



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

April 22, 2024

Contents

Page

1.0 Introduction 1

 1.1 Purposes of this Report 2

 1.2 Restrictions 3

 1.3 Currency 4

2.0 Background 4

 2.1 TD 5

 2.2 Forbearance Agreement 6

 2.3 Escrow Agreement 6

 2.4 Recommendations 7

3.0 UPS Update 7

4.0 Cash Flow 8

 4.1 Cash Flow Forecast 8

5.0 Company’s Activities 9

6.0 Monitor’s Activities 10

7.0 Stay Extension 10

8.0 Conclusion and Recommendation 11

Appendix

Tab

Initial Order dated March 11, 2024 A

Endorsement dated March 11, 2024 B

The Forbearance Agreement dated April 19, 2024 C

The Escrow Agreement dated April 19, 2024 D

Cash Flow Forecast E

Company’s Report on Cash Flow Forecast F

Monitor’s Report on Cash Flow Forecast G

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.

SECOND REPORT OF KSV RESTRUCTURING INC.
AS MONITOR

APRIL 22, 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**”). Copies of the Initial Order and the Court’s endorsement (the “**Endorsement**”) issued in connection with the Initial Order are provided in 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 is 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 the Company's sole shareholder, Momentum Decisive Solutions Canada Inc. ("**Momentum**" and, in such capacity, the "**DIP Lender**"), to secure advances made under a DIP 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. On March 21, 2024, the Court issued an amended and restated initial order (the "**ARIO**"), which granted:
 - a) an extension of the stay of proceedings to April 26, 2024;
 - b) an increase in the Directors' Charge to \$970,000; and
 - c) an increase in the Company's permitted borrowings under the DIP Facility to \$2.5 million, which amounts are secured by the DIP Lender's Charge.
4. To date, the principal purpose of these proceedings has been to provide the Company an opportunity, in the context of the stabilized environment created by CCAA protection, to address its liquidity challenges resulting largely from its contract (the "**UPS Contract**") with United Parcel Service Canada Ltd. ("**UPS**"), which is integral to the Company's business. The Company continues to seek a solution with UPS that provides a framework for working together in the future; however, the Company is also contingency planning in the event a solution cannot be identified, as discussed in greater detail in this report (the "**Second Report**").
5. 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. Mr. Dennhardt also swore a second affidavit, on April 20, 2024, in support of the relief sought by the Company in its present motion (the "**Second Dennhardt Affidavit**").
6. The Dennhardt Affidavit, the Pre-filing Report, the Monitor's first report dated March 18, 2024 (the "**First Report**"), this report, and the Second Dennhardt Affidavit, as well as 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 Second Report are to:
 - a) provide the Court with an update on the Company's:
 - i. business and operations since the commencement of these proceedings;
 - ii. negotiations with UPS; and

- iii. next steps in these proceedings, including contemporaneously:
 - continuing discussions with UPS;
 - considering an orderly transition plan for the Company's business which might include a wind-down of the UPS relationship if the UPS Contract cannot be renegotiated; and
 - planning for an orderly sale process of the Company's business and assets (the "**Sale Process**");
- b) update the Court on the status of:
 - i. a forbearance agreement dated April 19, 2024 among the Company, Momentum and TD (the "**Forbearance Agreement**"); and
 - ii. an escrow agreement dated April 19, 2024 among Momentum, TD, the Monitor and Norton Rose (the "**Escrow Agreement**");
- 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 recommendation that the Court issue an Order:
 - i. extending the stay of proceedings from April 26 to May 31, 2024;
 - ii. approving the Forbearance Agreement; and
 - iii. approving the Escrow Agreement.

1.2 Restrictions

1. In preparing this Second 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 (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 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 must be converted to cargo planes before they can be flown by the Company. Conversion of one of the 1900D aircraft has started and was initially paused at the commencement of these CCAA proceedings, but is now expected to be complete in the near future. Conversion of the other 1900D aircraft has not started.
3. UPS is the Company's primary customer. The Company and UPS are party to the UPS Contract, a long-term feeder aircraft charter agreement pursuant to which the Applicant provides cargo services for UPS throughout Canada. The Applicant generates a large majority of its revenue from the UPS Contract. The UPS Contract expires in 2027. A principal focus of these proceedings has been to renegotiate the UPS Contract. The status of the UPS Contract is discussed in further detail in Section 3 below.
4. The Company's registered office is 55 St. Clair Avenue West, Suite 210, Toronto, Ontario.
5. As of the Filing Date, the Company employed 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. Since the Filing Date, the Company's headcount has declined by six due to six terminations, three resignations and three new hires.
6. Momentum acquired the Company in 2020. At that time, the Company was performing well and forecasting significant growth. Since the acquisition, Momentum has provided 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.
7. Momentum has been funding these proceedings under the DIP Facility, which ranks subordinate to amounts owing to TD under the TD Loan Facilities pursuant to the ARIO. As of the date of this Report, Momentum has advanced \$1.5 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 revenue escalation provisions of the UPS Contract are not sufficient to compensate the Company for its cost increases and, accordingly, the Company is unable to operate profitably.
10. Additional background information about the Company and these proceedings is provided in the Dennhardt Affidavit, Second Dennhardt Affidavit, and the Pre-filing Report.

2.1 TD

1. TD is the only party with a registration filed against the Company in the applicable provincial personal property security registration systems and the Monitor understands it is the Company's only secured creditor. The Company is indebted to TD pursuant to a credit facilities letter agreement dated November 2, 2020 (the "**Credit Agreement**"). TD was granted security over all of the Company's assets pursuant to a general security agreement, aircraft security, assignment of insurance and hypothec (the "**TD Loan Security**"). Momentum has also provided a limited recourse guarantee of the TD Loan Facilities in the amount of \$15 million and provided security in connection with its guarantee. As at the date of this Report, the balance on the TD Loan Facilities was approximately \$13.46 million.
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.
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) the Company, Momentum and TD would negotiate 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 (the "**Additional Cash Collateral**") in escrow to be held in trust with Norton Rose, subject to agreeing on the terms of an escrow agreement.
4. Momentum also agreed that the Additional Cash Collateral would be sourced from an injection of fresh capital and not from its existing working capital. TD 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 no longer has access to this facility.
6. The Company has also continued to make scheduled debt service payments to TD from advances under the DIP Facility.
7. The Forbearance Agreement and the Escrow Agreement were executed on April 19, 2024. Copies of the Forbearance Agreement and the Escrow Agreement are provided in Appendices “C” and “D”, respectively. These agreements are summarized below.

2.2 Forbearance Agreement¹

1. Pursuant to the terms of the Forbearance Agreement:
 - a) TD agreed to forbear until the earlier of i) the expiration of the Stay Period (as defined in the ARIO and as may be further extended by Court Order in the CCAA proceedings); and ii) the occurrence of an Event of Default (as defined below);
 - b) the Company and Momentum are to each pay TD a one time forbearance fee of \$50,000;
 - c) the Company will continue to pay all monthly principal and interest payments to TD as they come due;
 - d) the net proceeds of the sale, transfer or disposition of the Assets outside of the ordinary course shall be deposited into the Company’s TD bank account;
 - e) upon the occurrence of an Event of Default, TD is entitled to enforce its rights under the TD Loan Security against the Assets to the extent of the indebtedness owing to TD;
 - f) msi Spergel inc. (“**Spergel**”) is appointed as TD’s consultant to, among other things, review and assess all business plans, the UPS Contract, the Company’s financial performance and the Company’s weekly financial and cash flow reporting; and
 - g) Events of Default include i) a failure in the performance of any payment, provision, covenant, obligation or agreement contained in the Forbearance Agreement, TD Loan Security or the Credit Agreement between the Company and TD; ii) if Momentum refuses or fails to finance the Company’s cash flow requirements to the extent DIP funding is required for such expenses; (iii) if the Company makes a voluntarily assignment in bankruptcy or moves to terminate the CCAA Proceedings; and iv) TD determining that a material adverse change has occurred, which material adverse change would prevent the Borrower from performing its obligations under the Repayment Plan.

2.3 Escrow Agreement²

1. Pursuant to the Escrow Agreement, Momentum agreed to post the Additional Cash Collateral in an escrow account with Norton Rose, which would act as escrow agent

¹ Capitalized terms not otherwise defined herein are as defined in the Forbearance Agreement.

² Capitalized terms not otherwise defined herein are as defined in the Escrow Agreement.

(the “**Escrow Agent**”). The Additional Cash Consideration, and any accrued interest thereon (the “**Escrow Funds**”), would only be released in the event that both TD and Momentum issue a joint direction or as follows:

To TD,

- a) upon the Escrow Agent’s receipt of a notice from TD and the Monitor confirming non-payment of principal or interest or fees outstanding under the Credit Agreement within three business days of being due; and
- b) upon the Escrow Agent’s receipt of a notice from the Monitor confirming that the Company has filed an assignment in bankruptcy or terminated the CCAA Proceedings.

To Momentum,

- c) upon the Escrow Agent’s receipt of a notice from the Monitor confirming that TD successfully appointed a receiver in respect of the Company pursuant to *Bankruptcy and Insolvency Act* and/or the *Court of Justice Act*; or
 - d) upon the Escrow Agent’s receipt of notice signed by TD confirming that all amounts under the Credit Agreement have been paid in full.
2. The Escrow Agent can also release the Escrow Funds to a designated party upon written receipt of instructions signed by Momentum and TD.

2.4 Recommendations

1. The Monitor recommends that the Court approve the Forbearance Agreement and the Escrow Agreement as they provide the framework for an orderly restructuring process which is acceptable to the Company and TD, as the Company’s senior ranking creditor. Approval of these agreements will provide the Company the opportunity to continue to explore all opportunities to restructure its business and/or to maximize recoveries for its benefit and the benefit of its stakeholders.

3.0 UPS Update

1. Immediately following the Filing Date, the Company contacted UPS to continue discussions concerning the UPS Contract which were ongoing at that time. The Company advised UPS that the Company was facing a liquidity crisis that necessitated the CCAA filing and that absent amendments to the financial terms of the UPS Contract, the Company would not be able to continue to service the UPS Contract. UPS was also advised that Momentum was funding the Company’s business and was not prepared to continue to fund the Company’s losses beyond the April 26, 2024 stay extension date. The Monitor also contacted UPS and its external counsel to impress the urgency of the situation.
2. The Company has provided UPS with several proposals for an amended contract, including an interim proposal pursuant to which UPS would provide funding to the Company while negotiations continue. These proposals have not been acceptable to UPS. UPS has also provided proposals to the Company, but those proposals were not acceptable to the Company. As of the date of this Second Report, no agreement has been reached. The Company remains hopeful that a solution can be identified and continues to assess various models and scenarios to determine whether a workable solution may be reached; however, the Company and UPS are now also

working cooperatively to consider an orderly transition plan in the event a long term solution cannot be identified. As of the date of this Second Report, the Company and UPS have not finalized the transition plan.

- The Company also intends to use the requested stay extension period to consider, on a contingency basis, the Sale Process, which would include the sale of its aircraft and/or its business. The Company's turn key operation (including its regulatory approvals) is likely to be attractive to certain buyers. Additionally, the Company's aircraft have been uniquely modified to provide air cargo services and there are few similar aircraft available for sale. Prior to seeking approval of the Sale Process, the Company intends to discuss the Sale Process with TD. Absent resolution of the UPS Contract, it is presently contemplated that the Company would seek Court approval of the Sale Process on or prior to the end of the requested stay extension period.

4.0 Cash Flow

4.1 Cash Flow Forecast

- A comparison of the Company's actual cash flow for the period March 2 to April 19, 2024 to the cash flow forecast provided in the First Report (the "**Prior Forecast**") is provided below.

(unaudited; CAD)	Forecast	Actual	Variance
Receipts			
UPS revenues	3,170,045	3,113,284	(56,761)
GST/HST/QST refunds	110,738	13,580	(97,158)
	<u>3,280,783</u>	<u>3,126,864</u>	<u>(153,919)</u>
Disbursements			
Payroll	794,266	713,880	(80,386)
Capital expenditures	452,014	133,258	(318,756)
Leases	117,838	117,838	-
Insurance	78,073	78,073	-
Maintenance	399,902	311,417	(88,485)
Aircraft operating expenses	1,306,558	1,189,054	(117,503)
Other general expenses	728,563	526,125	(202,438)
GST/HST/QST on expenditures	308,295	204,478	(103,817)
TD Loan - principal repayment	489,660	489,660	-
TD Loan – interest	96,458	95,471	(987)
	<u>4,771,626</u>	<u>3,859,254</u>	<u>(912,372)</u>
Net cash flow before the undernoted	(1,490,842)	(732,390)	758,452
Professional fees	350,000	313,830	(36,170)
Net Cash Flow	<u>(1,840,842)</u>	<u>(1,046,220)</u>	<u>794,622</u>
Opening Cash Balance	(94,757)	(94,757)	-
Net Cash Flow	(1,840,842)	(1,046,220)	794,622
DIP Financing	2,100,000	1,500,000	(600,000)
Ending Cash Balance	<u>164,401</u>	<u>359,023</u>	<u>194,622</u>

2. As reflected above, as of April 19, 2024, the Companies have borrowed \$1.5 million under the DIP Facility compared to \$2.1 million which had been projected in the Prior Forecast. The significant variances in the actual cash flow compared to the Prior Forecast are as follows:
 - Collection of GST/HST/QST refunds: This is expected to be a timing difference as the refund is being held by Canada Revenue Agency pending completion of an HST/GST audit;
 - Capital expenditures: This is due to a delay in sourcing capital assets and upgrades for certain aircraft, which delays have not impacted operations;
 - Maintenance: This is due to lower-than-average maintenance work in March; and
 - Aircraft operating expenses: This is due to a lower than projected sub-charter costs due to lower than anticipated aircraft maintenance.
3. The Company, with the assistance of the Monitor, has prepared a cash flow forecast for the period April 20 to May 31, 2024 (the “**Cash Flow Forecast**”). The Cash Flow Forecast is provided in Appendix “E”. The Company’s and the Monitor’s statutory reports on the Cash Flow Forecast are attached as Appendices “F” and “G”, respectively.
4. The Cash Flow Forecast reflects that the Company is projected to require advances of \$650,000 under the DIP Facility between April 13 and May 31, 2024. As at the date of this Report, the Company has borrowed \$1.5 million under the DIP Facility. Accordingly, the Company is not seeking an increase in the DIP Facility at this time.
5. Based on the Monitor’s review of the Cash Flow Forecast, the cash flow assumptions appear reasonable.

5.0 Company’s Activities

1. The Company’s activities since the commencement of the proceedings have included:
 - a) operating its business, subject to the terms of the ARIO, in the ordinary course;
 - b) carrying out a stakeholder communication plan immediately following the issuance of the Initial Order;
 - c) communicating with employees and other stakeholders regarding these proceedings and dealing with all human resource matters;
 - d) corresponding extensively with UPS in the context of its daily operations and the negotiation of the UPS Contract;
 - e) corresponding with Norton Rose and the Monitor regarding UPS, the Forbearance Agreement, the Escrow Agreement, employee matters, critical vendors and other issues;
 - f) communicating with suppliers to secure goods and services during these proceedings and to address payment terms;
 - g) considering cost-saving initiatives;

- h) reviewing the Company's cash flow forecast and comparing actual results to projected results;
- i) reporting weekly on its financial performance during these proceedings;
- j) preparing the Cash Flow Forecast; and
- k) considering a transition plan with respect to UPS and starting to consider the Sale Process.

6.0 Monitor's Activities

1. Since the Filing Date, the Monitor has been, among other things:
 - a) meeting and corresponding regularly with the Company's management team regarding operating issues and CCAA matters;
 - b) monitoring the Company's receipts and disbursements and attending weekly calls with the Company regarding same;
 - c) engaging with Cassels concerning the Comeback Motion, TD, UPS, the Forbearance Agreement and the Escrow Agreement and this motion;
 - d) corresponding with UPS and its external counsel;
 - e) dealing with Norton Rose regarding all aspects of these proceedings, including UPS and TD matters;
 - f) assisting the Company to deal with key suppliers, including its credit card provider, which temporarily de-activated the Company's credit cards;
 - g) considering a potential transition of the UPS business and the Sale Process;
 - h) reviewing and commenting on the Company's materials to be filed in support of the relief sought at this motion; and
 - i) preparing the First Report and this Report.

7.0 Stay Extension

1. The stay of proceedings currently expires on April 26, 2024. The Company is requesting an extension of the Stay Period to May 31, 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 liquidity to fund its post-filing obligations;
 - c) it will provide the Company additional time to consider whether there is a workable business model for the UPS Contract, and if not, to develop a transition plan with UPS and to prepare for a Sale Process;

- d) TD does not oppose the stay extension;
- e) 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;
- f) 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
- g) the Company is projected to have sufficient liquidity to fund its operations until May 31, 2024.

8.0 Conclusion and Recommendation

1. Based on the foregoing, KSV respectfully recommends that this Honourable Court grant an Order extending the stay of proceedings to May 31, 2024 and approving the Forbearance Agreement and the Escrow Agreement, in the forms 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”



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

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”

FORBEARANCE AGREEMENT

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

A M O N G:

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

- and -

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

- and -

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

WHEREAS:

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

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

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

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

ARTICLE 1 **INTERPRETATION**

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

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

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

ARTICLE 2 **CREDIT FACILITIES**

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

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

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

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

ARTICLE 3 **ACKNOWLEDGEMENTS**

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

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

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

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

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

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

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

3.03 Tolling Provisions:

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

ARTICLE 4
WAIVER AND RELEASE

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

ARTICLE 5
FORBEARANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6 **COVENANTS**

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

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

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

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

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

ARTICLE 7 **REPRESENTATIONS AND WARRANTIES**

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

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

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

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

ARTICLE 8 **SECURITY**

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

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

ARTICLE 9 **CONSULTANT**

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

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

ARTICLE 10 **DEFAULT**

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

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

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

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

ARTICLE 11 **REMEDIES ON DEFAULT**

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

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

ARTICLE 12 **GENERAL**

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

12.02 Headings: The headings in this Agreement are provided for convenience of reference only and should not be considered to form part hereof for the purpose of interpreting or construing or applying this Agreement and such headings shall not define, limit, extend or describe the scope of this Agreement or any of its terms and conditions.

12.03 Schedules: Schedules "A", "B", and "C" attached hereto form an integral part of this Agreement.

12.04 Severability: If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and shall remain valid and enforceable.

12.05 Notices: Any notice required or permitted to be given hereunder or any tender or delivery of documents may be given in writing by personal delivery, facsimile or other electronic transmission to the Borrower, the Guarantor and the Bank at the following addresses:

To the Borrower and Guarantor at:

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

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

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

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

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

To the Bank at:

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

with a courtesy copy to:

Fogler, Rubinoff LLP

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

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

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

12.13 Further Assurances: Each of the Parties hereby agree to sign or execute all such other documents and do such other things as may be necessary or desirable for more completely and effectively carrying out the terms and intentions of this Agreement.

12.14 Acceptance: The Borrower and the Guarantor hereby acknowledge and agree to and with the Bank that on or before 5:00 p.m. April 19, 2024, the Bank shall have received: (i) a copy of this Agreement executed by the Borrower and the Guarantor. In the event any of these conditions precedent to the Bank agreeing to forbear have not been satisfied, the Bank may elect to rely upon its rights and remedies under the Credit Agreement, the Security or otherwise.

[The remainder of this page is left blank intentionally]

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

THE TORONTO-DOMINION BANK

Per: K. Furfaro Kathryn (Katie) Furfaro
Name:
Title: Manager, Commercial Credit
Financial Restructuring Group

I Have Authority to Bind the Bank

SKYLINK EXPRESS INC.

Per: _____
Name:
Title: Authorized Signing Officer

I Have Authority to Bind the Corporation

**MOMENTUM DECISIVE SOLUTIONS
CANADA INC.**

Per: _____
Name:
Title: Authorized Signing Officer

I Have Authority to Bind the Corporation

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

THE TORONTO-DOMINION BANK

Per: _____

Name:

Title: Account Manager,
Financial Restructuring Group

I Have Authority to Bind the Bank

SKYLINK EXPRESS INC.

Per:  _____

Name: Kyle Dennhardt, CFO

Title: Authorized Signing Officer

I Have Authority to Bind the Corporation

**MOMENTUM DECISIVE SOLUTIONS
CANADA INC.**

Per:  _____

Name: Stephen Arbib

Title: Authorized Signing Officer

I Have Authority to Bind the Corporation

SCHEDULE "A"
GUARANTEES

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

SCHEDULE "B"
SECURITY

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

SCHEDULE "C"
TD WIRE INSTRUCTIONS

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

Appendix “D”

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

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

RECITALS:

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

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

Article 1 Interpretation

1.1 Definitions

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

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

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

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

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

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

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

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

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

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

1.2 Gender and Number

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

1.3 Certain Phrases

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

1.4 Headings, Etc.

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

1.5 Governing Law

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

Article 2 Appointment of Escrow Agent

2.1 Appointment of the Escrow Agent

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

2.2 Investment by Escrow Agent

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

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

2.3 Distributions of Escrow Funds

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

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

2.4 Interest on Escrow Funds

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

2.5 No Requirement to Act

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

2.6 Sufficiency of Escrow Funds

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

Article 3

Liability of the Escrow Agent

3.1 No Implied Duties

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

3.2 No Liability for Errors or Loss

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

3.3 No Liability Where Reliance

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

3.4 Expert Advice

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

3.5 Force Majeure

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

3.6 No Expenditure of Own Funds

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

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

3.7 Fees and Reimbursement of the Escrow Agent

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

3.8 Indemnification

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

3.9 Dispute Resolution

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

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

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

3.10 Removal and Resignation

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

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

3.11 No Conflict of Interest

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

Article 4 Miscellaneous

4.1 Notices

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

- (a) to Momentum at:

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

Attention: []

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

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

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

(b) to TD at:

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

with a courtesy copy to:

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

(c) to the Escrow Agent at:

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

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

(d) to the Monitor at:

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

Attention: Bobby Kofman
Email: bkofman@ksvadvisory.com

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

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

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

4.2 No Liability of the Monitor

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

4.3 Survival

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

4.4 Amendments

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

4.5 Termination

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

4.6 Waiver

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

4.7 Severability

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

4.8 Time of the Essence

Time is of the essence in this Agreement.

4.9 Successors and Assigns

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

4.10 Counterparts and Electronic Delivery


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

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

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

MOMENTUM DECISIVE SOLUTIONS CANADA INC.

Per:



Authorized Signatory

THE TORONTO-DOMINION BANK

Per:

Authorized Signatory

NORTON ROSE FULBRIGHT CANADA LLP

Per:



Authorized Signatory

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

Per:



Authorized Signatory

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

**MOMENTUM DECISIVE SOLUTIONS CANADA
INC.**

Per:

Authorized Signatory

THE TORONTO-DOMINION BANK

Per:

K. Furfaro

K. Furfaro
Manager, Commercial Credit
Financial Restructuring Group

Authorized Signatory

NORTON ROSE FULBRIGHT CANADA LLP

Per:

Authorized Signatory

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

Per:

Authorized Signatory

Appendix “E”

Skylink Express Inc. (the "Company")

Projected Statement of Cash Flow

For the Period ended May 31, 2024

(Unaudited; \$C)

Week	Notes	For the weeks ending					Total	
		26-Apr-24	03-May-24	10-May-24	17-May-24	24-May-24		31-May-24
		2	3	4	5	6	7	
<i>Receipts</i>								
UPS revenues	1	479,058	479,058	479,058	479,058	479,058	479,058	2,874,347
GST/HST/QST returns	3	-	-	-	-	-	-	-
DIP loan		250,000	250,000				150,000	650,000
Total Receipts		729,058	729,058	479,058	479,058	479,058	629,058	3,524,347
<i>Disbursements</i>								
Payroll	4	256,292	-	256,182	-	-	256,182	768,657
Capital expenditures	5	22,520	10,000	-	45,000	-	-	77,520
Leases	6	-	125,713	-	-	-	-	125,713
Insurance	7	-	-	-	-	-	-	-
Maintenance	8	57,129	57,129	57,129	57,129	57,129	57,129	342,773
Aircraft operating expenses	9	170,959	170,959	170,959	170,959	170,959	170,959	1,025,753
Other general expenses	10	9,920	10,420	10,420	10,420	10,420	10,420	62,018
GST/HST/QST on expenditures	3	33,090	47,348	30,356	34,856	30,356	30,356	206,362
TD Loan - Principal Repayment	11	-	244,830	-	-	-	-	244,830
TD Loan - Interest	11	101,301	-	-	-	96,282	-	197,583
Total Disbursements		651,211	666,398	525,046	318,363	365,146	525,046	3,051,210
<i>Net cash flow before the undernoted</i>		77,847	62,659	(45,988)	160,695	113,912	104,012	473,137
Professional fees	2	425,000	-	-	-	-	380,000	805,000
Net cash flow		(347,153)	62,659	(45,988)	160,695	113,912	(275,988)	(331,863)
Opening Cash Balance		359,023	11,870	74,529	28,541	189,236	303,148	359,023
Net cash flow		(347,153)	62,659	(45,988)	160,695	113,912	(275,988)	(331,863)
Closing Cash Balance		11,870	74,529	28,541	189,236	303,148	27,160	27,160

Purpose and General Assumptions

The cash flow projection assumes that the Company continues to be afforded protection under the *Companies' Creditors Arrangement Act* to May 31, 2024.

The cash flow projection has been prepared based on hypothetical and most probable assumptions developed and prepared by the Company.

Hypothetical Assumptions

1. Revenue is based on the Company's contract with United Parcel Services Canada Ltd. ("UPS") and is projected to be consistent each week, as per the contract between the Company and UPS. The cash flow assumes that all receivables owing from UPS will be collected.
2. Professional fees are estimated.

Probable Assumptions

3. The Company is typically in an HST/QST refundable position as its revenues are not subject to sales tax. Receipt of HST/QST refunds for the month of February and March of 2024 have been deferred as a result of a CRA audit initiated in response to the CCAA filing.
4. Payroll is paid on the 15th and last day of each month and is assumed to be paid three business days in advance of the payroll payment date.
5. The Company's capital and maintenance cost program has been budgeted per aircraft, with aircraft to be taken offline permanently upon reaching a major maintenance event.
6. Lease expenses are comprised of hangar lease costs, which are payable on the first of each month.
7. Aircraft insurance and aviation general liability insurance is due quarterly on March 23, June 23, September 23 and December 23 of each year.
8. Costs include consumable parts, non-consumable parts, outsourced labour, tools and shop supplies.
9. Aircraft operating costs include fuel, navigation, landing fees, crew travel costs and are generally incurred evenly throughout the month. These costs exclude crew payroll, aircraft insurance and hangar fees, which are reflected separately.
10. Includes telephone, office expenses, general legal fees, etc., as well as audit fee instalments.
11. Represents principal and interest repayments on the Company's TD Bank term facility. Principal of \$244,830 is paid on the second of each month and interest is paid on the 21st of each month. The interest rate is assumed to remain constant.

Appendix “F”

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.

APPLICANT

MANAGEMENT'S REPORT ON CASH FLOW STATEMENT
(paragraph 10(2)(b) of the CCAA)

The management of Skylink Express Inc. (the "Applicant") has developed the assumptions and prepared the attached statement of projected cash flow as of the 22nd day of April, 2024 for the period April 20, 2024 to May 31, 2024 (the "Cash Flow"). All such assumptions are disclosed in the notes to the Cash Flow.

The hypothetical assumptions are reasonable and consistent with the purpose of the Cash Flow as described in the notes to the Cash Flow, and the probable assumptions are suitably supported and consistent with the plans of the Applicant and provide a reasonable basis for the Cash Flow.

Since the Cash Flow is based on assumptions regarding future events, actual events will vary from the information presented and the variations may be material.

The Cash Flow has been prepared solely for the purpose outlined in the Cash Flow using a set of hypothetical and probable assumptions set out therein. Consequently, readers are cautioned that the Cash Flow may not be appropriate for other purposes.

Dated at Toronto, Ontario this 22nd day of April, 2024.

Skylink Express Inc.



Kyle Dennhardt

Appendix “G”

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.

MONITOR'S REPORT ON CASH FLOW STATEMENT
(paragraph 23(1)(b) of the CCAA)

The attached statement of projected cash-flow of Skylink Express Inc. (the "Applicant") as of the 22nd day of April, 2024, consisting of a weekly projected cash flow statement for the period April 20 to May 31, 2024 (the "Cash Flow") has been prepared by management of the Applicant for the purpose described in the notes, using probable and hypothetical assumptions set out in the notes to the Cash Flow.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied by management. We have reviewed the support provided by management for the probable and hypothetical assumptions and the preparation and presentation of the Cash Flow.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow;
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report.

The Cash Flow has been prepared solely for the purpose described in in the notes and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto this 22nd day of April, 2024.

A handwritten signature in blue ink that reads "KSV Restructuring Inc." The signature is written in a cursive, flowing style.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS CCAA MONITOR OF
SKYLINK EXPRESS INC.
AND NOT IN ANY OTHER CAPACITY**

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

SECOND REPORT OF THE MONITOR

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