

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

**MOTION RECORD
RETURNABLE JANUARY 29, 2025
(STAY EXTENSION, ACTIVITIES, AND DIP FACILITY INCREASE)**

January 23, 2025

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TO: The Service List

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TAB 1

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

**ONTARIO
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ARRANGEMENT OF SKYLINK EXPRESS INC.

NOTICE OF MOTION

Skylink Express Inc. (the “**Applicant**”) will make a motion to a Judge of the Superior Court of Justice (Commercial List), on **Wednesday, January 29th, 2025 at 11:30 a.m.** or as soon after that time as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario. Please advise if you intend to join the motion by emailing Lauren Archibald at lauren.archibald@nortonrosefulbright.com.

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

THE MOTION IS FOR AN ORDER, among other things:

- 1 If necessary, abridging and validating the time for service and filing of this notice of motion and motion record;
- 2 Extending the Stay Period (as defined below) up to and including to April 30, 2025;
- 3 Approving the Seventh Report (as defined below) and the Monitor’s (as defined below) activities described therein;

4 Increasing the maximum borrowing amount under the Applicant's debtor in possession credit facility (the "**DIP Facility**") from \$4.55 million to \$5.90 million in accordance with a third amendment to the DIP Term Sheet (as defined below) dated January 23, 2025 (the "**Third Amended DIP Term Sheet**"); and

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

THE GROUNDS FOR THE MOTION ARE:

Background

1 On March 11, 2024, the Applicant sought and obtained an initial order (as amended and restated, the "**Initial Order**") granting it protection pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and granting an initial stay period (the "**Stay Period**") to March 21, 2024;

2 Pursuant to the Initial Order, KSV Restructuring Inc. was appointed as the monitor of the Applicant (in such capacity, the "**Monitor**") in the CCAA proceedings (the "**Proceedings**");

3 In connection with the Proceedings, the Applicant and the Applicant's senior secured creditor, The Toronto-Dominion Bank ("**TD**"), have entered into an escrow agreement and a forbearance agreement (together, the "**TD Stand Still Agreements**"), both of which were approved by this Court on April 25, 2024;

4 On May 30, 2024, the Court approved a sale process (the "**Sale Process**") for the sale of the various aircraft and certain other assets owned by the Applicant;

5 On July 5, 2024, the Court granted an order approving the sale of one of the Applicant's caravan aircraft (the "**July 5 Order**");

6 On July 29, 2024, the Court approved the sale of three additional caravan aircraft (the “**July 29 Order**”);

7 Since the granting of the Initial Order, the Applicant have sought and obtained various orders from the Court approving extensions to the Stay Period;

8 Most recently, on October 30, 2024, the Court extended the Stay Period up to and including January 31, 2024 to allow the Applicant to continue to advance the Sale Process with respect to the balance of the Applicant’s unsold assets (collectively, the “**Remaining Assets**”);

Stay Extension

9 From the outset, the principal purpose of the Proceedings was to provide the Applicant with time to restructure its primary customer contract with United Parcel Services Canada Ltd. (“**UPS**”);

10 As set out in the Seventh Report, those negotiations were unsuccessful, and the Applicant entered into a wind-down agreement dated on July 31, 2024 setting out the terms of the agreed wind down of the Applicant’s performance of that contract;

11 Those wind-down services are now complete;

12 The primary remaining activity in the Proceedings is to complete the Sale Process;

13 To date, the Applicant has sold four caravan aircraft pursuant to the July 5 Order and the July 29 Order;

14 The Remaining Assets include ten Beechcraft 1900C aircrafts, plus inventory and other sundry assets;

15 The Applicant, with the Agent (as defined in the Seventh Report), continues to pursue prospective purchasers for the Remaining Assets;

16 Accordingly, the Applicant is seeking an extension of the Stay Period up to and including April 30, 2025 to continue to advance the Sale Process with respect to the Remaining Assets;

17 The Applicant has worked on a revised cash flow forecast with the Monitor, which is attached to the Seventh Report and which indicates that, subject to the increase in the DIP Facility, the Applicant will be able to fund its liabilities as they come due during the Stay Period;

18 The Applicant has acted, and continues to act, in good faith and with due diligence during the course of the Proceedings and intends to comply with the TD Stand Still Agreements during the extension of the Stay Period, including debt servicing obligations;

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

20 In addition, Momentum Decisive Solutions Canada Inc., the sole shareholder of the Applicant and the debtor-in-possession lender in the Proceedings (in such capacity, the “**DIP Lender**”), consents to the extension of the Stay Period;

21 TD does not oppose the relief being sought;

Activities

22 The activities of the Monitor since the sixth report of the Monitor dated October 23, 2024 are set out in the seventh report of the Monitor dated January 23, 2025 (the “**Seventh Report**”) and are consistent with its mandate in the Proceedings;

Increase in the DIP Facility

23 The Applicant and the DIP Lender are parties to a debtor in possession term sheet dated as of March 8, 2024 (as amended, the “**DIP Term Sheet**”) pursuant to which the DIP Lender agreed to provide debtor in possession financing to the Applicant during the Proceedings and that the facility would be subordinate to TD;

24 Pursuant to an Order of the Court dated July 29, 2024, which approved a second amendment to the DIP Term Sheet dated as of July 19, 2024, the current maximum borrowing amount under the DIP Term Sheet is \$4.55 million;

25 The DIP Lender has agreed to increase the maximum borrowing amount under the DIP Facility from \$4.55 million to \$5.90 million pursuant to the Third Amended DIP Term Sheet;

26 Without the increased amount, the Applicant may not have sufficient cash flow to carry out the Sale Process and service its debt owing to TD;

27 The DIP Lender’s Charge (as defined in the Initial Order) in respect of the increased amount under the Third Amended DIP Term Sheet will continue to be subordinate to TD’s security interest;

28 TD does not oppose the proposed increase in the DIP Facility and corresponding DIP Lender’s Charge;

29 In addition, the Monitor is of the opinion that the cost of the proposed DIP Facility is within the range of similar facilities recently approved by the Court and other Canadian courts in CCAA and other restructuring proceedings;

30 The DIP Lender is not increasing the cost of the DIP Facility;

Other Grounds

- 31 The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- 32 Rules 1.04 and 37 of the *Rules of Civil Procedure* (Ontario); and
- 33 Such further and other grounds as counsel may advise and this Honourable Court may deem just.

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

- 1 The Affidavit of David Atkins sworn January 23, 2025;
- 2 The Seventh Report, to be filed; and
- 3 Such further and other evidence as counsel may advise and this Court may permit.

January 23, 2025

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

NOTICE OF MOTION

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TAB 2

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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**AFFIDAVIT OF DAVID ATKINS
(sworn January 23, 2025)**

I, David Atkins, of the City of Kelowna, in the Province of British Columbia, MAKE OATH
AND SAY:

1. I am the President and Chief Operating Officer of the Applicant, Skylink Express Inc. (the "**Applicant**"). I am also the Vice President of Operations & Regulatory Affairs of Momentum Decisive Solutions Canada Inc. ("**Momentum**"), the sole shareholder of the Applicant and the debtor-in-possession lender in these CCAA proceedings (the "**Proceedings**"). I have been with Momentum since 2023. As such, I have knowledge of the following matters, except where otherwise stated.

2. I swear this affidavit in support of the Applicant's motion for an order, among other things, (a) extending the Stay Period (as defined below) up to and including to April 30, 2025; and (b) increasing the maximum borrowing amount under the Applicant's debtor in possession credit facility (the "**DIP Facility**") from \$4.55 million to \$5.90 million;

I. INTRODUCTION

3. The background and circumstances leading up to the Proceedings are set out in the affidavits of Kyle Dennhardt sworn March 8, 2024, April 20, 2024, and May 24, 2024 and therefore are not repeated herein.

Background

4. Pursuant to an application of the Applicant brought on March 11, 2024, the Applicant sought and obtained an initial order (the “**Initial Order**”) granting it protection pursuant to the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and granting an initial stay period (the “**Stay Period**”) to March 21, 2024. The Initial Order also appointed KSV Restructuring Inc. as the monitor of the Applicant (in such capacity, the “**Monitor**”) in the Proceedings.

5. On March 21, 2024, the Court granted an amended and restated initial order, pursuant to which, among other things, the Stay Period was extended to April 26, 2024.

6. In connection with the Proceedings, the Applicant and the Applicant’s senior secured creditor, The Toronto-Dominion Bank (“**TD**”), entered into an escrow agreement and a forbearance agreement (together, the “**TD Stand Still Agreements**”). On April 25, 2024, the Court granted an Order approving the terms of the executed TD Stand Still Agreements and extending the Stay Period up to and including May 31, 2024.

7. On May 30, 2024, the Court further extended the Stay Period up to and including July 31, 2024, and approved a sale process (the “**Sale Process**”) for the sale of the various aircraft and certain other assets owned by the Applicant.

8. On July 5, 2024, the Court granted an order approving the sale of one of the Applicant’s caravan aircraft (the “**July 5 Order**”). Subsequently, on July 29, 2024, the Court approved the sale of three additional caravan aircraft and further extended the Stay Period up to and including October 31, 2024 (the “**July 29 Order**”).

9. On October 30, 2024, the Court extended the Stay Period up to and including January 31, 2025 to allow the Applicant to continue to advance the Sale Process with respect to the balance of the Applicant’s unsold assets (collectively, the “**Remaining Assets**”).

II. EXTENSION OF THE STAY PERIOD

10. From the outset, the principal purpose of the Proceedings was to provide the Applicant with time to restructure its primary customer contract with United Parcel Services Canada Ltd. (“UPS”). As set out in the affidavit of Kyle Dennhardt sworn May 24, 2024, those negotiations were unsuccessful, and the Applicant entered into a wind-down agreement dated as of July 31, 2024 setting out the terms of the agreed wind down of the Applicant’s performance of that contract. Those wind-down services have now been completed.

11. The primary remaining activity in the Proceedings is to complete the Sale Process. To date, the Applicant has sold four caravan aircraft pursuant to the July 5 Order and the July 29 Order. The Remaining Assets include ten Beechcraft 1900C aircraft, plus inventory and other sundry assets.

12. The Applicant, with the Agent (as defined in the Seventh Report of the Monitor dated January 23, 2025, the “**Seventh Report**”), continues to pursue prospective purchasers for the Remaining Assets.

13. The Applicant is in communication with interested parties, including two parties that have expressed an interest in acquiring the majority of the Remaining Assets, including, in one case, the Applicant’s air operator certificate.

14. The Agent’s engagement was for a six month term ending on November 23, 2024. The Applicant negotiated an extension of this agreement to August 23, 2025.

15. The Applicant is seeking an extension of the Stay Period up to and including April 30, 2025 to continue to advance the Sale Process with respect to the Remaining Assets.

16. The Applicant has worked on a revised cash flow forecast with the Monitor, which is attached to the Seventh Report. This forecast indicates that, subject to the increase in the DIP Facility, the Applicant will be able to fund its liabilities as they come due during the Stay Period.

17. The Applicant has acted, and continues to act, in good faith and with due diligence during the course of the Proceedings and intends to comply with the TD Stand Still Agreements during the extension period, including debt servicing obligations.

18. Momentum consents to the relief being sought. TD does not oppose the relief being sought.

III. INCREASE IN THE DIP FACILITY

19. The Applicant and Momentum (in such capacity, the “**DIP Lender**”) are parties to a debtor in possession term sheet dated as of March 8, 2024 (the “**DIP Term Sheet**”) pursuant to which the DIP Lender agreed to provide debtor in possession financing to the Applicant during the Proceedings and that this financing would be subordinated to TD.

20. Pursuant to an Order of the Court dated July 29, 2024, which approved a second amendment to the DIP Term Sheet dated as of July 19, 2024 (the “**Second Amended DIP Term Sheet**”), the current maximum borrowing amount under the DIP Term Sheet is \$4.55 million.

21. The DIP Lender has agreed to increase the maximum borrowing amount under the DIP Facility from \$4.55 million to \$5.90 million pursuant to a third amendment to the DIP Term Sheet dated as of January 23, 2025 (the “**Third Amended DIP Term Sheet**”). A copy of the DIP Term Sheet, the first amendment to the DIP Term Sheet dated as of May 23, 2024, the Second Amended DIP Term Sheet, and the Third Amended DIP Term Sheet are attached as Exhibits “A”, “B”, “C” and “D” hereto. The Third Amended DIP Term Sheet is identical to the Second

Amended DIP Term Sheet except for the maximum amount that can be borrowed under the facility.

22. Without the increased amount, the Applicant may not have sufficient cash flow to carry out the Sale Process and to service its debt owing to TD.

23. The DIP Lender’s Charge (as defined in the Initial Order) in respect of the increased amount under the Third Amended DIP Term Sheet will continue to be subordinate to TD’s security interest. In addition, TD does not oppose the proposed increase in the DIP Facility and corresponding DIP Lender’s Charge.

IV. CONCLUSION

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

SWORN by David Atkins at the City of Kelowna, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on January 23, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Lauren Archibald

Commissioner for Taking Affidavits
(or as may be)

LAUREN ARCHIBALD LSO#: 87151U

David Atkins

David Atkins

This is Exhibit "A" referred to in the Affidavit of David Atkins sworn by David Atkins of the City of Kelowna, in the British Columbia, before me at the City of Toronto, in the Province of Ontario, on January 23, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Lauren Archibald

Commissioner for Taking Affidavits (or as may be)

LAUREN ARCHIBALD

March 8, 2024

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

Attention: David Atkins, President

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

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

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

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

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

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

SUMMARY OF TERMS FOR DIP FACILITY

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

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

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

5. Advances:

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

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

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

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

6. Interest:

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

7. Recoverable Expenses:

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

8. Security:

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Covenants

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

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

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

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

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

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

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

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

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

14. Remedies and Enforcement

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

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

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

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

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

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

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


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

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

[Signature Page Follows]

Dated this 8 day of March, 2024

**MOMENTUM DECISIVE SOLUTIONS
CANADA INC.**

By  _____

Name: Stephen Arbib
Title: CEO

I have authority to bind the Corporation.

ACCEPTANCE

TO THE LENDER:

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

Dated this 8 day of March, 2024.

SKYLINK EXPRESS INC.

By



Name: David Atkins

Title: President

I have authority to bind the Corporation.

This is Exhibit "B" referred to in the Affidavit of David Atkins sworn by David Atkins of the City of Kelowna, in the British Columbia, before me at the City of Toronto, in the Province of Ontario, on January 23, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Lauren Archibald

Commissioner for Taking Affidavits (or as may be)

LAUREN ARCHIBALD

May 23, 2024

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

Attention: David Atkins, President

Re: First Amendment to Debtor-in-Possession Financing Term Sheet (“First Amendment”) for Skylink Express Inc. (the “Borrower”)

- A. Reference is made to the debtor in possession term sheet dated as of March 8, 2024 (the “**Original DIP Term Sheet**” and together with this First Amendment, the “**DIP Term Sheet**”) between the Borrower and Momentum Decisive Solutions Canada Inc. (the “**Lender**”)
- B. The parties wish to make certain amendments to the Original DIP Term Sheet as set out herein.

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

1. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Original Term Sheet.
2. Section 3 of the Original DIP Term Sheet is hereby amended by replacing reference to “\$2.5 million with “\$3.0 million”.
3. This amendment shall be conditional upon the granting of an Order of the Court authorizing the increase in the maximum borrowing amount under the DIP Term Sheet.
4. This First Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and such counterparts together shall constitute one and the same agreement. The delivery of a facsimile or other electronic copy of an executed counterpart of this First Amendment shall be deemed to be valid execution and delivery of this First Amendment.

[Signature Page Follows]

This is Exhibit "C" referred to in the Affidavit of David Atkins sworn by David Atkins of the City of Kelowna, in the British Columbia, before me at the City of Toronto, in the Province of Ontario, on January 23, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Lauren Archibald

Commissioner for Taking Affidavits (or as may be)

LAUREN ARCHIBALD

July 19, 2024

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

Attention: David Atkins, President

Re: Second Amendment to Debtor-in-Possession Financing Term Sheet (“Second Amendment”) for Skylink Express Inc. (the “Borrower”)

A. Reference is made to the debtor in possession term sheet dated as of March 8, 2024 as amended by the first amendment dated as of May 23, 2024 (the “**Amended DIP Term Sheet**”) and as amended by this Second Amendment (collectively, the “**DIP Term Sheet**”) between the Borrower and Momentum Decisive Solutions Canada Inc. (the “**Lender**”).

B. The Borrower and the Lender wish to make certain amendments to the Amended DIP Term Sheet as set out herein.


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

1. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Amended DIP Term Sheet.
2. Section 3 of the Amended DIP Term Sheet is hereby amended by replacing reference to “\$3.0 million” with “\$4.55 million”.
3. This Second Amendment shall be conditional upon the granting of an Order of the Court authorizing the increase in the maximum borrowing amount under the DIP Term Sheet.
4. This Second Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and such counterparts together shall constitute one and the same agreement. The delivery of a facsimile or other electronic copy of an executed counterpart of this Second Amendment shall be deemed to be valid execution and delivery of this Second Amendment.

[Signature Page Follows]

Dated this 19th day of July, 2024


**MOMENTUM DECISIVE SOLUTIONS
CANADA INC.**

By 
Name: Stephen Arbib
Title: Chief Executive Officer

I have authority to bind the Corporation.

Acknowledged and agreed as of the date first above written

SKYLINK EXPRESS INC.

By 
Name: David Atkins
Title: President

I have authority to bind the Corporation.

This is Exhibit "D" referred to in the Affidavit of David Atkins sworn by David Atkins of the City of Kelowna, in the British Columbia, before me at the City of Toronto, in the Province of Ontario, on January 23, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Lauren Archibald

Commissioner for Taking Affidavits (or as may be)

LAUREN ARCHIBALD

January 23, 2025

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

Attention: David Atkins, President

Re: Third Amendment to Debtor-in-Possession Financing Term Sheet (the “Third Amendment”) for Skylink Express Inc. (the “Borrower”)

A. Reference is made to the debtor in possession term sheet dated as of March 8, 2024, as amended by the first amendment dated as of May 23, 2024, and the second amendment dated as of July 19, 2024 (as amended, the “**Amended DIP Term Sheet**”), and as further amended by this Third Amendment (collectively, the “**DIP Term Sheet**”) between the Borrower and Momentum Decisive Solutions Canada Inc. (the “**Lender**”).

B. The Borrower and the Lender wish to make certain amendments to the Amended DIP Term Sheet as set out herein.

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

1. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Amended DIP Term Sheet.
2. Section 3 of the Amended DIP Term Sheet is hereby amended by replacing reference to “\$4.55 million” with “\$5.90 million”.
3. This Third Amendment shall be conditional upon the granting of an Order of the Court authorizing the increase in the maximum borrowing amount under the DIP Term Sheet.
4. This Third Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and such counterparts together shall constitute one and the same agreement. The delivery of a facsimile or other electronic copy of an executed counterpart of this Third Amendment shall be deemed to be valid execution and delivery of this Third Amendment.

[Signature Page Follows]

Dated this 23rd day of January, 2025

**MOMENTUM DECISIVE SOLUTIONS
CANADA INC.**

By  _____

Name: Stephen Arbib

Title: Chief Executive Officer

I have authority to bind the Corporation.

Acknowledged and agreed as of the date first above written

SKYLINK EXPRESS INC.

By  _____

Name: David Atkins

Title: President

I have authority to bind the Corporation.

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

AFFIDAVIT OF DAVID ATKINS

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Lawyers for the Applicant

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEDNESDAY, THE 29 th
)	
JUSTICE OSBORNE)	DAY OF JANUARY, 2025

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

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

**ORDER
(Stay Extension, Activities, and DIP Facility Increase)**

THIS MOTION, made by the Applicant, Skylink Express Inc. (the "**Applicant**"), for an order, among other things, (a) extending the Stay Period (as defined in the Amended and Restated Initial Order dated March 21, 2024, the "**ARIO**") to and including April 30, 2025; (b) approving the Seventh Report (as defined below) and the activities described therein; and (c) increasing the Applicant's permitted borrowings under the Applicant's debtor in possession credit facility from \$4.55 million to \$5.90 million, was heard this day by Zoom videoconference.

ON READING the affidavit of David Atkins sworn January 23, 2025 and the exhibits attached thereto and the Seventh Report of KSV Restructuring Inc. in its capacity as the monitor of the Applicant (in such capacity, the "**Monitor**") dated January 23, 2025 (the "**Seventh Report**") and on hearing the submissions of the lawyers for the Applicant, and those other parties present although duly served as appears from the affidavit of service of Lauren Archibald sworn January [●], 2025.

SERVICE

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

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period be and is hereby extended up to and including April 30, 2025.

APPROVAL OF REPORT AND ACTIVITIES

3. **THIS COURT ORDERS** that the Seventh Report and the activities of the Monitor referred to therein be and are hereby approved; provided, however, that only the Monitor in its personal capacities and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

DIP FINANCING

4. **THIS COURT ORDERS** that paragraphs 31 and 32 of the ARIO are amended as follows: (a) the maximum borrowings under the Applicant's debtor in possession credit facility shall not exceed \$5.90 million; and (b) the definition of "DIP Term Sheet" shall incorporate reference to the Third Amended DIP Term Sheet (as defined in the Seventh Report).

5. **THIS COURT ORDERS** that, for greater certainty, the DIP Lender (as defined in the Seventh Report) shall have the benefit of the DIP Lender's Charge (as defined in the Seventh Report) in respect of all increased borrowings contemplated in paragraph 4 above.

GENERAL

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

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

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(Stay Extension, Activities, and DIP Facility Increase)**

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Lawyers for the Applicant

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

MOTION RECORD
Returnable January 29, 2025
(Stay Extension, Activities, and DIP Facility Increase)

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Lawyers for the Applicant