

**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  
(Stay Extension and Sale Process Approval)**

May 24, 2024

**NORTON ROSE FULBRIGHT CANADA LLP**  
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Lawyers for the Applicant

**ONTARIO  
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**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

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ARRANGEMENT OF SKYLINK EXPRESS INC. (the "**Applicant**")

**NOTICE OF MOTION**

Skylink Express Inc. ("**Skylink**" or the "**Applicant**") will make a motion to a Judge of the Superior Court of Justice (Commercial List), on **Thursday, May 30, 2024 at 12:30 p.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](mailto:katie.parent@nortonrosefulbright.com).

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

**THE MOTION IS FOR AN ORDER**, among other things:

- 1 If necessary, abridging and validating the time for service and filing of this notice of motion and motion record;
- 2 Extending the Stay Period (defined below) up to and including to July 30, 2024;
- 3 Approving the retention of the Agent and the Sale Process (as both terms are defined below);
- 4 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;

- 5 Approving the Reports (as defined below) and the Monitor's activities described therein;
- 6 Approving the fees and disbursements of the Monitor and its legal counsel; and
- 7 Such further and other relief as this Honourable Court may deem just.

## THE GROUNDS FOR THE MOTION ARE:

### Background

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

2 At the initial hearing, The Toronto-Dominion Bank (the "**Bank**") also brought a receivership application returnable on the same day (the "**Receivership Application**"); 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**");

3 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.

4 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.

5 The TD Stand Still Agreements were executed on April 19, 2024;

6 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.

### **Discussions with UPS**

7 As more fully described in the Affidavit of Kyle Dennhardt sworn May 24, 2024 (the "**Dennhardt Affidavit**"), the Applicant's primary customer is United Parcel Service Canada ("**UPS**");

8 One of the main goals of these CCAA proceedings was to renegotiate the terms of the long-time feeder aircraft charter agreement (the "**UPS Contract**"), given the revenue generated from the UPS Contract is insufficient to cover associated operating costs;

9 As of the date of this motion, 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;

10 Instead, the Applicant and UPS have been in discussions to agree on terms for a shorter term transition plan (the "**Transition**") up through the end of July, which will permit the Applicant to continue to operate the majority of its existing routes during the period;

11 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;

## Sale Process

12 As 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**”), an experienced sales agent and aircraft broker, 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**”);

13 Engaging the Agent 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, which 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;

15 The proposed sale process (the “**Sale Process**”) is more fully described in the third report of the Monitor (the “**Third Report**”);

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

17 The Bank does not oppose the retention of the Agent or the Sale Process;

## DIP Facility

18 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;

19 The current maximum borrowing amount under the Original DIP Term Sheet and DIP Facility is \$2.5 million;

20 The DIP Lender has agreed to increase the maximum borrowing amount under the DIP Facility from \$2.5 million to \$3.0 million pursuant to an amendment to the Original DIP Term Sheet dated as of May 23, 2024 (the "**First Amendment**");

21 The DIP Lender's Charge in respect of the increased amount will continue to be subordinate to the Bank;

22 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**

23 The activities of the Monitor are set out in detail in the first report dated March 18, 2024 (the "**First Report**"), the second report of the Monitor dated April 22, 2024 (the "**Second Report**") and the Third Report (collectively, the "**Reports**") and are consistent with its mandate pursuant to the ARIO;

24 The fees of KSV in its capacity as Monitor are more particularly set out in the affidavit of Robert Kofman sworn May 22, 2024 (the "**Kofman Affidavit**") from February 15, 2024 to April 30, 2024 total \$110,325.00, excluding disbursements and HST;

25 The fees of Cassels Brock & Blackwell ("**Cassels**") as more particularly set out in the affidavit of Monique Sassi sworn May 22, 2024 (the "**Sassi Affidavit**") and together with the



Kofman Affidavit, the “**Fee Affidavits**”) from February 28, 2024 to April 30, 2024 total \$67,187.00, excluding disbursements and HST;

26 The fees incurred by KSV in its capacity as Monitor and Cassels are reasonable and appropriate in the circumstances and the hourly rates of Cassels are consistent with the rates charged by other law firms practicing in the area of insolvency in the Toronto market;

### **Stay Extension**

27 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;

28 The Applicant has worked on a revised cash flow forecast with the Monitor, to be attached to the Third Report, which 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;

29 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;

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

### **Other Grounds**

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

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

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

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

- 1 The Dennhardt Affidavit;
- 2 The Affidavit of Kyle Dennhardt sworn March 8, 2024 (without exhibits);
- 3 The Affidavit of Kyle Dennhardt sworn April 20, 2024 (without exhibits);
- 4 The Amended and Restated Initial Order;
- 5 The Third Report, together with all Appendices, including the Fee Affidavits; and
- 6 Such further and other evidence as counsel may advise and this Court may permit.

May 24, 2024

**NORTON ROSE FULBRIGHT CANADA LLP**  
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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**

**NORTON ROSE FULBRIGHT CANADA LLP**

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Lawyers for the Applicant

**TAB 2**

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

**ONTARIO  
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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)

} \_\_\_\_\_

\_\_\_\_\_  
Kyle Dennhardt

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

This is Exhibit "A" referred to in the Affidavit of Kyle Dennhardt sworn by Kyle Dennhardt before me at the City of Toronto, in the Province of Ontario, on May 24, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*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**



This Agreement (the Agreement) is made on the 23rd day of May, 2024.

**BETWEEN:**

**SKYLINK EXPRESS INC.**, having its place of business at Suite 210, 55 St. Clair Ave. West, Toronto, ON, L5N1W1 (“Skylink”), c/o David Atkins 250-869-2625 ([datkins@skylinkexpress.com](mailto:datkins@skylinkexpress.com))

**AND**

**1262396 ALBERTA LTD. dba POLLOCK AVIATION**, having its place of business at 128 Citadel Green NW, Calgary, Alberta, Canada T3G 4G6 (“Pollock”), c/o Rick Pollock, tel: +1 403-554-6772, email: [rick@pollockaviation.com](mailto:rick@pollockaviation.com)

**WHEREAS** Skylink is the owner of the following:

**Aircraft**

<b>Model</b>	<b>Manufacturers Serial Number</b>	<b>Canadian Registration</b>
Cessna 208B	208B-0047	C-FHGA
Cessna 208B	208B-0350	C-GLGA
Cessna 208B	208B-0379	C-GE GA
Cessna 208B	208B-0662	C-FFGA
Beechcraft 1900C	UB-21	C-GSKM
Beechcraft 1900C	UB-32	C-GSKA
Beechcraft 1900C	UB-33	C-GSKW
Beechcraft 1900C	UB-35	C-GSKU
Beechcraft 1900C	UC-22	C-GSKG
Beechcraft 1900C	UC-54	C-GSKN
Beechcraft 1900C	UC-62	C-GTGA
Beechcraft 1900C	UC-102	C-FJXL
Beechcraft 1900C	UC-117	C-GKGA
Beechcraft 1900C	UC-124	C-FJXO

collectively the (“Aircraft”);

and associated spare parts for the above aircraft, collectively the (“Spares”);

and the associated Air Operator Certificate for Skylink (the “AOC”);



**WHEREAS** Skylink wishes to sell one or all of the Aircraft, Spares and AOC (collectively, the “Assets”);

**WHEREAS** Pollock is in the business of providing advisory services relating to the sale, leasing and acquisition of aircraft and related aviation assets;

**WHEREAS** parties identified by Pollock as potential purchasers of the Assets during the term of this agreement shall be identified to Skylink as Buyers (each a “Buyer” and more than one, “Buyers”); and

**WHEREAS** Pollock has agreed to provide aircraft sale and marketing services to Skylink in order to sell the Assets in accordance with the terms and conditions set forth herein, and in accordance with Appendix A – Skylink Liquidation Guideline.

**NOW THEREFORE** in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the parties agree as follows:

**1. Supply of Services**

In pursuance of the above, Pollock will provide the following services:

- (a) Subject to the approval and sole discretion of Skylink, in consultation with the Monitor (as defined below), Pollock will endeavour to locate Buyers for the Assets using sales, marketing and networking efforts, and to assist the drafting and negotiation agreements of purchase and sale with any Buyer for the purchase of some or all of the Assets, and to assist in the negotiation of such other documents as may be required for the sale of the Assets by providing advice as and when required by Skylink.

**2. No Obligation to Sell**

- (a) Nothing contained herein shall create an obligation for Skylink to sell Assets to a Buyer and Skylink, in consultation with the Monitor, shall have the right to accept or reject the sale of Assets to a Buyer based on the terms of the sale process (the “Sale Process”) to be established within Skylink’s *Companies’ Creditors Arrangement Act* (“CCAA”) proceedings and as outlined in the report of KSV Restructuring Inc., in its capacity as the CCAA monitor (the “Monitor”) and provided in Appendix “A” (the “Sale Process”).



### 3. Terms and Termination

- (a) Pollock will provide the services as described in paragraph 1 for a duration of six (6) months (the "Term"). Any extension to the Term shall be agreed at the time between the parties, in consultation with the Monitor, in writing.
- (b) This Agreement is being entered into on an exclusive basis. All enquiries for the purchase of the Assets during the Term shall be directed to Pollock, with Pollock having the sole right to market the Assets during the Term of this Agreement, unless terminated pursuant to an order of the Court or by agreement between Pollock and Skylink.
- (c) The Agreement shall terminate on the earliest of:
  - i. the expiration of the Term;
  - ii. the date on which Skylink notifies Pollock that the Assets have been withdrawn from the market and are no longer available for sale;
  - iii. the date on which Pollock receives payment from Skylink following the successful sale of all of the Assets (see section 1(a)) (which must be within the Term) for which Pollock is entitled to a selling fee; and
  - iv. an order of the Court terminating the Agreement.
- (d) Other than as set out above, neither party may terminate this Agreement prior to expiry of the Duration without the prior written consent of the other party or order of the Court.
- (e) Should Skylink and any Buyer fail to enter into a Sale and Purchase agreement for any of the Assets during the Term but enter into an agreement to sell the aircraft within six (6) months following the termination of this Agreement, the fee to Pollock will apply as per section 4 below.

### 4. Fees

In the case of a successful sale of any Assets to a Buyer, a fixed fee of 2% of the net purchase price of such Assets will be payable to Pollock within five (5) business days of the completed sale of the Assets from the proceeds of sale of such Assets.

The fee will be based on the selling price of the sold Assets, before HST, plus reasonable out-of-pocket expenses that will be reimbursed at cost. Any disbursement of more than \$1,000 requires the prior approval of Skylink.



5. Payment of Fee and Expenses

- (a) The fees payable to Pollock for services pursuant to section 4 is net of any applicable transaction taxes.
- (b) Each party shall be responsible for its own expenses relating to their respective performance under this Agreement.

6. Miscellaneous

- (a) This Agreement may only be amended in writing with the consent of the parties hereto or by order of the Court.
- (b) Nothing contained in this Agreement shall be construed as or have the effect as constituting the relationship of employer and employee between Skylink and Pollock.
- (c) This Agreement will be governed by the laws of the Province of Ontario.
- (d) To the extent of any inconsistency between this Agreement and the Sale Process, the Sale Process shall prevail.

Signed for and on behalf of:

**SKYLINK EXPRESS INC.**

**1262396 ALBERTA LTD. dba POLLOCK AVIATION**

Name: David Atkins

Name: Rick Pollock

Title: President

Title: President

**APPENDIX A**  
**Skylink Liquidation Outline**

<b>Summary of Sale Process</b>		
<b>Milestone</b>	<b>Description of Activities</b>	<b>Timeline</b>
Retention of Agent	<ul style="list-style-type: none"> <li>• Skylink Express Inc. (“<b>Skylink</b>” or the “<b>Company</b>”) to retain Pollock Aviation (the “<b>Agent</b>”) to conduct the sale process (the “<b>Sale Process</b>”) for Skylink’s aircraft fleet (the “<b>Fleet</b>”) to be marketed and sold on an en bloc, bulk or individual aircraft basis.</li> <li>• Agent will also market Skylink’s Aircraft Operating Certificate and aircraft inventory owned by Skylink.</li> </ul>	1 Week or less to complete.
Marketing	<ul style="list-style-type: none"> <li>• Agent, with input from Skylink and the Monitor, to prepare a list of potentially interested buyers.</li> <li>• Agent to prepare marketing material concerning the opportunity, including an Information Memorandum (the “<b>Information Memorandum</b>”) detailing the aircraft available for sale and details of each aircraft. The Agent will market the opportunity on its website, in industry websites such as Jetnet, Amstat, Global Air, Planefax, MyAirtrade, and Wingslist among other sites as suitable to this type of aircraft. Agent will contact an established base of clients operating these aircraft and draw on an extensive network of brokers and dealers specializing in these aircraft for other promotion avenue.</li> <li>• Agent, with the assistance of Skylink, to establish a data room, with key information for each aircraft.</li> </ul>	<p>Weekly updates as buyer list is developed.</p> <p>This will take approx. 4 weeks to prepare.</p> <p>Data room will prepared and hosted at the same time.</p> <p>Publication as soon as aircraft specifications are developed.</p> <p>CA will take a week or less to prepare.</p>
Prospect Identification	<ul style="list-style-type: none"> <li>• Interested buyers will execute a confidentiality agreement (“<b>CA</b>”) in order to be provided access to Skylink</li> </ul>	





Summary of Sale Process		
Milestone	Description of Activities	Timeline
	confidential information, to the extent relevant, in the discretion of the Monitor.	
Diligence	<ul style="list-style-type: none"> <li>• Interested buyers shall be provided copies of the Information Memorandum and access to non-confidential information in the data room.</li> <li>• Interested parties wanting access to information determined to be confidential by Skylink or the Monitor (such as employee information or historical financial information), will only be provided to parties who sign a CA.</li> <li>• Interested parties may be permitted to take aircraft for test flights.</li> </ul>	
Offers	<ul style="list-style-type: none"> <li>• Offers may be received and considered at any time.</li> <li>• In order to be a qualified offer, an offer be a binding offer submitted by the party and must include the following ("<b>Qualified Offer</b>"): <ul style="list-style-type: none"> <li>- identify which Aircraft are included in the offer for purchase;</li> <li>- indicate the consideration payable for the Aircraft;</li> <li>- include a 15% deposit to the Monitor to be held in trust within 24 hours of being notified that its offer is accepted;</li> <li>- not be conditioned on: (i) the outcome of any further due diligence; or (ii) financing;</li> <li>- indicate the estimated closing date;</li> <li>- provide sufficient financial information to determine that the buyer has the ability to satisfy and perform any liabilities or obligations assumed pursuant to the Qualified Offer;</li> </ul> </li> </ul>	



Summary of Sale Process		
Milestone	Description of Activities	Timeline
	<ul style="list-style-type: none"> <li>- provide that the Qualified Offer shall remain irrevocable for _____ days;</li> <li>- include acknowledgements and representations that confirm that the transaction is on an “as is, where is” basis; the bidder has had an opportunity to conduct any and all due diligence necessary prior to entering into the Qualified Offer and has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the property in making its bid; and it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the completeness of any information provided in connection therewith, except as expressly stated in the executed Qualified Offer; and</li> <li>- include any other terms or conditions the bidder believes are material to the transaction.</li> </ul>	
Offer Review	<ul style="list-style-type: none"> <li>• Upon receipt of any offer, the Agent, the Company and the Monitor shall review such offer to determine whether such offer constitutes a Qualified Offer.</li> <li>• The Monitor and Company shall consult with TD Bank with respect to any offers received.</li> </ul>	
Sale Approval	<ul style="list-style-type: none"> <li>• Upon acceptance of one or more Qualified Offers, the Company shall seek approval of such transactions from approval of the Court.</li> </ul>	



**APPENDIX A (Continued)**  
**Skylink Liquidation Outline**

**Additional Terms:**

- The Agent, Company and Monitor shall not be required to accept Qualified Offers and shall be entitled to seek further clarification or further negotiation of any offer received.
- In the event that multiple Qualified Offers are received for the same Aircraft, the Agent, Company and Monitor may establish further bidding procedures including to hold an auction.
- The Agent, with the consent of the Monitor and the Company, shall be entitled to waive strict compliance with any of the terms of the Sale Process provided that any material variation shall require further approval of the Court.

This is Exhibit "B" referred to in the Affidavit of Kyle Dennhardt sworn by Kyle Dennhardt before me at the City of Toronto, in the Province of Ontario, on May 24, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*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**

**May 23, 2024**

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

**Attention: David Atkins, President**

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

A. Reference is made to the debtor in possession term sheet dated as of March 8, 2024 (the “**Original DIP Term Sheet**” and together with this First Amendment, the “**DIP Term Sheet**”) between the Borrower and Momentum Decisive Solutions Canada Inc. (the “**Lender**”)

B. The parties wish to make certain amendments to the Original DIP Term Sheet as set out herein.

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

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

***[Signature Page Follows]***

Dated this 23<sup>rd</sup> day of May, 2024

**MOMENTUM DECISIVE SOLUTIONS  
CANADA INC.**

By DocuSigned by:  
Stephen Arbib

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 DocuSigned by:  
David Atkins

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 KYLE DENNHARDT**

**NORTON ROSE FULBRIGHT CANADA LLP**

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

**Jennifer Stam LSO#: 46735J**

Tel: 416.202.6707  
jennifer.stam@nortonrosefulbright.com

Lawyers for the Applicant

**TAB 3**



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

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

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

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

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

**I. INTRODUCTION**

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

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

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

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

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

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

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

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

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

## **II. SKYLINK**

### ***The Applicant***

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

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

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

### **III. THE BUSINESS**

#### ***Overview***

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

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

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

**Employees**

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

**Banking Information**

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

**IV. FINANCIAL INFORMATION**

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

**Assets**

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

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

Goodwill	5,617,356
<b>Total:</b>	<b>36,409,821</b>

### ***Liabilities***

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

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

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

## **V. DEBT STRUCTURE**

### ***TD Facility***

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

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

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

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

***Other***

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

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

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

## VI. CURRENT FINANCIAL POSITION AND RESTRUCTURING EFFORTS TO DATE

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

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

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

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



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

## VII. CCAA PROCEEDINGS

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

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

### ***Stay of Proceedings***

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

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

### ***Appointment of Monitor***

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

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

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

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

### ***Administration Charge***

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

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

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

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

#### ***Directors and Officers***

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

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

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

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

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

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

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

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

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

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

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

***DIP Facility and DIP Lenders' Charge***

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

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

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

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

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

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

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

***Priority of the Charges***

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

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

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

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

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

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

### ***Credit Card Payments***

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

### ***Cash Flow Forecast***

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

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

### ***Comeback Motion***

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



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

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

**VIII. CONCLUSION**

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

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



\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

\_\_\_\_\_  
Kyle Dennhardt

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

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

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AFFIDAVIT OF KYLE DENNHARDT**

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Lawyers for the Applicant

**TAB 4**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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 April 20, 2024)**

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

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

## I. INTRODUCTION

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

### *The Initial Order and the ARIO*

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

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

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

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

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

#### *The Bank Receivership Application*

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

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

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

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

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

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

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

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

## **II. STATUS OF DISCUSSIONS WITH UPS**

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

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



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

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

### III. FORBEARANCE AGREEMENT AND ESCROW AGREEMENT

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

- (a) Pursuant to the Forbearance Agreement, the Bank has agreed to forbear against enforcement on the TD Loan Security until the earlier of the expiration of the Say Period (as defined in therein) or the occurrence of an Event of Default following April 19, 2024 (the “**Forbearance Period**”) upon the terms and conditions set out in the Forbearance Agreement. The Applicant and Momentum have agreed to pay a \$100,000 forbearance fee (\$50,000 allocated to the Applicant and the other \$50,000 allocated to Momentum) in connection with the proposed Forbearance Agreement. A copy of the Forbearance Agreement is attached as Exhibit “B” hereto.
- (b) Pursuant to the Escrow Agreement, Momentum has agreed to post the Additional Cash Collateral in an escrow account with NRFC. NRFC has agreed to act as escrow agent (in such capacity, the “**Escrow Agent**”) under the Escrow Agreement. Under the Escrow Agreement, the Additional Cash Collateral is to be released:

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

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

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

#### **IV. NEXT STEPS**

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

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

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

**V. CONCLUSION**

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

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

Commissioner for Taking Affidavits  
(or as may be)

}

Kyle Dennhardt

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AFFIDAVIT OF KYLE DENNHARDT**

**NORTON ROSE FULBRIGHT CANADA LLP**

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**Jennifer Stam LSO#: 46735J**

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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 MR. )  
JUSTICE CAVANAGH )  
MONDAY, THE 11<sup>TH</sup>  
DAY OF MARCH, 2024

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

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

**AMENDED AND RESTATED INITIAL ORDER**

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

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

## **SERVICE**

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

## **APPLICATION**

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

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicant shall have authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

## **POSSESSION OF PROPERTY AND OPERATIONS**

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

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

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

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

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

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

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

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



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

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

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

- (a) Except with respect to payments on account of the TD Bank Credit Facilities (as defined in the Affidavit of Kathryn Furfaro sworn March 8, 2023), to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

10. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$300,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and



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

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

#### **NO INTERFERENCE WITH RIGHTS**

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

#### **CONTINUATION OF SERVICES**

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

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

### **NON-DEROGATION OF RIGHTS**

17. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

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

20. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$970,000, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 37 and 39 herein.













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

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

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

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

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

### **SERVICE AND NOTICE**

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

44. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL [www.ksvadvisory.com/experience/case/skylink](http://www.ksvadvisory.com/experience/case/skylink) .

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





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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AMENDED AND RESTATED INITIAL ORDER**

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**TAB 6**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	THURSDAY, THE 30 <sup>th</sup>
	)	
JUSTICE CAVANAGH	)	DAY OF MAY, 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 Sale Process 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 July 30, 2024; (b) approving retention of the Agent (defined below) and a sale process (the "**Sale Process**") for the Applicant's assets; (c) increasing the maximum borrowing amount under the Applicant's debtor in possession credit facility from \$2.5 million to \$3.0 million; (d) 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 Kyle Dennhardt sworn May 24, 2024 and the exhibits attached thereto (the "**Dennhardt Affidavit**") and the third report of KSV Restructuring Inc. in its capacity as the monitor of the Applicant (in such capacity, the "**Monitor**") dated May 24, 2024 (the "**Third 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 Katie Parent sworn May ●, 2024,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Third 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 July 30, 2024.

### **RETENTION OF SALE AGENT AND APPROVAL OF SALE PROCESS**

3. **THIS COURT ORDERS** that the engagement letter dated as of May 23, 2024 provided by 1262396 Alberta Ltd. dba Pollock Aviation to act as sales agent (the “**Agent**”) for the Sale Process is hereby approved, authorized and ratified and that the execution of the engagement letter by the Applicant is hereby approved, authorized, and ratified, *nunc pro tunc*. Subject to the provisions of this Order the Applicant is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Sale Process. Without limiting the foregoing, the Applicant is authorized to execute any other agreement, contract, deed or document, or take any other action, that is necessary or desirable to give full and complete effect to the Sale Process.

4. **THIS COURT ORDERS** Sale Process as set out in the Third Report is hereby approved and the Agent is hereby authorized to implement and carry out the Sale Process pursuant to the terms thereof. The Agent, in consultation with the Monitor, is hereby authorized to take all steps

it believes are reasonably necessary to perform all things reasonably necessary to carry out the Sale Process.

5. **THIS COURT ORDERS** that without limiting the powers and authority provided to the Monitor in the ARIO, the Monitor is authorized to supervise and oversee the Sale Process in accordance with the terms of the Sale Process.

6. **THIS COURT ORDERS** neither the Agent nor the Monitor shall have any liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the Sale Process, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or willful misconduct of the Agent or the Monitor in performing its obligations under the Sale Process, as determined by this Court. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA, any prior orders made in this proceeding, including the ARIO or any applicable legislation.

#### **PIPEDA**

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Agent and its respective advisors are hereby authorized and permitted to disclose and transfer to prospective Sale Process participants (each, a **"Sale Process Participant"**) and their advisors personal information of identifiable individuals but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the Sale Process (a **"Transaction"**). Each Sale Process Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and if it does not complete a Transaction, shall return all such information to the Agent, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Agent. Any Successful Party shall maintain and protect the privacy of such

information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the Sale Process in a manner that is in all material respects identical to the prior use of such information by the Applicant and shall return all other personal information to the Agent, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Agent.

### **DIP FINANCING**

8. **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 \$3.0 million; and (b) the definition of "DIP Term Sheet" shall incorporate reference to the First Amendment (as defined in the Dennhardt Affidavit).

9. **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**

10. **THIS COURT ORDERS** that the first report of the Monitor dated March 18, 2024, the second report of the Monitor dated April 22, 2024 and the Third Report (collectively, 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.

11. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from February 15, 2024 to April 30, 2024 as set out in the affidavit of Robert Kofman sworn May 22, 2024, are hereby approved.

12. **THIS COURT ORDERS** that the fees and disbursements of Cassels Brock & Blackwell LLP, in its capacity as counsel to the Monitor, for the period from February 28, 2024 to April 30, 2024, as set out in the affidavit of Monique Sassi sworn May 22, 2024, are hereby approved.

#### **GENERAL**

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 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.

14. **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.

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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.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER  
(Stay Extension and Sale Process Approval)**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**MOTION RECORD  
(Stay Extension and Sale Process Approval)**

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