Norton Rose Fulbright Canada LLP /
S.E.N.C.R.L., s.r.l., Barristers and Solicitors.
Expires July 9, 2024



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00716192-00CL
CV-24-00716267-00CL

DATE: March 11, 2024

NO. ON LIST: 3/4

TITLE OF PROCEEDING:

THE TORONTO-DOMINION BANK v. SKYLINK EXPRESS INC et al

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SKYLINK
EXPRESS INC.

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
FRANCIS, CATHERINE LIU, CAROL MOSES, RACHEL	THE TORONTO-DOMINION BANK	cfrancis@foglers.com cliu@foglers.com rmoses@foglers.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
STAM, JENNIFER LARRY, JEFF	SKYLINK EXPRESS INC. MOMENTUM DECISIVE SOLUTIONS CANADA INC.	Jennifer.stam@nortonrosefulbright.com Jeff.larry@palaireroland.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
DIETRICH, JANE	KSV – AS PROPOSED MONITOR	jdietrich@cassels.com
KOFMAN, BOBBY		bkofman@ksvadvisory.com
MANCHANDA, MUKUL	MSI SPERGEL INC. – AS PROPOSED RECEIVER	mmanchanda@spergel.ca

ENDORSEMENT OF JUSTICE CAVANAGH:

1. The Applicant, Skylink Express Inc., brings this application seeking, among other things, an Initial Order under the *Companies' Creditors Arrangement Act (Canada)* (the "CCAA"). The primary purpose of the CCAA application is to provide a stabilized environment while the Applicant commences restructuring and obtains debtor-in-possession funding which is urgently required.
2. The Applicant has operated for over 25 years providing regional air cargo services throughout North America and is one of Canada's largest operators specializing in regional courier feeder operations and time-sensitive air cargo charter throughout North America. The Applicant's focus is to provide "last mile" services for major delivery services to secondary locations, primarily in Canada. The Applicant's sole shareholder is Momentum Decisive Solutions Canada Inc. ("Momentum") who acquired the Applicant in 2020.
3. The primary customer of the Applicant's business is United Parcel Service Canada Ltd. ("UPS").
4. Over the past year, the Applicant has experienced negative operating cash flow, and it is now facing an imminent liquidity crisis.
5. The Toronto-Dominion Bank ("TD") is the Applicant's senior secured lender and only secured creditor. The TD Loan Facility is secured pursuant to various security granted by the Applicant on its assets including on its aircraft as well as pursuant to a secured guarantee provided by Momentum (in the maximum amount of \$15 million). The current balance of the TD Loan Facility is approximately \$13.8 million and the balance on the secured line of credit is approximately \$300,000.
6. The Applicant maintains various American Express and VISA cards for use by its employees for business related expenses. As of March 8, 2024, the estimated balance was \$250,000. The Applicant intends to continue to make payments in the ordinary course during the CCAA proceeding to keep the balances on the cards current.
7. The Applicant also has approximately \$1.7 million of aged trade payables and incurs trade liabilities in the ordinary course of its business.
8. Other than TD, there are no other parties with personal property security registrations against the Applicant or registrations against the Applicant's aircraft.
9. The Applicant is almost entirely reliant on UPS to generate revenue. A restructuring of the UPS contract is required for the Applicant to remain viable and to return to profitability. Discussions with UPS to date have

been preliminary in nature. The Applicant intends to use these proceedings to immediately commence discussions with UPS with a view to restructuring the UPS contract.

The CCAA Applies

10. Relief under the *CCAA* is available to a “debtor company” or affiliated “debtor companies” where the total claims against such company or affiliated companies exceed \$5 million.
11. The *CCAA* defines a “company” to include any incorporated company having assets in Canada. A “debtor company” includes any company that is “bankrupt or insolvent”. A financially troubled company is insolvent for the purposes of the *CCAA* if it is “reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring”. See *Stelco Inc. (Re)*, 2004 CanLII 24933, at para. 26.
12. The Applicant is a debtor company to which the *CCAA* applies. It is incorporated pursuant to the *OBCA* and its registered office is in Toronto. The Applicant has liabilities significantly exceeding \$5 million.
13. The Applicant is insolvent. Although the book value of its assets is greater than its liabilities, the Applicant is facing a liquidity crisis as the UPS contract is not sufficiently profitable to fund the Applicant’s costs of operations, including its aircraft maintenance costs. Without further funding, the Applicant is not projected to be able to fund its payroll due March 15, 2024. Momentum is not prepared to provide any further funding outside of a DIP facility and a *CCAA* filing.

The Stay of Proceedings is Appropriate

14. This Court may grant a stay of proceedings of up to 10 days on an initial application, provided it is satisfied that: (i) such stay is appropriate; and (ii) the Applicant has acted in good faith and with due diligence (s. 11.02(1), (3)).
15. When exercising judicial discretion under the *CCAA*, the court must be cognizant of the various interest at stake in the reorganization, which can extend beyond those of the debtor and creditors to include employees, directors, and even other parties doing business with the insolvent company. Absent exceptional circumstances, the relief sought shall be limited to relief reasonably necessary for the ordinary course of continued operations and, whenever possible, the *status quo* should be maintained during the initial 10-day period. This allows for stabilization of operations and a negotiating window.
16. I am satisfied that the requested stay of proceedings, other than, as agreed, against TD, is reasonably necessary to maintain the status quo and to allow the Applicant to continue its operations for the next 10 days, for the benefit of stakeholders.

KSV should be appointed as Monitor

17. I am satisfied that KSV is qualified to act as Monitor and that it is appropriate to make this appointment.

The Administration Charge, the Directors’ Charge, and the DIP facility and DIP Lender’s Charge

18. The Applicant is seeking approval of an Administration Charge in favour of the proposed Monitor, the proposed Monitor’s counsel and the Applicant’s counsel to secure payments of their reasonable fees and disbursements incurred both prior to filing and after the initial Order in the maximum amount of \$350,000.

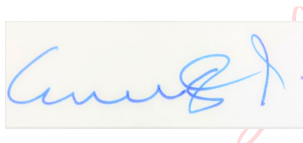
19. The *CCAA* provides that the Court has jurisdiction to grant an administration charge where it concludes that (a) the notice has been given to the secured creditors likely to be affected by the charge; (b) the amount is appropriate; (c) the charges should extend to all of the proposed beneficiaries.
20. The proposed Administration Charge will be subordinate to the security held by TD.
21. I am satisfied that the Administration Charge is appropriate in the circumstances because (a) the beneficiaries of the charge will provide the required legal and financial advice during the course of this proceeding; (b) there is no anticipated duplication of roles; and (c) the proposed Monitor has indicated it believes the amount of the proposed Administration Charge is appropriate in the circumstances.
22. The Applicant is seeking the Directors' Charge in favour of the officers and directors of the Applicant in the amount of \$480,000. This represents an estimate of accruals of amounts that are potentially director liability obligations between payment cycles. Under the *CCAA*, the Court has authority to grant a charge to the directors and officers of the company as security for an indemnity provided by the applicant in respect of certain statutory obligations. In order to grant such charge, the Court must be satisfied that (a) notice has been given to the secured creditors likely to be affected by the charge; (b) the amount is appropriate; (c) the debtor could not obtain adequate indemnification insurance at reasonable cost; and (d) the charge does not apply in respect of any obligation incurred by a director or officer as a result of the director's or officer's gross negligence or wilful misconduct.
23. The proposed Monitor believes the quantum of the charge is reasonable in view of the potential liabilities faced by the directors and officers in the post-filing period. I am satisfied that the proposed Directors' Charge is appropriate.
24. The Applicant is seeking approval of the DIP Facility pursuant to the DIP Term Sheet during the *CCAA* proceeding. The proposed DIP Lender's Charge will rank subsequent to the TD security and the Administration Charge, but in priority to the proposed Directors' Charge and any other security interests, trusts, liens, charges and encumbrances, statutory or otherwise. The Applicant is not aware of any such other encumbrances.
25. In determining whether to grant a charge to secure the interim financing sought, the factors described in section 11.2 of the *CCAA* should be considered. These are (a) whether notice has been given to secured creditors who are likely to be affected by the subject charge; (b) whether the amount of the interim financing to be secured by the charges appropriate and necessary having regard to the Applicant's cash flow statement; (c) whether the charge secures an obligation it would exist before the order is made; and (d) the enumerated factors in subsection 11.2(4) of the *CCAA*.
26. Fresh capital is being injected into Momentum to provide Momentum with capital to fund the DIP facility.
27. The DIP Term Sheet will provide the Applicant with essential funding to continue operations during the *CCAA* proceeding. The proposed initial maximum borrowing amount is \$1.35 million and is required for funding for the Applicant's payroll for March 15, 2024. The proposed DIP Lender's Charge does not secure any pre-filing obligations.
28. I am satisfied from the materials filed on this application that: (a) absent an event of default, the proposed funding under the DIP Term Sheet will be made available through the end of April, 2024; (b) without funding under the DIP Term Sheet, the Applicant will be unable to continue operations or make crucial payments including its upcoming payroll; (c) the proposed Monitor has reviewed the DIP Term Sheet with

other interim financing facilities approved by Canadian courts in *CCAA* proceedings commenced between 2021 and 2023 and has concluded the cost of the proposed facility is within the range of similar facilities recently approved by the Court and other Canadian courts in *CCAA* and other restructuring proceedings; (d) it is unlikely any other lender would provide DIP funding on a subordinated basis to TD; (e) there are no structuring, facility, standby or other fees being charged by the DIP lender under the DIP facility other than reasonable legal fees of the lender; (f) the proposed Monitor has indicated it believes that the DIP Lender's Charge is in the best interest of the Applicant and its stakeholders; and (g) Momentum has advised it will not provide further funding absent the granting of the DIP Lender's Charge.

29. I am satisfied that the requested DIP Lender's charge should be approved.
30. The Applicant is requesting that it be authorized, but not require, to pay pre-filing amounts owing in respect of its outstanding credit card balances that are critical to their business and ongoing operations up to a maximum of \$250,000.
31. I am satisfied that the ongoing use of these credit cards is crucial to the business because employees, (including the Applicant's pilot group) are often travelling and required to incur expenses in the course of their employment. I am satisfied that authorization to grant such relief should be granted.

Position of TD

32. TD has confirmed it is not opposing the Applicant's *CCAA* application based on the following terms:
- a. TD will not be stayed pending the comeback but agrees that its receivership application (Court File No. CV-24-00716192-00CL) is adjourned pending the comeback;
 - b. During the 10 day period, TD will agree that the Applicant and Momentum can continue to use their bank accounts and Momentum will continue to have access to its line and FX facility;
 - c. The parties will work in good faith on the terms of a forbearance agreement among TD, Momentum and the Applicant pending the comeback;
 - d. The Administration Charge will be subordinated to the TD Loan Security; and
 - e. Momentum will agree to post \$2 million of cash collateral in escrow to be held in trust with Norton Rose (legal counsel to the Applicant) subject to agreeing on the terms of an escrow agreement. The parties will work on the terms of an escrow agreement prior to the comeback for the deposit of the cash collateral which will provide, among other things, that so long as the Applicant is continuing its restructuring, if it at any time misses a payment, TD may immediately access the full amount of the cash collateral to pay down its loan and the cash collateral be held until the loan is repaid in full. The funding of the cash collateral by Momentum will be sourced through an injection of new capital and not from existing working capital.
33. Order to issue in form of Order signed by me today.



Digitally signed
by Mr. Justice
Cavanagh

This is Exhibit "B" referred to in the Affidavit of Kyle Dennhardt sworn by Kyle Dennhardt at the City of Toronto, in the Province of Ontario, before me at the Town of Newmarket, in the Province of Ontario, on April 20, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

KATIE PARENT

Katie Marie Parent, a Commissioner, etc.,
Province of Ontario,
for Norton Rose Fulbright Canada LLP /
S.E.N.C.R.L., s.r.l., Barristers and Solicitors.
Expires July 9, 2024

FORBEARANCE AGREEMENT

THIS AGREEMENT made as of the 19th day of April, 2024.

A M O N G:

THE TORONTO-DOMINION BANK
(the "**Bank**")

- and -

SKYLINK EXPRESS INC.
(the "**Borrower**")

- and -

MOMENTUM DECISIVE SOLUTIONS CANADA INC.
(the "**Guarantor**")

WHEREAS:

1. The Borrower provides regional air cargo services throughout North America. The primary customer of the Borrower's business is United Parcel Service Canada Ltd. ("**UPS**").
2. The Guarantor is the sole shareholder of the Borrower. The Guarantor provided to the Bank a limited guarantee to \$15,000,000 for the debts, liabilities and obligations of the Borrower to the Bank.
3. The Bank has made available the Credit Facilities to the Borrower on the terms and conditions established under the Credit Agreement under which the Indebtedness is outstanding as of the date of this Agreement.
4. The Bank has advised that it transferred the Borrower's accounts to the Bank's Financial Restructuring Group on or about March 6, 2024 following a call on March 6, 2024 wherein the Borrower advised the Bank, among other things, that (i) it had retained KSV Advisory Inc. to help restructure the Borrower; (ii) the Borrower planned to file for *Companies' Creditors Arrangement Act* ("**CCAA**") protection on March 11, 2024; (iii) KSV Restructuring Inc. (in such capacity "**KSV**") would be appointed as Monitor under the CCAA proceeding; (iv) the Borrower had been trying to renegotiate its contract with UPS; and (v) the Borrower would be providing the Bank with draft materials either later that day or the following day regarding the restructuring process, which draft materials were provided to the Bank.

5. The Borrower has committed certain defaults under the Credit Agreement and the Security, including without limitation (i) under section 10(e) "Standard Events of Default" of the Credit Agreement, the Borrower advised (and has now) filed for CCAA protection; (ii) under section 10(l) "Standard Events of Default" of the Credit Agreement, the Bank determined that a material adverse change occurred in the financial condition and business operations of the Borrower; and (iii) defaults under the Borrower's covenants to the Bank pursuant to the Credit Agreement, including breaches of the financial covenants (i.e., leverage ratio covenant and the fixed charge coverage ratio covenant) and breaches of reporting covenants/late delivery of reporting.
6. On March 8, 2024, the Bank issued payment demands and a notice of intention to enforce security pursuant to section 244(1) of the Bankruptcy and Insolvency Act ("**BIA Notice**").
7. On March 8, 2024, the Bank issued a notice of application, Court File No. CV-24-00716192-00CL, returnable on March 11, 2024, seeking an order appointing msi Spergel inc. ("**Spergel**") as receiver and manager, without security, of all of the assets, property and undertakings of the Borrower and judgment against the Guarantor in accordance with its Guarantee ("**TD Application**").
8. On the same day, the Borrower served its application record, Court File No. CV-24-00716267-00CL, returnable on March 11, 2024 under the CCAA seeking to appoint KSV as Monitor (the "**CCAA Proceedings**").
9. The CCAA Proceedings was heard by Justice Cavanagh on March 11, 2024. The Bank agreed to adjourn the TD Application and not oppose the CCAA Proceedings on terms set out in Justice Cavanagh's Endorsement. Justice Cavanagh granted the Borrower's request for an initial order under the CCAA (the "**Initial Order**") which specifically excludes the Bank from the stay provisions under the Initial Order.
10. On March 21, 2024, Justice Cavanagh granted an Amended and Restated Initial Order (the "**ARIO**") in the CCAA Proceedings. The TD Application was further adjourned and was not heard as the Parties continued to negotiate the terms of this Agreement and the escrow agreement. The next return date for the CCAA Proceedings and the TD Application is April 25, 2024.
11. The Borrower and Guarantor have requested that the Bank forbear from enforcing its rights and remedies under the Security and the TD Application so as to provide them with the opportunity to renegotiate the UPS contract under the CCAA Proceedings.
12. As an inducement to the Bank agreeing to adjourn the TD Application and so forbear, the Guarantor has agreed to provide additional cash collateral of \$2 million (the "**Additional Cash Collateral**") pursuant to the Escrow Agreement (defined below) and

the Borrower and Guarantor have agreed to enter into this Agreement and to comply with the terms and provisions contained herein.

NOW THEREFORE in consideration of the acknowledgements, confirmations, covenants and agreements contained herein, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties hereto), each of the Parties hereto hereby agree with each other as follows:

ARTICLE 1 **INTERPRETATION**

1.01 Definitions: Unless otherwise specifically defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed to them in the Credit Agreement. The following terms shall have the following meanings:

- (a) **"Account"** means all accounts established by the Bank in the name of the Borrower;
- (b) **"Assets"** means all of the personal property, tangible or intangible and undertakings of the Borrower in respect of which the Bank holds Security;
- (c) **"BIA"** means the *Bankruptcy and Insolvency Act (Canada)*;
- (d) **"Business Day"** means a day other than a Saturday, Sunday, statutory holiday in the Province of Ontario, or any other day on which the Schedule 1 Canadian Chartered Banks located in the City of Toronto are not open for business during normal banking hours;
- (e) **"Credit Agreement"** means the credit facilities letter agreement dated November 2, 2020 and accepted by the Borrower and Guarantor on November 2, 2020, as amended, revised, restated, replaced and supplemented from time to time in accordance with its terms;
- (f) **"Credit Facilities"** means the credit facilities established by the Bank in favour of the Borrower pursuant to the Credit Agreement;
- (g) **"Escrow Agreement"** means the agreement made between the Guarantor, the Bank and Norton Rose Fulbright Canada LLP (as the Escrow Agent) in connection with the Additional Cash Collateral provided by the Guarantor for the obligations of the Borrower to the Bank under the Credit Agreement and pursuant to the Endorsement of Justice Cavanagh made on March 11, 2024;
- (h) **"Event of Default"** means the occurrence of any one or more of the events set forth in Article 10 of this Agreement;

- (i) **"Guarantee"** means the limited guarantee made as of November 2, 2020 executed and delivered to and in favour of the Bank by the Guarantor, as further described in **Schedule "A"** hereto;
- (j) **"Indebtedness"** means the amounts set forth in sections 2.01 and 2.02;
- (k) **"Parties"** means any one or more of the parties referred to in this Agreement, as the context may require;
- (l) **"Priority Payables"** has the meaning ascribed thereto in subsection 6.01(k);
- (m) **"Priority Payable Authorizations"** shall have the meaning ascribed thereto in subsection 6.01(k);
- (n) **"Repayment Plan"** means the Repayment Plan set forth in Article 5 of this Agreement;
- (o) **"Security"** means collectively all of the security delivered by the Borrower, or any other person, to the Bank as security for the Indebtedness and obligations of the Borrower to the Bank pursuant to the Credit Agreement, or otherwise, or that may be delivered by the Borrower, or any other person, to the Bank to secure the Indebtedness and obligations of the Borrower to the Bank including, without limitation, the Security listed in **Schedules "A" and "B"** attached hereto;
- (p) **"Term Loan"** means the committed reducing term facility (single draw) in the amount of \$23,900,000.00 (Loan #95***24-07/1020) established as facility #1 under the Credit Agreement and set forth in subsection 2.02(b); and
- (q) **"UPS Contract"** means the Feeder Aircraft Charter Agreement made as of August 21, 2017 between UPS and the Borrower.

ARTICLE 2 **CREDIT FACILITIES**

2.01 Acknowledgement of the Borrower Indebtedness: The Borrower and Guarantor acknowledge as at April 18, 2024, the Borrower is indebted to the Bank:

- (a) in respect of Term Loan # 95***24-07/1020, outstanding principal in the amount of \$13,465,622.34 and accrued interest to and including April 18, 2024 in the amount of \$90,569.48. The per diem interest on the aforesaid principal amount is \$3,209.61.

2.02 Interest, Etc.: The Borrower and Guarantor acknowledge that, as set out in the Credit Agreement and the Security, interest on the amounts due and payable from time to time on the amounts set forth in section 2.01 above, as well as all costs, fees, expenses and other monies incurred by the Bank in connection with the Security, the

Indebtedness, further advances, if any, made by the Bank under the Credit Agreement or hereunder, the collection of the Indebtedness, the TD Application, any appraisals and investigation of the Assets, the enforcement of the Security, the negotiation, preparation and enforcement of this Agreement and any amendments hereto, and the disbursements and full amount of all legal and other professional fees incurred by the Bank, in connection with all of the same shall be added to and are deemed to form part of the Indebtedness.

ARTICLE 3 **ACKNOWLEDGEMENTS**

3.01 Acknowledgements by the Borrower: The Borrower hereby confirms and acknowledges to the Bank that:

- (a) each of the foregoing recitals are true and accurate both in substance and in fact;
- (b) the Indebtedness is due and owing to the Bank and the Borrower has no right or claim of set-off, counter-claim, damages or any similar right or claim against the Bank in connection with the Indebtedness;
- (c) the Bank had the right to demand repayment of the Credit Facilities and is not subject to the stay of proceedings set out in the ARIIO;
- (d) the Security is, and any other security delivered by the Borrower, or any other person, to the Bank to secure the Indebtedness after the date hereof, including the Additional Cash Collateral for the Borrower's obligations to the Bank under the Credit Agreement and pursuant to the Escrow Agreement, will be, subject to any Court order, in full force and effect, and constitute legal, valid and binding obligations of the Borrower, or the person granting such Security, enforceable against the Borrower, and the person granting such Security, and the Borrower hereby waives and agrees not to assert or cause to be asserted on its behalf, and is hereby estopped from asserting or causing to be asserted on its behalf, any defences or rights with respect to the legal effect of the Security, or the legality, validity or binding effect of the obligations of the Borrower thereunder and the enforceability of same;
- (e) except as provided for in this Agreement, the Bank (either by itself or through its employees or agents) has made no promises, nor has it taken any action or omitted to take any action which would constitute a waiver of its right to take any enforcement action in connection with the enforcement of the Security, the TD Application or which would estop it from so doing and that no statement, representation, promise, act or omission by the Bank or its employees or agents shall create such a waiver or estoppel unless the Bank executes and delivers to the Borrower a written waiver of any such rights;

- (f) the operating loan (Loan #95***24-02/1020) and the uncommitted TD Visa Business card (or cards) each established in favour of the Borrower under the Credit Agreement have been cancelled and all amounts owing thereunder in respect of principal, interest or otherwise have been paid in full;
- (g) the Security shall not be released or amended until repayment in full of all the Indebtedness; and
- (h) the Borrower has been provided with a reasonable opportunity to seek legal advice with respect to the execution and delivery of this Agreement and has either done so or has decided to execute and deliver the same to the Bank without obtaining such legal advice.

3.02 Acknowledgements by the Guarantor: The Guarantor hereby acknowledges and confirms that:

- (a) each of the foregoing recitals as it relates to the Guarantor are true and accurate both in substance and in fact;
- (b) the Bank had the right to demand repayment of the Credit Facilities and is not subject to the stay of proceedings set out in the ARIO;
- (c) the Security is, and any other security delivered by the Borrower, or any other person, to the Bank to secure the Indebtedness after the date hereof, including the Additional Cash Collateral provided by the Guarantor for the Borrower's obligations to the Bank under the Credit Agreement and pursuant to the Escrow Agreement, will subject to any Court order, be in full force and effect, constitute legal, valid and binding obligations of the Borrower, or the person granting such Security, and the Security and any other security delivered by the Borrower, or any other person, will be enforceable against the Borrower, and the person granting such Security, and the Guarantor hereby waives and agrees not to assert or cause to be asserted on its behalf, and it is hereby estopped from asserting or causing to be asserted on its behalf, any defences or rights in relation to any matter, cause or thing whatsoever existing to the date hereof with respect to the legal effect of the Security or the legality, validity or binding effect of the obligations of the Borrower and other persons thereunder and the enforceability of same;
- (d) there is no dispute respecting the liability of the Guarantor in connection with the Indebtedness and the obligations of the Guarantor to repay the Indebtedness subject to the provisions of i) the Guarantee delivered by the Guarantor and ii) the Escrow Agreement;
- (e) the Guarantee delivered by the Guarantor is in full force and effect, constitutes legal, valid and binding obligations of the Guarantor, is enforceable against the Guarantor and the Guarantor hereby waives and agrees not to assert or cause to be asserted on its own behalf, and is hereby estopped from asserting or

causing to be asserted on its own behalf, any defences or rights with respect to the legal effect of the Guarantee or the legality, validity or binding effect of the obligations of the Guarantor thereunder and the enforceability of same;

- (f) the Guarantor consents to the Borrower entering into this Agreement;
- (g) notwithstanding the terms of the Guarantee, the Security, the Credit Agreement, this Agreement, or of any other agreement, whether written or oral, between the Bank, the Borrower and the Guarantor, the Bank shall be entitled to rely upon the Guarantee in respect of any amounts comprising the Indebtedness subject to the limits imposed by the Guarantee; except as provided in this Agreement, the Bank (either by itself or through its employees or agents) has made no promises, nor has it taken any action or omitted to take any action which would constitute a waiver of its right to take any enforcement action in connection with the enforcement of the Security, the TD Application, or which would estop it from so doing and that no statement, representation, promise, act or omission by the Bank or its employees or agents shall create such a waiver or estoppel unless the Bank executes and delivers to the Borrower or Guarantor a written waiver of any such rights following the date hereof; and
- (h) the Guarantor has been provided with a reasonable opportunity to seek legal advice with respect to the execution and delivery of this Agreement and has either done so or has decided to execute and deliver the same to the Bank without obtaining such legal advice.

3.03 Tolling Provisions:

As of the date hereof and continuing until the termination of the Forbearance Period, the Bank, the Borrower and the Guarantor hereby agree to toll and suspend the running of the applicable statutes of limitations, laches or other doctrines related to the passage of time in relation to the Indebtedness, the Security, the Credit Agreement, the TD Application and any entitlements arising from the Indebtedness or the Security and/or the Credit Agreement and any other related matters, and each of the parties confirms that this Agreement is intended to be an agreement to suspend or extend the basic limitation period, provided by Section 4 of the *Limitations Act, 2002* (Ontario) as well as the ultimate limitation period provided by Section 15 of the *Limitations Act, 2002* (Ontario) in accordance with the provisions of Section 22(2) of the *Limitations Act, 2002* (Ontario) and as a business agreement in accordance with the provisions of Section 22(5) of the *Limitations Act, 2002* (Ontario) and any contractual time limitation on the commencement of proceedings, any claims or defences based upon such applicable statute of limitations, contractual limitations, or any time related doctrine including waiver, estoppel or laches. For greater certainty, (i) the time during which the limitation period is suspended pursuant to this Section shall not be included in the computation of any limitation period; and (ii) this Section does not affect the inclusion of time preceding the date of this Agreement in relation to the calculation of any such period.

ARTICLE 4
WAIVER AND RELEASE

4.01 Waiver and Release: The Borrower and Guarantor hereby acknowledge and agree not to assert or cause to be asserted on behalf of any of them, and are hereby estopped from asserting or causing to be asserted on behalf of any of them, any defences, rights, or claims on any grounds whatsoever solely with respect to the Bank's administration of the Credit Facilities, its conduct and actions and dealings prior to the date of this Agreement with the Borrower and/or Guarantor solely in connection with the Credit Facilities, including the TD Application (the "**Released Conduct**"), and hereby absolutely, unconditionally and irrevocably release and remise the Bank (and its present and former, affiliates, subsidiaries, divisions, predecessors, directors, officers, employees, agents and other representatives and their successors and assigns) of and from any and all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any other claims, counterclaims, defences, rights of set-off, demands and liabilities of any nature and kind whatsoever, known or unknown, both at law and in equity that the Borrower or Guarantor or any of their successors, assigns, or other legal representatives may now or hereafter have against the Bank as a result of the Released Conduct.

ARTICLE 5
FORBEARANCE

5.01 Implementation: The Borrower and the Guarantor hereby covenant and agree to and with the Bank that they shall, and each shall ensure each other, honour and fulfil the terms and provisions of Sections 5.04 and 5.05 (the "**Repayment Plan**").

5.02 Forbearance Period: Subject to the terms and conditions of this Agreement, the Bank agrees that it will forbear from the exercise of its rights and remedies against the Borrower and Guarantor in respect of the Indebtedness and under the TD Application for the period of time ("**Forbearance Period**") commencing with the execution and delivery of this Agreement until the earlier of:

- (a) The expiration of the Stay Period (as defined in the ARIO and as may be extended by further Order in the CCAA Proceedings); or
- (b) the occurrence of an Event of Default following the date hereof.

For greater certainty, during the Forbearance Period, the Borrower and Guarantor will continue to use their bank accounts and the Guarantor will continue to have access to its line and FX facility.

The Borrower and Guarantor acknowledge that the Bank shall have no obligation to continue to forbear after the expiration of the Forbearance Period and that the Indebtedness shall be repaid on or prior to the expiration of the Forbearance Period.

5.03 Forbearance Fee: A forbearance fee in the sum of \$100,000.00 (the “**Forbearance Fee**”, comprised of \$50,000.00 from the Borrower and \$50,000.00 from the Guarantor) shall be paid to the Bank in consideration for the Bank’s agreement to forbear as set out herein and to compensate the Bank for the time and expense incurred, and to be incurred, by it in connection with the administration of the Credit Facilities during the Forbearance Period and such Forbearance Fee is deemed to have been fully earned by the Bank upon the execution and delivery of this Agreement. For certainty, the Forbearance Fee is in addition to all other fees, interest, costs and expenses payable in connection with or pursuant to the Credit Agreement, the Security or this Agreement and shall automatically be deemed to form part of the Indebtedness and is deemed to be secured by the Security without any further action or documents required whatsoever.

The forbearance fee shall be paid to the Bank by wire, according to the wire instructions attached hereto as **Schedule “C”**.

The Borrower and Guarantor acknowledge that the Bank shall have no obligation to continue to forbear after the expiration of the Forbearance Period. In the event the Bank agrees, in its sole and absolute discretion, to extend the Forbearance Period there shall be no additional forbearance fee.

5.04 Servicing and Reduction of the Indebtedness: Notwithstanding any other provisions of this Agreement, the Borrower shall honour all payment obligations in accordance with the provisions of the Credit Agreement and cause the Indebtedness to be permanently reduced as follows:

- (a) all monthly payments shall be made by the Borrower as they become due and owing under the Credit Agreement. For certainty, (i) principal payments under the Term Loan are due on the 2nd of each month and interest payments under the Term Loan are due on or before the 20th day of each month; and (ii) without acceleration provided that the Borrower may pre-pay any such amounts in accordance with the Credit Agreement without regard to any Event of Default (as defined herein); and
- (b) the net proceeds from all sales, transfers or other disposition of the Assets outside of the ordinary course, or any portion thereof shall be deposited into the Account and applied by the Bank to permanently reduce the Indebtedness.

Notwithstanding any of the foregoing, the Bank reserves the right to apply the monies received under this section against the Indebtedness in such manner as it determines in its sole and absolute discretion.

5.05 Payment of Professional Expenses: The Borrower and Guarantor hereby jointly and severally covenant and agree to pay the Bank all reasonable professional fees it has incurred and will reasonably incur in connection with this Agreement and prior to the TD Application and the Initial Order, including, without limitation, legal fees of the

Bank's lawyers, being Fogler, Rubinoff LLP, and fees of Spergel and other reasonable fees and expenses that the Bank has incurred or will incur arising out of its dealings with the Borrower and Guarantor and in the protection, preservation and enforcement of the Security, including without limitation the issuance and prosecution of the TD Application. For greater certainty, these professional fees and expenses shall be and are hereby deemed to form part of the Indebtedness secured by the Security.

ARTICLE 6 **COVENANTS**

6.01 The Borrower and Guarantor hereby jointly and severally covenant and agree with the Bank that during the Forbearance Period, except as expressly provided in the Initial Order and the ARIO as follows:

- (a) **No Further Obligations:** Except as expressly permitted by the Initial Order, the ARIO or other Order in the CCAA Proceedings, the Borrower shall not incur or become liable for any borrowed money, or for the purchase price of assets, obligations and leases, obligations under letters of credit or guarantees or indemnities, obligations given pursuant to bankers' acceptances or indemnities in connection therewith, or any contingent obligation, including, without limitation, guarantees, endorsements or bills of exchange, obligations to purchase assets and obligations to make advances or otherwise provide financial assistance to any other entity without the prior written consent of the Bank, provided however that nothing herein shall preclude the Borrower from incurring and becoming liable for borrowed money provided the same is used by the Borrower to repay the Indebtedness in accordance with and pursuant to this Agreement;
- (b) **No Agreements:** Except as expressly permitted herein or under the Initial Order, the ARIO or other Order in the CCAA Proceedings, the Borrower shall not enter into any agreement or employ any strategy, either directly or indirectly, which would affect the ranking of the Security, encumber, restrict or otherwise impair its Assets or the marketability thereof;
- (c) **Payment of Bonuses, Etc.:** The Borrower shall not, without the prior written consent of the Bank, make any payments, whether directly or indirectly, to any of its shareholders, whether by way of dividends, capital dividends, redemption or retraction of shares, bonuses or otherwise, except for salaries in the ordinary course of business consistent with past practice;
- (d) **No Repayment to Related Persons:** Until the Indebtedness is repaid in full, there shall be no repayment of any amounts owing by the Borrower to any "related person" as such term is defined under the BIA, without the prior written consent of the Bank not to be unreasonably withheld;
- (e) **Statutory Remittances:** The Borrower shall, keep current all amounts owing by the Borrower to the Crown, including, without limitation, amounts owing under

the *Income Tax Act* (Canada), the *Excise Tax Act* (Canada), the *Retail Sales Tax Act* (Ontario), the *Municipal Act* (Ontario), the *Highway Traffic Act* (Ontario), and any other federal or provincial or municipal laws which could give rise to a claim against the Bank in priority to the Security held by the Bank against the Assets (as the case may be) (collectively, the “**Priority Payables**”). The Borrower shall, at the request of the Bank, execute and deliver such authorizations and consents as the Bank may require for any entity having information in respect of the Priority Payables to release such information to the Bank or its agents to assist the Bank in evaluating the existence and extent of any indebtedness owing by the Borrower to such entity and in respect of same (the “**Priority Payable Authorizations**”);

- (f) **Harmonized Sales Tax and Source Deductions:** The Borrower shall deliver to the Bank, evidence satisfactory to the Bank, acting reasonably, that the Borrower keeps current with all amounts owing to Canada Revenue Agency in respect of source deductions and harmonized sales and shall upon request provide copies of RT and RP reports of the Borrower to the Bank;
- (g) **Equipment Suppliers:** The Borrower shall keep current all of its, as applicable, obligations to third parties that have or may be granted a lien, charge or security interest in any equipment forming part of the Assets;
- (h) **No Movement of Assets:** Other than in accordance with the Initial Order, ARIO or other Order in the CCAA Proceedings, no material Assets shall be moved or otherwise relocated from any premises where the Assets are now situated, unless it is in the ordinary course of the business, and no such Assets shall be sold outside of the ordinary course without the prior written consent of the Bank, such consent not to be unreasonably withheld;
- (i) **Progress and Status Reports:** The Borrower shall provide weekly reporting to the Consultant as required under Article 9 of this Agreement;
- (j) **Account Debit Authorization:** The Borrower hereby authorizes and directs the Bank to automatically debit, by mechanical, electronic or manual means, any account in the name of the Borrower for all amounts payable under this Agreement, if not otherwise paid on such date in accordance with this Agreement;
- (k) **Bank Account:** The Borrower shall ensure that all monies generated by the Borrower in the course of its business operations are deposited into any Account maintained by the Borrower at the Bank, and the Borrower shall only maintain accounts at the Bank (other than in respect of the Borrower’s bank account with Royal Bank of Canada used principally for the purposes of processing payments in respect of RBC Visas maintained by the Borrower). The Account of the Borrower shall be closed effective on repayment of the Indebtedness;

- (l) **Compliance:** The Borrower and the Guarantor shall comply, and each shall ensure that the other complies, in all respects with all terms and provisions of this Agreement, the Credit Agreement, and the Security; and
- (m) **Full Co-operation:** The Borrower and Guarantor shall cooperate fully with the Bank, the Consultant and the Bank's agents and employees by providing all reasonably requested information, and by providing the Bank with full access to the books, records, property, the Assets and personnel of the Borrower wherever they may be situated in whatever medium they may be recorded, at the request of and at times convenient to any such party, acting reasonably, which right of access shall include the right to inspect and appraise the Asset, at the Bank's sole and absolute discretion.

ARTICLE 7 **REPRESENTATIONS AND WARRANTIES**

7.01 Representations and Warranties: The Borrower and the Guarantor represent and warrant to and in favour of the Bank and acknowledge that the Bank is relying upon such representations and warranties in entering into this Agreement as follows:

- (a) the Borrower is a corporation duly incorporated, organized and subsisting under the laws of the Province of Ontario;
- (b) the Borrower has all necessary power and authority and is duly qualified and holds all necessary licenses and/or registrations to carry on business as now conducted and to enter into and perform its respective obligations under this Agreement;
- (c) the execution, delivery and performance of this Agreement by the Borrower and the performance of its obligations hereunder:
 - (i) has been duly authorized by all necessary corporate actions;
 - (ii) does not conflict with or result in a breach or violation of or constitute a default under;
 - A. the constating documents or by-laws of the Borrower;
 - B. any law, rule, regulation, order, judgment, writ, injunction or decree applicable to the Borrower; and
 - C. any material commitment, agreement or instrument to which the Borrower is now party or otherwise bound; and
 - (iii) does not require the consent or approval of any third party;

- (d) all amounts owing by the Borrower under the *Income Tax Act* (Canada), *Excise Tax Act* (Canada), *Retail Sales Tax Act* (Ontario) and any other federal or provincial or municipal laws which could give rise to a claim against the Bank in priority to the Security, are current, including, without limitation, source deductions and harmonized sales tax and there are no amounts owing to Canada Revenue Agency, the Province of Ontario, or any other federal or provincial government agency or body that may give rise to the issuance of a third party requirement to pay or any similar such demand notice;
- (e) other than the CCAA Proceedings, there is no matter, fact or event which is known to the Borrower or the Guarantor that has not been disclosed to the Bank which constitutes an Event of Default or is likely to have a material adverse affect on the performance of their respective obligations under this Agreement, or have a material adverse effect on the Assets or the operations of the Borrower, and the Borrower has conducted such investigations as they consider reasonably necessary to make this representation and warranty; and
- (f) other than the payment demands and the BIA Notice issued by the Bank, neither the Borrower nor the Guarantor have received notice of any proceeding or action having been taken or commenced by any person against the Borrower or the Guarantor in respect of any amounts owing by the Borrower to any person.

7.02 Non-Merger: The representations and warranties set forth herein shall survive the execution and delivery of this Agreement, and shall continue in full force and effect until the repayment of the Indebtedness.

ARTICLE 8 **SECURITY**

8.01 Security: The Security shall continue to be held by the Bank hereunder.

8.02 Cross Collateralization: All Security held by the Bank shall be held as security for all Indebtedness. For greater certainty, the Borrower and the Guarantor hereby acknowledge and agree that upon the occurrence of an Event of Default, the Bank shall be entitled to enforce its rights under the Security, or any part thereof, against the Assets, or any portion thereof, to the extent of the Indebtedness in accordance with the Credit Agreement, the Security and applicable law.

ARTICLE 9 **CONSULTANT**

9.01 Consultant: The Borrower and Guarantor acknowledge to the appointment of Spergel, as the Consultant, and effective as of the date hereof, the Consultant is engaged for the purposes of, among other things, reviewing and assessing all business plans, the UPS Contract and other contracts of the Borrower, the financial performance of the Borrower and any and all financial and other reports relating to the Borrower, including cashflow

projections, cash receipts, expenditures and statements relating to Priority Payables, and any and all financial and other reports relating to the Borrower and all other documentation required to be provided by the Borrower to the Monitor and to the Bank under the Credit Agreement, the Security, this Agreement or otherwise, as well as all any other information obtained by the Bank. Commencing on April 15, 2024, the Borrower shall provide to the Consultant i) weekly financial reporting on Thursday of each calendar week for the immediately preceding week detailing the nature and status of negotiations with UPS as it relates to the renegotiation of the UPS Contract; ii) weekly cash flow reporting on Thursday of each calendar week for the immediately preceding week; and iii) access the books and records of the Borrower, and shall co-operate fully with the Consultant and its requests for information in order that it may fulfil the terms of its appointment. The Borrower and Guarantor acknowledge that the engagement of the Consultant by the Bank shall not and does not in any way constitute the Bank or the Consultant to be in control of the Assets or the business operations of the Borrower. The Borrower shall be responsible for all reasonable fees, disbursements and taxes of the Consultant, and the Bank is hereby authorized to debit the Account for such reasonable fees, disbursements and taxes. The Borrower and Guarantor each hereby acknowledge, confirm and agree that in the event the TD Application is granted, that the Consultant shall be the Receiver and may also be named as the trustee in bankruptcy of the Borrower.

ARTICLE 10 **DEFAULT**

10.01 Events of Default: Each of the following events shall constitute an Event of Default under this Agreement:

- (a) Any new default or failure in the observance or performance of any payment, provision, covenant, obligation or agreement contained herein, under the Security or under the Credit Agreement by the Borrower and/or the Guarantor;
- (b) if the Guarantor as DIP Lender (as defined in the Initial Order and ARIO) refuses or fails to finance the Borrower's cash flow requirements to the extent that DIP funding is required for such requirements;
- (c) the Bank determining, acting reasonably, that a material adverse change has occurred in the financial condition, business operations or prospects of the Borrower, ownership structure or composition or operation of the Borrower, which material adverse change would prevent the Borrower from performing its obligations under the Repayment Plan;
- (d) other than the CCAA Proceedings, the Borrower taking any action or commencing or consenting to any proceeding in respect of the liquidation, dissolution or winding-up of the Borrower, including, without limitation, any action or proceeding under the *Winding Up and Restructuring Act*, the *Business Corporations Act* (Ontario), or other similar legislation whether now or hereinafter in effect;

- (e) other than the CCAA Proceedings, the Borrower taking any action or commencing or consenting to any proceeding relating to the reorganization, readjustment, compromise or settlement of the debts owed by the Borrower to its creditors, including, without limitation, the filing of a notice of intention to make a proposal or the filing of a proposal pursuant to the provisions of the BIA,;
- (f) the Borrower making an assignment in bankruptcy or consenting to the filing of a bankruptcy application for a bankruptcy order against the Borrower pursuant to the provisions of the BIA;
- (g) if the Court grants an Order in the CCAA Proceedings lifting the stay to allow any execution, sequestration or other process of any court or other tribunal becoming enforceable against the Borrower or a distress or analogous action or proceeding being taken, commenced or issued against the Borrower or levied upon or in respect of the Assets or any part thereof, or any lien, trust claim or any other right or entitlement against or in respect of the Assets or any part thereof becoming effective, including, without limitation, a warrant of distress of any rent in respect of any premises occupied by the Borrower or any premises in or upon which the Assets or any part thereof may at any time be situate; and
- (h) other than pursuant to the TD Application, a receiver, receiver and manager, agent, liquidator or other similar administrator being appointed in respect of the Assets, or any part thereof, or the taking by a secured party, lien claimant, other encumbrancer, judgment creditor or a person asserting similar rights of possession to the Assets or any part thereof.

10.02 Waiver: The Bank may waive in writing any Event of Default, in its sole and absolute discretion, but no such waiver shall constitute a waiver of any other Event of Default.

ARTICLE 11 **REMEDIES ON DEFAULT**

11.01 Enforcement: Upon the occurrence of an Event of Default:

- (a) the Bank may immediately terminate its agreement to forbear as set forth in section 5.02 hereof and shall be entitled to enforce all of its rights and remedies against the Borrower and the Guarantor.

ARTICLE 12 **GENERAL**

12.01 Entire Agreement: This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements or discussions between the Parties whether written or oral.

- 12.02 Headings:** The headings in this Agreement are provided for convenience of reference only and should not be considered to form part hereof for the purpose of interpreting or construing or applying this Agreement and such headings shall not define, limit, extend or describe the scope of this Agreement or any of its terms and conditions.
- 12.03 Schedules:** Schedules “A”, “B”, and “C” attached hereto form an integral part of this Agreement.
- 12.04 Severability:** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and shall remain valid and enforceable.
- 12.05 Notices:** Any notice required or permitted to be given hereunder or any tender or delivery of documents may be given in writing by personal delivery, facsimile or other electronic transmission to the Borrower, the Guarantor and the Bank at the following addresses:

To the Borrower and Guarantor at:

Skylink Express Inc.
55 St. Clair West, Suite 210
Toronto, Ontario M4V 2YZ

Attention: David Atkins/ Kyle Dennhardt
Email: datkins@skylinkexpress.com; kd@momentumds.com

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

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 2000
PO Box 53, Toronto, Ontario M5K 1E7

Attn: Jennifer Stam and Eric Reither
Email: jennifer.stam@nortonrosefulbright.com
Eric.reither@nortonrosefulbright.com

To the Bank at:

3140 Dufferin Street
Toronto, Ontario M6A 2T1
Attn: Katie Furfaro
Email: Kathryn.Furfaro@td.com

with a courtesy copy to:

Fogler, Rubinoff LLP

77 King Street West, Suite 3000
Toronto, Ontario M5K 1G8
Attn: Rachel Moses
Email: rmoses@foglers.com

The date of receipt of such notice shall be the date of the actual delivery to the address specified if delivered or the date of actual transmission to the telecopier number (if telecopied) or the date of actual electronic transmission, unless such date is not a Business Day, in which event the date of receipt shall be the next Business Day immediately following the date of such delivery or transmission.

- 12.06 No Prejudice:** The provisions hereof shall operate and apply without prejudice to any rights which the Bank may now or in the future have in respect of the Indebtedness, or other liabilities or obligations, whether direct or indirect, matured or not, contingent or otherwise, of the Borrower to the Bank.
- 12.07 Successors and Assigns:** This Agreement may be assigned by the Bank in its sole and absolute discretion, but shall not be assigned by the Borrower or the Guarantor unless authorized by the Bank in writing and this Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors, permitted assigns, heirs and legal personal representatives (as applicable).
- 12.08 Timely Performance:** It is intended by all Parties to this Agreement that all obligations hereunder will be performed strictly in accordance with the provisions of this Agreement and in a timely manner, with time being of the essence hereof. Accordingly, should default occur in the timely performance of any of the obligations by the Borrower for any reason, whether within or beyond its control, the Bank shall, upon the occurrence of such default, be entitled to rely strictly on its rights and remedies as set forth in this Agreement and under the Credit Agreement and the Security.
- 12.09 Relationship of Parties:** Nothing in this Agreement shall be construed to change the relationship existing between the Borrower and the Bank to one other than the debtor/creditor relationship as it now exists. This Agreement is not entered into, nor shall it create, a partnership, joint venture or agency relationship between any of the Parties hereto.
- 12.10 Counterparts and Electronic Execution:** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which taken together shall be deemed to constitute one and the same agreement. A facsimile or other electronic transmission received by each Party of the other Parties signatures shall serve to confirm the execution thereof by each such party.
- 12.11 Governing Law:** This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada as are applicable therein.
- 12.12 No Amendment:** This Agreement shall not be amended unless such amendments are in writing and signed by all Parties.

- 12.13 Further Assurances:** Each of the Parties hereby agree to sign or execute all such other documents and do such other things as may be necessary or desirable for more completely and effectively carrying out the terms and intentions of this Agreement.
- 12.14 Acceptance:** The Borrower and the Guarantor hereby acknowledge and agree to and with the Bank that on or before 5:00 p.m. April 19, 2024, the Bank shall have received: (i) a copy of this Agreement executed by the Borrower and the Guarantor. In the event any of these conditions precedent to the Bank agreeing to forbear have not been satisfied, the Bank may elect to rely upon its rights and remedies under the Credit Agreement, the Security or otherwise.

[The remainder of this page is left blank intentionally]

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement with effect as and from the date first written above.

THE TORONTO-DOMINION BANK

Per: K. Furfaro Kathryn (Katie) Furfaro

Name:

Title: Manager, Commercial Credit
Financial Restructuring Group

I Have Authority to Bind the Bank

SKYLINK EXPRESS INC.

Per: _____

Name:

Title: Authorized Signing Officer

I Have Authority to Bind the Corporation

**MOMENTUM DECISIVE SOLUTIONS
CANADA INC.**

Per: _____

Name:

Title: Authorized Signing Officer

I Have Authority to Bind the Corporation

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement with effect as and from the date first written above.

THE TORONTO-DOMINION BANK

Per: _____

Name:

Title: Account Manager,
Financial Restructuring Group

I Have Authority to Bind the Bank

SKYLINK EXPRESS INC.

Per:  _____

Name: Kyle Dennhardt, CFO

Title: Authorized Signing Officer

I Have Authority to Bind the Corporation

**MOMENTUM DECISIVE SOLUTIONS
CANADA INC.**

Per:  _____

Name: Stephen Arbib

Title: Authorized Signing Officer

I Have Authority to Bind the Corporation

SCHEDULE "A"
GUARANTEES

1. Guarantee limited to the principal sum of \$15,000,000.00 made as of November 2, 2020, executed and delivered to and in favour of the Bank by the Guarantor, for the debts of the Borrower.

**SCHEDULE “B”
SECURITY**

1. General Security Agreement dated November 2, 2020 executed and delivered to and in favour of the Bank by the Borrower;
2. Aircraft Security and Mortgage Agreement dated November 2, 2020 executed and delivered to and in favour of the Bank by the Borrower;
3. General Security Agreement dated November 2, 2020 executed and delivered to and in favour of the Bank by the Guarantor;
4. Investment Property Pledge Agreement dated November 2, 2020 executed and delivered to and in favour of the Bank by the Guarantor.
5. Escrow Agreement dated April 19 , 2024.

SCHEDULE "C"
TD WIRE INSTRUCTIONS

Bank: **The Toronto Dominion Bank**
Address: **3140 Dufferin Street, Toronto, ON M6A 2T1**
Transit No.: **1070**
Bank No.: **004**
SWIFT ID: **TDOMCATTOR**
Account No.: **5283797**

This is Exhibit "C" referred to in the Affidavit of Kyle Dennhardt sworn by Kyle Dennhardt at the City of Toronto, in the Province of Ontario, before me at the Town of Newmarket, in the Province of Ontario, on April 20, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

KATIE PARENT

Katie Marie Parent, a Commissioner, etc.,
Province of Ontario,
for Norton Rose Fulbright Canada LLP /
S.E.N.C.R.L., s.r.l., Barristers and Solicitors.
Expires July 9, 2024

THIS ESCROW AGREEMENT is dated effect as of April 19, 2024, and is made between:

- (1) **MOMENTUM DECISIVE SOLUTIONS CANADA INC.**, a corporation existing under the laws of Canada ("**Momentum**");
- (2) **THE TORONTO-DOMINION BANK**, a Schedule I bank existing under the laws of Canada ("**TD**");
- (3) **KSV RESTRUCTURING INC.**, solely in its capacity as court-appointed monitor of Skylink Express Inc. and not in its personal capacity (the "**Monitor**"); and
- (4) **NORTON ROSE FULBRIGHT CANADA LLP**, a limited liability partnership existing under the laws of Ontario (the "**Escrow Agent**").

RECITALS:

- (A) Skylink Express Inc. ("**Skylink**"), a wholly owned subsidiary of Momentum, is indebted to TD pursuant to the terms of a credit facilities letter agreement dated November 2, 2020 (the "**Credit Agreement**") from TD, and accepted by Skylink on November 2, 2020.
- (B) Momentum has guaranteed Skylink's obligations under the Credit Agreement pursuant to the terms of a guarantee made as of November 2, 2020, limited to the principal sum of \$15,000,000 (the "**Guarantee**").
- (C) Skylink applied for and received an initial order of the Ontario Superior Court of Justice Commercial List (the "**Court**") dated March 11, 2024 (as amended and restated, and the same may be further amended and restated or supplemented from time to time, the "**Initial Order**") in the matter (Court File No. CV-24-00716267-00CL) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and the matter of a plan of compromise or arrangement of Skylink (the "**CCAA Proceedings**" and together with the matter between TD and Skylink and Momentum commenced by TD in the Court (Court File No. CV-24-00716192-00CL, the "**Proceedings**")).
- (D) In connection with TD not opposing the Initial Order, Momentum agreed to provide \$2,000,000 (the "**Initial Escrow Amount**") as cash collateral for Skylink's obligations under the Credit Agreement to be held in trust with the Escrow Agent on the terms of an escrow agreement to be entered into between Momentum, TD, the Escrow Agent and the Monitor.
- (E) The Escrow Agent is willing to act as escrow agent on the terms set forth in this Agreement.
- (F) In satisfaction of the obligation to provide the Initial Escrow Amount, Momentum, TD, the Escrow Agent and the Monitor have agreed to the terms applicable to the Initial Escrow Amount set forth in this Agreement and, upon approval by the Court of this Agreement, Momentum will deposit with the Escrow Agent the Initial Escrow Amount to be held in escrow and administered in accordance with the terms and conditions of this Agreement.
- (G) The Monitor is a party to this Agreement in order to facilitate the release of the Initial Escrow Amount by the Escrow Agent in accordance with the terms of this Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties agree as follows.

Article 1 Interpretation

1.1 Definitions

In this Agreement, capitalized terms defined in the Recitals or the Preamble have the meaning given to them in the Recitals or Preamble, as applicable, and the following words have the following meanings:

“Agreement” means this escrow agreement as it may be amended, restated, replaced or supplemented from time to time; and the words “Article” and “Section” followed by a number or letter mean and refer to the specified Article or Section of this escrow agreement.

“Business Day” means a day on which commercial banks are open for business in Toronto, Ontario but excludes a Saturday, Sunday or any other statutory or civic holiday in Toronto, Ontario.

“Escrow Funds” has the meaning specified in Section 2.1 of this Agreement.

“Final Order” means a judgment or order (including an order of specific performance or injunctive relief) of a court of competent jurisdiction binding on the Parties from which no appeal may be taken.

“Joint Instruction” has the meaning specified in Section 2.3(a)(i) of this Agreement.

“Release Instruction” means a Joint Instruction or a written notice delivered pursuant to Section 2.3(a).

“Norton Rose Fulbright Group” means Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa, Norton Rose Fulbright US LLP and their respective affiliates.

“Parties” means Momentum, TD, the Monitor and the Escrow Agent and their respective successors and permitted assigns, and each a **“Party”**.

“Person” means a natural person, partnership, limited partnership, limited liability partnership, syndicates, sole proprietorship, corporation or company (with or without share capital), limited liability company, trust, unincorporated association or other entity.

1.2 Gender and Number

Any reference in this Agreement to gender includes all genders and words importing the singular include the plural and *vice versa*.

1.3 Certain Phrases

- (a) In this Agreement (i) the words “including” and “includes” mean “including (or includes) without limitation”, and (ii) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding” and if the last day of any such period is not a Business Day, such period will end on the next Business Day.
- (b) When calculating the period of time “within” which or “following” which any act or event is required or permitted to be done or any notice given, the date which is the reference date in calculating such period is to be excluded from the calculation. If the last day of any such period is not a Business Day, such period will end on the next Business Day.

1.4 Headings, Etc.

The division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect the interpretation of this Agreement.

1.5 Governing Law

This Agreement is governed by and is to be interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the Parties irrevocably attorns and submits to the exclusive jurisdiction of the courts of Ontario.

Article 2 Appointment of Escrow Agent

2.1 Appointment of the Escrow Agent

Momentum and TD hereby appoint the Escrow Agent to serve as escrow agent, and the Escrow Agent accepts such appointment on the terms set forth in this Agreement. The Escrow Agent acknowledges receipt of the Initial Escrow Amount and agrees to hold in trust for Momentum and TD, subject to the terms of this Agreement: (a) the Initial Escrow Amount; and (b) any Interest (as defined below) earned thereon (all such amounts being collectively, the “**Escrow Funds**”).

2.2 Investment by Escrow Agent

The Escrow Agent shall invest the Escrow Funds in a Canadian interest bearing account or Canadian term deposit maintained or issued by a Canadian chartered bank chosen by the Escrow Agent (collectively, the “**Permitted Investments**”), and is not required to otherwise invest such funds. The Escrow Agent may sell, exchange, redeem and otherwise transfer all or any part of the Escrow Funds and reinvest the proceeds thereof in Permitted Investments. The Escrow Agent is also authorized and directed to sell, exchange, redeem and otherwise transfer all or any part of the Escrow Funds, without further instructions, as may be necessary from time to time to pay any amount required to be disbursed pursuant to this Agreement. From time to time upon request of

Momentum and TD in writing and in any event on the date on which all Escrow Funds are disbursed, the Escrow Agent will provide Momentum and TD with a statement showing all transactions involving the Escrow Funds.

2.3 Distributions of Escrow Funds

- (a) Subject to Section 3.9, the Escrow Agent shall only release the Escrow Funds as follows:
- (i) upon receipt by the Escrow Agent of written instructions signed by Momentum and TD indicating the amount of Escrow Funds to be released and the Person to whom it is to be released (a “**Joint Instruction**”) such amount of the Escrow Funds shall be released to such Person; or
 - (ii) upon receipt by the Escrow Agent of a written notice from TD and the Monitor (and the Monitor hereby covenants to provide such notice as soon as reasonably possible upon receipt of evidence of non-payment by TD) confirming that there has been a non-payment of principal or interest or fees outstanding under the Credit Agreement within 3 Business Days of when due while the CCAA Proceedings are pending, the full amount of the Escrow Funds shall be released to TD or as TD may otherwise direct in writing; or
 - (iii) upon receipt by the Escrow Agent of a written notice from the Monitor confirming that Skylink has filed an assignment in bankruptcy or has terminated the CCAA Proceedings (and the Monitor hereby covenants to provide such notice as soon as reasonably possible), the full amount of the Escrow Funds shall be released to TD or as TD may otherwise direct in writing; or
 - (iv) upon receipt by the Escrow Agent of a written notice from the Monitor confirming that TD has successfully appointed a receiver in respect of Skylink pursuant to the provisions of the *Bankruptcy and Insolvency Act* (Canada) and/or the *Courts of Justice Act* (and the Monitor hereby covenants to provide such notice as soon as reasonably possible), the full amount of the Escrow Amount shall be released to Momentum or as Momentum may otherwise direct in writing; or
 - (v) upon receipt by the Escrow Agent of a written notice signed by TD confirming that all amounts owing under the Credit Agreement have been paid in full (and TD hereby covenants to provide such notice forthwith), the full amount of the Escrow Funds shall be released to Momentum or as Momentum may otherwise direct in writing.
- (b) Any amount of Escrow Funds to be released pursuant to Section 2.3(a) above shall be paid by the Escrow Agent to the applicable Person within two Business Days after receipt of a Release Instruction by wire transfer to the account specified in the Release Instruction. For the avoidance of doubt, only one Release Instruction shall be effective which Release Instruction shall be in respect of the first event giving rise to a Release Instruction to occur.

- (c) Any amount of Escrow Funds received by TD shall be applied in satisfaction of that amount of indebtedness outstanding under the Credit Agreement.

2.4 Interest on Escrow Funds

- (a) Any interest, dividends and other distributions and payments (collectively, “**Interest**”) earned on the Escrow Funds shall form and part of the Escrow Funds and will accrue *pro rata* to the benefit of the Persons ultimately entitled to such funds. The Escrow Agent has no liability or responsibility for determining or calculating the *pro rata* amount of interest to be allocated to Momentum or TD but may rely on a joint notice from Momentum and TD or a Final Order.
- (b) If, for tax reporting purposes, the Escrow Agent is required to attribute interest earned on the Escrow Funds to any Party prior to the full release of the Escrow Funds, the Escrow Agent shall attribute all such interest to Momentum.
- (c) The Escrow Agent shall have no obligation with respect to tax reporting other than to deliver an annual statement of interest earned to Momentum and TD; provided that Momentum and TD agree to provide the Escrow Agent with their certified tax identification numbers and such other forms, documents and information that the Escrow Agent may request where required to fulfill any tax reporting function or requirement at law.

2.5 No Requirement to Act

The Escrow Agent has the right not to act and will not be held liable for refusing to act unless it has received clear and reasonable documentation which complies with the terms of this Agreement. Such documentation must not require the exercise of any discretion or independent judgment on the part of the Escrow Agent. The Escrow Agent has the right not to act and will not be liable for refusing to act if, in its sole judgment, it determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation or guidelines. Further, should the Escrow Agent, in its sole judgment, determine at any time that its acting under this Agreement has resulted in its being in non-compliance with any such legislation or guidelines, it may resign in accordance with Section 3.10 of this Agreement, provided that (a) the Escrow Agent’s resignation notice describes the circumstances of such non-compliance, and (b) if such circumstances are resolved to the Escrow Agent’s satisfaction within the ten Business Day period set out in Section 3.10, then such resignation will not be effective.

2.6 Sufficiency of Escrow Funds

Momentum and TD acknowledge and agree that the Escrow Agent is acting as a depository only and the Escrow Agent has no obligation to ensure the sufficiency of the Initial Escrow Amount or the Escrow Funds.

Article 3 Liability of the Escrow Agent

3.1 No Implied Duties

The duties and obligations of the Escrow Agent are determined solely by the express provisions of this Agreement, and no implied representations, warranties, covenants, obligations or duties are to be read into this Agreement against the Escrow Agent, nor shall it have, or be deemed to have, any duties under the provisions of any other agreement between the other Parties or any other Persons.

3.2 No Liability for Errors or Loss

The Escrow Agent is not liable for any error of judgment or mistake of fact or law, or any action taken, suffered or omitted by it in good faith in connection with this Agreement. The Escrow Agent shall have no liability for any loss sustained as a result of any investment made in accordance with the terms of this Agreement or any liquidation or redemption of an investment prior to its maturity.

3.3 No Liability Where Reliance

The Escrow Agent may rely upon, and shall not incur any liability for acting or refraining from acting in good faith in reliance upon, any written instruction (including wire transfer instructions), notice, request, resolution, direction (including a Joint Instruction), certificate, approval or other paper or document, believed by it in good faith to be genuine and duly authorized and presented by the proper Person. The Escrow Agent shall have no responsibility for determining the accuracy of any such paper or document.

3.4 Expert Advice

The Escrow Agent may employ such experts as may, in its opinion, be necessary or desirable to properly discharge its duties under this Agreement and may pay any reasonable amounts required for such services. Any opinion or advice of such expert is full authorization and protection with respect to any action taken, suffered or omitted by the Escrow Agent in good faith and in accordance with the opinion or advice of such expert within the area of its expertise. The Escrow Agent is not responsible for the negligence or misconduct of such experts except where the Escrow Agent did not exercise due care in their selection.

3.5 Force Majeure

The Escrow Agent shall not incur any liability for failing to perform any act or fulfill any duty, obligation or responsibility hereunder by reason of any occurrence beyond the reasonable control of the Escrow Agent (including any provision of any present or future law, any act of God or war, any epidemic or the unavailability of any wire or communication facility).

3.6 No Expenditure of Own Funds

Nothing in this Agreement requires the Escrow Agent to expend its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise

of any of its rights or powers unless indemnified or reimbursed as provided in this Agreement.

3.7 Fees and Reimbursement of the Escrow Agent

Momentum shall pay the Escrow Agent's fees and the costs and expenses reasonably incurred by it in providing the services hereunder, in connection with the administration of the escrow created hereby or the performance or observance of its duties hereunder and all amounts not otherwise covered by such remuneration, including all out-of-pocket expenses and disbursements incurred or made by the Escrow Agent in the administration of its services and duties created hereby.

3.8 Indemnification

Momentum and TD shall jointly and severally indemnify the Escrow Agent and the other members of the Norton Rose Fulbright Group for, and hold them harmless against, any loss, liability, claims, actions, damages or expenses incurred by any of them arising out of or in connection with the entering into of this Agreement and the performance of the obligations and the exercise of the rights hereunder, including the costs of defending themselves against any claim or liability, provided that Momentum shall be solely liable for any amounts payable to the Escrow Agent pursuant to Section 3.7.

3.9 Dispute Resolution

Should any dispute arise with respect to the delivery, ownership, right of possession or disposition of the Escrow Funds or otherwise, or should any claim be made upon the Escrow Agent or the Escrow Funds by a Person other than a Party, the Escrow Agent, upon receipt of notice of such dispute or claim, may:

- (a) resign in accordance with Section 3.10;
- (b) retain in its possession without liability, the remaining Escrow Funds until (i) such dispute or claim has been settled either by the written agreement of the Persons involved or by a Final Order, and (ii) a certified copy of the settlement agreement or Final Order has been delivered to the Escrow Agent; and/or
- (c) apply to the Ontario Superior Court of Justice (by way of interpleader or other proceeding) for such advice and direction with respect to such dispute or uncertainty, and pay into court all or a part of the remaining Escrow Funds for disposition pursuant to any further order or direction of such court.

The Escrow Agent may, but shall be under no duty whatsoever to, institute or defend any legal proceedings which relate to the Escrow Funds or this Agreement and shall be fully indemnified pursuant to Section 3.8 of this Agreement for so doing.

3.10 Removal and Resignation

The Escrow Agent may be removed at any time by joint written notice from Momentum and TD given not less than 20 days prior to the proposed date of removal. The Escrow Agent may, at any time, resign and be discharged of its obligations under this Agreement by giving written notice to Momentum and TD specifying the date of its

resignation which shall be no less than 20 days after the date of such notice. Within ten Business Days after giving the foregoing notice of removal to the Escrow Agent or of receiving the foregoing notice of resignation from the Escrow Agent, as the case may be, Momentum and TD shall jointly agree on and appoint a successor escrow agent and provide written notice of such to the current Escrow Agent. If a successor escrow agent has not accepted such appointment by the end of the ten Business Day period, the Escrow Agent may, in its sole discretion, apply to a court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief. Upon receipt of a notice identifying the successor escrow agent, the Escrow Agent shall deliver the Escrow Funds then held by it to the successor escrow agent and such successor shall become the Escrow Agent for purposes of this Agreement. Upon such delivery, the resigning Escrow Agent shall have no further duties or responsibilities of any nature or kind whatsoever under this Agreement.

3.11 No Conflict of Interest

Momentum and TD acknowledge that the Escrow Agent and other members of the Norton Rose Fulbright Group may have acted and may continue to act as legal counsel to Momentum, Skylink, TD and their respective affiliates. TD shall not (a) make, and it hereby waives any right it may have at law or otherwise to make, any claim alleging a conflict of interest regarding Norton Rose Fulbright Group's representation of Momentum and Skylink and their respective affiliates in regards to the Credit Agreement, the Guarantee, the Proceedings or the matters giving rise thereto or any negotiations or agreements to be entered into in connection therewith, (b) dispute or challenge, and it hereby waives any right it may have at law or otherwise to dispute or challenge, the right of the Escrow Agent or any other member of the Norton Rose Fulbright Group to represent Momentum, Skylink and their respective affiliates in connection with, *inter alia*, matters in regards to the Credit Agreement, the Guarantee, the Proceedings or the matters giving rise thereto or any negotiations or agreements to be entered into in connection therewith (excluding this Agreement), or (c) dispute or challenge, and it hereby waives any right it may have at law or otherwise to dispute or challenge, the right of the Escrow Agent or any other member of the Norton Rose Fulbright Group to represent or act as legal counsel on behalf of Momentum or Skylink or their respective affiliates that is or may be adverse in interest of TD or its affiliates (in respect of any matter other than this Agreement); in each case, as a result of the execution and delivery by the Escrow Agent of this Agreement, the exercise of its rights hereunder, the performance by it of its obligations hereunder or otherwise. Despite the foregoing, Momentum and TD acknowledge that no member of the Norton Rose Fulbright Group acts for Momentum or TD or their respective affiliates in connection with this Agreement.

Article 4 Miscellaneous

4.1 Notices

Any notice, direction, Joint Instruction, consent or other communications given under this Agreement must be in writing and delivered by courier, by personal delivery or by electronic transmission (including by email) as follows:

- (a) to Momentum at:

55 St Clair Ave W, Suite 210
Toronto, ON M4V 2Y7

Attention: []

with a copy (which does not constitute notice to Momentum) to:

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 2000
PO Box 53, Toronto ON M5K 1E7

Attention: Eric Reither and Jennifer Stam
Email: eric.reither@nortonrosefulbright.com
and Jennifer.stam@nortonrosefulbright.com

(b) to TD at:

3140 Dufferin Street
Toronto, Ontario M6A 2T1
Attn: Katie Furfaro
Email: Kathryn.Furfaro@td.com

with a courtesy copy to:

Fogler, Rubinoff LLP
77 King Street West, Suite 3000
Toronto, Ontario M5K 1G8
Attn: Rachel Moses
Email: rmoses@foglers.com

(c) to the Escrow Agent at:

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 2000
PO Box 53, Toronto ON M5K 1E7

Attention: Eric Reither and Jennifer Stam
Email: eric.reither@nortonrosefulbright.com
and Jennifer.stam@nortonrosefulbright.com

(d) to the Monitor at:

KSV Advisory
220 Bay Street, 13th Floor, PO Box 20,
Toronto, Ontario, M5J 2W4

Attention: Bobby Kofman
Email: bkofman@ksvadvisory.com

Any such communication shall be deemed to have been given and received on the day on which it was so delivered or transmitted (if a Business Day, and if not, then on the next succeeding Business Day) unless received after 5:00 pm (local time in the place of receipt) in which case it shall be deemed to have been given and received on the next succeeding Business Day.

In the case of a communication by email or other electronic means, if an autoreply is received indicating that the email is no longer monitored or in use, delivery must be followed by the dispatch of a copy of such communication pursuant to one of the other methods described above; provided however that any communication originally delivered by electronic means shall be deemed to have been given and received on the date stipulated above for electronic delivery.

A Person may change its address for service by notice given in accordance with the foregoing and any subsequent communication must be sent to such Person at its changed address.

4.2 No Liability of the Monitor

Notwithstanding the terms hereof, by virtue of its appointment as Monitor of Skylink, the Parties acknowledge and irrevocably agree that the Monitor in its personal or corporate capacity shall incur no liability or obligation in respect of this Agreement save and except or gross negligence or wilful misconduct on its part. The Parties further agree that nothing in this Agreement shall derogate from the protections afforded to the Monitor by the Initial Order or any other order of the Court in connection with the Proceedings.

4.3 Survival

The rights and benefits held by and the indemnities granted in favour of the Escrow Agent set out in Section 2.5, Section 2.6 and Article 3 shall survive the termination of this Agreement and continue indefinitely notwithstanding the resignation, removal or discharge of the Escrow Agent or the appoint of a successor escrow agent in accordance with the terms of this Agreement.

4.4 Amendments

This Agreement may only be amended or otherwise modified by written agreement of all of the Parties.

4.5 Termination

This Agreement will terminate automatically once the Escrow Funds have been completely distributed in accordance with its terms. However, any indemnity and any other liability which has accrued prior to such termination will continue in full force and effect.

4.6 Waiver

The failure or delay by a Party in enforcing or insisting upon strict performance of any of the provisions of this Agreement does not constitute a waiver of such provision or in any way affect the validity of this Agreement (or any of its provisions) or deprive a Party of the right, at any time or from time to time, to enforce or insist upon strict performance of that provision or any other provision of this Agreement.

4.7 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect, without amendment.

4.8 Time of the Essence

Time is of the essence in this Agreement.

4.9 Successors and Assigns

This Agreement will become effective when executed by the Parties and after that time will be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns. Except as otherwise provided in Section 3.10 of this Agreement, neither this Agreement nor any of the rights, duties or obligations under this Agreement are assignable or transferable by a Party without the prior written consent of the other Parties. Any attempt to assign any of the rights, duties or obligations in this Agreement without such written consent is void.

4.10 Counterparts and Electronic Delivery


This Agreement may be executed in any number of separate counterparts, each of which shall be deemed to be an original. All such signed counterparts, taken together, shall constitute one and the same agreement. Delivery of an executed signature page to this Agreement by electronic means (including by facsimile or in PDF format) shall be as valid and effective as delivery of an originally or manually executed copy of this Agreement.

(The remainder of this page is intentionally left blank; signature page follows.)

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement as of the date first written above.

MOMENTUM DECISIVE SOLUTIONS CANADA INC.

Per:


Authorized Signatory

THE TORONTO-DOMINION BANK

Per:

Authorized Signatory


NORTON ROSE FULBRIGHT CANADA LLP

Per:


Authorized Signatory

KSV RESTRUCTING INC., SOLELY IN ITS CAPACITY AS THE MONITOR OF SKYLINK EXPRESS INC. AND NOT IN ITS PERSONAL CAPACITY

Per:


Authorized Signatory

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement as of the date first written above.

MOMENTUM DECISIVE SOLUTIONS CANADA INC.

Per:

Authorized Signatory

THE TORONTO-DOMINION BANK

Per:

K. Furfaro K. Furfaro
Manager, Commercial Credit
Financial Restructuring Group

Authorized Signatory

NORTON ROSE FULBRIGHT CANADA LLP

Per:

Authorized Signatory

KSV RESTRUCTING INC., SOLELY IN ITS CAPACITY AS THE MONITOR OF SKYLINK EXPRESS INC. AND NOT IN ITS PERSONAL CAPACITY

Per:

Authorized Signatory

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36,
AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SKYLINK EXPRESS INC.

Court File No. CV-24-00716267-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

AFFIDAVIT OF KYLE DENNHARDT

NORTON ROSE FULBRIGHT CANADA LLP

222 Bay Street, Suite 3000
Toronto, ON M5K 1E7
Fax: 416.216.3930

Jennifer Stam LSO#: 46735J

Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Lawyers for the Applicant

TAB 3

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SKYLINK EXPRESS INC. (the "**Applicant**")

**AFFIDAVIT OF KYLE DENNHARDT
(sworn March 8, 2024)**

I, Kyle Dennhardt, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Financial Officer of the Applicant, Skylink Express Inc. ("**Skylink**" or the "**Applicant**"). I am also the Chief Operating Officer of Momentum Decisive Solutions Canada Inc. ("**Momentum**"), the sole shareholder of the Applicant and have been with Momentum since 2016. As such, I have knowledge of the following matters, except where otherwise stated.

2. I swear this affidavit in support of an application by the Applicant for an Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

I. INTRODUCTION

3. Skylink is in the business of providing air cargo delivery services throughout North America, principally to remote locations in Canada (the "**Business**"). It has been in business for over 25 years.

4. Momentum acquired the Applicant in 2020 during a time when the Business was performing well and was forecasting significant growth. Momentum has provided significant

financial and other support including, funding recent expenses of \$1 million and making certain aircraft owned by Momentum available to Skylink at no cost. Momentum employees also support the Skylink Business with no overhead or management fee charged to Skylink. Skylink is in urgent need of capital to continue to operate, as more fully discussed below.

5. The Business generally performed well throughout 2021 and through much of 2022; however, it began to experience serious cash flow and liquidity issues in late 2022 and, as we further discovered, had significantly greater capex requirements than initially forecasted. Additionally, the Business was suffering as a result of mismanagement and other internal and external factors. In early 2023, Skylink also lost a material customer, which further compounded its difficulties. Over the past year, the Applicant has experienced negative operating cash flow, such that it is now facing an imminent liquidity crisis. Factors that have contributed to the decline of the Business include:

- (a) economic factors resulting in less demand for cargo delivery services, which has resulted in the loss of certain routes and customers;
- (b) increase in operating costs and turnover in the labour market, particularly for aircraft maintenance engineers (“**AME**”) and pilots due to changes in regulatory requirements, labour shortages and the recent unionization of the Applicant’s pilot group;
- (c) significant increases in the cost for aircraft parts due to a decline in the availability of same; and

- (d) significant increase in the anticipated future capex requirements of the Business due to, among other things, the cost of the capex (outlined above) and regulatory changes including new software/hardware requirements for aircraft.

6. The Applicant has a secured loan facility outstanding to the Toronto-Dominion Bank (“TD”). As of the date of this Affidavit, the amount owing to TD under this facility was approximately \$13.8 million. The Applicant has committed various defaults under the TD Loan Facility (as defined below) and is currently unable to repay the full amount of the loan.

7. The Applicant has taken several steps with a view to restructuring the Business and/or maximizing its value, which are discussed in greater detail below. However, as is also discussed in greater detail below, it has become apparent to me that absent a restructuring of the Applicant’s key customer contract with United Parcel Service Canada Ltd. (“UPS”), it is unlikely it will be able to return to profitability.

8. The Applicant is on the verge of a liquidity crisis and is projected in the very short term to be unable to fund its expenses as they come due. While Momentum has historically supported the Applicant and the Business in a variety of ways, it has advised that its further support is contingent upon the Applicant commencing CCAA proceedings such that additional funding can be provided within a filing through the proposed DIP Facility (defined and described below).

II. SKYLINK

The Applicant

9. Skylink is a company incorporated pursuant to the laws of Ontario. Its registered office is located at 55 St. Clair West, Suite 210, Toronto, Ontario.

10. The sole shareholder of Skylink is Momentum. Momentum acquired Skylink in 2020 from a related party, which party had exercised a right of first refusal to buy the shares of the Applicant.

11. Skylink's sole director is Stephen Arbib. A copy of the corporate profile for Skylink is attached hereto as **Exhibit "A"**.

III. THE BUSINESS

Overview

12. Skylink has operated for over 25 years providing regional air cargo services throughout North America. Today, Skylink is one of Canada's largest operators, specializing in regional courier feeder operations and time-sensitive, cost effective, air cargo charters throughout North America. Skylink's focus is to provide "last mile" services for major delivery servicers to secondary locations, primarily in Canada. Skylink currently has bases in Vancouver, Winnipeg, Hamilton, Montreal-Mirabel and Québec City.

13. Skylink operates a fleet of 16 aircraft, comprised of 208B (4), 1900C (10) and 1900D (2) all-cargo aircraft, of which 14 are owned by Skylink. The two 1900D aircraft were acquired by Momentum at the request of and for the use of Skylink and require work to be converted to cargo planes before they can be flown by Skylink. Conversion on one of the 1900D aircraft has started but has been paused given these proceedings. Conversion has not started on the other 1900D aircraft. The remaining 14 aircraft of the Skylink-owned aircraft are operational.

14. The primary customer of the Business is UPS. The Applicant and UPS are party to a long-term feeder aircraft charter agreement (the "**UPS Contract**") pursuant to which the Applicant provides charter services for UPS throughout Canada. Presently, the Applicant generates the vast majority of its revenue from the UPS Contract.

Employees

15. Skylink employs 79 full time employees, 7 part time employees, as well as 11 independent contractors. The Applicant provides certain group benefits to its employees through Manulife. The Applicant does not maintain any registered pension plans. The Applicant is party to a collective agreement with UNIFOR entered into in March 2023 in respect of approximately 37 members of its pilot group. The Applicant is current with respect to payment of wages, vacation pay and remittance of source deductions.

Banking Information

16. Skylink maintains USD and CAD accounts primarily with the TD. It also maintains two accounts with Royal Bank of Canada ("**RBC**") used principally in connection with RBC credit cards that are used by employees.

IV. FINANCIAL INFORMATION

17. Copies of the Applicant's unaudited financial statements for the fiscal year ended December 31, 2023 (the "**2023 Financial Statements**") are attached hereto as **Exhibit "B"**.

Assets

18. Skylink's assets consist primarily of its capital assets (its aircraft), accounts receivable, inventory (aircraft parts) and goodwill. As set out in the 2023 Financial Statements, the book value of Skylink's assets were as follows:

Asset	\$
Cash	59,635
Accounts Receivable	2,432,218
Inventory	5,421,535
Prepaid Expenses and deposits	408,970
Total Current Assets	\$8,322,358
Capital Assets	22,470,107

Goodwill	5,617,356
Total:	36,409,821

Liabilities

19. As set out in the 2023 Financial Statements, the book value of Skylink's liabilities were as follows:

Liabilities	\$
Current Liabilities	7,092,045
Deferred Tax Liabilities	5,577,360
Long Term Portion of Loan Payable	11,371,003
Total:	24,040,408

20. Although the book value of the Applicant's assets is greater than its liabilities, the Applicant is facing a liquidity crisis as the UPS Contract is not sufficiently profitable to fund the Applicant's cost of operations, including its aircraft maintenance costs. In this regard, as of March 8, 2024, the Applicant's line of credit balance was approximately \$300,000 and it had a minimal cash balance and, without further funding, the Applicant is not projected to be able to fund its payroll due March 15, 2024. While Momentum recently provided emergency funding of \$1 million on an unsecured basis, it is not prepared to provide any further funding outside of a DIP Facility (defined below) in a CCAA filing.

V. DEBT STRUCTURE

TD Facility

21. Pursuant to a commitment letter dated November 2, 2020 given by TD to the Applicant (as amended on October 5, 2022, the "**Commitment Letter**"), TD agreed to establish term and

operating loan facilities in favour of Skylink (the “**TD Loan Facility**”). A copy of the Commitment Letter is attached hereto as **Exhibit “C”**.

22. In connection with the TD Loan Facility, the Applicant granted TD security over all of its assets pursuant to, among other things, a general security agreement, aircraft security, assignment of insurance and hypothec (the “**TD Loan Security**”). Momentum also provided a limited recourse guarantee of the TD Loan Facility in the maximum amount of \$15,000,000 and provided security in connection with its guarantee. The Applicant also maintains a secured line of credit with TD, which is subject to the TD Loan Security.

23. As of the date of this Affidavit, the balance of the TD Loan Facility was approximately \$13.8 million.

Other

24. The Applicant maintains various American Express and VISA cards for use by its employees for Business related expenses. The ongoing use of these credit cards is crucial to the Business as employees (including the Applicant’s pilot group) are often traveling and required to incur expenses in the course of their employment. In order to ensure ongoing access to the credit cards, specific relief is being requested to pay the outstanding balances on the pre-filing balances on those credit cards. As of March 8, 2024, the estimated amount was \$250,000. The Applicant intends to continue to make payments in the ordinary course during the CCAA filing to keep the balances on the cards current.

25. The Applicant also has approximately \$1.7 million of aged trade payables and incurs trade liabilities in the ordinary course of its Business.

26. As set out below, other than TD, there are no other parties with personal property security registrations against the Applicant.

VI. CURRENT FINANCIAL POSITION AND RESTRUCTURING EFFORTS TO DATE

27. As set out above, over the past 15 months the Applicant's cash position has eroded significantly. To address the financial situation and other concerns regarding management, the Applicant and its Board of Directors have taken several restructuring steps to attempt to turn around the Business. Among other things:

- (a) in mid-2023, the Applicant appointed a new President;
- (b) in 2024, it hired additional management, including a new vice president of financing and other team members;
- (c) it took steps to reduce overhead and operating costs, including streamlining its approach and costs in connection with crew travel, crew turnover rates and insurance (without reduction in coverage);
- (d) it reviewed capex initiatives that would result in long term savings; and
- (e) took steps to improve its retention of flight crews and AMEs.

28. Additionally, in September 2023, the Applicant retained a financial advisor, Capital Canada Limited, to solicit interest in the Business and the Applicant. Such efforts did not result in any offers. Skylink has also continued to pursue new business opportunities and consider other alternative financing opportunities, although these efforts have not yielded any material success to-date.

29. The Applicant is almost entirely reliant on UPS to generate revenue. It has become apparent that the UPS Contract is not economically sustainable given, among other things, the changes to the operating environment and inflationary costs, for which adjustments are not provided for in the UPS Contract.

30. An urgent restructuring of the UPS Contract is required for the Applicant to remain viable and to return to profitability. While Momentum is prepared to continue to provide limited support to the Business in the short term to determine whether such negotiations can be successful, it is not prepared to continue to support the Business with the UPS Contract on its current terms. All discussions to date have been preliminary in nature. While the Applicant remains optimistic that its longstanding relationship with UPS will be able to be restructured, it requires the protection of the CCAA court in the meantime given its nominal and eroding cash position and its need for additional liquidity. The Applicant intends to use these proceedings to immediately commence discussions with UPS and, if no resolution can be reached in the short term, it will consider returning to court to seek approval of a sale process for its assets and Business.

VII. CCAA PROCEEDINGS

31. As a result of the Applicant's imminent liquidity crisis and the Applicant's inability to meet its obligations as they come due, the Applicant is insolvent and, absent the CCAA proceedings and the contemplated borrowings under the proposed DIP Facility (as described below), is currently projected to run out of cash the second full week of March. The Applicant is not projected to be able to fund its payroll on March 15, 2024. It is clear that the Applicant will shortly have no ability to fund its obligations as they come due, nor does it currently have the ability to repay the TD Loan Facility, if such debt were to be accelerated and come due immediately.

32. The Applicant is seeking an initial order (the "**Proposed Initial Order**") pursuant to the CCAA. I am advised by Jennifer Stam of Norton Rose Fulbright Canada LLP ("**NRFC**") that the requested relief is consistent with other initial applications pursuant to the CCAA and is summarized below.

Stay of Proceedings

33. As set out above, the Applicant is on the verge of a liquidity crisis and has been or will shortly be unable to meet its obligations as they come due.

34. The Applicant is requesting a stay of proceedings for an initial period of not more than 10 days (the “**Stay Period**”) to be granted to provide it time to commence its restructuring options in a stabilized environment.

Appointment of Monitor

35. The Applicant seeks to appoint KSV Restructuring Inc. (“**KSV**”) as the monitor (in such capacity, the “**Proposed Monitor**”) in the CCAA proceedings. KSV has consented to act as Monitor, subject to court approval, a copy of which is attached hereto as **Exhibit “D”**.

36. I am advised by Bobby Kofman, President of KSV, that KSV is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* and not subject to any of the restrictions set out in Section 11.7(2) of the CCAA.

37. I understand that KSV has extensive experience in restructuring proceedings, including in the airline industry, and is qualified and appropriate for this mandate. KSV has been working with Skylink for several weeks and is familiar with Skylink’s circumstances.

38. I am advised by Mr. Kofman that KSV will be preparing a pre-filing report in respect of the Proposed Initial Order and, if appointed, will file a further report in connection with the Comeback Motion (defined below).

Administration Charge

39. The Proposed Initial Order contemplates a super priority charge over its property, assets and undertaking in the initial maximum amount of \$350,000 to secure the fees and

disbursements of the Proposed Monitor, its counsel and counsel to the Applicant incurred both before and during the CCAA proceedings (the “**Administration Charge**”).

40. The expertise and participation of the proposed beneficiaries of the Administration Charge are crucial to the completion of the Applicant’s restructuring.

41. The Applicant has worked with the Proposed Monitor to determine the proposed quantum of the Administration Charge. The Applicant and the Proposed Monitor are of the view that the amount of the Administration Charge is reasonable and appropriate as the professional fees have either received no or nominal retainers and they anticipate incurring fees during the initial ten-day period of the CCAA proceedings.

Directors and Officers

42. To ensure the ongoing stability of the Applicant’s Business during the CCAA period and the efficient implementation of these restructuring proceedings, including the negotiation of the UPS Contract, the Applicant requires the continued participation of its directors and officers who oversee the management of the Business and commercial activities of the Applicant.

43. The directors and officers of the Applicant have indicated that due to the potential for personal liability, they cannot continue their service in this restructuring unless the Proposed Initial Order grants the Directors’ Charge (as defined below) to secure the Applicant’s indemnity obligations to the directors and officers that arise post-filing.

44. I am advised by Ms. Stam that in certain circumstances directors can be held liable for certain obligations of a company owing to employees and government entities. As at the current date, the Applicant has approximately 100 employees. Wages, vacation pay, and statutory employee deductions are accruing in the ordinary course with no arrears due and unpaid as at the date hereof. I am further advised by Ms. Stam that, as the Applicant is

federally regulated under the Canada Labour Code, directors may be held statutorily liable for certain termination and severance amounts for employees who may be terminated.

45. I am also advised by Ms. Stam, and do verily believe, that in certain circumstances directors can be held liable for certain unremitted excise taxes, if there is a failure to remit such amounts.

46. The Applicant maintains directors' and officers' liability insurance (the "**D&O Insurance**") for the directors and officers of the Applicant. The current D&O Insurance policies provide a total of up to \$5 million in primary coverage.

47. The Proposed Initial Order contemplates the establishment of a charge in the amount of \$480,000 (the "**Directors' Charge**") to protect the directors and officers against obligations and liabilities they may incur as directors and officers of the Applicant after the commencement of the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct. The Directors' Charge was calculated by the Applicant with the assistance of the Proposed Monitor, with reference to (a) the payroll and withholding obligations of the Applicant; and (b) vacation pay, during a period of the length of the proposed initial 10 day Stay Period. I am advised by Ms. Stam that the Directors' Charge also often takes into consideration HST collected in a particular period, but the Applicant is generally in an HST refund position.

48. The benefit of the Directors' Charge will only be available to the extent that a liability is not covered by the D&O Insurance.

49. While the D&O Insurance is available, the directors and officers of the Applicant cannot be certain that the insurance providers will not seek to deny coverage on the basis that the D&O Insurance does not cover a particular claim or that coverage limits have been exhausted.

50. The Applicant is unlikely to have sufficient funds available to satisfy any contractual indemnities to the directors or officers should the directors or officers need to call upon those indemnities.

51. The Applicant worked with the Proposed Monitor in determining the proposed quantum of the Directors' Charge. The Applicant and the Proposed Monitor believes the Directors' Charge is reasonable in the circumstances.

DIP Facility and DIP Lenders' Charge

52. As set out above and as is reflected in the Cash Flow Statement (defined below), the Applicant requires additional funding immediately to fund working capital costs within the first 10 days of the CCAA proceedings including, notably, to fund its payroll which is funded to its payroll provider on March 12, 2024 and paid to employees on March 15, 2024.

53. Momentum has agreed to establish a secured debtor-in-possession financing facility ("**DIP Facility**") in favour of Skylink, to fund working capital, capex and restructuring costs during the CCAA period. In that regard, the parties have entered into a DIP Term Sheet dated March 8, 2024 (the "**DIP Term Sheet**") pursuant to which Momentum (in such capacity, the "**DIP Lender**") has agreed to a DIP Facility to the Applicant as follows:

	<u>Description</u>
Borrower	Skylink
Lender	Momentum
DIP Facility	Non-revolving facility in the maximum aggregate principal amount of \$2.3 million
Permitted Uses	To fund working capital and professional fees in accordance with the Cash Flow Forecast, Recoverable Expenses (defined below) and such other costs and expenses as Skylink and Momentum may agree in writing.
Initial Advance	Up to a maximum of \$1.35 million

	Description
Comeback Advances	Up to a maximum of \$2.5 million
Interest	15%
Fees	None
Recoverable Expenses	Fees of the Lender as outlined in the DIP Term Sheet including related legal fees.
Security	Super Priority DIP Lender's Charge, subject to the Administration Charge and the TD Loan Security
Maturity	The earliest of: April 30, 2024, the closing of a sale transaction, implementation of a plan, termination of CCAA proceedings or conversion to a bankruptcy; and the occurrence of an Event of Default (defined below).
Conditions Precedent to the Initial Advance and Subsequent Advances	<p>Conditions precedent to the Initial Advance include customary conditions for DIP facilities, including approval of the DIP Term Sheet, granting of the Initial Order and no outstanding Event of Default (defined below).</p> <p>Conditions precedent to subsequent advances include the granting of an amended and restated initial order ("ARIO").</p>
Events of Default	<p>Events of default include events of default customary for DIP facilities and including:</p> <ul style="list-style-type: none"> - If the Initial Order is not granted by no later than March 11, 2024 - If the ARIO is not granted by March 21, 2024 - Enforcement by TD on any of the TD Loan Security or the Momentum guarantee - Cumulative variance for disbursements in the first month is more than 115% of the budgeted disbursements

A copy of the DIP Term Sheet is attached hereto as **Exhibit "E"**

54. The DIP Facility is contingent, among other things, upon the granting of a priority charge over the assets, property and undertaking of the Applicant in favour of the DIP Lender, which will rank subordinate to the Administration Charge and the TD Loan Security but in priority to the Directors' Charge.

55. The proposed initial borrowing under the DIP Facility is limited to \$1.35 million being the amount projected to be required in the first 10 days of the CCAA proceedings, and is supported by the Proposed Monitor.

Priority of the Charges

56. The proposed ranking of the Court-ordered charges as amongst themselves is as follows:

- (a) First, the Administration Charge (up to a maximum of \$350,000);
- (b) Second, the DIP Lender's Charge; and
- (c) Third, the Directors' Charge (up to a maximum of \$480,000).

57. It is further proposed that in respect of the TD Loan Security, the Administration Charge would rank in priority to the TD Loan Security but the Directors' Charge and DIP Lender's Charge would rank subordinate to the TD Loan Security.

58. NRFC has conducted: (i) Bankruptcy and Insolvency searches with the Office of the Superintendent of Bankruptcy Canada current to February 28, 2024, (ii) Bankruptcy searches with the Ontario Superior Court of Justice in Toronto current to February 29, 2024 (iii) Personal Property Security Registration System searches in Ontario current to February 15, 2024, (iv) Property Registry searches in Manitoba current to February 21, 2024, (v) Personal Property Registry searches in British Columbia current to February 21, 2024, (vi) Registre des droits

personnels et réels mobiliers (RDPRM) searches in Québec current to February 21, 2024, (vii) *Bank Act* security searches current to February 29, 2024, in Ontario, and (viii) International Registry of Mobile Assets searches current to February 29, 2024. Copies of those searches are attached hereto as **Exhibit “F”**.

59. I am advised by Ms. Stam that other than TD, no party has any outstanding registrations against the Applicant.

Credit Card Payments

60. The Applicant is seeking the entitlement (but not direction) to be able to make payments in respect of its corporate credit cards for pre-filing balances. As set out above, the ongoing use of these credit cards are critical for the operation of the Business and routinely used by Skylink employees for travel and other expenses while working. Any such pre-filing payments would be with the consent of the Monitor in the event that the Monitor and the Applicant determine that such payments are critical to the preservation of the Business.

Cash Flow Forecast

61. A cash flow forecast (the “**Cash Flow Statement**”) was prepared by the Applicant with the assistance of the Proposed Monitor for the period from March 2, 2024 to April 26, 2024. A copy of the Cash Flow Statement is attached hereto as **Exhibit “G”**.

62. The Cash Flow Statement shows that, subject to the approval of the DIP Facility, the Applicant will be able to fund its operations during the period provided for in the Cash Flow Statement.

Comeback Motion

63. If the Proposed Initial Order is granted, the Applicant proposes to return to this Court for a comeback hearing (the “**Comeback Motion**”) on or before March 21, 2024.

64. At the Comeback Motion, the Applicant intends to seek the Court’s approval of, among other things, an amended and restated initial order which may include, among other things:

- (a) An extension of the Stay Period;
- (b) An increase in the borrowing limit under the DIP Facility; and
- (c) An increase in the Administration Charge and Directors’ Charge.

VIII. CONCLUSION

65. For the reasons set out above, the Applicant requests the relief set out in the Proposed Initial Order. I swear this affidavit in support of the Applicant’s application and for no improper purpose.

SWORN by Kyle Dennhardt at the City of Toronto, in the Province of Ontario, before me on March 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

Kyle Dennhardt

Viktor Hohlacov, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires June 15, 2025

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36,
AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SKYLINK EXPRESS INC.

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

AFFIDAVIT OF KYLE DENNHARDT

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Lawyers for the Applicant

TAB 4



Court File No. CV-24-00716267-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE CAVANAGH)
MONDAY, THE 11TH
DAY OF MARCH, 2024

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SKYLINK EXPRESS INC. (the "**Applicant**")

AMENDED AND RESTATED INITIAL ORDER

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

ON READING the affidavit of Kyle Dennhardt sworn March 8, 2024 and the Exhibits thereto, the Pre-Filing report of KSV Restructuring Inc. ("**KSV**") in its capacity as the proposed monitor of the Applicant (in such capacity, the "**Monitor**"), the first report of KSV in its capacity as Court-appointed Monitor dated March 18, 2024, the supplementary affidavit of Kyle Dennhardt sworn March 9, 2024, the affidavit of Kathryn Furfaro sworn March 8, 2024, the supplementary affidavit of Kathryn Furfaro sworn March 10, 2024 and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, Momentum Decisive Solutions Canada Inc. ("**Momentum**"), The Toronto-Dominion Bank ("**TD Bank**") and those other parties present although duly served as appears from the affidavits of service of Katie Parent sworn March 9, 11 and 18, 2024 and on reading the consent of KSV to act as the Monitor,

- (c) with the consent of the Monitor, amounts owing in respect of the Applicant's corporate credit cards in respect of charges incurred prior to this Order up to a maximum amount of \$250,000 if, in the opinion of the Applicant and the Monitor, such payments are critical to the preservation of the Business.

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

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

7. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

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

Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

Notwithstanding the foregoing or any other provision of this Order, the rights and remedies of TD Bank shall not be stayed during the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

16. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in

- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

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

25. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

- Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

36. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

First – Administration Charge (to the maximum amount of \$350,000);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum amount of \$970,000).

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

39. THIS COURT ORDERS that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person however, the Charges shall rank subordinate to the TD Loan Security (as defined in the Affidavit) and provided that the Charges shall rank behind Encumbrances in favour of any Persons that have

not been served with notice of this application. The Applicant and the beneficiaries of the Charges shall be entitled to seek priority ahead of such Encumbrances on notice to those parties.

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

41. THIS COURT ORDERS that the Charges, the DIP Term Sheet and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

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

42. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

43. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the *Globe and Mail* (national edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

44. 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 www.ksvadvisory.com/experience/case/skylink .

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

46. THIS COURT ORDERS that the Applicant, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements

GENERAL

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

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

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

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

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

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36,
AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SKYLINK EXPRESS INC.

Court File No. CV-24-00716267-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

AMENDED AND RESTATED INITIAL ORDER

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Lawyers for the Applicant

TAB 5

Court File No. CV-24-00716267-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	THURSDAY, THE 25 th
)	
JUSTICE)	DAY OF APRIL, 2024

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SKYLINK EXPRESS INC. (the "**Applicant**")

ORDER

THIS MOTION, made by the Applicant, Skylink Express Inc. (the "**Applicant**"), for an order (a) extending the Stay Period (as defined in the Amended and Restated Initial Order, as amended on March 21, 2024, the "**ARIO**") to and including May 31, 2024; (b) approving a forbearance agreement dated as of April 19, 2024 (the "**Forbearance Agreement**") among The Toronto-Dominion Bank (the "**Bank**"), the Applicant and Momentum Decisive Solutions Canada Inc. ("**Momentum**"); and (c) approving an escrow agreement dated as of April 19, 2024 (the "**Escrow Agreement**") among Momentum, the Bank, the Monitor (defined below) and Norton Rose Fulbright Canada LLP, was heard this day was heard this day by Zoom videoconference.

ON READING the affidavit of Kyle Dennhardt sworn April 20, 2024 and the exhibits attached thereto, the second report of KSV Restructuring Inc. in its capacity as the monitor of the Applicant (in such capacity, the "**Monitor**") dated April 19, 2024 (the "**Second Report**"), and on hearing the submissions of the lawyers for the Applicant, Momentum, the Bank, the Monitor and

those other parties present although duly served as appears from the affidavit of service of Katie Parent sworn April 1, 2024,

SERVICE

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

STAY EXTENSION

2. THIS COURT ORDERS that the Stay Period, as defined in the ARIO, be and is hereby extended up to and including May 31, 2024.

FORBEARANCE AGREEMENT AND ESCROW AGREEMENT

3. THIS COURT ORDERS that the Forbearance Agreement be and is hereby approved and that the Applicant is hereby, *nunc pro tunc*, authorized to enter into and perform its obligations under the Forbearance Agreement.

4. THIS COURT ORDERS that the Escrow Agreement be and is hereby approved and the Monitor is hereby, *nunc pro tunc*, authorized to enter into and perform its obligations under the Escrow Agreement.

5. THIS COURT ORDERS that the Monitor, and their respective affiliates, partners, directors, employees, and agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the Escrow Agreement, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or wilful misconduct of the Monitor, as applicable, in performing their obligations under the Escrow Agreement, as determined by this Court.

GENERAL

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

7. THIS COURT ORDERS that this Order and all of its provisions are effective from the date it is made without any need for entry and/or filing.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36,
AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SKYLINK EXPRESS INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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

Court File No. CV-24-00716267-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SKYLINK EXPRESS INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**MOTION RECORD
(returnable April 25, 2024)**

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Lawyers for the Applicant