

**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 JULY 29, 2024
(STAY EXTENSION, SALE APPROVALS AND ANCILLARY MATTERS)**

July 20, 2024

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TO: The Service List

**ONTARIO
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TABLE OF CONTENTS

Tab No.	Document	Page No.
1.	Notice of Motion dated July 20, 2024	001
2.	Affidavit of David Atkins sworn July 19, 2024	011
	Exhibit A – DIP Term Sheet dated March 8, 2024	020
	Exhibit B – Second Amendment to the DIP Term Sheet dated July 19, 2024	034
3.	Affidavit of Kyle Dennhardt sworn May 24, 2024 (without exhibits)	037
4.	Draft Order (Stay Extension and Activities and Fees Approval)	044
5.	Draft Approval and Vesting Order (C-FHGA Cessna 208B, MSN 208B-0047 (Gingras))	049
6.	Blackline of Model Order to Draft Approval and Vesting Order (C-FHGA Cessna 208B, MSN 208B-0047 (Gingras))	061
7.	Draft Approval and Vesting Order (C-GLGA Cessna 208B, MSN 208B-0350 (Randigo))	077
8.	Blackline of Model Order to Draft Approval and Vesting Order (C-GLGA Cessna 208B, MSN 208B-0350 (Randigo))	089
9.	Draft Approval and Vesting Order (C-GEGA Cessna 208B, MSN 208B-0379 (Randigo))	106
10.	Blackline of Model Order to Draft Approval and Vesting Order (C-GEGA Cessna 208B, MSN 208B-0379 (Randigo))	118

TAB 1

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. (the "**Applicant**")

NOTICE OF MOTION

Skylink Express Inc. (the "**Applicant**") will make a motion to a Judge of the Superior Court of Justice (Commercial List), on **Monday, July 29, 2024 at 9:00 a.m.** or as soon after that time as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario. Please advise if you intend to join the motion by emailing Katie Parent at katie.parent@nortonrosefulbright.com.

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

THE MOTION IS FOR AN ORDER, among other things:

- 1 If necessary, abridging and validating the time for service and filing of this notice of motion and motion record;
- 2 Approving the following sale transactions (collectively, the "**Transactions**"):
 - (a) a transaction for the sale of the 47 Aircraft (as defined below) contemplated by the agreement of purchase and sale dated July 10, 2024 (the "**Gingras Sale Agreement**") between the Applicant and Gingras Équipement Inc. ("**Gingras**");

- (b) transactions with Randigo LLC (“**Randigo**” and together with Gingras, the “**Purchasers**”) for the sale of:
- (i) the 379 Aircraft (as defined below) contemplated by the agreement of purchase and sale dated July 12, 2024 (as amended, the “**379 Sale Agreement**”) between the Applicant and Randigo;
 - (ii) the 350 Aircraft (as defined below) contemplated by the agreement of purchase and sale dated July 12, 2024 (as amended, the “**350 Sale Agreement**”, together with the 379 Sale Agreement, the “**Randigo Sale Agreements**” and collectively with the Gingras Sale Agreement, the “**Sale Agreements**”) between the Applicant and Randigo;
- 3 Authorizing, requesting and directing the applicable government authorities to register the transfer of ownership of the Aircrafts (as defined below) to the Purchasers in the applicable registries and discharge the encumbrances against the Aircrafts including in favour of TD (as defined below);
- 4 Authorizing and directing KSV Restructuring Inc., the monitor in the CCAA (as defined below) proceedings (the “**Monitor**”), to distribute, on behalf of the Applicant, and in its capacity as escrow agent, the net proceeds of sale from the Transactions to The Toronto-Dominion Bank (“**TD**”);
- 5 Extending the Stay Period (as defined below) up to and including to October 31, 2024;
- 6 Increasing the maximum borrowing amount under the Applicant’s debtor in possession credit facility (the “**DIP Facility**”) from \$3.0 million to \$4.55 million;
- 7 Sealing the confidential appendices to the fifth report (the “**Fifth Report**”) of the Monitor;

8 Approving the Reports (as defined below) and the Monitor’s activities described therein;

9 Approving the fees and disbursements of the Monitor and its legal counsel; and

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

THE GROUNDS FOR THE MOTION ARE:

Background

2 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**”);

3 The initial purpose of the CCAA proceedings had been to restructure its operating contract with its principal customer, United Parcel Services Canada Ltd. (“**UPS**”), however such negotiations were not successful and the Applicant is now in the process of winding down its services for UPS;

4 In connection with the CCAA, the Applicant and TD, the Applicant’s senior secured creditor, have entered into an escrow agreement and a forbearance agreement (the “**TD Stand Still Agreements**”);

Sale Process

5 Pursuant to an order of the Court made on May 30, 2024 (the “**Sale Process Order**”), the Court approved a sale process (the “**Sale Process**”) for the sale of the various aircraft and certain other assets owned by the Applicant (the “**Fleet**”);

6 Pursuant to the Sale Process, the Applicant retained 1262396 Alberta Ltd. dba Pollock Aviation (the “**Agent**”) as its sales agent to market the Fleet and it was contemplated that the Fleet would be marketed for sale on a one-off or en-bloc basis without a specific bid deadline;

7 Since the approval of the Sale Process, the Agent has widely canvassed the market for interested buyers in the Fleet;

8 On July 5, 2024, the Court granted an order approving a transaction for the sale of a Cessna grand caravan aircraft and Pratt and Whitney Canada engine to LAD Inc.;

9 The LAD transaction closed on July 5, 2024;

Sale Transactions

10 On July 10, 2024, the Applicant entered into the Gingras Sale Agreement for the sale of a Cessna Grand Caravan aircraft, manufacturer’s serial number 208B-0047 together with one (1) Pratt and Whitney Canada PT6A-114A engine; all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached as Exhibit A to the Gingras Sale Agreement; a spare (uninstalled) co-pilot windshield; and all Aircraft Documents (as defined in the Gingras Sale Agreement) (collectively, the “**47 Aircraft**”);

11 On July 12, 2024, the Applicant entered into the Randigo Sale Agreements pursuant to the:

- (a) the 379 Sale Agreement for the sale of a Cessna Grand Caravan aircraft, manufacturer’s serial 208B-0379 together with one (1) Pratt and Whitney Canada PT6A-114A engine; all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories

installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached as Exhibit A to the 379 Sale Agreement; and all Aircraft Documents (as defined in the 379 Sale Agreement) (collectively, the “**379 Aircraft**”);

- (b) the 350 Sale Agreement for the sale of a Cessna Grand Caravan aircraft, manufacturer’s serial number 208B-0350 together with one (1) Pratt and Whitney Canada PT6A-114A engine; all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached as Exhibit A to the 350 Sale Agreement; and all Aircraft Documents (as defined in the 350 Sale Agreement) (collectively, the “**350 Aircraft**”, and together with the 47 Aircraft and 379 Aircraft, the “**Aircrafts**”);

12 The Sale Agreements and the Transactions are subject to, among other things, approval by this Court;

13 The Transactions are unconditional, except for Court approval;

14 The Purchasers have each paid the deposits, which are non-refundable unless the Court does not approve the Transactions;

15 The process undertaken by the Agent to market the Aircrafts was commercially reasonable and consistent with the terms of the Sale Process Order;

16 TD does not oppose the proposed Transactions;

17 Momentum Decisive Solutions Canada Inc. (“**Momentum**”) as guarantor also consents to the proposed Transactions;

Distribution

18 TD is the Applicant's senior secured creditor;

19 Pursuant to the TD Stand Still Agreements, the Applicant is required to pay all net proceeds of sale to TD;

20 The Monitor has received an opinion from its independent counsel with respect to the validity and enforceability of TD's security in respect of the Aircrafts;

21 The Sale Agreements contemplate that the Purchasers shall pay the sale proceeds to the Monitor as the escrow agent and the Monitor, on behalf of the Applicant, will distribute the proceeds to TD, net of the Agent's commission and HST;

Sealing

22 The confidential appendices to the Fifth Report contain unredacted versions of the Sale Agreements which provides details as to the purchase prices and deposits for the Aircrafts;

23 The sealing of the confidential appendices during the pendency of the remainder of the Sale Process is appropriate as public disclosure of such information may negatively impact i) the sale of the Aircrafts if the Transactions do not close; and ii) the sale of other assets available for sale in the Sale Process;

Stay Extension

24 The Applicant is seeking an extension of the stay of proceedings (the "**Stay Period**") up to and including October 31, 2024 to provide sufficient time to close the current Transactions and to continue to advance the Sale Process with respect to the balance of the Fleet, subject to the approval of the Sale Process by the Court and complete the wind down of its services to UPS;

25 The Applicant has worked on a revised cash flow forecast with the Monitor, to be attached to the Fifth Report, 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;

26 The Applicant has acted, and continues to act, in good faith and with due diligence during the course of these CCAA proceedings and intends to comply with the TD Stand Still Agreements during the extension period, including debt servicing obligations;

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

Increase in DIP Facility

28 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 (as amended, the “**DIP Term Sheet**”) pursuant to which the DIP Lender agreed to provide debtor in possession financing to the Applicant during these CCAA proceedings;

29 The current maximum borrowing amount under the DIP Term Sheet is \$3.0 million;

30 The DIP Lender has agreed to increase the maximum borrowing amount under the DIP Facility from \$3.0 million to \$4.55 million pursuant to a second amendment to the DIP Term Sheet dated as of July 19, 2024 (the “**Second Amendment**”);

31 The DIP Lender’s Charge (as defined in the Initial Order) in respect of the increased amount will continue to be subordinate to TD;

32 Without the increased amount, the Applicant is not forecast to be able to meet its liabilities as they come due during the proposed extended Stay Period;

Activities and Fees

33 The activities of the Monitor since the third report of the Monitor dated May 24, 2024 are set out in the fourth report of the Monitor dated June 28, 2024 (the “**Fourth Report**”, together with the Fifth Report, the “**Reports**”) and the Fifth Report;

34 The fees of the Monitor and that of its legal counsel, are more particularly set out in the Reports;

35 The fees incurred by Monitor are reasonable and appropriate in the circumstances;

Other Grounds

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

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

38 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 July 19, 2024;

2 The Affidavit of Kyle Dennhardt sworn May 24, 2024 (without exhibits);

3 The Fifth Report, to be filed; and

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

July 20, 2024

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

NOTICE OF MOTION

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Lawyers for the Applicant

TAB 2

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

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

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**AFFIDAVIT OF DAVID ATKINS
(sworn July 19, 2024)**

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. ("**Skylink**" or 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 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, approving the sale of the following transactions (collectively, the "**Transactions**"):

(a) a transaction for the sale of the 47 Aircraft (as defined below) contemplated by the agreement of purchase and sale dated July 10, 2024 (the "**Gingras Sale Agreement**") between the Applicant and Gingras Équipement Inc. ("**Gingras**");

(b) transactions with Randigo LLC for the sale of:

- i. the 379 Aircraft (as defined below) contemplated by the agreement of purchase and sale dated July 12, 2024 (as amended, the “**379 Sale Agreement**”) between the Applicant and Randigo;
 - ii. the 350 Aircraft (as defined below) contemplated by the agreement of purchase and sale dated July 12, 2024 (as amended, the “**350 Sale Agreement**”, together with the 379 Sale Agreement, the “**Randigo Sale Agreements**” and collectively with the Gingras Sale Agreement, the “**Sale Agreements**”) between the Applicant and Randigo;
- (c) extending the Stay Period (as defined below) up to and including to October 31, 2024;
- and
- (d) increasing the maximum borrowing amount under the Applicant’s debtor in possession credit facility (the “**DIP Facility**”) from \$3.0 million to \$4.55 million;

I. INTRODUCTION

3. The background and circumstances leading up to Skylink’s CCAA proceedings are set out in the affidavit of Kyle Dennhardt sworn March 8, 2024, the affidavit of Kyle Dennhardt sworn April 20, 2024 and the affidavit of Kyle Dennhardt sworn May 24, 2024 (collectively, the “**Prior Affidavits**”) and therefore are not repeated herein.

The Initial Order and the ARIO

4. Pursuant to an application of the Applicant brought on March 11, 2024, the Applicant sought and obtained an initial order (the “**Initial Order**”) granting it protection pursuant to the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and granting an initial stay period (“**Stay Period**”) to March 21, 2024.

5. At the initial hearing, the Bank (as defined in the Prior Affidavits) also brought a Receivership Application (as defined in the Prior Affidavits) returnable on the same day; however, at the initial hearing on March 11, 2024, the Applicant and the Bank advised that they had agreed to terms and a proposed endorsement (the “**Initial Order Endorsement**”) pursuant to which the Receivership Application would be adjourned and provided that, among other things, the parties would work to negotiate an escrow agreement and forbearance agreement (collectively, the “**TD Stand Still Agreements**”).

6. The comeback hearing was scheduled for March 21, 2024. On March 21, 2024, the Court granted an amended and restated initial order (the “**ARIO**”), pursuant to which, among other things, the Stay Period was extended to April 26, 2024. The ARIO further provided that the Bank was not affected by the stay of proceedings. As the TD Stand Still Agreements had not yet been finalized, the Applicant and the Bank agreed to continue to abide by the terms of the Initial Order Endorsement.

7. The TD Stand Still Agreements were executed on April 19, 2024. On April 25, 2024, the Court granted an Order approving the terms of the TD Stand Still Agreements and extending the Stay Period up to and including May 31, 2024. The Receivership Application was also further adjourned.

8. On May 30, 2024, this Court further extended the Stay Period up to and including July 31, 2024.

II. SALE PROCESS

9. On May 30, 2024, the Court granted an order authorizing the Applicant to engage 1262396 Alberta Ltd. dba Pollock Aviation (the “**Agent**”) to act as its sales agent to market and sell its assets, which consist primarily of the Applicant’s aircrafts (the “**Fleet**”) and approved the Applicant’s proposed sale process (the “**Sale Process**”).

10. The Agent, in conjunction with Skylink, and under the supervision of the Monitor, developed its proposed approach to the marketing and sale of the Fleet and other assets. Briefly, the Sale Process provided that the Fleet and other assets would be marketed for sale on a one-off or en-bloc basis without a specific bid deadline.

11. I understand that the fifth report of the Monitor (the “**Fifth Report**”) will provide that to the Monitor’s knowledge, the Sale Process has been conducted in accordance with the Sale Process Order (as defined in the Prior Affidavits) and remains ongoing.

III. THE LAD TRANSACTION

12. Pursuant to an agreement of purchase and sale dated Jun 24, 2024 (the “**LAD Sale Agreement**”), the Applicant agreed to sell a Cessna Grand Caravan aircraft and Pratt and Whitney engine to LAD Inc. (the “**LAD Transaction**”).

13. The LAD Transaction was approved by the Court on July 5, 2024. The LAD Transaction closed later in the day on July 5, 2024.

IV. TRANSACTIONS

14. On July 10, 2024, the Applicant entered into the Gingras Sale Agreement for the sale of a Cessna Grand Caravan aircraft, manufacturer’s serial number 208B-0047 together with one (1) Pratt and Whitney Canada PT6A-114A engine with serial number 19226; all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached as Exhibit A to the Gingras Sale Agreement; a spare (uninstalled) co-pilot windshield; and (iii) all Aircraft Documents (as defined in the Gingras Sale Agreement).

15. On July 12, 2024, the Applicant entered into the Randigo Sale Agreements:

- a. for the sale of a Cessna Grand Caravan aircraft, manufacturer's serial 208B-0379 together with one (1) Pratt and Whitney Canada PT6A-114A engine with serial number PC0687; all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached as Exhibit A to the 379 Sale Agreement; and (iii) all Aircraft Documents (as defined in the 379 Sale Agreement) (collectively, the "**379 Aircraft**"); and
 - b. for the sale of a Cessna Grand Caravan aircraft, manufacturer's serial number 208B-0350 together with one (1) Pratt and Whitney Canada PT6A-114A engine with serial number 17025; all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached as Exhibit A to the 350 Sale Agreement; and (iii) all Aircraft Documents (as defined in the 350 Sale Agreement) (collectively, the "**350 Aircraft**", and together with the 47 Aircraft and 379 Aircraft, the "**Aircrafts**"); and
16. The Sale Agreements are in largely the same form as the LAD Sale Agreement.
 17. I am advised by Jennifer Stam of Norton Rose Fulbright Canada LLP, the Applicant's counsel, that the Bank does not oppose the Transactions.

V. EXTENSION OF THE STAY PERIOD

18. The Applicant is seeking an extension of the Stay Period up to and including October 31, 2024 to provide sufficient time to close the current Transactions and to continue to advance the Sale Process with respect to the balance of the Fleet and other assets, subject to the approval of the Sale Process by the Court. Additionally, the extension of the Stay Period will assist the

Applicant in its ongoing wind down of its service to UPS under the UPS Contract (as both terms are defined in the Prior Affidavits).

19. The Applicant has worked on a revised cash flow forecast with the Monitor, to be attached to the Fifth Report, 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.

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

VI. INCREASE IN DIP FACILITY

21. 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 (as amended, the “**DIP Term Sheet**”) pursuant to which the DIP Lender agreed to provide debtor in possession financing to the Applicant during these CCAA proceedings.

22. The current maximum borrowing amount under the DIP Term Sheet is \$3.0 million.

23. The DIP Lender has agreed to increase the maximum borrowing amount under the DIP Facility from \$3.0 million to \$4.55 million pursuant to a second amendment to the DIP Term Sheet dated as of July 19, 2024 (the “**Second Amendment**”). A copy of the DIP Term Sheet and the Second Amendment are attached as Exhibits “A” and “B” hereto.

24. The DIP Lender’s Charge (as defined in the Prior Affidavits) in respect of the increased amount will continue to be subordinate to the Bank.

25. Without the increased amount, the Applicant is not forecast to be able to meet its liabilities as they come due during the proposed extended Stay Period.

VII. ADDITIONAL RELIEF

Distribution

26. Pursuant to the TD Stand Still Agreements, the Applicant has agreed that the net proceeds of all sales, transfers or other disposition of assets outside of the ordinary course shall be paid to TD. As such, the Applicant is seeking authorization for the Monitor, as escrow agent, to distribute the net proceeds of sale from the Aircrafts plus applicable taxes to TD.

Sealing

27. The Applicant is requesting that the confidential appendices to the Fifth Report (the “**Confidential Appendices**”) be sealed until either completion of the Sale Process or further Order of the Court. The Confidential Appendices contains the deposits and purchase prices of the Aircrafts. Given that the Sale Process continues with respect to the balance of the Fleet, disclosure of this information could influence the selling price of the balance of the Fleet which could result in reduced recoveries for stakeholders.

VIII. CONCLUSION

28. 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 July 19, 2024 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 July 19, 2024 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 July 19, 2024 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.

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

AFFIDAVIT OF DAVID ATKINS

NORTON ROSE FULBRIGHT CANADA LLP

222 Bay Street, Suite 3000

Toronto, ON M5K 1E7

Fax: 416.216.3930

Jennifer Stam LSO#: 46735J

Tel: 416.202.6707

jennifer.stam@nortonrosefulbright.com

Lawyers for the Applicant

TAB 3

Court File No. 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. (the "**Applicant**")

**AFFIDAVIT OF KYLE DENNHARDT
(sworn May 24, 2024)**

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

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

2. I swear this affidavit in support of the Applicant's motion for an order, among other things:

- (a) extending the Stay Period (defined below) up to and including to July 30, 2024;
- (b) approving the retention of the Agent and the Sale Process (as both terms are defined below); and
- (c) increasing the maximum borrowing amount under the Applicant's debtor in possession credit facility (the "**DIP Facility**") from \$2.5 million to \$3.0 million.

I. INTRODUCTION

3. The background and circumstances leading up to Skylink's CCAA proceedings are set out in my affidavit sworn March 8, 2024 (the "**Initial Affidavit**") and my affidavit sworn April 20, 2024 (collectively, my "**Prior Affidavits**") and therefore are not repeated herein.

The Initial Order and the ARIO

4. Pursuant to an application of the Applicant brought on March 11, 2024, the Applicant sought and obtained an initial order (the "**Initial Order**") granting it protection pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**") and granting an initial stay period ("**Stay Period**") to March 21, 2024.

5. At the initial hearing, the Bank also brought a Receivership Application (as defined in my Prior Affidavits) returnable on the same day; however, at the initial hearing on March 11, 2024, the Applicant and the Bank advised that they had agreed to terms and a proposed endorsement (the "**Initial Order Endorsement**") pursuant to which the Receivership Application would be adjourned and provided that, among other things, the parties would work to negotiate an escrow agreement and forbearance agreement (collectively, the "**TD Stand Still Agreements**").

6. The comeback hearing was scheduled for March 21, 2024. On March 21, 2024, the Court granted an amended and restated initial order (the "**ARIO**"), pursuant to which, among other things, the Stay Period was extended to April 26, 2024. The ARIO further provided that the Bank was not affected by the stay of proceedings. As the TD Stand Still Agreements had not yet been finalized, the Applicant and the Bank agreed to further continue to abide by the terms of the Initial Order Endorsement.

7. The TD Stand Still Agreements were executed on April 19, 2024. On April 25, 2024, the Court granted an Order approving the terms of the TD Stand Still Agreements and extending the

Stay Period up to and including May 31, 2024. The Receivership Application was also further adjourned.

II. DISCUSSIONS WITH UPS

8. As set out in my Prior Affidavits, the Applicant's primary customer is United Parcel Service Canada Ltd. ("**UPS**"). One of the main goals of the Applicant in its restructuring was to renegotiate the terms of long-term feeder aircraft charter agreement (the "**UPS Contract**"), given the revenue generated from the UPS Contract is insufficient to cover associated operating costs. The many reasons for the need to renegotiate the UPS Contract have been set out in my Prior Affidavits and therefore not repeated herein.

9. As described in my prior affidavit sworn in advance of the last stay extension hearing, I indicated that we had hoped to have made more progress on the negotiation on the UPS Contract. At the date of the last motion, the Applicant was continuing to review and consider whether there was a business model that would allow the Applicant and UPS to continue their longstanding relationship, but also began considering a transition plan with UPS as well as the development of a sale process for the Applicant's business and assets.

10. As of the date of this Affidavit, the Applicant and UPS have not been able to make the progress on a new long term arrangement that would see the Applicant continue to provide services to UPS. Instead more recently, the Applicant and UPS have been in discussions to agree on term for a shorter term transition plan (the "**Transition**") up through the end of July. The Transition will permit the Applicant to continue to operate the majority of its existing routes during the period. However, the Applicant's ability to continue its operations depends on a number of factors including the ability to retain the employees required to service the UPS Contract.

11. This arrangement is far from what the Applicant had hoped for given the support it has provided UPS over the many years of our relationship. Although the current Transition contemplates that Skylink may be required to cease operations at the end of the Transition period, I know that for Skylink's part, it remains open to further discussions with UPS in the next few months.

III. SALE PROCESS

12. Given it is not certain that Skylink will continue operating past the end of the Transition, the Applicant is seeking authorization to engage 1262396 Alberta Ltd. dba Pollock Aviation (the "**Agent**") to act as its sales agent to market and sell its assets, which consist primarily of the Applicant's aircraft (the "**Fleet**"), aircraft parts inventory and potentially its air operator certificate (the "**AOC**"). The AOC may have value to a party looking to operate Skylink or another aviation business as a turn-key aviation business. A copy of the Agent's engagement letter is attached hereto as **Exhibit "A"**.

13. The Agent is an experienced sales agent and aircraft broker. It is well known in the aviation industry, as well as to the Applicant and to Momentum. I understand that further details with respect to the Agent's credentials will be outlined in the Monitor's third report (the "**Third Report**"). I believe that engaging the Agent in this instance is crucial to maximizing the value of Skylink's assets, including the Fleet, parts inventory and potentially the AOC.

14. The Agent, in conjunction with Skylink, and under the supervision of the Monitor, has outlined its proposed approach to the marketing and sale of the Fleet and other assets. A description of the proposed sale process (the "**Sale Process**") is provided in the Third Report. Briefly, the Sale Process provides that the Fleet and other assets will be marketed for sale on a one-off or en-bloc basis without a specific bid deadline. The Agent is of the view that certain of the aircraft will be sold quickly, while some aircraft may require several months to sell. The

Applicant intends to maintain the personnel required to maintain, service and preserve the value of the Fleet and the parts inventory, while also securing and safeguarding the books and records related to the Fleet, which is critical to preserve value.

15. I am advised by Jennifer Stam of NRFC, the Applicant's counsel, that the Bank does not oppose the retention of the Agent or the Sale Process.

IV. DIP FACILITY

16. As set out in my Prior Affidavits, 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 "**Original DIP Term Sheet**") pursuant to which the DIP Lender agreed to provide debtor in possession financing to the Applicant during these CCAA proceedings. The current maximum borrowing amount under the Original DIP Term Sheet and DIP Facility is \$2.5 million.

17. Given the Applicant's cash requirements for the proposed stay extension (which is discussed further in the Third Report), the DIP Lender has agreed to increase the maximum borrowing amount under the DIP Facility from \$2.5 million to \$3.0 pursuant to an amendment to the Original DIP Term Sheet dated as of May 23, 2024 (the "**First Amendment**"). A copy of the First Amendment is attached hereto as **Exhibit "B"**.

18. The DIP Lender's Charge in respect of the increased amount will continue to be subordinate to the Bank. I believe that the ability of the Applicant to borrow these additional funds is reasonable in the circumstances and that no one will be unduly prejudiced by the increase in the DIP Facility. Without the increased amount, the Applicant is not forecast to be able to meet its liabilities as they come due during the proposed extended Stay Period.

V. STAY EXTENSION

19. The Applicant is seeking an extension of the Stay Period up to and including July 30, 2024 to provide sufficient time to facilitate the Transition and advance the proposed Sale Process, subject to the approval of the Sale Process by the Court.

20. I believe there is no prejudice in the request for the extension of the Stay Period up to the end of July. The Applicant has worked on a revised cash flow forecast with the Monitor, which I understand will be attached to the Third Report and indicates that, subject to the increased amount of the DIP Facility, the Applicant will be able to fund its liabilities as they come due during the Stay Period. The Applicant has been acting in good faith and with due diligence during this time and will continue to do so during this CCAA proceeding. The Applicant intends to comply with the TD Stand Still Agreements during the extension period, including the debt servicing obligations.

VI. CONCLUSION

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

SWORN by Kyle Dennhardt at the City of Toronto, in the Province of Ontario, before me on May 24, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits
(or as may be)

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

Kyle Dennhardt

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

AFFIDAVIT OF KYLE DENNHARDT

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Jennifer Stam LSO#: 46735J

Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Lawyers for the Applicant

TAB 4

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE	)	MONDAY, THE 29 th
)	
JUSTICE STEELE	)	DAY OF JULY, 2024

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

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

**ORDER
(Stay Extension and Activities and Fees Approval)**

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, as amended on March 21, 2024, the "**ARIO**") to and including October 31, 2024; (b) increasing the maximum borrowing amount under the Applicant's debtor in possession credit facility from \$3.0 million to \$4.55 million; and (b) approving the Reports (as defined below), activities and fees of the Monitor (as defined below) and its legal counsel, was heard this day by Zoom videoconference.

ON READING the affidavit of David Atkins sworn July 19, 2024 and the exhibits attached thereto (the "**Atkins Affidavit**") and the fifth report of KSV Restructuring Inc. in its capacity as the monitor of the Applicant (in such capacity, the "**Monitor**") dated July 19, 2024 (the "**Fifth Report**"), and on hearing the submissions of the lawyers for the Applicant, Momentum Decisive Solutions

Canada Inc., The Toronto-Dominion Bank, the Monitor and those other parties present although duly served as appears from the affidavit of service of ● sworn July ●, 2024,

SERVICE

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

STAY EXTENSION

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

SEALING

3. **THIS COURT ORDERS** that the confidential appendices to the Fifth Report be and is hereby sealed until such time as the Sale Process (as defined in the Fifth Report) is complete or further Order of the Court.

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 \$4.55 million; and (b) the definition of "DIP Term Sheet" shall incorporate reference to the Second Amendment (as defined in the Atkins Affidavit).

5. **THIS COURT ORDERS** that, for greater certainty, the DIP Lender (as defined in the ARIO) shall have the benefit of the DIP Lender's Charge in respect of all increased borrowings contemplated in paragraph 8 above.

APPROVAL OF REPORTS AND ACTIVITIES AND FEES

6. **THIS COURT ORDERS** that the fourth report of the Monitor dated June 28, 2024 and the Fifth Report (together, the “**Reports**”) and the activities of the Monitor referred to therein be and are hereby approved; provided, however, that only the Monitor in their personal capacities and only with respect to their own personal liability, shall be entitled to rely upon or utilize in any way such approval.

7. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from May 1, 2024 to June 30, 2024 as set out in the affidavit of **[Robert Kofman]** sworn July ●, 2024, are hereby approved.

8. **THIS COURT ORDERS** that the fees and disbursements of Cassels Brock & Blackwell LLP, in its capacity as legal counsel to the Monitor, for the period from May 1, 2024 to June 30, 2024, as set out in the affidavit of **[Monique Sassi]** sworn July ●, 2024, are hereby approved.

GENERAL

9. **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.

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



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(Stay Extension and Activities and Fees Approval)**

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Jennifer Stam LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Lawyers for the Applicant

TAB 5

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE	)	MONDAY, THE 29 th
)	
JUSTICE STEELE	)	DAY OF JULY, 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**")

**APPROVAL AND VESTING ORDER
(C-FHGA CESSNA 208B, MSN 208B-0047 (GINGRAS ÉQUIPEMENT INC.))**

THIS MOTION, made by the Applicant, Skylink Express Inc., (the "**Applicant**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Applicant and Gingras Équipement Inc. (the "**Purchaser**") dated July 10, 2024 and appended to the Fifth Report of KSV Restructuring Inc. in its capacity as the monitor of the Applicant (in such capacity, the "**Monitor**") dated July 19, 2024 (the "**Fifth Report**"), and vesting in the Purchaser the Applicant's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of David Atkins, sworn July 19, 2024 and the exhibits attached thereto and the Fifth Report and on hearing the submissions of counsel for the Applicant, Momentum Decisive Solutions Canada Inc., The Toronto-Dominion Bank (the "**Bank**"), the Monitor and those other parties present although duly served as appears from the Affidavit of Service of ● sworn July ●, 2024, filed:

-2-

1 **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Applicant is hereby authorized and approved, with such minor amendments as the Applicant and Monitor may deem necessary. The Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2 **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Applicant's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule "B" hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated March 11, 2024 (as amended and restated); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (Manitoba), the *Personal Property Security Act* (Saskatchewan), and the *Personal Property Security Act* (British Columbia) or any other personal property registry system; (iii) all international interests and associated rights registered with the International Registry of Mobile Assets operating under the framework of the *Convention on International Interests in Mobile Equipment* and the *Protocol on Matters Specific to Aircraft Equipment* ("**International Registry**"); (iv) any Irrevocable De-registration and Export Request Authorisation ("**IDERA**") registered with the Canadian Civil Aircraft Register ("**CCAR**"); and (v) those Claims listed on Schedule "C" hereto

-3-

(all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3 **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4 **THIS COURT ORDERS** that all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Applicant or the Purchased Assets, including without limitation, any personal property security register in any Province in Canada, the Federal Aviation Administration aircraft registry, the International Registry and Transport Canada (including the CCAR) (collectively, the “**Governmental Authorities**”) are hereby authorized requested and directed to accept delivery of the Monitor’s Certificate and a copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance (including any deregistration of IDERA with the CCAR) as may be required to convey or record in favour of the Purchaser clear title to the Purchased Assets and registration of the Purchased Assets with the CCAR in favour of the Purchaser or any future lessee of the Purchased Assets as the operator of the Purchased Assets.

5 **THIS COURT ORDERS** that the Applicant, the Bank and the Purchaser each register as a Transacting User Entity with the International Registry (as defined in the International Registry)

-4-

and that each designate a Professional User Entity with such registry (as defined in the International Registry).

6 **THIS COURT ORDERS** that the Applicant, the Bank and the Purchaser are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to effect the discharge of the Encumbrances including but not limited to providing the consents to discharge of any international interests, associated rights or rights to discharge Encumbrances in favour of the Bank.

7 **THIS COURT ORDERS and DIRECTS** each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement (irrespective if the explicit consent of any other party is required in writing or otherwise) and the presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest, or any recordation of same, and cancel and discharge registrations and IDERA.

8 **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

9 **THIS COURT ORDERS** that the Applicant and the Monitor, on behalf of the Applicant and in its capacity as Escrow Agent under the APA, are hereby authorized and directed, without further order of the Court, to distribute the Purchase Price (as defined in the APA), net of the commission payable to the Agent (as defined in the Fifth Report), to Bank (the "**Distribution**").

10 **THIS COURT ORDERS** that the Monitor and the Applicant are hereby authorized and directed to take all reasonably necessary steps and actions to effect the Distribution in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distribution.

-5-

11 **THIS COURT ORDERS** that the Distribution shall be made free and clear of all Encumbrances and shall reduce the obligations under the TD Loan Facilities and TD Loan Security (each as defined in the Fifth Report).

12 **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

the Distribution and the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

13 **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

-6-

Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

Schedule "A" - Form of Monitor's Certificate

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. (the "**Applicant**")

MONITOR'S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (the "Court") dated March 11, 2024, KSV Restructuring Inc. was appointed as the monitor (the "**Monitor**") of Skylink Express Inc. (the "**Applicant**").

B. Pursuant to an Order of the Court dated **[DATE]**, the Court approved the agreement of purchase and sale made as of July 10, 2024 (the "**Sale Agreement**") between the Applicant and Gingras Équipement Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 3.5 of the Sale Agreement have been satisfied or waived by the Monitor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Applicant and the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

-2-

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 3.5 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Applicant and the Monitor.
4. This Certificate was delivered by the Monitor at _____ [a.m./p.m.] on [DATE].

**KSV Restructuring Inc., in its capacity as Monitor of
Skylink Express Inc., and not in its personal capacity**

Per: _____

Name:

Title:

Schedule "B" - Purchased Assets

- Cessna Grand Caravan airframe, manufacturer's serial number 208B-0047 (the "**Airframe**");
- Pratt and Whitney Canada PT6A-114A engine, engine's serial number 19226 (the "**Engine**");
- all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached as Exhibit A to the Sale Agreement;
- all Aircraft Documents (as defined in the Sale Agreement); and
- a spare (uninstalled) co-pilot windshield

Schedule “C” – Partial Discharges to be Registered

Personal Property Security Act (Ontario) Security

Debtor	Secured Party	Reference File Number	Collateral Description
Skylink Express Inc.	The Toronto-Dominion Bank	767158866	Reference to the following under “Motor Vehicle” and “General Collateral Description” to be removed: <ul style="list-style-type: none"> • Pratt & Whitney Canada PT6A Series Serial No. 19226 • Cessna 208B Serial No. 208B-0047

Personal Property Security Act (Manitoba) Security

Debtor	Secured Party	Registration Number	Collateral Description
Skylink Express Inc.	The Toronto-Dominion Bank	202017958706	Reference to the following under “Serial Numbered Goods” and “General Collateral Description” to be removed: <ul style="list-style-type: none"> • Pratt & Whitney Canada PT6A Series Serial No. 19226 • Cessna 208B Serial No. 208B-0047

Personal Property Security Act (British Columbia) Security

Debtor	Secured Party	Base Registration Number	Collateral Description
Skylink Express Inc.	The Toronto-Dominion Bank	561393M	Reference to the following under “Vehicle Collateral” and “General Collateral” to be removed:

			<ul style="list-style-type: none"> • Pratt & Whitney Canada PT6A Series Serial No. 19226 • Cessna 208B Serial No. 208B-0047
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Personal Property Security Act (Saskatchewan) Security

Debtor	Secured Party	Registration Number	Collateral Description
Skylink Express Inc.	The Toronto-Dominion Bank	302097989	Reference to the following under “Serial Property” and “General Property” to be removed: <ul style="list-style-type: none"> • Pratt & Whitney Canada PT6A Series Serial No. 19226 • Cessna 208B Serial No. 208B-0047

International Registry

- File number 1809912 in favour of The Toronto-Dominion Bank, as creditor, against Skylink Express Inc., as debtor, in respect of Pratt & Whitney Canada PT6A-114 Series Serial No. 19226 as shown on Priority Search Certificate Number 1945187.
- File number 1809903 in favour of The Toronto-Dominion Bank, as creditor, against Skylink Express Inc., as debtor, in respect of Cessna 208B Serial No. 208B0047 as shown on Priority Search Certificate Number 1945185.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**APPROVAL AND VESTING ORDER
(C-FHGA Cessna 208B, MSN 208B-0047
(GINGRAS ÉQUIPEMENT INC.))**

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Jennifer Stam LSO#: 46735J
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Lawyers for the Applicant

TAB 6

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

<u>THE HONOURABLE</u>	)	<u>MONDAY, THE 29th</u>
)	
THE HONOURABLE	)	WEEKDAY, THE #
)	
JUSTICE <u>STEELE</u>	)	DAY OF MONTH <u>JULY</u> , 20 YR <u>2024</u>

~~BETWEEN:~~~~PLAINTIFF~~

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

~~Plaintiff~~

~~-and-~~

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

~~DEFENDANT~~

~~Defendant~~

**APPROVAL AND VESTING ORDER
(C-FHGA CESSNA 208B, MSN 208B-0047 (GINGRAS ÉQUIPEMENT INC.))**

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ *in its capacity as the Court appointed* receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ (the "Debtor" the Applicant, Skylink Express Inc., (the "**Applicant**")) for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the ~~Receiver and [NAME OF PURCHASER]~~ (the "Applicant and Gingras Équipement Inc. (the "**Purchaser**")") dated ~~[DATE]~~ July 10, 2024 and appended to the Fifth Report of ~~the Receiver dated [DATE]~~ (the "Report" KSV Restructuring Inc. in its capacity as the monitor of the Applicant (in such capacity, the "**Monitor**") dated July 19, 2024 (the "Fifth

-2-

Report"), and vesting in the Purchaser the ~~Debtor's~~Applicant's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"); was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of David Atkins, sworn July 19, 2024 and the exhibits attached thereto and the Fifth Report and on hearing the submissions of counsel for the ~~Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly~~Applicant, Momentum Decisive Solutions Canada Inc., The Toronto-Dominion Bank (the "Bank"), the Monitor and those other parties present although duly served as appears from the a~~A~~ffidavit of [NAME] Service of ● sworn [DATE] July ●, 2024, filed¹:

1 ~~1.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,² and the execution of the Sale Agreement by the ~~Receiver~~³Applicant is hereby authorized and approved, with such minor amendments as the ~~Receiver~~Applicant and Monitor may deem necessary. The ~~Receiver~~Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the

¹~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

²~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2 ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a ~~Receiver's~~Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the ~~"Receiver's"~~"Monitor's Certificate"), all of the ~~Debtor's~~Applicant's right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~{~~and listed on Schedule "B" hereto~~}~~⁴ shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the ~~"Claims"~~"Claims"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~Cavanagh dated ~~[DATE]~~March 11, 2024 (as amended and restated); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (Manitoba), the *Personal Property Security Act* (Saskatchewan), and the *Personal Property Security Act* (British Columbia) or any other personal property registry system; ~~and~~ (iii) all international interests and associated rights registered with the

~~⁴To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

~~⁵The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

International Registry of Mobile Assets operating under the framework of the *Convention on International Interests in Mobile Equipment* and the *Protocol on Matters Specific to Aircraft Equipment* (“**International Registry**”); (iv) any Irrevocable De-registration and Export Request Authorisation (“**IDERA**”) registered with the Canadian Civil Aircraft Register (“**CCAR**”); and (v) those Claims listed on Schedule “**C**” hereto (all of which are collectively referred to as the “**Encumbrances**”, ~~which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D~~) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

~~3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “Real Property”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

3 ~~4.~~ **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the ~~Receiver's~~Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets

⁶Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at “net proceeds”.

immediately prior to the sale⁸, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4 **THIS COURT ORDERS** that all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Applicant or the Purchased Assets, including without limitation, any personal property security register in any Province in Canada, the Federal Aviation Administration aircraft registry, the International Registry and Transport Canada (including the CCAR) (collectively, the “Governmental Authorities”) are hereby authorized requested and directed to accept delivery of the Monitor’s Certificate and a copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance (including any deregistration of IDERA with the CCAR) as may be required to convey or record in favour of the Purchaser clear title to the Purchased Assets and registration of the Purchased Assets with the CCAR in favour of the Purchaser or any future lessee of the Purchased Assets as the operator of the Purchased Assets.

5 **THIS COURT ORDERS** that the Applicant, the Bank and the Purchaser each register as a Transacting User Entity with the International Registry (as defined in the International Registry) and that each designate a Professional User Entity with such registry (as defined in the International Registry).

~~⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

-6-

6 **THIS COURT ORDERS** that the Applicant, the Bank and the Purchaser are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to effect the discharge of the Encumbrances including but not limited to providing the consents to discharge of any international interests, associated rights or rights to discharge Encumbrances in favour of the Bank.

7 **THIS COURT ORDERS and DIRECTS** each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement (irrespective if the explicit consent of any other party is required in writing or otherwise) and the presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest, or any recordation of same, and cancel and discharge registrations and IDERA.

8 ~~5.~~ **THIS COURT ORDERS AND DIRECTS** the ~~Receiver~~Monitor to file with the Court a copy of the ~~Receiver's~~Monitor's Certificate, forthwith after delivery thereof.

9 **THIS COURT ORDERS** that the Applicant and the Monitor, on behalf of the Applicant and in its capacity as Escrow Agent under the APA, are hereby authorized and directed, without further order of the Court, to distribute the Purchase Price (as defined in the APA), net of the commission payable to the Agent (as defined in the Fifth Report), to Bank (the "**Distribution**").

10 ~~6.~~ **THIS COURT ORDERS** that, ~~pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the~~

-7-

~~personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~ the Monitor and the Applicant are hereby authorized and directed to take all reasonably necessary steps and actions to effect the Distribution in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distribution.

11 **THIS COURT ORDERS** that the Distribution shall be made free and clear of all Encumbrances and shall reduce the obligations under the TD Loan Facilities and TD Loan Security (each as defined in the Fifth Report).

12 ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the ~~Debtor~~Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the ~~Debtor~~Applicant;

the Distribution and the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Applicant and shall not be void or voidable by creditors of the ~~Debtor~~Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute

-8-

oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

13 ~~9.~~ **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 ~~Receiver and its~~ 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 ~~Receiver~~ Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver and its~~ Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

Schedule "A" - Form of ~~Receiver's~~Monitor's CertificateCourt File No. ~~_____~~CV-24-00716267-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

~~BETWEEN:-~~~~PLAINTIFF~~

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

Plaintiff

~~-and-~~

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

~~DEFENDANT~~~~Defendant~~**RECEIVER'SMONITOR'S CERTIFICATE****RECITALS**

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~Justice Cavanagh of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~March 11, 2024, KSV Restructuring Inc. was appointed as the ~~receiver~~ ~~(the "Receiver")~~ ~~of the undertaking, property and assets of [DEBTOR]~~ ~~(the "Debtor")~~ monitor ~~(the "Monitor")~~ of Skylink Express Inc. (the "Applicant").

B. Pursuant to an Order of the Court dated **[DATE]**, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~July 10, 2024 (the "Sale Agreement") between the ~~Receiver~~ ~~[Debtor]~~ ~~and [NAME OF PURCHASER]~~ ~~(the "Applicant and Gingras Équipement Inc. (the "Purchaser")")~~ and provided for the vesting in the Purchaser of the ~~Debtor's~~Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the ~~Receiver~~Monitor

-2-

to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ~~3.5~~ of the Sale Agreement have been satisfied or waived by the ~~Receiver~~Monitor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the ~~Receiver~~Applicant and the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE ~~RECEIVER~~MONITOR CERTIFIES the following:

1. ~~1.~~ The Purchaser has paid and the ~~Receiver~~Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. ~~2.~~ The conditions to Closing as set out in section ~~3.5~~ of the Sale Agreement have been satisfied or waived by the ~~Receiver~~Applicant and the Purchaser; and

3. ~~3.~~ The Transaction has been completed to the satisfaction of the ~~Receiver~~Applicant and the Monitor.

4. ~~4.~~ This Certificate was delivered by the ~~Receiver~~ at _____ [TIME] on Monitor at _____ [a.m./p.m.] on [DATE].

~~[NAME OF RECEIVER]~~ KSV Restructuring Inc., in its capacity as ~~Receiver of the undertaking, property and assets of~~ [DEBTOR] Monitor of Skylink Express Inc., and not in its personal capacity

Per: _____

Name: _____

-3-

Title:

|



Schedule "B" - Purchased Assets

- Cessna Grand Caravan airframe, manufacturer's serial number 208B-0047 (the "Airframe");
- Pratt and Whitney Canada PT6A-114A engine, engine's serial number 19226 (the "Engine");
- all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached as Exhibit A to the Sale Agreement;
- all Aircraft Documents (as defined in the Sale Agreement); and
- a spare (uninstalled) co-pilot windshield

Schedule "C" – ~~Claims to be deleted and expunged from title to Real Property~~ Partial Discharges to be Registered

Personal Property Security Act (Ontario) Security

<u>Debtor</u>	<u>Secured Party</u>	<u>Reference File Number</u>	<u>Collateral Description</u>
<u>Skylink Express Inc.</u>	<u>The Toronto-Dominion Bank</u>	<u>767158866</u>	<p><u>Reference to the following under "Motor Vehicle" and "General Collateral Description" to be removed:</u></p> <ul style="list-style-type: none"> • <u>Pratt & Whitney Canada PT6A Series Serial No. 19226</u> • <u>Cessna 208B Serial No. 208B-0047</u>

**Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

Personal Property Security Act (Manitoba) Security

<u>Debtor</u>	<u>Secured Party</u>	<u>Registration Number</u>	<u>Collateral Description</u>
<u>Skylink Express Inc.</u>	<u>The Toronto-Dominion Bank</u>	<u>202017958706</u>	<p>Reference to the following under “Serial Numbered Goods” and “General Collateral Description” to be removed:</p> <ul style="list-style-type: none"> • <u>Pratt & Whitney Canada PT6A Series Serial No. 19226</u> • <u>Cessna 208B Serial No. 208B-0047</u>

Personal Property Security Act (British Columbia) Security

<u>Debtor</u>	<u>Secured Party</u>	<u>Base Registration Number</u>	<u>Collateral Description</u>
<u>Skylink Express Inc.</u>	<u>The Toronto-Dominion Bank</u>	<u>561393M</u>	<p>Reference to the following under “Vehicle Collateral” and “General Collateral” to be removed:</p> <ul style="list-style-type: none"> • <u>Pratt & Whitney Canada PT6A Series Serial No. 19226</u> • <u>Cessna 208B Serial No. 208B-0047</u>

Personal Property Security Act (Saskatchewan) Security

<u>Debtor</u>	<u>Secured Party</u>	<u>Registration Number</u>	<u>Collateral Description</u>
<u>Skylink Express Inc.</u>	<u>The Toronto-Dominion Bank</u>	<u>302097989</u>	<p><u>Reference to the following under “Serial Property” and “General Property” to be removed:</u></p> <ul style="list-style-type: none"> • <u>Pratt & Whitney Canada PT6A Series Serial No. 19226</u> • <u>Cessna 208B Serial No. 208B-0047</u>

International Registry

- File number 1809912 in favour of The Toronto-Dominion Bank, as creditor, against Skylink Express Inc., as debtor, in respect of Pratt & Whitney Canada PT6A-114 Series Serial No. 19226 as shown on Priority Search Certificate Number 1945187.
- File number 1809903 in favour of The Toronto-Dominion Bank, as creditor, against Skylink Express Inc., as debtor, in respect of Cessna 208B Serial No. 208B0047 as shown on Priority Search Certificate Number 1945185.

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**APPROVAL AND VESTING ORDER
(C-FHGA Cessna 208B, MSN 208B-0047
(GINGRAS ÉQUIPEMENT INC.))**

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Jennifer Stam LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Lawyers for the Applicant

TAB 7

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE	)	MONDAY, THE 29 th
)	
JUSTICE STEELE	)	DAY OF JULY, 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**")

**APPROVAL AND VESTING ORDER
(C-GLGA CESSNA 208B, MSN 208B-0350 (RANDIGO LLC))**

THIS MOTION, made by the Applicant, Skylink Express Inc., (the "**Applicant**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Applicant and Randigo LLC (the "**Purchaser**") dated July 12, 2024 and appended to the Fifth Report of KSV Restructuring Inc. in its capacity as the monitor of the Applicant (in such capacity, the "**Monitor**") dated July 19, 2024 (the "**Fifth Report**"), and vesting in the Purchaser the Applicant's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of David Atkins, sworn July 19, 2024 and the exhibits attached thereto and the Fifth Report and on hearing the submissions of counsel for the Applicant, Momentum Decisive Solutions Canada Inc., The Toronto-Dominion Bank (the "**Bank**"), the Monitor and those other parties present although duly served as appears from the Affidavit of Service of ● sworn July ●, 2024, filed:

-2-

1 **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Applicant is hereby authorized and approved, with such minor amendments as the Applicant and Monitor may deem necessary. The Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2 **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Applicant's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule "B" hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated March 11, 2024 (as amended and restated); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (Manitoba), the *Personal Property Security Act* (Saskatchewan), and the *Personal Property Security Act* (British Columbia) or any other personal property registry system; (iii) all international interests and associated rights registered with the International Registry of Mobile Assets operating under the framework of the *Convention on International Interests in Mobile Equipment* and the *Protocol on Matters Specific to Aircraft Equipment* ("**International Registry**"); (iv) any Irrevocable De-registration and Export Request Authorisation ("**IDERA**") registered with the Canadian Civil Aircraft Register ("**CCAR**"); and (v) those Claims listed on Schedule "C" hereto

-3-

(all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3 **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4 **THIS COURT ORDERS** that all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Applicant or the Purchased Assets, including without limitation, any personal property security register in any Province in Canada, the Federal Aviation Administration aircraft registry, the International Registry and Transport Canada (including the CCAR) (collectively, the “**Governmental Authorities**”) are hereby authorized requested and directed to accept delivery of the Monitor’s Certificate and a copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance (including any deregistration of IDERA with the CCAR) as may be required to convey or record in favour of the Purchaser clear title to the Purchased Assets and deregistration of the Purchased Assets with the CCAR.

5 **THIS COURT ORDERS** that the Bank registers as a Transacting User Entity with the International Registry (as defined in the International Registry) and it designates a Professional

User Entity with such registry (as defined in the International Registry) for the discharge of its international interests.

6 **THIS COURT ORDERS** that the Applicant, the Bank and the Purchaser are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to effect the discharge of the Encumbrances including but not limited to providing the consents to discharge of any international interests, associated rights or rights to discharge Encumbrances in favour of the Bank.

7 **THIS COURT ORDERS and DIRECTS** each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement (irrespective if the explicit consent of any other party is required in writing or otherwise) and the presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest, or any recordation of same, and cancel and discharge registrations and IDERA.

8 **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

9 **THIS COURT ORDERS** that the Applicant and the Monitor, on behalf of the Applicant and in its capacity as Escrow Agent under the APA, are hereby authorized and directed, without further order of the Court, to distribute the Purchase Price (as defined in the APA), net of the commission payable to the Agent (as defined in the Fifth Report), to Bank (the "**Distribution**").

10 **THIS COURT ORDERS** that the Monitor and the Applicant are hereby authorized and directed to take all reasonably necessary steps and actions to effect the Distribution in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distribution.

-5-

11 **THIS COURT ORDERS** that the Distribution shall be made free and clear of all Encumbrances and shall reduce the obligations under the TD Loan Facilities and TD Loan Security (each as defined in the Fifth Report).

12 **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

the Distribution and the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

13 **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

-6-

Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

Schedule "A" - Form of Monitor's Certificate

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. (the "**Applicant**")

MONITOR'S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (the "Court") dated March 11, 2024, KSV Restructuring Inc. was appointed as the monitor (the "**Monitor**") of Skylink Express Inc. (the "**Applicant**").

B. Pursuant to an Order of the Court dated **[DATE]**, the Court approved the agreement of purchase and sale made as of July 12, 2024 (the "**Sale Agreement**") between the Applicant and Randigo LLC (the "**Purchaser**") and provided for the vesting in the Purchaser of the Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 3.5 of the Sale Agreement have been satisfied or waived by the Monitor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Applicant and the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

-2-

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 3.5 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Applicant and the Monitor.
4. This Certificate was delivered by the Monitor at _____ [a.m./p.m.] on [DATE].

**KSV Restructuring Inc., in its capacity as Monitor of
Skylink Express Inc., and not in its personal capacity**

Per: _____

Name:

Title:

Schedule "B" - Purchased Assets

- Cessna Grand Caravan airframe, manufacturer's serial number 208B-0350 (the "**Airframe**");
- Pratt and Whitney Canada PT6A-114A engine, engine's serial number 17025 (the "**Engine**");
- all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached as Exhibit A to the Sale Agreement; and
- all Aircraft Documents (as defined in the Sale Agreement)

Schedule "C" – Partial Discharges to be Registered

Personal Property Security Act (Ontario) Security

Debtor	Secured Party	Reference File Number	Collateral Description
Skylink Express Inc.	The Toronto-Dominion Bank	767158866	Reference to the following under "Motor Vehicle" and "General Collateral Description" to be removed: <ul style="list-style-type: none"> • Pratt & Whitney Canada PT6A Series Serial No. 17025 • Cessna 208B Serial No. 208B-0350

Personal Property Security Act (Manitoba) Security

Debtor	Secured Party	Registration Number	Collateral Description
Skylink Express Inc.	The Toronto-Dominion Bank	202017958706	Reference to the following under "Serial Numbered Goods" and "General Collateral Description" to be removed: <ul style="list-style-type: none"> • Pratt & Whitney Canada PT6A Series Serial No. 17025 • Cessna 208B Serial No. 208B-0350

Personal Property Security Act (British Columbia) Security

Debtor	Secured Party	Base Registration Number	Collateral Description
Skylink Express Inc.	The Toronto-Dominion Bank	561393M	Reference to the following under "Vehicle Collateral" and "General Collateral" to be removed: <ul style="list-style-type: none"> • Pratt & Whitney Canada PT6A Series Serial No. 17025 • Cessna 208B Serial No. 208B-0350

Personal Property Security Act (Saskatchewan) Security

Debtor	Secured Party	Registration Number	Collateral Description
Skylink Express Inc.	The Toronto-Dominion Bank	302097989	Reference to the following under "Serial Property" and "General Property" to be removed: <ul style="list-style-type: none"> • Pratt & Whitney Canada PT6A Series Serial No. 17025 • Cessna 208B Serial No. 208B-0350

International Registry

- File number 1809911 in favour of The Toronto-Dominion Bank, as creditor, against Skylink Express Inc., as debtor, in respect of Pratt & Whitney Canada PT6A Series Serial No. 17025 as shown on Priority Search Certificate Number 1947202.
- File number 1809905 in favour of The Toronto-Dominion Bank, as creditor, against Skylink Express Inc., as debtor, in respect of Cessna 208B Serial No. 208B0350 as shown on Priority Search Certificate Number 1947201.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**APPROVAL AND VESTING ORDER
C-GLGA Cessna 208B, MSN 208B-0350 (Randigo LLC))**

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Jennifer Stam LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Lawyers for the Applicant

TAB 8

Court File No. [CV-24-00716267-00CL](#)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

<u>THE HONOURABLE</u>	)	<u>MONDAY, THE 29th</u>
)	
THE HONOURABLE	)	WEEKDAY, THE #
)	
JUSTICE <u>STEELE</u>	)	DAY OF MONTH <u>JULY</u> , 20 YR <u>2024</u>

~~BETWEEN:~~~~PLAINTIFF~~

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

~~Plaintiff~~

~~-and-~~

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

~~DEFENDANT~~

~~Defendant~~

**APPROVAL AND VESTING ORDER
(C-GLGA CESSNA 208B, MSN 208B-0350 (RANDIGO LLC))**

THIS MOTION, made by ~~[RECEIVER'S NAME] in its capacity as the Court-appointed~~ receiver (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ (the "Debtor"the Applicant, Skylink Express Inc., (the "**Applicant**")) for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the ~~Receiver and [NAME OF PURCHASER]~~ (the "Applicant and Randigo LLC (the "**Purchaser**")") dated ~~[DATE]~~July 12, 2024 and appended to the Fifth Report of ~~the Receiver dated [DATE]~~ (the "Report"KSV Restructuring Inc. in its capacity as the monitor of the Applicant (in such capacity, the "**Monitor**")) dated July 19, 2024 (the "Fifth Report"), and

-2-

vesting in the Purchaser the ~~Debtor's~~Applicant's right, title and interest in and to the assets described in the Sale Agreement (the ~~"Purchased Assets"~~),¹ was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of David Atkins, sworn July 19, 2024 and the exhibits attached thereto and the Fifth Report and on hearing the submissions of counsel for the ~~Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly~~Applicant, Momentum Decisive Solutions Canada Inc., The Toronto-Dominion Bank (the "Bank"), the Monitor and those other parties present although duly served as appears from the a~~A~~ffidavit of ~~[NAME]~~Service of ● sworn ~~[DATE]~~July ●, 2024, filed¹:

1 ~~1.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,² and the execution of the Sale Agreement by the ~~Receiver~~³Applicant is hereby authorized and approved, with such minor amendments as the ~~Receiver~~Applicant and Monitor may deem necessary. The ~~Receiver~~Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the

¹~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

²~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

-3-

completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2 ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a ~~Receiver's~~Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the ~~"Receiver's"~~"Monitor's Certificate"), all of the ~~Debtor's~~Applicant's right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~{~~and listed on Schedule "B" hereto⁴ shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the ~~"Claims"~~⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~Cavanagh dated ~~[DATE]~~March 11, 2024 (as amended and restated); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (Manitoba), the *Personal Property Security Act* (Saskatchewan), and the *Personal Property Security Act* (British Columbia) or any other personal property registry system; ~~and~~ (iii) all international interests and associated rights registered with the

⁴~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

⁵~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

-4-

International Registry of Mobile Assets operating under the framework of the *Convention on International Interests in Mobile Equipment* and the *Protocol on Matters Specific to Aircraft Equipment* (“**International Registry**”); (iv) any Irrevocable De-registration and Export Request Authorisation (“**IDERA**”) registered with the Canadian Civil Aircraft Register (“**CCAR**”); and (v) those Claims listed on Schedule “C” hereto (all of which are collectively referred to as the “Encumbrances”, ~~which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D~~) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

~~3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “Real Property”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

3 ~~4.~~ **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the ~~Receiver's~~Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets

⁶Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at “net proceeds”.

immediately prior to the sale⁸, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4 **THIS COURT ORDERS** that all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Applicant or the Purchased Assets, including without limitation, any personal property security register in any Province in Canada, the Federal Aviation Administration aircraft registry, the International Registry and Transport Canada (including the CCAR) (collectively, the “Governmental Authorities”) are hereby authorized requested and directed to accept delivery of the Monitor’s Certificate and a copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance (including any deregistration of IDERA with the CCAR) as may be required to convey or record in favour of the Purchaser clear title to the Purchased Assets and deregistration of the Purchased Assets with the CCAR.

5 **THIS COURT ORDERS** that the Bank registers as a Transacting User Entity with the International Registry (as defined in the International Registry) and it designates a Professional User Entity with such registry (as defined in the International Registry) for the discharge of its international interests.

6 **THIS COURT ORDERS** that the Applicant, the Bank and the Purchaser are hereby authorized and directed to take such additional steps and execute such additional documents

~~⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

as may be necessary or desirable to effect the discharge of the Encumbrances including but not limited to providing the consents to discharge of any international interests, associated rights or rights to discharge Encumbrances in favour of the Bank.

7 THIS COURT ORDERS and DIRECTS each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement (irrespective if the explicit consent of any other party is required in writing or otherwise) and the presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest, or any recordation of same, and cancel and discharge registrations and IDERA.

8 ~~5.~~ THIS COURT ORDERS AND DIRECTS the ~~Receiver~~Monitor to file with the Court a copy of the ~~Receiver's~~Monitor's Certificate, forthwith after delivery thereof.

9 THIS COURT ORDERS that the Applicant and the Monitor, on behalf of the Applicant and in its capacity as Escrow Agent under the APA, are hereby authorized and directed, without further order of the Court, to distribute the Purchase Price (as defined in the APA), net of the commission payable to the Agent (as defined in the Fifth Report), to Bank (the "Distribution").

10 ~~6.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the

-7-

~~prior use of such information by the Debtor.~~ the Monitor and the Applicant are hereby authorized and directed to take all reasonably necessary steps and actions to effect the Distribution in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distribution.

11 **THIS COURT ORDERS** that the Distribution shall be made free and clear of all Encumbrances and shall reduce the obligations under the TD Loan Facilities and TD Loan Security (each as defined in the Fifth Report).

12 ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the ~~Debtor~~Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the ~~Debtor~~Applicant;

the Distribution and the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Applicant and shall not be void or voidable by creditors of the ~~Debtor~~Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

-8-

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

13 ~~9.~~ **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 ~~Receiver and its~~ 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 ~~Receiver~~ Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver and its~~ Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

Schedule "A" - Form of ~~Receiver's~~Monitor's CertificateCourt File No. ~~_____~~CV-24-00716267-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

~~BETWEEN:~~~~PLAINTIFF~~

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

Plaintiff

~~—and—~~

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

~~DEFENDANT~~~~Defendant~~**RECEIVER'SMONITOR'S CERTIFICATE****RECITALS**

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~Justice Cavanagh of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~March 11, 2024, KSV Restructuring Inc. was appointed as the ~~receiver~~ ~~(the "Receiver")~~ of the ~~undertaking, property and assets of [DEBTOR]~~ ~~(the "Debtor")~~ monitor ~~(the "Monitor")~~ of Skylink Express Inc. (the "Applicant").

B. Pursuant to an Order of the Court dated **[DATE]**, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~July 12, 2024 (the "Sale Agreement") between the ~~Receiver~~ ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ ~~(the "Applicant and Randigo LLC (the "Purchaser")~~) and provided for the vesting in the Purchaser of the ~~Debtor's~~Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the ~~Receiver~~Monitor to

-2-

the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ~~3.5~~ of the Sale Agreement have been satisfied or waived by the ~~Receiver~~Monitor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the ~~Receiver~~Applicant and the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE ~~RECEIVER~~MONITOR CERTIFIES the following:

1. ~~1.~~ The Purchaser has paid and the ~~Receiver~~Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. ~~2.~~ The conditions to Closing as set out in section ~~3.5~~ of the Sale Agreement have been satisfied or waived by the ~~Receiver~~Applicant and the Purchaser; and

3. ~~3.~~ The Transaction has been completed to the satisfaction of the ~~Receiver~~Applicant and the Monitor.

4. ~~4.~~ This Certificate was delivered by the ~~Receiver~~ at _____ [TIME] on Monitor at _____ [a.m./p.m.] on [DATE].

~~[NAME OF RECEIVER]~~KSV Restructuring Inc., in its capacity as ~~Receiver of the undertaking, property and assets of~~ Monitor of Skylink Express Inc., and not in its personal capacity

Per:

Name:

-3-

Title:

|



Schedule "B" - Purchased Assets

- Cessna Grand Caravan airframe, manufacturer's serial number 208B-0350 (the "Airframe"):
- Pratt and Whitney Canada PT6A-114A engine, engine's serial number 17025 (the "Engine"):
- all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached as Exhibit A to the Sale Agreement; and
- all Aircraft Documents (as defined in the Sale Agreement)

Schedule "C" – ~~Claims to be deleted and expunged from title to Real Property~~ Partial Discharges to be Registered

Personal Property Security Act (Ontario) Security

<u>Debtor</u>	<u>Secured Party</u>	<u>Reference File Number</u>	<u>Collateral Description</u>
<u>Skylink Express Inc.</u>	<u>The Toronto-Dominion Bank</u>	<u>767158866</u>	<p>Reference to the following under "Motor Vehicle" and "General Collateral Description" to be removed:</p> <ul style="list-style-type: none"> • <u>Pratt & Whitney Canada PT6A Series Serial No. 17025</u> • <u>Cessna 208B Serial No. 208B-0350</u>

~~Schedule D — Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property~~

~~(unaffected by the Vesting Order)~~

Personal Property Security Act (Manitoba) Security

<u>Debtor</u>	<u>Secured Party</u>	<u>Registration Number</u>	<u>Collateral Description</u>
<u>Skylink Express Inc.</u>	<u>The Toronto-Dominion Bank</u>	<u>202017958706</u>	<p>Reference to the following under “Serial Numbered Goods” and “General Collateral Description” to be removed:</p> <ul style="list-style-type: none"> • <u>Pratt & Whitney Canada PT6A Series Serial No. 17025</u> • <u>Cessna 208B Serial No. 208B-0350</u>

Personal Property Security Act (British Columbia) Security

<u>Debtor</u>	<u>Secured Party</u>	<u>Base Registration Number</u>	<u>Collateral Description</u>
<u>Skylink Express Inc.</u>	<u>The Toronto-Dominion Bank</u>	<u>561393M</u>	<p>Reference to the following under “Vehicle Collateral” and “General Collateral” to be removed:</p> <ul style="list-style-type: none"> • <u>Pratt & Whitney Canada PT6A Series Serial No. 17025</u> • <u>Cessna 208B Serial No. 208B-0350</u>

Personal Property Security Act (Saskatchewan) Security

<u>Debtor</u>	<u>Secured Party</u>	<u>Registration Number</u>	<u>Collateral Description</u>
<u>Skylink Express Inc.</u>	<u>The Toronto-Dominion Bank</u>	<u>302097989</u>	<p>Reference to the following under “Serial Property” and “General Property” to be removed:</p> <ul style="list-style-type: none"> • <u>Pratt & Whitney Canada PT6A Series Serial No. 17025</u> • <u>Cessna 208B Serial No. 208B-0350</u>

International Registry

- File number 1809911 in favour of The Toronto-Dominion Bank, as creditor, against Skylink Express Inc., as debtor, in respect of Pratt & Whitney Canada PT6A Series Serial No. 17025 as shown on Priority Search Certificate Number 1947202.
- File number 1809905 in favour of The Toronto-Dominion Bank, as creditor, against Skylink Express Inc., as debtor, in respect of Cessna 208B Serial No. 208B0350 as shown on Priority Search Certificate Number 1947201.

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER
C-GLGA Cessna 208B, MSN 208B-0350 (Randigo LLC)

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Jennifer Stam LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Lawyers for the Applicant

TAB 9

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE	)	MONDAY, THE 29 TH
)	
JUSTICE STEELE	)	DAY OF JULY, 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**")

**APPROVAL AND VESTING ORDER
(C-GEGA CESSNA 208B, MSN 208B-0379 (RANDIGO LLC))**

THIS MOTION, made by the Applicant, Skylink Express Inc., (the "**Applicant**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Applicant and Randigo LLC (the "**Purchaser**") dated July 12, 2024 and appended to the Fifth Report of KSV Restructuring Inc. in its capacity as the monitor of the Applicant (in such capacity, the "**Monitor**") dated July 19, 2024 (the "**Fifth Report**"), and vesting in the Purchaser the Applicant's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of David Atkins, sworn July 19, 2024 and the exhibits attached thereto and the Fifth Report and on hearing the submissions of counsel for the Applicant, Momentum Decisive Solutions Canada Inc., The Toronto-Dominion Bank (the "**Bank**"), the Monitor and those other parties present although duly served as appears from the Affidavit of Service of ● sworn July ●, 2024, filed:

-2-

1 **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Applicant is hereby authorized and approved, with such minor amendments as the Applicant and Monitor may deem necessary. The Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2 **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Applicant's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule "B" hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated March 11, 2024 (as amended and restated); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (Manitoba), the *Personal Property Security Act* (Saskatchewan), and the *Personal Property Security Act* (British Columbia) or any other personal property registry system; (iii) all international interests and associated rights registered with the International Registry of Mobile Assets operating under the framework of the *Convention on International Interests in Mobile Equipment* and the *Protocol on Matters Specific to Aircraft Equipment* ("**International Registry**"); (iv) any Irrevocable De-registration and Export Request Authorisation ("**IDERA**") registered with the Canadian Civil Aircraft Register ("**CCAR**") and (v) those Claims listed on Schedule "C" hereto

-3-

(all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3 **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4 **THIS COURT ORDERS** that all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Applicant or the Purchased Assets, including without limitation, any personal property security register in any Province in Canada, the Federal Aviation Administration aircraft registry, the International Registry and Transport Canada (including the CCAR) (collectively, the “**Governmental Authorities**”) are hereby authorized requested and directed to accept delivery of the Monitor’s Certificate and a copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance (including any deregistration of IDERA with the CCAR) as may be required to convey or record in favour of the Purchaser clear title to the Purchased Assets and deregistration of the Purchased Assets with the CCAR.

5 **THIS COURT ORDERS** that the Bank registers as a Transacting User Entity with the International Registry (as defined in the International Registry) and it designates a Professional

-4-

User Entity with such registry (as defined in the International Registry) for the discharge of its international interests.

6 **THIS COURT ORDERS** that the Applicant, the Bank and the Purchaser are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to effect the discharge of the Encumbrances including but not limited to providing the consents to discharge of any international interests, associated rights or rights to discharge Encumbrances in favour of the Bank.

7 **THIS COURT ORDERS and DIRECTS** each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement (irrespective if the explicit consent of any other party is required in writing or otherwise) and the presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest, or any recordation of same, and cancel and discharge registrations and IDERA.

8 **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

9 **THIS COURT ORDERS** that the Applicant and the Monitor, on behalf of the Applicant and in its capacity as Escrow Agent under the APA, are hereby authorized and directed, without further order of the Court, to distribute the Purchase Price (as defined in the APA), net of the commission payable to the Agent (as defined in the Fifth Report), to Bank (the "**Distribution**").

10 **THIS COURT ORDERS** that the Monitor and the Applicant are hereby authorized and directed to take all reasonably necessary steps and actions to effect the Distribution in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distribution.

-5-

11 **THIS COURT ORDERS** that the Distribution shall be made free and clear of all Encumbrances and shall reduce the obligations under the TD Loan Facilities and TD Loan Security (each as defined in the Fifth Report).

12 **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicant;

the Distribution and the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicant and shall not be void or voidable by creditors of the Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

13 **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

-6-

Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

Schedule "A" - Form of Monitor's Certificate

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. (the "**Applicant**")

MONITOR'S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (the "Court") dated March 11, 2024, KSV Restructuring Inc. was appointed as the monitor (the "**Monitor**") of Skylink Express Inc. (the "**Applicant**").

B. Pursuant to an Order of the Court dated **[DATE]**, the Court approved the agreement of purchase and sale made as of July 12, 2024 (the "**Sale Agreement**") between the Applicant and Randigo LLC (the "**Purchaser**") and provided for the vesting in the Purchaser of the Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 3.5 of the Sale Agreement have been satisfied or waived by the Monitor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Applicant and the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

-2-

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 3.5 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Applicant and the Monitor.
4. This Certificate was delivered by the Monitor at _____ [a.m./p.m.] on [DATE].

**KSV Restructuring Inc., in its capacity as Monitor of
Skylink Express Inc., and not in its personal capacity**

Per: _____

Name:

Title:

Schedule "B" - Purchased Assets

- Cessna Grand Caravan airframe, manufacturer's serial number 208B-0379 (the "**Airframe**");
- Pratt and Whitney Canada PT6A-114A engine, engine's serial number PC0687 (the "**Engine**");
- all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached as Exhibit A to the Sale Agreement; and
- all Aircraft Documents (as defined in the Sale Agreement)

Schedule "C" – Partial Discharges to be Registered

Personal Property Security Act (Ontario) Security

Debtor	Secured Party	Reference File Number	Collateral Description
Skylink Express Inc.	The Toronto-Dominion Bank	767158866	<p>Reference to the following under "Motor Vehicle" and "General Collateral Description" to be removed:</p> <ul style="list-style-type: none"> • Pratt & Whitney Canada PT6A Series Serial No. PC0687 • Cessna 208B Serial No. 208B-0379

Personal Property Security Act (Manitoba) Security

Debtor	Secured Party	Registration Number	Collateral Description
Skylink Express Inc.	The Toronto-Dominion Bank	202017958706	<p>Reference to the following under "Serial Numbered Goods" and "General Collateral Description" to be removed:</p> <ul style="list-style-type: none"> • Pratt & Whitney Canada PT6A Series Serial No. PC0687 • Cessna 208B Serial No. 208B-0379

Personal Property Security Act (British Columbia) Security

Debtor	Secured Party	Base Registration Number	Collateral Description
Skylink Express Inc.	The Toronto-Dominion Bank	561393M	Reference to the following under "Vehicle Collateral" and "General Collateral" to be removed: <ul style="list-style-type: none"> • Pratt & Whitney Canada PT6A Series Serial No. PC0687 • Cessna 208B Serial No. 208B0379

Personal Property Security Act (Saskatchewan) Security

Debtor	Secured Party	Registration Number	Collateral Description
Skylink Express Inc.	The Toronto-Dominion Bank	302097989	Reference to the following under "Serial Property" and "General Property" to be removed: <ul style="list-style-type: none"> • Pratt & Whitney Canada PT6A Series Serial No. PC0687 • Cessna 208B Serial No. 208B0379

International Registry

- File number 1809935 in favour of The Toronto-Dominion Bank, as creditor, against Skylink Express Inc., as debtor, in respect of Pratt & Whitney Canada PT6A Series Serial No. PC0687 as shown on Priority Search Certificate Number 1945188.
- File number 1809904 in favour of The Toronto-Dominion Bank, as creditor, against Skylink Express Inc., as debtor, in respect of Cessna 208B Serial No. 208B0379 as shown on Priority Search Certificate Number 1945186.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**APPROVAL AND VESTING ORDER
(C-GEGA CESSNA 208B, MSN 208B-0379 (RANDIGO LLC))**

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Jennifer Stam LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Lawyers for the Applicant

TAB 10

Court File No. [CV-24-00716267-00CL](#)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE	)	MONDAY, THE 29TH
)	
THE HONOURABLE	)	WEEKDAY, THE #
)	
JUSTICE STEELE	)	DAY OF MONTH JULY , 20 YR 2024

~~BETWEEN:~~~~PLAINTIFF~~

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

~~Plaintiff~~

~~-and-~~

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

~~DEFENDANT~~

~~Defendant~~

**APPROVAL AND VESTING ORDER
([C-GEGA CESSNA 208B, MSN 208B-0379 \(RANDIGO LLC\)](#))**

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ *in its capacity as the Court-appointed receiver* (the "Receiver") of the undertaking, property and assets of ~~[DEBTOR]~~ (the "Debtor" the Applicant, Skylink Express Inc., (the "**Applicant**")) for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the ~~Receiver and [NAME OF PURCHASER]~~ (the "Applicant and Randigo LLC (the "**Purchaser**")") dated ~~[DATE]~~ July 12, 2024 and appended to the Fifth Report of ~~the Receiver dated [DATE]~~ (the "Report" KSV Restructuring Inc. in its capacity as the monitor of the Applicant (in such capacity, the "**Monitor**") dated July 19, 2024 (the "**Fifth Report**"), and

-2-

vesting in the Purchaser the ~~Debtor's~~Applicant's right, title and interest in and to the assets described in the Sale Agreement (the ~~"Purchased Assets"~~), ~~was heard this day at 330 University Avenue, Toronto, Ontario.~~

ON READING the Affidavit of David Atkins, sworn July 19, 2024 and the exhibits attached thereto and the Fifth Report and on hearing the submissions of counsel for the ~~Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly~~Applicant, Momentum Decisive Solutions Canada Inc., The Toronto-Dominion Bank (the "Bank"), the Monitor and those other parties present although duly served as appears from the a~~A~~ffidavit of ~~[NAME]~~Service of ● sworn ~~[DATE]~~July ●, 2024, filed¹:

1 ~~1.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,² and the execution of the Sale Agreement by the ~~Receiver~~³Applicant is hereby authorized and approved, with such minor amendments as the ~~Receiver~~Applicant and Monitor may deem necessary. The ~~Receiver~~Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the

¹~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

²~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2 ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a ~~Receiver's~~Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the ~~"Receiver's"~~"Monitor's Certificate"), all of the ~~Debtor's~~Applicant's right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~{~~and listed on Schedule "B" hereto~~}~~⁴ shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the ~~"Claims"~~"Claims"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~Cavanagh dated ~~[DATE]~~March 11, 2024 (as amended and restated); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (Manitoba), the *Personal Property Security Act* (Saskatchewan), and the *Personal Property Security Act* (British Columbia) or any other personal property registry system; ~~and~~ (iii) all international interests and associated rights registered with the

⁴~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

⁵~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

-4-

International Registry of Mobile Assets operating under the framework of the *Convention on International Interests in Mobile Equipment* and the *Protocol on Matters Specific to Aircraft Equipment* (“**International Registry**”); (iv) any Irrevocable De-registration and Export Request Authorisation (“**IDERA**”) registered with the Canadian Civil Aircraft Register (“**CCAR**”) and (v) those Claims listed on Schedule “C” hereto (all of which are collectively referred to as the “Encumbrances”, ~~which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D~~) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

~~3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “Real Property”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

3 ~~4.~~ **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the ~~Receiver's~~Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets

⁶Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at “net proceeds”.

immediately prior to the sale⁸, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4 **THIS COURT ORDERS** that all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Applicant or the Purchased Assets, including without limitation, any personal property security register in any Province in Canada, the Federal Aviation Administration aircraft registry, the International Registry and Transport Canada (including the CCAR) (collectively, the “Governmental Authorities”) are hereby authorized requested and directed to accept delivery of the Monitor’s Certificate and a copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance (including any deregistration of IDERA with the CCAR) as may be required to convey or record in favour of the Purchaser clear title to the Purchased Assets and deregistration of the Purchased Assets with the CCAR.

5 **THIS COURT ORDERS** that the Bank registers as a Transacting User Entity with the International Registry (as defined in the International Registry) and it designates a Professional User Entity with such registry (as defined in the International Registry) for the discharge of its international interests.

6 **THIS COURT ORDERS** that the Applicant, the Bank and the Purchaser are hereby authorized and directed to take such additional steps and execute such additional documents

~~⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

as may be necessary or desirable to effect the discharge of the Encumbrances including but not limited to providing the consents to discharge of any international interests, associated rights or rights to discharge Encumbrances in favour of the Bank.

7 THIS COURT ORDERS and DIRECTS each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement (irrespective if the explicit consent of any other party is required in writing or otherwise) and the presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest, or any recordation of same, and cancel and discharge registrations and IDERA.

8 ~~5.~~ THIS COURT ORDERS AND DIRECTS the ~~Receiver~~Monitor to file with the Court a copy of the ~~Receiver's~~Monitor's Certificate, forthwith after delivery thereof.

9 THIS COURT ORDERS that the Applicant and the Monitor, on behalf of the Applicant and in its capacity as Escrow Agent under the APA, are hereby authorized and directed, without further order of the Court, to distribute the Purchase Price (as defined in the APA), net of the commission payable to the Agent (as defined in the Fifth Report), to Bank (the "Distribution").

10 ~~6.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the

-7-

~~prior use of such information by the Debtor.~~ the Monitor and the Applicant are hereby authorized and directed to take all reasonably necessary steps and actions to effect the Distribution in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distribution.

11 **THIS COURT ORDERS** that the Distribution shall be made free and clear of all Encumbrances and shall reduce the obligations under the TD Loan Facilities and TD Loan Security (each as defined in the Fifth Report).

12 ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the ~~Debtor~~Applicant and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the ~~Debtor~~Applicant;

the Distribution and the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Applicant and shall not be void or voidable by creditors of the ~~Debtor~~Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

13 ~~9.~~ **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 ~~Receiver and its~~ 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 ~~Receiver~~ Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the ~~Receiver and its~~ Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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Schedule "A" - Form of ~~Receiver's~~Monitor's CertificateCourt File No. ~~_____~~CV-24-00716267-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

~~BETWEEN:-~~~~PLAINTIFF~~

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

~~Plaintiff~~

~~-and-~~

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

~~DEFENDANT~~~~Defendant~~**RECEIVER'SMONITOR'S CERTIFICATE****RECITALS**

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~Justice Cavanagh of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~March 11, 2024, KSV Restructuring Inc. was appointed as the ~~receiver (the "Receiver")~~ of the ~~undertaking, property and assets of [DEBTOR]~~ (the "Debtor" monitor (the "Monitor")) of Skylink Express Inc. (the "Applicant").

B. Pursuant to an Order of the Court dated **[DATE]**, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~July 12, 2024 (the "Sale Agreement") between the ~~Receiver [Debtor]~~ and ~~[NAME OF PURCHASER]~~ (the "Applicant and Randigo LLC (the "Purchaser"") and provided for the vesting in the Purchaser of the ~~Debtor's~~Applicant's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the ~~Receiver~~Monitor to

-2-

the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ~~3.5~~ of the Sale Agreement have been satisfied or waived by the ~~Receiver~~Monitor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the ~~Receiver~~Applicant and the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE ~~RECEIVER~~MONITOR CERTIFIES the following:

1. ~~1.~~ The Purchaser has paid and the ~~Receiver~~Applicant has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. ~~2.~~ The conditions to Closing as set out in section ~~3.5~~ of the Sale Agreement have been satisfied or waived by the ~~Receiver~~Applicant and the Purchaser; and

3. ~~3.~~ The Transaction has been completed to the satisfaction of the ~~Receiver~~Applicant and the Monitor.

4. ~~4.~~ This Certificate was delivered by the ~~Receiver~~ at _____ [TIME] on Monitor at _____ [a.m./p.m.] on [DATE].

~~[NAME OF RECEIVER]~~KSV Restructuring Inc., in its capacity as ~~Receiver of the undertaking, property and assets of~~ Monitor of Skylink Express Inc., and not in its personal capacity

Per:

Name:

-3-

Title:

|



Schedule "B" - Purchased Assets

- Cessna Grand Caravan airframe, manufacturer's serial number 208B-0379 (the "Airframe");
- Pratt and Whitney Canada PT6A-114A engine, engine's serial number PC0687 (the "Engine");
- all appurtenances, appliances, parts, avionics, instruments, components, accessions, furnishings, items of equipment and accessories installed thereon or appurtenant thereto as set forth in the Aircraft Specification attached as Exhibit A to the Sale Agreement; and
- all Aircraft Documents (as defined in the Sale Agreement)

Schedule "C" – ~~Claims to be deleted and expunged from title to Real Property~~ Partial Discharges to be Registered

Personal Property Security Act (Ontario) Security

<u>Debtor</u>	<u>Secured Party</u>	<u>Reference File Number</u>	<u>Collateral Description</u>
<u>Skylink Express Inc.</u>	<u>The Toronto-Dominion Bank</u>	<u>767158866</u>	<p>Reference to the following under "Motor Vehicle" and "General Collateral Description" to be removed:</p> <ul style="list-style-type: none"> • <u>Pratt & Whitney Canada PT6A Series Serial No. PC0687</u> • <u>Cessna 208B Serial No. 208B-0379</u>

~~Schedule D — Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property
(unaffected by the Vesting Order)~~

Personal Property Security Act (Manitoba) Security

<u>Debtor</u>	<u>Secured Party</u>	<u>Registration Number</u>	<u>Collateral Description</u>
<u>Skylink Express Inc.</u>	<u>The Toronto-Dominion Bank</u>	<u>202017958706</u>	<p>Reference to the following under “Serial Numbered Goods” and “General Collateral Description” to be removed:</p> <ul style="list-style-type: none"> • <u>Pratt & Whitney Canada PT6A Series Serial No. PC0687</u> • <u>Cessna 208B Serial No. 208B-0379</u>

Personal Property Security Act (British Columbia) Security

<u>Debtor</u>	<u>Secured Party</u>	<u>Base Registration Number</u>	<u>Collateral Description</u>
<u>Skylink Express Inc.</u>	<u>The Toronto-Dominion Bank</u>	<u>561393M</u>	<p>Reference to the following under “Vehicle Collateral” and “General Collateral” to be removed:</p> <ul style="list-style-type: none"> • <u>Pratt & Whitney Canada PT6A Series Serial No. PC0687</u> • <u>Cessna 208B Serial No. 208B0379</u>

Personal Property Security Act (Saskatchewan) Security

<u>Debtor</u>	<u>Secured Party</u>	<u>Registration Number</u>	<u>Collateral Description</u>
<u>Skylink Express Inc.</u>	<u>The Toronto-Dominion Bank</u>	<u>302097989</u>	<p>Reference to the following under “Serial Property” and “General Property” to be removed:</p> <ul style="list-style-type: none"> • <u>Pratt & Whitney Canada PT6A Series Serial No. PC0687</u> • <u>Cessna 208B Serial No. 208B0379</u>

International Registry

- File number 1809935 in favour of The Toronto-Dominion Bank, as creditor, against Skylink Express Inc., as debtor, in respect of Pratt & Whitney Canada PT6A Series Serial No. PC0687 as shown on Priority Search Certificate Number 1945188.

- File number 1809904 in favour of The Toronto-Dominion Bank, as creditor, against Skylink Express Inc., as debtor, in respect of Cessna 208B Serial No. 208B0379 as shown on Priority Search Certificate Number 1945186.

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER
(C-GEGA CESSNA 208B, MSN 208B-0379 (RANDIGO LLC))

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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

**MOTION RECORD
RETURNABLE JULY 29, 2024
(STAY EXTENSION, SALE APPROVALS AND
ANCILLARY MATTERS)**

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