



**First Report to Court of
KSV Restructuring Inc. as
Monitor of
Skylink Express Inc.**

March 18, 2024

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

FIRST REPORT OF KSV RESTRUCTURING INC.
AS MONITOR

MARCH 18, 2024

1.0 Introduction

1. Pursuant to an order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on March 11, 2024 (the “**Filing Date**”), Skylink Express Inc. (the “**Company**”) was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and KSV Restructuring Inc. (“**KSV**”) was appointed monitor (the “**Monitor**”). A copy of the Initial Order and the Court’s endorsement (the “**Endorsement**”) are attached as Appendices “A” and “B”, respectively.
2. Pursuant to the terms of the Initial Order, among other things, the Court granted:
 - a) a stay of proceedings until March 21, 2024, being the date of the comeback motion in these proceedings (the “**Comeback Motion**”);
 - b) the following charges on the Company’s current and future assets, property and undertaking (collectively, the “**Property**”), in the order of priority provided below, each of which ranks subordinate to secured credit facilities provided to the Company by TD Bank (“**TD**”) (the “**TD Loan Facilities**”):
 - i. a charge in favour of the Company’s counsel, Norton Rose Fulbright Canada LLP (“**Norton Rose**”), the Monitor and its counsel, Cassels Brock & Blackwell LLP (“**Cassels**”) in the amount of \$350,000 to secure their fees and disbursements in these proceedings (the “**Administration Charge**”);

- ii. a charge in favour of Momentum Decisive Solutions Canada Inc. (“**Momentum**” and, in such capacity, the “**DIP Lender**”), to secure advances made under an interim financing facility (the “**DIP Facility**”) pursuant to an interim financing term sheet (the “**DIP Term Sheet**”) which advances were limited to \$1.35 million until the Comeback Motion (the “**DIP Lender’s Charge**”); and
 - iii. a charge in the amount of \$480,000 in favour of the sole director and officers of the Company (the “**Directors’ Charge**”).
3. The principal purpose of these proceedings is to create a stabilized environment to provide the Company the best opportunity to address its liquidity challenges and various inefficiencies, as well as the opportunity to address its contract (the “**UPS Contract**”) with United Parcel Service Canada Ltd. (“**UPS**”), which is integral to the Company’s viability.
4. The Affidavit of Kyle Dennhardt, the Company’s CFO, sworn March 8, 2024 in support of the CCAA application (the “**Dennhardt Affidavit**”) and KSV’s pre-filing report dated March 8, 2024 (the “**Pre-filing Report**”) filed in connection with the initial application, provide, *inter alia*, background information concerning the Company, its business and the reasons for the commencement of these proceedings.
5. The Dennhardt Affidavit, the Pre-filing Report and other Court materials filed in these proceedings can be found on the Monitor’s case website at www.ksvadvisory.com/experience/case/skylink.

1.1 Purposes of this Report

1. The purposes of this report (the “**Report**”) are to:
 - a) provide the Court with an update on the Company’s operations since the commencement of these proceedings and the Company’s preliminary discussions with UPS;
 - b) update the Court of the status of a forbearance agreement (the “**Forbearance Agreement**”) and an escrow agreement (the “**Escrow Agreement**”) which are contemplated to be entered into among the Company, Momentum and TD;
 - c) provide the Court with an update on the Monitor’s and the Company’s activities since the Filing Date;
 - d) provide the Monitor’s rationale for supporting the Company’s requested relief for an:
 - extension of the stay of proceedings from March 21 to April 26, 2024;
 - increase in the Directors’ Charge from \$480,000 to \$970,000; and
 - increase in the Company’s permitted borrowings under the DIP Facility from \$1.35 million to \$2.5 million, which amounts are sought to be secured by the DIP Lender’s Charge; and

- e) recommend that the Court grant the relief sought by the Company on the return of this motion and grant the amended and restated Initial Order in the form requested by the Company in its motion materials.

1.2 Restrictions

1. In preparing this Report, the Monitor has relied upon the Company's unaudited financial information, books and records and discussions with the Company's management and legal counsel.
2. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied upon to prepare this Report in a manner that complies with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
3. An examination of the Cash Flow Forecast (as defined below) as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon the Company's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance on whether the Cash Flow Forecast will be achieved.

1.3 Currency

1. All currency references in this Report are in Canadian dollars.

2.0 Background

1. The Company is an Ontario corporation and has operated for over 25 years providing regional air cargo services throughout North America. The Company is one of Canada's largest air cargo operators, specializing in regional courier feeder operations and time-sensitive, cost effective, air cargo charters throughout North America. The Company's focus is to provide "last mile" services for major delivery servicers to secondary (remote) locations, primarily in Canada. The Company operates from hangars in Vancouver, Winnipeg, Hamilton, Montreal-Mirabel and Québec City. Momentum is the Company's sole shareholder.
2. The Company has a fleet of 16 aircraft, comprised of 208B (4), 1900C (10) and 1900D (2) all-cargo aircraft, of which 14 are owned by the Company. The two 1900D aircraft were acquired by Momentum at the request of and for the use of the Company and require work to be converted to cargo planes before they can be flown by the Company. Conversion on one of the 1900D aircraft has started but has been paused given the commencement of these CCAA proceedings. Conversion has not started on the other 1900D aircraft. Currently, the 14 Company-owned aircraft are operational.

3. The Company's primary customer is UPS. The Company and UPS are party to the UPS Contract, a long-term feeder aircraft charter agreement pursuant to which the Applicant provides charter services for UPS throughout Canada. Presently, the Applicant generates a large majority of its revenue from the UPS Contract. The UPS Contract expires in 2027.
4. The Company has advised the Monitor that it is uniquely qualified to perform the UPS Contract and that its fleet of aircraft is specifically suitable for this purpose. The Monitor has also been advised that UPS may not have any cost-effective and operationally efficient means to replace the Company as supplier for the services set out in the UPS Contract, at least in the short-term.
5. The Company's registered office is located at 55 St. Clair Avenue West, Suite 210, Toronto, Ontario.
6. The Company employs 79 full-time employees, seven part-time employees and 11 independent contractors. The Company's pilots (37) are members of UNIFOR. The Company does not maintain any registered pension plans.
7. Momentum acquired the Company in 2020. At that time, the Company was performing well and forecasting significant growth. Since the acquisition, Momentum has provided significant financial and other support, including injecting working capital of \$7 million on acquisition, funding expenses of \$1 million prior to these proceedings and, as noted, making certain of its aircraft available to the Company at no cost. Momentum's employees also support the Company's business with no overhead or management fee charged to the Company. Momentum has been funding these proceedings under the DIP Facility, which ranks subordinate to amounts owing to TD under the TD Loan Facilities, and is prepared to continue to do so if the Court issues the relief sought by the Company at the Comeback Motion. As of the date of this Report, Momentum has advanced \$1.2 million to the Company under the DIP Facility.
8. The Company began experiencing liquidity challenges in late 2022. The Company's financial performance was impacted by higher-than-expected capital expenditures and, in 2023, the loss of a material customer. The Company is presently operating on a cash flow negative basis as a result of several factors, including i) a reduction in demand for cargo delivery services; ii) increased turnover in the Company's staff, notably for aircraft maintenance engineers and pilots due to regulatory changes, labour shortages and the recent unionization of the Company's pilot group; iii) increases in the cost and decreases in availability of aircraft parts; and iv) material increases in capital expenditures due to, among other things, regulatory changes.
9. The UPS Contract does not include sufficient revenue escalation provisions to compensate the Company for its cost increases and, accordingly, the Company is unable to generate revenue sufficient to cover all costs.
10. In September 2023, the Company retained a financial advisor with experience selling aviation assets to solicit interest in the Company's aircraft. The Company has not received any offers as of the date of this Report.
11. Additional background information about the Company and these proceedings is provided in the Dennhardt Affidavit and the Pre-filing Report.

2.1 Status of UPS Contract Discussions

1. The Company and UPS commenced discussions regarding amending the terms of the UPS Contract prior to these proceedings. The Company sought CCAA protection to provide it with liquidity to continue to operate and to fund these proceedings while it attempts to continue its discussions with UPS. The Company requires that discussions advance expediently as Momentum has not confirmed that it will indefinitely continue to fund the Company during these proceedings if progress is not being made toward an amended UPS Contract.
2. Immediately following the commencement of these proceedings, the Company contacted UPS to advance discussions concerning the UPS Contract. The Monitor has been advised that there have been preliminary discussions at a high level as to the Company's proposed terms of an amended contract. On March 16, 2024, the Monitor sent an email to UPS requesting an in-person meeting among representatives of UPS, the Company and the Monitor in order to advance these discussions. The Company has advised the Monitor that it is ready, willing and able to meet with UPS forthwith.

2.2 TD

1. TD is the only party with a registration filed in the applicable provincial personal property security registration systems against the Company and the Monitor understands it is the Company's only secured creditor. TD was granted security over all of the Company's assets pursuant to a general security agreement, aircraft security, assignment of insurance and hypothec. Momentum has also provided a limited recourse guarantee of the TD Loan Facilities and provided security in connection with its guarantee. As at the date of the Pre-filing Report, the balance on the TD Loan Facilities was approximately \$13.8 million. The Monitor has requested that its counsel perform a review of TD's security.
2. Prior to the Filing Date, TD served and filed court materials for, among other things, the appointment of a receiver and manager over all the assets, property and undertaking of the Company. The Monitor has reviewed these court materials.
3. The Company, Momentum and TD, with the assistance of the Monitor, reached a consensual agreement prior to the Filing Date and TD did not oppose the relief sought in the Initial Order based on terms reflected in the Endorsement, which included:
 - a) the receivership application that had been brought by TD would be adjourned to the Comeback Motion;
 - b) that the Company, Momentum and TD would work in good faith on the terms of a forbearance agreement pending the Comeback Motion;
 - c) the Administration Charge would be subordinated to the TD Loan Security; and
 - d) Momentum would post \$2 million of cash collateral in escrow to be held in trust with Norton Rose subject to agreeing on the terms of an escrow agent.
4. TD also agreed that the Company could continue to use its cash management system with TD.

5. Following the Filing Date, the Company repaid from the DIP Facility the full amount owing under an operating line provided by TD. The Company has advised TD that it does not intend to borrow under that facility during these proceedings.
6. On March 14, 2024, the Company provided TD with a draft of the Escrow Agreement. As of the date of this Report, TD has not provided a draft of the Forbearance Agreement. On March 18, 2024, Norton Rose advised TD's counsel that supplemental materials could be filed with the Court in advance of the return of this motion if the Forbearance Agreement and the Escrow Agreement are finalized by that time. The Monitor is not presently aware of any intention of either party not to negotiate and finalize these agreements.

3.0 Cash Flow and DIP Facility

3.1 Cash Flow Forecast

1. As set out in the Pre-Filing Report, the Company, with the assistance of the Monitor, prepared a cash flow forecast for the period March 2, 2024 to April 26, 2024 (the "**Cash Flow Forecast**"). The Cash Flow Forecast is provided in Appendix "C". The Company's and the Monitor's statutory reports on the Cash Flow Forecast were attached to the Pre-filing Report and have not been attached to this Report.
2. The Cash Flow Forecast reflects that the Company requires funding of \$2.5 million under the DIP Facility through April 26, 2024.
3. As noted in the Pre-filing Report, the Monitor's review of the Cash Flow Forecast, the cash flow assumptions appear reasonable.
4. Based on discussions with the Company, the Monitor understands that the Company's actual cash flow results since the Filing Date are consistent with the Cash Flow Forecast, subject to timing differences which the Company expects will reverse in the near term. Based on the Company's Cash Flow Forecast assumption, the Monitor is of the view that the total DIP Facility of \$2.5 million should provide the Company with sufficient liquidity to continue to operate through April 26, 2024.
5. The Monitor understands that the DIP Lender is prepared to fund the Company and these proceedings in accordance with the Cash Flow Forecast, subject to: (a) the grant of the relief sought at the Comeback Motion for an increase in the permitted borrowings under the DIP Facility to \$2.5 million; and (b) a corresponding increase in the DIP Lender's Charge; and (c) the Company remaining in compliance with the terms and conditions of the DIP Term Sheet. The DIP Term Sheet was summarized in the Pre-filing Report and is provided in Appendix "D".

3.2 DIP Facility Recommendation

1. The Monitor is of the view that the increase to the permitted borrowing under the DIP Facility and the increase to the DIP Lender's Charge is appropriate and reasonable for the following reasons:
 - a) the Company is facing an imminent liquidity crisis and the proposed DIP Facility is the only financing source available to the Company to fund its immediate cash requirements;

- b) without the cash to be provided under the DIP Facility, the Company will be unable to continue operating and, consequently, advance its restructuring efforts;
- c) as set out in the Pre-Filing Report, KSV has compared the terms of the DIP Facility to other interim financing facilities approved by Canadian courts in recent CCAA proceedings. The comparison was appended to the Pre-Filing Report. Based on the Monitor's review, the cost of the proposed DIP Facility is within the range of similar facilities recently approved by the Court and other Canadian courts in CCAA and other restructuring proceedings;
- d) the DIP Facility is to rank subordinate to TD's security interest. Additionally, approximately \$450,000 of the DIP Facility is intended to be used to pay for capital expenditures on the Company's aircraft, being the Company's most significant asset and TD's primary security. Accordingly, it is the Monitor's opinion that the structure of the DIP Facility and the use of DIP Facility protects the interests of TD;
- e) the Monitor believes it is unlikely that any other lender would provide DIP funding on a subordinated basis to TD; and
- f) there are no structuring, facility, standby or other fees being charged by the DIP Lender under the DIP Facility.

4.0 Court Ordered Charges

4.1 Administration Charge

1. No change is being sought in the amount (\$350,000) or priority of the Administration Charge.

4.2 Directors' Charge

1. As noted above, the Court approved the Directors' Charge of \$480,000 until the Comeback Motion.
2. The Company is seeking an increase of the Directors' Charge from \$480,000 to \$970,000. The initial amount of the Directors' Charge was estimated by the Company in consultation with the Monitor, taking into consideration the payroll and vacation pay obligations of the Company. If unpaid, the Company's directors and officers could be liable for these obligations. In addition, the Company's employees are subject to the Canada Labour Code which provides that directors may also be liable for severance and termination amounts for employees who are terminated (along with any unpaid wages and vacation pay).
3. The amount of the Directors' Charge approved in the Initial Order represented the sum of one payroll cycle plus the estimated amount of the Company's vacation pay owing to retained employees. KSV understands that the Company is current on its normal course payroll obligations, including the remittance of employee withholding taxes.

4. As noted in the Pre-filing Report, the Company is usually in a refundable position in respect of GST and/or HST and accordingly, no provision has been made for unpaid sales taxes in the Directors' Charge.
5. The Cash Flow Forecast contemplates payroll will continue to be paid in the ordinary course.
6. The proposed increase in the Director's Charge is in respect of potential termination and severance obligations that the directors may be liable for pursuant to the Canada Labour Code. Based on a review of the potential severance and termination obligations provided by the Company, this obligation may be up to \$490,000.
7. The proposed Directors' Charge provides protection for the Company's directors and officers should the Company fail to pay certain obligations which may give rise to liability for directors and officers. The directors and officers of the Company have advised that they require the benefit of the Directors' Charge to continue to act in those capacities.
8. As noted in the Pre-filing Report, it is proposed that the Company's directors and officers would only be entitled to the benefit of the Directors' Charge to the extent that: (a) they do not have coverage under their existing insurance policies; (b) such coverage is insufficient to pay the Company's indemnity obligations; or (c) such coverage is denied by the insurance provider or expires. The directors and officers currently have insurance policies in place that provide for \$5 million in coverage.
9. KSV is of the view that the Directors' Charge is reasonable in the circumstances and that the continued involvement of the directors and officers is beneficial to the Company and the advancement of these proceedings.

4.3 Priority of the Court Ordered Charges

1. There is no change is being sought in the priority of the Court Ordered Charges, each of which is to rank subordinate to TD. The priority of the charges is to remain as follows:
 - a) Administration Charge
 - b) DIP Lender's Charge
 - c) Directors' Charge

5.0 Update on the Company's Operations and Activities

1. The Company's activities since the commencement of the proceedings have included:
 - a) operating its business in the ordinary course;
 - b) communicating with employees and other stakeholders regarding these proceedings;
 - c) corresponding with UPS;

- d) corresponding with Norton Rose and the Monitor regarding UPS, the Forbearance Agreement, the Escrow Agreement, employee matters and other issues;
- e) communicating with suppliers to secure goods and services during these proceedings and to address payment terms;
- f) considering cost-saving initiatives;
- g) corresponding regularly with representatives of the Monitor regarding numerous matters in these proceedings, including an aircraft currently in the possession of a supplier which is refusing to release the aircraft notwithstanding that the Company is offering to pay it for amounts owing in respect of the aircraft¹; and
- h) carrying out its stakeholder communication plan.

6.0 Monitor's Activities since the Initial Order

1. Since the Filing Date, the Monitor has, among other things:
 - a) met and corresponded regularly with the Company's management team regarding material issues in these proceedings;
 - b) worked with the Company's management team regarding the Company's stakeholder communication strategy;
 - c) mailed a CCAA notice to the Company's creditors and filed Forms 1 and 2 with the Office of Superintendent of Bankruptcy, as required under the CCAA;
 - d) posted the CCAA notice, list of creditors and other documents on the Monitor's website;
 - e) arranged for the publication of the CCAA notice in *The Globe and Mail (national edition)* in accordance with the Initial Order;
 - f) monitored the Company's receipts and disbursements;
 - g) engaged with its legal counsel, Cassels, on matters related to these proceedings, as necessary;
 - h) engaged extensively with Norton Rose regarding various matters relating to these proceedings including the Forbearance Agreement and the Escrow Agreement;
 - i) assisted the Company with key suppliers;
 - j) reviewed and commented on the Company's materials to be filed in support of the relief sought by the Company at the Comeback Motion; and
 - k) prepared this Report.

¹ This issue may be the subject of an emergency motion in the near term if this matter cannot be resolved.

7.0 Stay Extension

1. The stay of proceedings currently expires on March 21, 2024. The Company is requesting an extension of the Stay Period to April 26, 2024.
2. The Monitor supports the request for an extension of the stay of proceedings for the following reasons:
 - a) the Company is acting in good faith and with due diligence;
 - b) the Cash Flow Forecast reflects that the Company is projected to have sufficient cash flow to fund all of its post-filing obligations, subject to the increase in the maximum amount that could be borrowed under the DIP Facility;
 - c) it will provide the Company the opportunity to advance negotiations with UPS concerning the UPS Contract, which is integral to the success of these proceedings;
 - d) the Monitor believes that the extension is in the best interest of the Company's stakeholders and that no stakeholder will be prejudiced by extending the stay of proceedings;
 - e) as of the date of this Report, neither the Company nor the Monitor is aware of any party opposed to an extension of the stay of proceedings; and
 - f) the Company is projected to have sufficient liquidity to fund its operations until April 26, 2024.

8.0 Conclusion and Recommendation

1. Based on the foregoing, KSV respectfully recommends that this Honourable Court grant the amended and restated Initial Order in the form requested by the Company in its motion materials.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS MONITOR IN THE CCAA PROCEEDINGS OF
SKYLINK EXPRESS INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) MONDAY, THE 11TH
)
JUSTICE CAVANAGH) 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**")

INITIAL ORDER

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

ON READING the affidavit of 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 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 and 11, 2024 and on reading the consent of KSV to act as the Monitor,

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

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

4. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

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

5. 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.

6. 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 which are attributable to or in respect of the carrying on of the Business by the Applicant.

7. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as

rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

8. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court:

- (a) Except with respect to payments on account of the TD Bank Credit Facilities (as defined in the Affidavit of Kathryn Furfaro sworn March 8, 2024), to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

9. THIS COURT ORDERS that until and including March 21, 2024, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. 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

10. 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

11. 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

12. 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 accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

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

advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

16. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$480,000, as security for the indemnity provided in paragraph 15 of this Order. The Directors' Charge shall have the priority set out in paragraphs 33 and 35 herein.

17. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 15 of this Order.

APPOINTMENT OF MONITOR

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

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

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

- (g) perform such other duties as are required by this Order or by this Court from time to time.

20. 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.

21. 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.

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

23. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save

and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

24. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, whether incurred prior to, on or subsequent to the date of this Order, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a monthly basis or as may otherwise be agreed on.

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

26. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$350,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 33 and 35 hereof.

DIP FINANCING

27. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Momentum (the "**DIP Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$1.35 million unless permitted by further Order of this Court.

28. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicant and the DIP Lender dated as of March 8, 2024 (the "**DIP Term Sheet**"), filed.

29. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required

by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

30. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 33 and 35 hereof.

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 5 business days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's 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.

32. 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

33. 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 \$480,000).

34. 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.

35. 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.

36. 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.

37. 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.

38. 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

39. 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.

40. 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 .

41. 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.

42. 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

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

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

 Digitally signed
by Mr. Justice
Cavanagh

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, Court File No. CV-24-00716267-00CL
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

INITIAL ORDER

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Appendix “B”



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.

Appendix “C”

Skylink Express Inc. (the "Company")

Projected Statement of Cash Flow

For the Period ended April 26, 2024

(Unaudited; \$C)

Week	Notes	For the weeks ending								Total	
		08-Mar-24	15-Mar-24	22-Mar-24	29-Mar-24	05-Apr-24	12-Apr-24	19-Apr-24	26-Apr-24		
		1	2	3	4	5	6	7	8		
<i>Receipts</i>											
	UPS revenues	1	417,864	475,864	372,864	475,864	475,864	475,864	475,864	475,864	3,645,909
	GST/HST/QST returns	4	-	-	-	-	110,738	-	-	-	110,738
	DIP loan	2	-	900,000	450,000	450,000	300,000	-	-	400,000	2,500,000
	Total Receipts		417,864	1,375,864	822,864	925,864	886,602	475,864	475,864	875,864	6,256,647
<i>Disbursements</i>											
	Payroll	5	-	264,755	-	264,755	-	264,755	-	264,755	1,059,021
	Capital expenditures	6	60,500	134,841	-	-	182,423	-	74,250	-	452,014
	Leases	7	-	-	-	-	117,838	-	-	-	117,838
	Insurance	8	-	-	78,073	-	-	-	-	-	78,073
	Maintenance	9	57,129	57,129	57,129	57,129	57,129	57,129	57,129	57,129	457,030
	Aircraft operating expenses	10	198,420	198,420	198,420	198,420	170,959	170,959	170,959	170,959	1,477,517
	Other general expenses	11	31,420	309,920	331,420	9,920	26,045	9,920	9,920	9,920	738,483
	GST/HST/QST on expenditures	4	34,747	70,031	66,504	26,547	55,439	23,801	31,226	23,801	332,095
	TD Loan - Principal Repayment	12	244,830	-	-	-	244,830	-	-	-	489,660
	TD Loan - Interest	12	-	-	96,458	-	-	-	-	101,301	197,759
	Total Disbursements		627,046	1,035,096	828,004	556,771	854,663	526,563	343,483	627,864	5,399,490
	<i>Net cash flow before the undernoted</i>		(209,182)	340,768	(5,140)	369,093	31,938	(50,700)	132,381	247,999	857,157
	Professional fees	3	-	-	-	350,000	-	-	-	375,000	725,000
	Net cash flow		(209,182)	340,768	(5,140)	19,093	31,938	(50,700)	132,381	(127,001)	132,157
	Opening Cash Balance (line of credit)		(94,757)	(303,939)	36,829	31,689	50,781	82,720	32,020	164,401	(94,757)
	Net cash flow		(209,182)	340,768	(5,140)	19,093	31,938	(50,700)	132,381	(127,001)	132,157
	Closing Cash Balance (line of credit)		(303,939)	36,829	31,689	50,781	82,720	32,020	164,401	37,400	37,400

Appendix “D”

March 8, 2024

Skylink Express Inc.
 55 St. Clair West, Suite 210
 Toronto, ON M4V 2Y7

Attention: David Atkins, President

Re: Debtor-in-Possession Financing of Skylink Express Inc. (the “Borrower”)

A. The Borrower intends to make an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an initial order (the “**Initial Order**”), among other things, commencing proceedings under the *Companies’ Creditors Arrangement Act* (the “**CCAA Proceedings**”), imposing a stay of proceedings in favour of the Borrower (the “**Initial Stay**”), appointing KSV Restructuring Inc. as monitor of the Borrower (in such capacity, the “**Monitor**”) and approving this Term Sheet and granting the DIP Lender’s Charge (as defined herein) to secure the initial authorized advance of \$1.35 million;

B. In the event that the Initial Order is granted, and prior to the expiry of the Initial Stay, the Borrower will seek an Amended and Restated Initial Order (as may be further amended and restated from time to time in accordance with this Term Sheet, the “**ARIO**”) within the CCAA Proceedings, seeking, in addition to the relief set out in the Initial Order: (i) an extension of the Initial Stay; (ii) approval of a Court-supervised sale and investment solicitation process (the “**SISP**”); (iii) approval of an increase in the authorized limit of the DIP Facility (defined below) secured by the DIP Lender’s Charge to \$2.5 million;

C. The Borrower requires funding for the purposes set out below;

D. Momentum Decisive Solutions Canada Inc. (the “**Lender**”) has agreed to advance a debtor-in-possession loan in the aggregate principal amount of \$2.5 million, subject to and in accordance with the terms and conditions of this term sheet (this “**Term Sheet**”);

NOW THEREFORE in consideration of the foregoing and the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

SUMMARY OF TERMS FOR DIP FACILITY

- | | |
|-----------------------------------|---|
| 1. Borrowers: | Skylink Express Inc. |
| 2. Lender: | Momentum Decisive Solutions Canada Inc. |
| 3. DIP Facility / Deposit: | Non-revolving facility in the maximum aggregate principal amount of \$2.5 million (the “ DIP Facility ”). |
| 4. Purpose: | The DIP Facility shall be available to fund: (i) working capital expenses and professional fees and expenses incurred by the Borrower and the Monitor in respect of the CCAA Proceedings, in all cases in accordance with the cash flow projections approved by the Monitor and the Lender (the “ Cash Flow Projections ”); (ii) the Recoverable |

Expenses (as defined below); and (iii) such other costs and expenses of the Borrower as may be agreed to by the Lender, in writing.

The amount and purpose of the DIP Facility may be amended by the Borrower and the Lender in writing. The Borrower may not use the proceeds of the DIP Facility to pay any pre-filing obligations of the Borrower, except in accordance with the Cash Flow Projections or with the prior written consent of the Lender and the Monitor.

5. Advances:

Subject to the funding conditions set out in Section 11 of this Term Sheet, the DIP Facility shall be available by multiple advances (individually, an “**Advance**” and collectively, the “**Advances**”) as follows:

- (a) Upon one or more requests from the Borrower, upon the issuance of the Initial Order, up to a maximum of \$1.35 million, or such lesser amount as may be approved by the Initial Order and secured by the DIP Lender’s Charge (the “**First Advance**”), may be advanced to the Borrower to finance those expenses projected to be incurred in the first 10 days after the issuance of the Initial Order as set out in the Cash Flow Projection; and
- (b) upon the issuance of the ARIIO, the balance of all amounts owing under the DIP Facility that must be approved by the Court and secured by the DIP Lender’s Charge, being \$2.5 million, shall be advanced to the Borrower on not more than a weekly basis (unless otherwise agreed to by the Lender in writing), subject to receipt of a written draw request by the Lender from the Borrower (each a “**Subsequent Advance**”) which draw request may, for greater certainty, be made by email.

The Borrower shall endeavour to provide the Lender with no less than two (2) business days’ written notice for any requested Advance.

Nothing in this Term Sheet creates a legally binding obligation on the Lender to advance any amount under the DIP Facility at any time unless the Borrower are in compliance with the provisions of this Term Sheet.

6. Interest:

Interest shall accrue on amounts Advanced under the DIP Facility at a rate equal to the 15% per annum (the “**Interest**”). Interest shall be calculated on the daily outstanding balance owing under the DIP Facility, not in advance, and shall accrue and be paid on the Maturity Date (as defined herein).

7. Recoverable Expenses:

The Borrowers shall pay all fees and expenses (collectively, the “**Recoverable Expenses**”) incurred by the Lender in connection with the preparation, registration and ongoing administration of this Term Sheet, the DIP Facility, the Initial Order, the ARIO, the DIP Lender’s Charge (as defined below) and with the enforcement of the Lender’s rights and remedies hereunder and thereunder, at law or in equity, including, without limitation all reasonable legal fees and disbursements incurred by the Lender. For greater certainty, “**Recoverable Expenses**” shall include all reasonable fees and expenses incurred by the Lender in connection with the CCAA Proceedings and all Court attendances in respect thereof. If the Lender has paid any expenses for which the Lender is entitled to reimbursement from the Borrowers, such expenses shall be added to the DIP Facility and shall accrue Interest at the rate set out above. All such fees and expenses and Interest thereon shall be secured by the DIP Lender’s Charge whether or not any funds under the DIP Facility are advanced.

8. Security:

All debts, liabilities and obligations of the Borrower to the Lender under or in connection with the DIP Facility (including, without limitation, Interest and Recoverable Expenses), this Term Sheet and any other documents executed in connection therewith shall be secured by a Court-ordered priority charge (the “**DIP Lender’s Charge**”) granted to the Lender in and to all present and future properties, assets, and undertakings of the Borrower, real and personal, tangible and intangible, whether now owned or hereafter acquired, and the proceeds thereof (the “**Property**”), subject only to:

- (a) an administration charge in the maximum aggregate amount of \$350,000 under the Initial Order and increased to \$500,000 under the ARIO for the payment of the fees and expenses of the Monitor, counsel to the Borrowers and counsel to the Monitor (the “**Administration Charge**”); and
- (b) the security held by the Toronto-Dominion Bank in connection with the loan facility entered into by the Borrower pursuant to a commitment letter dated November 2, 2020 (as amended, the “**TD Commitment Letter**”).

A directors’ charge in the maximum aggregate amount of \$480,000 under the Initial Order and increased to an amount as may be agreed to by the Lender pursuant to the ARIO as security for the indemnity provided to the directors and officers of the Borrower against obligations and liabilities they may incur after the commencement of the CCAA Proceedings (the “**Directors’ Charge**”) shall be permitted but shall rank subordinate to the DIP Lender’s Charge under the terms of the Initial Order and the ARIO. No other charges shall be permitted unless otherwise consented to by the Lender in writing.

9. Maturity Date: Unless otherwise agreed to by the Lender and the Borrowers in writing, the term of the DIP Facility shall expire, and the Borrowers shall repay all obligations owing to the Lender under this Term Sheet, on the earliest of (the “**Maturity Date**”):

- (a) April 30 2024;
- (b) the closing of a sale or investment transaction for all or substantially all of the assets or shares of the Borrower, which transaction has been approved by an order of the Court;
- (c) the implementation of a plan of compromise or arrangement within the CCAA Proceedings, which has been approved by the requisite majority of the Borrower’s creditors, and by an order of the Court;
- (d) the date on which the CCAA Proceedings are terminated for any reason, including if the CCAA Proceedings are converted into a proceeding under the *Bankruptcy and Insolvency Act* (the “**BIA**”); and
- (e) the occurrence of an Event of Default (as defined herein), subject to a cure period of five (5) business days, beginning on the date of the occurrence of such Event of Default.

10. Repayment: Upon the occurrence of the Maturity Date, the aggregate principal amount owing under the DIP Facility plus all accrued and unpaid Interest and Recoverable Expenses. The DIP Facility may be prepaid at any time, without penalty, (provided all accrued and unpaid Interest and Recoverable Expenses are paid in full). If the Borrower chooses to prepay any amount owing under the DIP Facility, any such payment shall be applied: (i) first, to all accrued and unpaid Interest; (ii) second, to the Recoverable Expenses; and (iii) third, to any principal amount outstanding under the DIP Facility.

11. Conditions Precedent: The availability of the First Advance under the DIP Facility shall be subject to and conditional upon the following, which may be waived by the Lender in writing:

- (a) the Court shall have issued the Initial Order, in a form and on notice satisfactory to the Lender, including:
 - i. approving this Term Sheet and the DIP Facility;
 - ii. granting the DIP Lender’s Charge in favour of the Lender;

- iii. authorizing the Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the DIP Lender's Charge;
 - iv. providing that the DIP Lender's Charge shall be valid and effective to secure all of the obligations of the Borrower to the Lender hereunder, without the necessity of the making of any registrations or filings and whether or not any other documents have been executed by the Borrower;
 - v. declaring that the granting of the DIP Lender's Charge and all other documents executed and delivered to the Lender as contemplated herein, including, without limitation, all actions taken to perfect, record and register the DIP Lender's Charge, do not constitute conduct meriting an oppression remedy, settlement, fraudulent preference, fraudulent conveyance or other challengeable or reviewable transaction under any applicable federal or provincial legislation; and
 - vi. provisions restricting the granting of any additional liens or encumbrances on the assets of the Borrower, other than as permitted herein and the DIP Lender's Charge.
- (b) the Initial Order shall not have been vacated, stayed, appealed or amended in a manner not acceptable to the Lender, acting reasonably; and
- (c) no Event of Default shall have occurred.

The availability of each Subsequent Advance under the DIP Facility shall be subject to and conditional upon the following, which may be waived by the Lender in writing:

- (a) the Court shall have issued the ARIO, in a form and on notice satisfactory to the Lender, including:
 - i. approving this Term Sheet and the DIP Facility;
 - ii. granting the DIP Lender's Charge in favour of the Lender;
 - iii. authorizing the Lender to effect registrations, filings and recordings wherever in its discretion it deems appropriate regarding the DIP Lender's Charge;
 - iv. providing that the DIP Lender's Charge shall be valid and effective to secure all of the obligations of the Borrower to the Lender hereunder, without the necessity of the making

of any registrations or filings and whether or not any other documents have been executed by the Borrower;

- v. declaring that the granting of the DIP Lender's Charge and all other documents executed and delivered to the Lender as contemplated herein, including, without limitation, all actions taken to perfect, record and register the DIP Lender's Charge, do not constitute conduct meriting an oppression remedy, settlement, fraudulent preference, fraudulent conveyance or other challengeable or reviewable transaction under any applicable federal or provincial legislation; and
 - vi. provisions restricting the granting of any additional liens or encumbrances on the assets of the Borrower, other than as permitted herein and the DIP Lender's Charge.
- (b) the ARIO shall not have been vacated, stayed, appealed or amended in a manner not acceptable to the Lender, acting reasonably; and
- (c) no Event of Default shall have occurred.

12. Covenants

The Borrower covenants and agrees with the Lender, so long as any amounts are outstanding by the Borrower to the Lender hereunder, to:

- (a) promptly on the receipt by the Borrower of the same, give the Lender a copy of any Notice of Motion or Application to vary, supplement, revoke, terminate or discharge the Initial Order, the ARIO, without limitation, any application to the Court for the granting of new or additional security that will or may have priority over the DIP Lender's Charge, or otherwise for the variation of the priority of the DIP Lender's Charge;
- (b) if requested by the Lender, to provide the Lender with drafts of all materials that the Borrower intends to file in the CCAA Proceedings;
- (c) provide the Lender with any additional financial information reasonably requested by the Lender, to the extent that it is readily available;
- (d) use the Advances under the DIP Facility for the purposes for which they are being provided, as set out in Section 4 of this Term Sheet, or such other purposes that may be agreed to by the Lender in writing;
- (e) provide the Lender with prompt written notice of any event which constitutes, or which, with notice, lapse of time, or both,

would constitute an Event of Default, a breach of any covenant, or other term or condition of this Term Sheet, or of any document executed in connection with this Term Sheet;

- (f) keep and maintain books of account and other accounting records in accordance with generally accepted accounting principles;
- (g) pay all property taxes and other claims which, under law, may rank prior to or *pari passu* with the DIP Lender's Charge due and payable from and after the commencement of the CCAA Proceedings, as and when such amounts are due;
- (h) not make any payment to any officer, employee or related party of the Borrower (except salary and wages in the normal course) other than in accordance with any payments authorized under the Director's Charge, without the prior written consent of the Lender;
- (i) keep the Borrower's assets fully insured against such perils and in such manner as would be customarily insured by companies owning similar assets;
- (j) not, without the prior written consent of the Lender, incur any borrowings or other secured indebtedness, obligations or liabilities, other than the DIP Facility, or create or grant any security (other than the Administration Charge, the Directors' Charge and the DIP Lender's Charge) over any of the Borrower's Property, whether ranking in priority to or subordinate to the DIP Lender's Charge;
- (k) not sell, transfer, assign, convey or lease any Property unless agreed to by the Lender;
- (l) provide notice of any material communication received by the Borrower to the Lender including any notice of default or termination of any material contract, license or permit;
- (m) provide updates to the Lender, as may be reasonably requested by the Lender from time to time, on the Borrower's cash flows as compared to the Cash Flow Projections for such week and an explanation of any material variances;
- (n) conduct all activities in the ordinary course and in material compliance with the Cash Flow Projections; and
- (o) the Borrower shall be in material compliance in material respects with applicable laws except as may be authorized by the CCAA proceedings.

13. Events of Default: The DIP Facility shall be subject to the following events of default (each, an “**Event of Default**”):

- (a) the Borrower’s failure to pay any amount due hereunder when due and payable;
- (b) any covenant, condition precedent, payment obligation, or other term or condition of this Term Sheet is not complied with or fulfilled to the satisfaction of the Lender;
- (c) the Initial Order is not obtained in form and substance satisfactory to the Lender on or before March 11, 2024, and the ARIO, in each case in form and substance satisfactory to the Lender, is not obtained on or before March 21, 2024;
- (d) the seeking or support by the Borrower of any Court order (in the CCAA Proceedings or otherwise) to which the Lender, in its sole discretion, does not consent;
- (e) the issuance of any Court order lifting or terminating (in whole or in part) the stay of proceedings in the CCAA Proceedings, or discontinuing, dismissing or otherwise terminating the CCAA Proceeding;
- (f) the issuance of any Court order staying, reversing, vacating or modifying the terms of the Initial Order, the ARIO, the DIP Facility or the DIP Lender’s Charge, in each case without the Lender’s consent;
- (g) the issuance of any Court order (in the CCAA Proceedings or otherwise) to which the Lender, in its sole discretion, does not consent;
- (h) the service or filing of a notice of appeal, application for leave to appeal, or an appeal in respect of the Initial Order or the ARIO in each case if the notice of appeal, application for leave to appeal or appeal is not being actively defended by the Borrower or if the appeal is actually granted;
- (i) the occurrence of an event that will, in the opinion of the Lender, materially impair the Borrower’s financial condition, operations or ability to perform under this Term Sheet or any order of the Court;

- (j) the failure by the Borrower to comply with the Initial Order or the ARIO or any other Order issued in the CCAA Proceedings which has been consented to by the Lender;
- (k) the occurrence of any material adverse change in: (i) the business, operations, or financial condition of the Borrower; (ii) the Property of the Borrower; (iii) the DIP Lender's Charge, including its relative priority; (iv) the ability of the Borrower to perform their obligations to the Lender or to any person under any material contract; (v) the Lender's ability to enforce any of its rights or remedies against the Borrower's Property or for the obligations of the Borrower to be satisfied from the realization thereof;
- (l) any changes in the composition of the Borrower's board of directors, management, or other change of control of the Borrower not approved by the Lender;
- (m) the Borrower becomes bankrupt or subject to a proceeding under the BIA, or a receiver, interim receiver, receiver and manager or trustee in bankruptcy is appointed in respect of any Borrower, or any Borrower's Property;
- (n) TD enforces on any the security granted by the Borrower pursuant to the TD Commitment Letter including repossession or foreclosure on any aircraft or calls on or demands on the guarantee given by the DIP Lender to TD in connection with the TD Commitment Letter;
- (o) the sale, transfer, assignment, conveyance or lease of substantially all of the business or assets of the Borrower that has not been approved or consented to by the Lender in writing;
- (p) the filing of any plan of reorganization, arrangement or liquidation to which the Lender does not consent;
- (q) the commencement of any claim, action, proceeding, application, motion, defense or other contested matter the purpose of which is to seek, or the result of which would be, to obtain any order, judgment, determination, declaration or similar relief: (i) invalidating, setting aside, avoiding, or subordinating the obligations of the Borrower under the DIP Facility, the DIP Lender's Charge or its priority; (ii) for monetary, injunctive or other relief against the Lender or the Borrower's Property; or (iii) preventing, hindering or otherwise delaying the exercise by the Lender of any of its rights and remedies hereunder, pursuant to the Initial Order,

the ARIO or under applicable law, or the enforcement or realization by the Lender against any of its collateral;

- (r) The actual cumulative disbursements of the Borrower are, at any time in the first month greater than 115% of the budgeted disbursements set out in the Cash Flow Projections and thereafter are at any time greater than 115% of the budgeted disbursements set out in the Cash Flow Projections, in each case for the cumulative period from the commencement of the Cash Flow Projections to the then current date.

14. Remedies and Enforcement

Following the occurrence of an Event of Default, and the expiration of the cure period prescribed in Section 9(e), upon written notice to the Borrower and the Monitor, the Lender shall have the right, subject to the Lender obtaining an Order from the Court lifting the stay under the CCAA Proceedings, to:

- (a) enforce the DIP Lender's Charge and realize on the Property and any other collateral securing the DIP Facility;
- (b) exercise the rights and powers of a secured lender pursuant to the *Personal Property Security Act* or any legislation of similar effect;
- (c) declare all debts, liabilities and obligations of the Borrower to the Lender under or in connection with the DIP Facility (including, without limitation, Interest and Recoverable Expenses), this Term Sheet and any other documents executed in connection therewith to be immediately due and payable;
- (d) terminate the DIP Facility; and
- (e) exercise all such other rights and remedies available to the Lender under this Term Sheet, the Initial Order, the ARIO, any other order of the Court or applicable law.

No failure or delay on the part of the Lender in exercising any of its rights and remedies shall be deemed to be a waiver of any kind.

15. Further Assurances The Borrower will, at its own expense and promptly on demand by the Lender at any time, do such acts and things and execute and deliver such documents as the Lender may reasonably request to give effect to any other provisions set out hereunder.

16. Assignment: The Borrower shall not assign this Term Sheet or any of the provisions set out herein. The Lender may assign or sell its rights or obligations

with respect to this Term Sheet to any person without the prior written consent of the Borrower.

17. Governing Law: The DIP Facility and the provisions set out herein shall be governed and construed in all respects in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

18. Currency: All dollar amounts herein are in Canadian Dollars.

19. Acceptance: This Term Sheet is open for acceptance until 5:00 p.m. (Toronto time) on March 8, 2024. The Borrower may accept this Term Sheet by returning a countersigned copy of this Term Sheet to the Lender (by electronic transmission or personal delivery).

[Signature Page Follows]

Dated this 8 day of March, 2024

**MOMENTUM DECISIVE SOLUTIONS
CANADA INC.**

By  _____

Name: Stephen Arbib

Title: CEO

I have authority to bind the Corporation.

ACCEPTANCE**TO THE LENDER:**

For good and valuable consideration received, the undersigned accepts and agrees to comply with the provisions of the Term Sheet set out above.

Dated this 8 day of March, 2024.

SKYLINK EXPRESS INC.By  _____

Name: David Atkins

Title: President

I have authority to bind the Corporation.

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

FIRST REPORT OF THE MONITOR

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