

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, RSC 1985,
c. C-36)

No.: 500-11-061483-224

**IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF:**

XEBEC ADSORPTION INC.

-and-

XEBEC RNG HOLDINGS INC.

-and-

APPLIED COMPRESSION SYSTEMS LTD.

-and-

COMPRESSED AIR INTERNATIONAL INC.

-and-

XEBEC HOLDING USA INC.

-and-

ENERPHASE INDUSTRIAL SOLUTIONS, INC.

-and-

CDA SYSTEMS, LLC

-and-

XEBEC ADSORPTION USA INC.

-and-

THE TITUS COMPANY

-and-

NORTEKBELAIR CORPORATION

-and-

XBC FLOW SERVICES – WISCONSIN INC.

-and-

CALIFORNIA COMPRESSION, LLC

-and-

XEBEC SYSTEMS USA, LLC

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

-and-

1396905 B.C. LTD.

-and-

**THE REGISTRAR OF THE BRITISH COLUMBIA
PERSONAL PROPERTY REGISTRY**

Impleaded Parties

**APPLICATION FOR THE ISSUANCE OF A SECOND AMENDED
AND RESTATED INITIAL ORDER AND AN APPROVAL AND
VESTING ORDER**

**(Sections 11, 11.2 and 36 of the *Companies' Creditors
Arrangement Act*, RSC 1985, c C-36)**

**TO THE HONOURABLE JUSTICE CHRISTIAN IMMER, SITTING IN COMMERCIAL
DIVISION, IN THE JUDICIAL DISTRICT OF MONTRÉAL, THE DEBTORS /
PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:**

I. INTRODUCTION

1. The Debtors / Petitioners Xebec Adsorption Inc., Xebec RNG Holdings Inc., Applied Compression Systems Ltd., Compressed Air International Inc., Xebec Holding USA Inc., Enerphase Industrial Solutions, Inc., California Compression, LLC, CDA Systems, LLC, Xebec Adsorption USA Inc., The Titus Company, Nortekbelair Corporation, Xebec Systems USA, LLC, XBC Flow Services – Wisconsin Inc. (collectively, the “**Petitioners**”) form part of a global provider of sustainable gas solutions used in energy, mobility and industry applications, headquartered in Montréal, Québec.
2. By the present Application, the Petitioners are seeking the issuance of an order (the “**Second Amended and Restated Initial Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-1**, *inter alia*:
 - (a) extending the Stay (as defined below) until March 17, 2023 (the “**Extension Date**”);
 - (b) increasing the Administration Charge (as defined in the ARIO); and
 - (c) sealing the confidential exhibits filed in support of this Application and the summary of offers appended to the Monitor’s Report (as defined below).

A comparison of the Second Amended and Restated Initial Order and the ARIO (as defined below) is communicated herewith as **Exhibit P-1A**.

3. The Petitioners are also seeking the issuance of an order (the “**ACS Approval and Vesting Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-2**, *inter alia*:
 - (a) authorizing the Petitioner Applied Compression Systems Ltd. (“**ACS**”) to execute an asset purchase agreement dated January 27, 2023 (the “**APA**”) between ACS, as vendor, and 1396905 B.C. Ltd., as purchaser (the “**Purchaser**”) for the sale of the Purchased Assets (as defined below) (the “**ACS Transaction**”); and
 - (b) approving the ACS Transaction.

A comparison of the ACS Approval and Vesting Order and the model approval and vesting order published by the Barreau de Montréal is communicated herewith as **Exhibit P-2A**.

II. PROCEDURAL BACKGROUND

4. On September 29, 2022, at the Petitioners’ request, the Court issued a First Day Initial Order (the “**FDIO**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”) and a Bidding Procedures Order (the “**Bidding Procedures Order**” collectively with the FDIO, the “**First Day Orders**”), as appears from the Court record.
5. The FDIO, *inter alia*:
 - (a) appointed Deloitte Restructuring Inc. as monitor of the Petitioners’ CCAA proceedings (the “**Monitor**”);
 - (b) ordered a stay of proceedings in respect of the Petitioners and their directors and officers until October 7, 2022, as extended thereafter pursuant to the ARIO (as defined below), (the “**Stay**”); and
 - (c) declared that Québec is the “center of main interest” of the Petitioners and, accordingly, authorized the Petitioners to apply, as they may consider necessary or desirable, to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize and/or assist in carrying out the terms of the Initial Order and any subsequent Orders rendered by this Court in the context of these proceedings, including, without limitation, orders under Chapter 15 of the United States Bankruptcy Code 11 U.S.C. §§ 101-1532.
6. The Bidding Procedures Order, *inter alia*, approved the proposed Sale and Investment Solicitation Process (the “**SISP**”) and its implementation in accordance with the Procedures for the Sale and Investment Solicitation Process annexed

thereto as Schedule “A” (the “**Bidding Procedures**”), as appears from the Court record.

7. The Bidding Procedures Order also approved the engagement of National Bank Financial Inc. (“**NBF**”) to assist in the implementation of the SISP.
8. On October 7, 2022, at the Petitioners’ request, the Court issued an Order Extending the Stay until October 20, 2022, as appears from the Court record.
9. On October 20, 2022, at the Petitioners’ request, the Court issued an Amended and Restated Initial Order (the “**ARIO**”) pursuant to the CCAA, as appears from the Court record.
10. The ARIO, *inter alia*:
 - (a) extended the Stay until November 28, 2022;
 - (b) approved a key employee retention plan, a key vice-president retention plan and a key executive incentive plan (collectively, the “**KERPs**”) and granted a Court-ordered charge to secure the payment owed to the key employees in accordance with the KERPs; and
 - (c) approved the debtor-in-possession evolving multiple draw credit facility (the “**DIP Facility**”) provided by the National Bank of Canada (“**NBC**”) and Export Development Canada (collectively, the “**Interim Lenders**”) in accordance with the Interim Financing Term Sheet filed under seal as Exhibit P-2A in support of the Application for the Issuance of an Amended and Restated Initial Order and granted a Court-ordered charge in an amount sufficient to cover the potential exposure of the Interim Lenders under the DIP Facility.
11. On November 28, 2022, at the Petitioners’ request, the Court issued an Order Extending the Stay of Proceedings and Granting Ancillary Relief, which extended the Stay for a third time until February 3, 2023, as appears from the Court record.

III. **SISP**¹

12. In accordance with the Bidding Procedures Order, the SISP was conducted in accordance with the following milestones:
 - (a) non-binding letters of intent (“**LOIs**”) were due on or before November 11, 2022;
 - (b) NBF notified each Phase 1 Qualified Bidder as to whether its bid constituted a Phase 1 Satisfactory Bid on November 18, 2022; and

¹ Terms in this section not otherwise defined herein have the meaning ascribed to them in the SISP.

(c) Definitive offers by Phase 2 Qualified Bidders were due on or before January 6, 2023;

the whole as further provided for in the Bidding Procedures.

13. As previously reported to the Court, NBF distributed teasers to 479 potential targets, including potential investors and strategic acquirers.
14. A confidential virtual data room (the “**VDR**”) was made available to potential targets, provided that such potential targets execute a non-disclosure agreement (“**NDA**”).
15. As a result, 101 potential targets executed NDAs and were thereafter granted access to the VDR. Of those 101 potential bidders, 67 were deemed Phase 1 Qualified Bidders.
16. Of the 67 Phase 1 Qualified Bidders, 32 submitted bids in the form of non-binding LOIs.
17. The Petitioners, in consultation with the Monitor and NBF, determined that 19 Phase 1 Qualified Bidders were Phase 2 Qualified Bidders, and invited them to participate in phase 2 of the SISP.
18. On January 6, 2023 (the “**Phase 2 Bid Deadline**”), a number of Binding Offers were submitted by Phase 2 Qualified Bidders. A summary of the Binding Offers received in the context of the SISP will be appended (under seal) to the Monitor’s report to be filed in support of the present Application (the “**Monitor’s Report**”).
19. Further to a review of the Binding Offers, the Petitioners, in consultation with the Monitor and NBF determined that it would be in the best interests of the stakeholders that further clarifications in respect of the Binding Offers be sought.
20. Accordingly, NBF engaged with the Phase 2 Qualified Bidders to obtain clarifications regarding their Binding Offers and provided certain Phase 2 Qualified Bidders with an “Issues List” identifying key deficiencies in their respective Binding Offers.
21. NBF also held subsequent meetings to discuss the Binding Offers with each Phase 2 Qualified Bidder and requested that each Phase 2 Qualified Bidder address the identified issues and resubmit their “best and final offer” by no later than January 16, 2023.
22. On January 16, 2023, each of the Phase 2 Qualified Bidders submitted a revised Binding Offer.
23. Following receipt of same, the Petitioners, in consultation with NBF and the Monitor, conducted numerous meetings to review and evaluate the revised Binding

Offers and engaged in negotiations with certain Phase 2 Qualified Bidders with a view to entering into definitive agreements.

24. In light of the revised Binding Offers, the Petitioners, in consultation with the Monitor and NBF, determined that it was in the best interest of the Petitioners and their stakeholders to not hold an auction amongst the Phase 2 Qualified Bidders.

A. Sale of ACS assets²

25. ACS is a wholly owned subsidiary of Xebec Adsorption Inc. It offers a single source solution for air and gas compression requirements and focuses on custom designed and fabricated compressor packages for specialized applications in the industry sector. It operates in Cranbrook, British Columbia.
26. As at the Phase 2 Bid Deadline, no offers had been made with respect to ACS.
27. However, following the Phase 2 Bid Deadline, the Purchaser submitted an offer for the assets of ACS. Subsequently, the Petitioners, with the assistance of NBF, negotiated a revised and improved offer from the Purchaser.
28. The Purchaser is a newly established entity whose main stakeholder is the current general manager of ACS.
29. In light of the current context and after careful consideration of all alternatives, the Petitioners determined, in consultation with the Monitor and NBF, that the revised offer from the Purchaser was the most advantageous to the stakeholders of ACS and of the Xebec Group generally.
30. The ACS Transaction contemplates the sale of substantially all assets of ACS (the **"Purchased Assets"**) and the continuation of its business by the Purchaser, including the continued employment of 23 employees currently actively employed by ACS.
31. The APA contemplates the sale of the Purchased Assets for a purchase price, which should remain confidential, but which includes Accrued Liabilities (the **"Purchase Price"**)
32. The APA also includes the following key terms:
 - (a) the Purchased Assets are being sold on an "as is, where is" basis without any legal warrant and at the risk and peril of the Purchaser;
 - (b) it is a condition of the APA that the ACS Approval and Vesting Order be issued by this Court;

² Terms in this section not otherwise defined herein have the meaning ascribed to them in the APA.

- (c) the APA provides that the Purchase Price is payable in full by the Purchaser to the Monitor at Closing;
- (d) the ACS Transaction must close on or before February 10, 2023, but it is currently contemplated that Closing is expected to occur on the day of the issuance of the ACS Approval and Vesting Order, should the Court determine it appropriate to issue same.

A redacted copy of the APA is communicated herewith as **Exhibit P-3**.

- 33. Given the current circumstances, the Petitioners believe that:
 - (a) the Purchase Price for the sale of the Purchased Assets is reasonable and fair in the circumstances; and
 - (b) the expedited closing of the ACS, should this Court issue the ACS Approval and Vesting Order, will benefit all stakeholders including in particular the employees of ACS.
- 34. As a result, the Petitioners are of the view that the ACS Transaction represents the highest and best transaction available resulting from the SISP.
- 35. As appears from above, the SISP was conducted in a fair and reasonable manner and in accordance with the Bidding Procedures Order.
- 36. As at the date hereof, absent a transaction, ACS does not have sufficient liquidity to continue its operations in the ordinary course.
- 37. Considering that all Purchased Assets are in Canada, there is no requirement to obtain the approval of the U.S. Bankruptcy Court seized with the Chapter 15 Proceedings in respect of the Petitioners (the "**U.S. Bankruptcy Court**").
- 38. As will appear from the Monitor's Report, the Monitor supports the ACS Transaction. In addition, the Petitioners understand that the Interim Lenders support the ACS Transaction.

B. Sale of Tiger Filtration Limited

- 39. Xebec Holding UK Limited ("**Holding UK**"), a wholly owned subsidiary of Xebec, has no active operations and is the sole shareholder of Tiger Filtration Limited ("**Tiger**"), which operates a facility located in Sunderland, United Kingdom, focused on the manufacturing of elements and filters. Neither Holding UK, nor Tiger are Petitioners in the present CCAA Proceedings, however their assets were included and marketed as part of the SISP.
- 40. As at the Phase 2 Bid Deadline, an offer was made for the acquisition of all of the issued and outstanding shares of Tiger (the "**Tiger Shares**").

41. After carefully considering all alternatives, the Petitioners determined, in consultation with the Monitor and NBF, that the aforementioned offer was the most advantageous to the stakeholders of Holding UK and of the Xebec Group generally.
42. As a result, on January 27, 2023, Holding UK, completed the sale of the Tiger Shares (the “**Tiger Transaction**”).
43. The Tiger Transaction will allow Tiger to continue operating as a going concern. The Monitor and the Interim Lenders supported the Tiger Transaction.
44. The proceeds of the Tiger Transaction will, *inter alia*, allow for the repayment in full of the secured Operating Facility (as defined in the Application for the issuance of a First Day Initial Order, a deemed extension of the stay period and a Bidding Procedures Order dated September 28, 2022, the “**FDIO Application**”) provided to the Xebec Group by NBC.

C. Ongoing negotiations

45. Sustained discussions are ongoing with several Phase 2 Qualified Bidders in respect of various transactions, designed to ensure that the SISP results in the highest and best transactions available in the circumstances, the whole for the benefit of all stakeholders.
46. Negotiations, including in respect of Definitive Documentation (as defined in the Bidding Procedures Order), are advancing well and the Petitioners expect to bring one or more applications seeking approval of one or more transaction(s) in the near term.

IV. GROUNDS FOR THE ISSUANCE OF THE SECOND AMENDED AND RESTATED INITIAL ORDER

A. Extension of the Stay

47. Since the issuance of the ARIO, the Petitioners have acted, and continue to act in good faith and with due diligence.
48. As described above, the Petitioners, with the assistance of NBF and under the supervision of the Monitor, have diligently implemented and substantially advanced the SISP.
49. The Stay currently expires on February 3, 2023.
50. The Petitioners are seeking to extend the Stay to the Extension Date, which will provide the Petitioners with the sufficient time to notably:

- (a) complete negotiations with Phase 2 Qualified Bidders determined to be Successful Bidders pursuant to the SISP and finalize the Definitive Documentation;
 - (b) if necessary, seek approval of the resulting transaction(s) by this Honourable Court, and as required, the U.S. Bankruptcy Court; and
 - (c) proceed to the closing of such transaction(s).
51. As of the date hereof, the Petitioners expect that additional financing will be required to continue operations and advance the SISP up to the Extension Date. Discussions with respect to such financing are advancing with the Interim Lenders and the Petitioners are hopeful that, prior to the hearing of the present Application, they will be able to seek approval by this Court of the required additional financing.
52. Should this Honourable Court not extend the Stay, the Petitioners will not be able to complete the SISP, to the detriment of their stakeholders.
53. No creditor will be unduly prejudiced by the extension sought.

B. Increase of the Administration Charge

54. The Petitioners seek the increase of the Administration Charge from a maximum amount of \$900,000 to a maximum amount of \$3,000,000. Such increase of the Administration Charge is justified by the Petitioners' cash flow considerations.
55. More specifically, Petitioners are required to preserve their liquidity while the transactions resulting from the SISP are being negotiated and proceed to closing with the approval of the Court. This process requires intensive work from the Professionals (as defined in the FDIO Application).
56. As a result, the Petitioners are currently not in a position to keep current all amounts due to the Professionals for professional services rendered on an ongoing basis and the outstanding balance is significantly higher than the amount of the Administration Charge, as it currently stands.
57. However, upon closing of the transactions resulting from the SISP, the Petitioners expect to be in a position to pay the Professionals out of the proceeds of such transactions, should same be approved by the Court.
58. The Petitioners believe that the increased amount of the Administration Charge is fair and reasonable in the circumstances and is essential to the viability of the Petitioners' restructuring efforts, particularly at this crucial juncture.

C. Sealing of Confidential Documents

59. The Petitioners are seeking an order declaring that the following be kept strictly confidential and under seal:

- (a) the unredacted version of the APA; and
 - (b) the Summary of offers received in the context of the SISP appended to the Monitor's report to be filed by the Monitor.
60. The sealing of the unredacted version of the APA is necessary considering that:
- (a) The SISP has not been completed, and disclosing the Purchase Price may affect negotiations with Phase 2 Qualified Bidders interested in other assets of the Xebec Group;
 - (b) Schedule 1.1(ii) contains individualized information on the compensation of ACS employees. In the current competitive employment market, such information could be highly prejudicial to ACS, allowing competitors to "poach" employees; and
 - (c) Schedule 2.3(b) contains commercially sensitive information regarding trade payables, which can give an unfair advantage to ACS's competitors, if disclosed.
61. The sealing of the Summary of offers received in the context of the SISP is justified and necessary for the Petitioners to continue negotiating transactions within the SISP. The disclosure of these documents would have a prejudicial impact on the ongoing SISP.

D. Execution Notwithstanding Appeal

62. The Petitioners respectfully submit that they are justified to seek provisional execution of the order to be rendered on the present Application notwithstanding appeal, considering that the relief sought herein is beneficial for their stakeholders, and a stay of execution thereof would be detrimental to the value of their assets and to the potential recovery of their respective creditors.

V. CONCLUSION

63. The Monitor has informed the Petitioners that it supports the present Application.
64. For the reasons set forth above, the Petitioners respectfully submit that it is both appropriate and necessary that this Honourable Court render the order sought herein. With such relief, the Petitioners will be able to continue going concern operations and pursue the ongoing SISP to maximize value for the benefit of stakeholders.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present *Application for the Issuance of a Second Amended and Restated Initial Order and an Approval and Vesting Order* (the "**Application**");

ISSUE orders substantially in the form of the draft orders communicated in support of the Application as **Exhibits P-1** and **P-2**;

ORDER the provisional execution of the order to be rendered on the Application notwithstanding appeal and without security;

THE WHOLE WITHOUT COSTS, save in the event of contestation.

MONTREAL, January 28, 2023

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP

Mtre. Sandra Abitan | Mtre. Julien Morissette |

Mtre. Ilia Kravtsov | Mtre. Sophie Courville

Attorneys for Debtors / Petitioners

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Email notification: notificationosler@osler.com

Our file: 1233913

AFFIDAVIT

I the undersigned, Dimitrios Vounassis, domiciled for the purpose hereof at 730 Industriel Boulevard, in the city of Blainville, district of Terrebonne, Québec, J7C 3V4, solemnly declare the following:

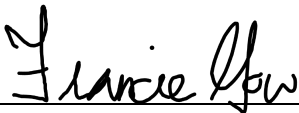
1. I am the President and CEO of Xebec Adsorption Inc. and a duly authorized representative of the Debtors / Petitioners for the purposes hereof.
2. I have taken cognizance of the attached *Application for the Issuance of a Second Amended and Restated Initial Order and an Approval and Vesting Order* (the "**Application**").
3. All of the facts alleged in the Application of which I have personal knowledge are true.
4. Where the facts alleged in the Application have been obtained from others, I believe them to be true.

AND I HAVE SIGNED:



Dimitrios Vounassis

SOLEMNLY DECLARED BEFORE ME BY
VIRTUAL MEANS IN MONTRÉAL,
QUÉBEC, ON JANUARY 28, 2023.



Francie Gow
Member of the Bar of the Province of
Québec
No. 292473-1

**NOTICE OF PRESENTATION
COMMERCIAL DIVISION**

TO: **SERVICE LIST** (See attached)

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the *Application for the Issuance of a Second Amended and Restated Initial Order and an Approval and Vesting Order* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, during the virtual calling of the roll on **February 3, 2023, at 9:00 a.m.**, or at such other time, and in a room to be determined by the Court.

2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL

The contact information to join the virtual calling of the roll will be communicated to the Service List as soon as the room attributed to the presentation of the *Application for the Issuance of a Second Amended and Restated Initial Order and an Approval and Vesting Order* is determined by the Court.

3. DEFAULT TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL

TAKE NOTICE that in accordance with the Amended and Restated Initial Order, if you wish to contest this Application, you must serve responding materials or a notice stating the objection to the Application and the grounds for such objection in writing to the Petitioners and the Monitor, with a copy to all persons on the Service List, no later than **5:00 P.M. on January 31, 2023**, and participate at the virtual calling of the roll, failing which, judgment may be rendered during the presentation of the proceeding, without further notice or delay.

4. OBLIGATIONS

4.1 Duty of cooperation

TAKE NOTE that the parties are duty-bound to cooperate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and make sure that relevant evidence is preserved (s. 20, *Code of Civil Procedure*).

4.2 Dispute prevention and resolution processes

TAKE NOTE that the parties must consider private prevention and resolution processes before referring their dispute to the courts, which are namely negotiation, mediation or arbitration, for which the parties call on a third party (*Code of Civil Procedure*, art. 2).

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, January 28, 2023

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP

Attorneys for the Debtors / Petitioners

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, RSC 1985,
c. C-36)

No.: 500-11-061483-224

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XBC FLOW SERVICES – WISCONSIN INC.

-and-

CALIFORNIA COMPRESSION, LLC

-and-

XEBEC SYSTEMS USA, LLC

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

LIST OF EXHIBITS

- | | |
|-------|---|
| P-1: | Draft Second Amended and Restated Initial Order |
| P-1A: | Comparison between the Second Amended and Restated Initial Order and the ARIO |
| P-2: | Draft ACS Approval and Vesting Order |
| P-2A: | Comparison between the ACS Approval and Vesting Order and the model approval and vesting order published by the Barreau de Montréal |
| P-3: | Redacted copy of the APA |

MONTREAL, January 28, 2023

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Attorneys for Debtors / Petitioners

EXHIBIT P-1

**Draft Second Amended and Restated
Initial Order**

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 3, 2023

BEFORE THE HONOURABLE CHRISTIAN IMMER, J.S.C.

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
APPLIED COMPRESSION SYSTEMS LTD.
COMPRESSED AIR INTERNATIONAL INC.
XEBEC HOLDING USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES – WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC**
Debtors / Petitioners

and

DELOITTE RESTRUCTURING INC.
Monitor

SECOND AMENDED AND RESTATED INITIAL ORDER

- [1] **CONSIDERING** the *Application for the Issuance of an Amended and Restated Initial Order and an Approval and Vesting Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the “**Initial Application**”) pursuant to the CCAA;
- [3] **CONSIDERING** the Firth Report of the Monitor dated January 1, 2023 (the “**Report**”);
- [4] **CONSIDERING** the submissions of counsel and the testimony of the witnesses heard;
- [5] **GIVEN** the provisions of the CCAA;
- [6] **GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

THE COURT HEREBY:

- [7] **GRANTS** the Application.
- [8] **ISSUES** an order pursuant to the CCAA (the “**Order**”), divided under the following headings:
- (a) Service;
 - (b) Application of the CCAA;
 - (c) Effective Time;
 - (d) Administrative Consolidation;
 - (e) Plan of Arrangement;
 - (f) Stay of Proceedings against the Petitioners and the Property;
 - (g) Stay of Proceedings against the Directors and Officers;
 - (h) Possession of Property and Operations;

- (i) No Exercise of Rights or Remedies;
- (j) No Interference with Rights;
- (k) Continuation of Services;
- (l) Non-Derogation of Rights;
- (m) Interim Financing (DIP);
- (n) Directors' and Officers' Indemnification and Charge;
- (o) Restructuring;
- (p) Powers of the Monitor;
- (q) KERPs and KERP Charge;
- (r) Priorities and General Provisions Relating to CCAA Charges;
- (s) Hearing Scheduling and Details;
- (t) General.

a. Service

- [9] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.

b. Application of the CCAA

- [10] **DECLARES** that the Petitioners are debtor companies to which the CCAA applies.

c. Effective Time

- [11] **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montréal time, Province of Québec, on September 29, 2022 (the "**Effective Time**").

d. Administrative Consolidation

- [12] **ORDERS** the consolidation of these CCAA proceedings of the Petitioners under one single Court file, in file number 500-11-061483-224.
- [13] **ORDERS** that all existing and future proceedings, filings, and other matters (including, without limitation, all applications, reports and cash flows) in the CCAA

Proceedings henceforth be filed jointly and together by the Petitioners, and the Monitor, as applicable, under file number 500-11-061483-224.

- [14] **DECLARES** that the consolidation of these CCAA proceedings in respect of the Petitioners shall be for administrative purposes only and shall not effect a consolidation of the assets and property or of the debts and obligations of each of the Petitioners including, without limitation, for the purposes of any plan of compromise or arrangement (a “**Plan**”) that may be hereafter proposed.

e. Plan of Arrangement

- [15] **DECLARES** that the Petitioners shall have the authority to file with this Court and to submit to their creditors one or more Plans in accordance with the CCAA.

f. Stay of Proceedings against the Petitioners and the Property

- [16] **ORDERS** that, until and including March 17, 2023 (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Petitioners, or affecting the Petitioners’ business operations and activities (the “**Business**”) or the Property (as defined herein), including as provided in paragraph [29] herein except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.
- [17] **ORDERS** that the rights of His Majesty in right of Canada and His Majesty in right of a Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.
- [18] **ORDERS** and **DECLARES** that the National Bank of Canada (“**NBC**”) is an unaffected creditor in these CCAA proceedings and is not subject to the stay of proceedings, including the Stay Period and any renewal or extension thereof, or any other limitations of creditors’ right or recourses under this Order. Nothing in this Order shall prevent NBC from enforcing its security against the Petitioners’ Property in conformity with its contractual rights, subject only to NBC providing advance notice of its intention to do so.

g. Stay of Proceedings against Directors and Officers

- [19] **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioners nor against any person deemed to be a director or an officer of any of the Petitioners under

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subsection 11.03(3) CCAA (each, a “**Director**”, and collectively the “**Directors**”) in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioners where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

h. Possession of Property and Operations

- [20] **ORDERS** that the Petitioners shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the “**Property**”), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph [47] hereof.
- [21] **ORDERS** that the Petitioners shall be entitled, but not required to pay the following expenses with the prior consent of the Monitor or further order of the Court, as the case may be, whether incurred prior to or after this Order:
- (a) outstanding and future wages, salaries, expenses and, benefits payable prior to 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 counsel, advisors and agents retained or employed by the Petitioners directly related to these proceedings, at their standard rates and charges; and
 - (c) amounts owing for goods or services actually supplied to the Petitioners prior to the date of this Order by third party suppliers up to a maximum aggregate amount of \$700,000, if, in the opinion of the Petitioners and of the Monitor, the supplier is critical to the business and ongoing operations of the Petitioners.
- [22] **ORDERS** that except as otherwise provided to the contrary herein, the Petitioners shall be entitled to pay all reasonable expenses incurred by the Petitioners 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; and
 - (b) payment for goods or services actually supplied to the Petitioners following the date of this Order.

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- [23] **ORDERS** that the Petitioners 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) Québec Pension Plan, and (iv) income taxes; and
 - (b) all goods and services, harmonized sales or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners and in connection with the sale of goods and services by the Petitioners but only where such Sales Taxes are accrued or collected after the date of this Order.
- [24] **ORDERS** that, subject to the consent of the Monitor, each of the Petitioners is authorized to complete outstanding transactions and engage in new transactions with other Petitioners or their affiliates, including, without limitation, (a) intercompany funding transactions, (b) purchase and sale transactions for goods or services in the ordinary course of the Business, (c) allocation and payments of costs, expenses and other amounts for the benefit of the Petitioners, including, without limitation, debt repayments and interest costs, head office, shared services and restructuring costs (collectively, "**Intercompany Transactions**"), and to continue, on and after the date of this Order, to effect Intercompany Transactions. All Intercompany Transactions among the Petitioners shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures as the Monitor may require, or subject to this Order or further Order of this Court.
- [25] **ORDERS** that, in conformity with the DIP Term Sheet, the Petitioners shall notify, at least two (2) days in advance, the Interim Lenders of any monetary payment from a Petitioner to another Petitioner or their affiliates, and that the Monitor shall continue to report from time to time to the Court on such monetary payments constituting Intercompany Transactions.
- [26] **ORDERS** that prior to the distribution of any net sale proceeds resulting from the sale or divestiture of any Business or Property (but excluding any distribution made in respect of any amounts owing under the CCAA Charges (as defined herein), as the case may, it being understood that in each such case, said distribution may in itself constitute an Intercompany Transaction to form part of a subsequent Intercompany Transactions Report, as defined herein), the Monitor shall prepare and file with the Court a report (each, an "**Intercompany Transactions Report**") detailing all Intercompany Transactions which occurred on or after the date of the

Initial Order with respect to the applicable Petitioner(s), which Intercompany Transactions Report shall include the Monitor's proposed allocation of the net amount to be attributed to each Petitioner as a result of the applicable Intercompany Transactions, if any, and any net sale proceeds to be remitted by one Petitioner to another Petitioner as the case may be (the "**Proposed Allocation**").

- [27] **ORDERS** the Monitor to serve a copy of the Intercompany Transactions Report upon the service list in these proceedings and **DECLARES** that any interested creditor shall be entitled to apply to this Court within five (5) calendar days of said notification to the service list of the Intercompany Transactions Report to contest or make representations with respect to the Proposed Allocation.
- [28] **DECLARES** that paragraph [26] and [27] of this Order and their effects shall apply to any distribution, even outside of these CCAA proceedings, including, without limitation, a distribution by any trustee in bankruptcy, receiver, receiver and manager, interim receiver or any other person appointed to make a distribution in respect of the Property, unless the Court orders otherwise.

i. No Exercise of Rights or Remedies

- [29] **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the Petitioners is a party as a result of the insolvency of the Petitioners and/or these CCAA proceedings, any events of default or non-performance by the Petitioners or any admissions or evidence in these CCAA proceedings, of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof are hereby stayed and suspended except with leave of this Court.
- [30] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods including, without limitation, to file grievances relating to the Petitioners or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioners, or any of them, become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") is appointed in respect of the Petitioners, the period between the date of the Order and the day

on which the Stay Period ends shall not be calculated in respect of the Petitioners in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

j. No Interference with Rights

- [31] **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, fail to renew (when contractually provided), alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners except with the written consent of the Petitioners and the Monitor, or with leave of this Court.

k. Continuation of Services

- [32] **ORDERS** that during the Stay Period and subject to paragraphs [33] and [34] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioners or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioners, are hereby restrained until further order of this Court from discontinuing, altering, failing to renew (when contractually provided), interfering with or terminating the supply or, as the case may be, interrupting, delaying or stopping the transit of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, 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 Petitioners, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners, as applicable, with the consent of the Monitor, or as may be ordered by this Court.

- [33] **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioners 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 make further advance of money or otherwise extend any credit to the Petitioners.

- [34] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any Petitioners with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such

Person in reduction or repayment of amounts owing to such Person as of the date of this Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by a Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into a Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

I. Non-Derogation of Rights

- [35] **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the “**Issuing Party**”) at the request of the Petitioners shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of this Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

m. Interim Financing (DIP)

- [36] **ORDERS** that the Petitioners be and are hereby authorized to borrow from NBC and Export Development Canada (collectively, the “**Interim Lenders**”) such amounts from time to time as the Petitioners may consider necessary or desirable, up to an aggregate principal amount not exceeding \$3,000,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed under seal as Exhibit P-2A in support of the Application (the “**DIP Term Sheet**”) and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioners and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents (as defined hereinafter) (the “**DIP Facility**”).
- [37] **ORDERS** that the Petitioners are hereby authorized to execute and deliver the DIP Term Sheet and other security documents and ancillary documents as may be required by the Interim Lenders in connection with the DIP Facility and the DIP Term Sheet (collectively, the “**Interim Financing Documents**”), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to with the Interim Lenders, but only with the consent of the Monitor, and the Petitioners are hereby authorized to perform all of its obligations under the DIP Term Sheet and the Interim Financing Documents.
- [38] **ORDERS** that Petitioners shall pay to the Interim Lenders, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation,

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all fees and disbursements of counsel and all other reasonably required advisors to or agents of the Interim Lenders on a full indemnity basis (the “**Interim Lender Expenses**”)) under the DIP Term Sheet and the Interim Financing Documents and shall perform all of their other obligations owed to the Interim Lenders pursuant to the DIP Term Sheet, the Interim Financing Documents and the Order.

- [39] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,600,000 (the “**DIP Charge**”) in favour of the Interim Lenders as security for all obligations of the Petitioners to the Interim Lenders with respect to the payment of the DIP Facility (including principal, interest and the Interim Lender Expenses) owing to the Interim Lenders under or in connection with the DIP Term Sheet and the Interim Financing Documents. Such Interim Lender Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs [61] and [62] of this Order.
- [40] **ORDERS** that the claims of the Interim Lenders pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lenders, in that capacity, shall be treated as unaffected creditors in these proceedings and in any Plan.
- [41] **ORDERS** that the Interim Lenders may:
- (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the DIP Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
 - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Petitioners if the Petitioners fail to meet the provisions of the DIP Term Sheet and the Interim Financing Documents.
- [42] **ORDERS** that the Interim Lenders shall not take any enforcement steps under the DIP Term Sheet, the Interim Financing Documents or the DIP Charge without providing at least 3 business days written notice (the “**Notice Period**”) of a default thereunder to the Petitioners, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lenders shall be entitled to take any and all steps, the DIP Term Sheet, the Interim Financing Documents, the DIP Charge and otherwise permitted at law, but without having to send any additional demands under Section 244 of the BIA, under the Civil Code of Quebec or any other similar legislation.

- [43] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [68] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [36] to [43] of this Order unless either (a) notice of a motion for such order is served on the Interim Lenders by the moving party within at least seven (7) days prior to the presentation thereof or (b) the Interim Lenders apply for or consents to such order.

n. Directors' and Officers' Indemnification and Charge

- [44] **ORDERS** that the Petitioners shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioners after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.
- [45] **ORDERS** that the Directors of the Petitioners shall be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$3,700,000 (the "**D&O Charge**"), as security for the indemnity provided in paragraph [44] of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The D&O Charge shall have the priority set out in paragraphs [61] and [62] of this Order.
- [46] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Directors shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph [44] of this Order.

o. Restructuring

- [47] **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioners, subject to prior approval of the Monitor or further order of the Court, as the case may be, shall have the right to:
- (a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate;
 - (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part,

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subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);

- (c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$750,000 or \$1,500,000 in the aggregate;
- (d) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioners and such employee, or failing such agreement, make provision to deal with, any consequences thereof in a Plan, as the Petitioners may determine;
- (e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the relevant Petitioner, as applicable, and the relevant party, or failing such agreement, to make provision for the consequences thereof in a Plan; and
- (f) subject to section 11.3 CCAA, assign any rights and obligations of Petitioners.

[48] **DECLARES** that, in order to facilitate the Restructuring, the Petitioners may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.

[49] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, C 5, and equivalent provisions of the *Act Respecting the Protection of Personal Information in the Private Sector*, RSQ, c P-39.1, the Petitioners are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a “**Third Party**”), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of a Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited

purpose set out herein, the personal information shall be returned to the Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of a Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

p. Powers of the Monitor & Administration Charge

[50] **ORDERS** that *Deloitte Restructuring Inc.* is hereby appointed to monitor the business and financial affairs of the Petitioners as an officer of this Court (the “**Monitor**”) and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

- (a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, in La Presse (French version) and the Globe and Mail National Edition (English version) and (ii) within four (4) business days after the date of this Order (A) post on the Monitor’s website a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioners of more than \$1,000, advising them that this Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective 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;
- (b) shall monitor the Petitioners’ receipts and disbursements;
- (c) shall assist the Petitioners, to the extent required by the Petitioners, in dealing with their creditors and other interested Persons during the Stay Period;
- (d) shall assist the Petitioners, to the extent required by the Petitioners, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (e) shall advise and assist the Petitioners, to the extent required by the Petitioners, to review the Petitioners’ business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (f) shall assist the Petitioners, to the extent required by the Petitioners, with the Restructuring and in their negotiations with their creditors and other

interested Persons and with the holding and administering of any meetings held to consider a Plan;

- (g) shall report to the Court on the state of the business and financial affairs of the Petitioners or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated reports for the Petitioners;
- (h) shall report to this Court and interested parties, including but not limited to creditors affected by a Plan, with respect to the Monitor's assessment of, and recommendations with respect to, a Plan;
- (i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under this Order or under the CCAA;
- (k) may give any consent or approval as may be contemplated by this Order or the CCAA;
- (l) may hold and administer funds in connection with arrangements made among the Petitioners, any counter-parties and the Monitor, or by Order of this Court; and
- (m) may perform such other duties as are required by this Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioners, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Petitioners.

- [51] **ORDERS** that the Petitioners and their current and former shareholders, Directors, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties, rights and obligations as provided and set out in this Order.

- [52] **ORDERS** that, without limiting the generality of anything herein, the Petitioners and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of this Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioners in connection with the Monitor's duties and responsibilities hereunder.
- [53] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioners with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioners' counsel. In the case of information that the Monitor has been advised by the Petitioners is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioners unless otherwise directed by this Court.
- [54] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioners or continues the employment of the Petitioners' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
- [55] **DECLARES** that Section 215 of the BIA applies *mutatis mutandis* and that no action or other proceedings shall be commenced against the Monitor or its representatives relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least seven (7) days' notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor and their representatives shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [56] **DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.
- [57] **ORDERS** that the Petitioners shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
- [58] **DECLARES** that the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel, as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, any Plan and the Restructuring, as well as National Bank Financial Inc. ("**NBF**"), as security for the Engagement Fee and the Fairness Opinion Fee (as such terms

are defined in the engagement letter filed as Exhibit P-3 in support of the Initial Application, the “**Engagement Letter**”) and all disbursements incurred by NBF pursuant to the Engagement Letter, be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$3,000,000 (the “**Administration Charge**”), having the priority established by paragraphs [61] and [62] of this Order.

q. KERPs and KERP Charge

- [59] **ORDERS** that the key employee retention plan, key vice-president retention plan and the key executive incentive plan (collectively, the “**KERPs**”) described in the Application and summarized in the document filed under seal as Exhibit P-3 to the Application are hereby approved, and the Petitioners are hereby authorized and empowered to perform their obligations set forth thereunder, including by making the payments in accordance with the terms set out therein.
- [60] **ORDERS** that the employees designated in the KERPs shall be entitled to the benefit of and are hereby granted a charge and security in the on the Property, to the extent of the aggregate amount of \$1,080,000 (the “**KERP Charge**”), having the priority established by paragraphs [61] and [62] of this Order.

r. Priorities and General Provisions Relating to CCAA Charges

- [61] **DECLARES** that the priorities of the Administration Charge and the D&O Charge (collectively, the “**CCAA Charges**”), as between them with respect to any Property to which they apply, shall be as follows:
- (a) first, the Administration Charge;
 - (b) second, the D&O Charge;
 - (c) third, the DIP Charge;
 - (d) fourth, the Transaction Charge (as defined in the Bidding Procedures Order dated September 29, 2022);
 - (e) fifth, the KERP Charge.
- [62] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Property whether or not charged by such Encumbrances, save that, as regards the Transaction Charge and the KERP Charge only, the question with respect to its priority ranking as regards any

amounts owing by the Petitioners pursuant to paragraph [23](a) of this Order shall be determined by the Court at a later date and time.

- [63] **ORDERS** that, except as otherwise expressly provided for herein, the Petitioners shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioner, as applicable, obtains the prior written consent of the Monitor and the prior approval of the Court.
- [64] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
- [65] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease or other arrangement which binds the Petitioners (a “**Third Party Agreement**”), and notwithstanding any provision to the contrary in any Third Party Agreement:
- (a) the creation of any of the CCAA Charges shall not create nor be deemed to constitute a breach by the Petitioners of any Third Party Agreement to which any of the Petitioners is a party; and
 - (b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.
- [66] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any Petitioners pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances, preferential payments, transfers at undervalue or other challengeable or

reviewable transactions or conduct meriting an oppression remedy under any applicable law.

- [67] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners.

s. Hearing Scheduling and Details

- [68] **ORDERS** that, subject to further Order of this Court, all applications in these CCAA proceedings are to be brought on not less than five (5) calendar days' notice to all Persons on the service list prepared by the Monitor or counsel for the Monitor in connection with these CCAA proceedings (the "**Service List**"). Each application shall specify a date (the "**Initial Return Date**") and time (the "**Initial Return Time**") for the hearing.
- [69] **ORDERS** that any Person wishing to object to the relief sought on an application in these CCAA proceedings must serve responding materials or a notice stating the objection to the application and the grounds for such objection (a "**Notice of Objection**") in writing to the moving party, the Petitioners and the Monitor, with a copy to all Persons on the Service List, no later than 5 P.M. on the date that is three (3) calendar days prior to the Initial Return Date (the "**Objection Deadline**").
- [70] **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of these proceedings (the "**Presiding Judge**") may determine: (a) whether a hearing is necessary; (b) whether such hearing will be in person, by videoconference, by telephone or by written submissions only; and (c) the parties from whom submissions are required (collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.
- [71] **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Monitor or the Monitor's counsel shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor or the Monitor's counsel shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in these proceedings.
- [72] **ORDERS** that, if a Notice of Objection is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time, or such earlier or later time as may be directed by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial

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Return Date and at the Initial Return Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested application and such other matters, including interim relief, as the Court may direct.

t. General

- [73] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, representatives, legal counsel or financial advisers of the Petitioners or of the Monitor in relation to the Business or Property of the Petitioners, without first obtaining leave of this Court, upon ten (10) calendar days' written notice to the Petitioners' counsel, the Monitor's counsel, and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
- [74] **DECLARES** that this Order and any proceeding or affidavit leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioners under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [75] **DECLARES** that, except as otherwise specified herein, the Petitioners and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery, electronic mail, or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioners and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.
- [76] **DECLARES** that the Petitioners and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses.
- [77] **ORDERS** that Exhibits-P-3, P-8, P-10 and Schedule D to Exhibit P-5 to the Initial Application, Exhibits P-2, P-2A and P-3 to the Application for the Issuance of an Amended and Restated Initial Order, and Exhibit ● to the Report shall be filed under seal and kept confidential until further order of this Court.
- [78] **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served an Answer on the counsel for the Petitioners and the Monitor and has filed such notice with this Court,

or appears on the Service List, save and except when an order is sought against a Person not previously involved in these proceedings.

- [79] **DECLARES** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.
- [80] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [81] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order and to assist the Petitioners, 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 Petitioners and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Petitioners in any foreign proceeding, to assist the Petitioners, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.
- [82] **AUTHORIZES** the Monitor or the Petitioners to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the U.S. Bankruptcy Code, including an order for recognition of these CCAA proceedings as “Foreign Main Proceedings” in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, for which Xebec Adsorption Inc., shall be the foreign representative of the Petitioners. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be deemed necessary or appropriate for that purpose.
- [83] **DECLARES** that, for the purposes of any applications authorized by paragraph [82] of this Order, Petitioners’ centre of main interest is located in Montréal, Québec, Canada.
- [84] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.

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[85] **THE WHOLE WITHOUT COSTS.**

Christian Immer, J.S.C.

MTRE SANDRA ABITAN
MTRE JULIEN MORISSETTE
MTRE ILIA KRAVTSOV
(OSLER HOSKIN & HARCOURT LLP)
COUNSEL TO THE PETITIONERS

Hearing date: February 3, 2023

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EXHIBIT P-1A

Comparison - Draft Second Amended
and Restated Initial Order and ARIO

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: ~~October 20~~February 3, 2023

BEFORE THE HONOURABLE CHRISTIAN IMMER, J.S.C.

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
APPLIED COMPRESSION SYSTEMS LTD.
COMPRESSED AIR INTERNATIONAL INC.
XEBEC HOLDING USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES – WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC**
Debtors / Petitioners

and

DELOITTE RESTRUCTURING INC.
Monitor

SECOND AMENDED AND RESTATED INITIAL ORDER

- [1] **CONSIDERING** the *Application for the Issuance of an Amended and Restated Initial Order and an Approval and Vesting Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the “**Initial Application**”) pursuant to the CCAA;
- [3] **CONSIDERING** the ~~Third~~Firth Report of the Monitor dated ~~October 19~~January 2023 ~~(the “Report”)~~(the “**Report**”);
- [4] **CONSIDERING** the submissions of counsel and the testimony of the witnesses heard;
- [5] **GIVEN** the provisions of the CCAA;
- [6] **GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

THE COURT HEREBY:

- [7] **GRANTS** the Application.
- [8] **ISSUES** an order pursuant to the CCAA (the “**Order**”), divided under the following headings:
- (a) Service;
 - (b) Application of the CCAA;
 - (c) Effective Time;
 - (d) Administrative Consolidation;
 - (e) Plan of Arrangement;
 - (f) Stay of Proceedings against the Petitioners and the Property;
 - (g) Stay of Proceedings against the Directors and Officers;
 - (h) Possession of Property and Operations;

- (i) No Exercise of Rights or Remedies;
- (j) No Interference with Rights;
- (k) Continuation of Services;
- (l) Non-Derogation of Rights;
- (m) Interim Financing (DIP);
- (n) Directors' and Officers' Indemnification and Charge;
- (o) Restructuring;
- (p) Powers of the Monitor;
- (q) KERPs and KERP Charge;
- (r) Priorities and General Provisions Relating to CCAA Charges;
- (s) Hearing Scheduling and Details;
- (t) General.

a. Service

- [9] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.

b. Application of the CCAA

- [10] **DECLARES** that the Petitioners are debtor companies to which the CCAA applies.

c. Effective Time

- [11] **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montréal time, Province of Québec, on September 29, 2022 (the "**Effective Time**").

d. Administrative Consolidation

- [12] **ORDERS** the consolidation of these CCAA proceedings of the Petitioners under one single Court file, in file number 500-11-061483-224.

- [13] **ORDERS** that all existing and future proceedings, filings, and other matters (including, without limitation, all applications, reports and cash flows) in the CCAA Proceedings henceforth be filed jointly and together by the Petitioners, and the Monitor, as applicable, under file number 500-11-061483-224.
- [14] **DECLARES** that the consolidation of these CCAA proceedings in respect of the Petitioners shall be for administrative purposes only and shall not effect a consolidation of the assets and property or of the debts and obligations of each of the Petitioners including, without limitation, for the purposes of any plan of compromise or arrangement (a “**Plan**”) that may be hereafter proposed.

e. Plan of Arrangement

- [15] **DECLARES** that the Petitioners shall have the authority to file with this Court and to submit to their creditors one or more Plans in accordance with the CCAA.

f. Stay of Proceedings against the Petitioners and the Property

- [16] **ORDERS** that, until and including ~~November 28~~ March 17, 202~~2~~3 (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Petitioners, or affecting the Petitioners’ business operations and activities (the “**Business**”) or the Property (as defined herein), including as provided in paragraph [29] herein except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.
- [17] **ORDERS** that the rights of His Majesty in right of Canada and His Majesty in right of a Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.
- [18] **ORDERS** and **DECLARES** that the National Bank of Canada (“**NBC**”) is an unaffected creditor in these CCAA proceedings and is not subject to the stay of proceedings, including the Stay Period and any renewal or extension thereof, or any other limitations of creditors’ right or recourses under this Order. Nothing in this Order shall prevent NBC from enforcing its security against the Petitioners’ Property in conformity with its contractual rights, subject only to NBC providing advance notice of its intention to do so.

g. Stay of Proceedings against Directors and Officers

- [19] **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against

any former, present or future director or officer of the Petitioners nor against any person deemed to be a director or an officer of any of the Petitioners under subsection 11.03(3) CCAA (each, a “**Director**”, and collectively the “**Directors**”) in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioners where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

h. Possession of Property and Operations

- [20] **ORDERS** that the Petitioners shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the “**Property**”), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph [47] hereof.
- [21] **ORDERS** that the Petitioners shall be entitled, but not required to pay the following expenses with the prior consent of the Monitor or further order of the Court, as the case may be, whether incurred prior to or after this Order:
- (a) outstanding and future wages, salaries, expenses and, benefits payable prior to 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 counsel, advisors and agents retained or employed by the Petitioners directly related to these proceedings, at their standard rates and charges; and
 - (c) amounts owing for goods or services actually supplied to the Petitioners prior to the date of this Order by third party suppliers up to a maximum aggregate amount of \$700,000, if, in the opinion of the Petitioners and of the Monitor, the supplier is critical to the business and ongoing operations of the Petitioners.
- [22] **ORDERS** that except as otherwise provided to the contrary herein, the Petitioners shall be entitled to pay all reasonable expenses incurred by the Petitioners 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; and

- (b) payment for goods or services actually supplied to the Petitioners following the date of this Order.
- [23] **ORDERS** that the Petitioners 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) Québec Pension Plan, and (iv) income taxes; and
 - (b) all goods and services, harmonized sales or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners and in connection with the sale of goods and services by the Petitioners but only where such Sales Taxes are accrued or collected after the date of this Order.
- [24] **ORDERS** that, subject to the consent of the Monitor, each of the Petitioners is authorized to complete outstanding transactions and engage in new transactions with other Petitioners or their affiliates, including, without limitation, (a) intercompany funding transactions, (b) purchase and sale transactions for goods or services in the ordinary course of the Business, (c) allocation and payments of costs, expenses and other amounts for the benefit of the Petitioners, including, without limitation, debt repayments and interest costs, head office, shared services and restructuring costs (collectively, "**Intercompany Transactions**"), and to continue, on and after the date of this Order, to effect Intercompany Transactions. All Intercompany Transactions among the Petitioners shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures as the Monitor may require, or subject to this Order or further Order of this Court.
- [25] **ORDERS** that, in conformity with the DIP Term Sheet, the Petitioners shall notify, at least two (2) days in advance, the Interim Lenders of any monetary payment from a Petitioner to another Petitioner or their affiliates, and that the Monitor shall continue to report from time to time to the Court on such monetary payments constituting Intercompany Transactions.
- [26] **ORDERS** that prior to the distribution of any net sale proceeds resulting from the sale or divestiture of any Business or Property (but excluding any distribution made in respect of any amounts owing under the CCAA Charges (as defined herein), as the case may, it being understood that in each such case, said distribution may in itself constitute an Intercompany Transaction to form part of a subsequent Intercompany Transactions Report, as defined herein), the Monitor

shall prepare and file with the Court a report (each, an “**Intercompany Transactions Report**”) detailing all Intercompany Transactions which occurred on or after the date of the Initial Order with respect to the applicable Petitioner(s), which Intercompany Transactions Report shall include the Monitor’s proposed allocation of the net amount to be attributed to each Petitioner as a result of the applicable Intercompany Transactions, if any, and any net sale proceeds to be remitted by one Petitioner to another Petitioner as the case may be (the “**Proposed Allocation**”).

- [27] **ORDERS** the Monitor to serve a copy of the Intercompany Transactions Report upon the service list in these proceedings and **DECLARES** that any interested creditor shall be entitled to apply to this Court within five (5) calendar days of said notification to the service list of the Intercompany Transactions Report to contest or make representations with respect to the Proposed Allocation.
- [28] **DECLARES** that paragraph [26] and [27] of this Order and their effects shall apply to any distribution, even outside of these CCAA proceedings, including, without limitation, a distribution by any trustee in bankruptcy, receiver, receiver and manager, interim receiver or any other person appointed to make a distribution in respect of the Property, unless the Court orders otherwise.

i. No Exercise of Rights or Remedies

- [29] **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the Petitioners is a party as a result of the insolvency of the Petitioners and/or these CCAA proceedings, any events of default or non-performance by the Petitioners or any admissions or evidence in these CCAA proceedings, of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof are hereby stayed and suspended except with leave of this Court.
- [30] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods including, without limitation, to file grievances relating to the Petitioners or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioners, or any of them, become(s) bankrupt or a receiver as defined in

subsection 243(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) is appointed in respect of the Petitioners, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioners in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

j. No Interference with Rights

- [31] **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, fail to renew (when contractually provided), alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners except with the written consent of the Petitioners and the Monitor, or with leave of this Court.

k. Continuation of Services

- [32] **ORDERS** that during the Stay Period and subject to paragraphs [33] and [34] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioners or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioners, are hereby restrained until further order of this Court from discontinuing, altering, failing to renew (when contractually provided), interfering with or terminating the supply or, as the case may be, interrupting, delaying or stopping the transit of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, 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 Petitioners, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners, as applicable, with the consent of the Monitor, or as may be ordered by this Court.
- [33] **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioners 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 make further advance of money or otherwise extend any credit to the Petitioners.

- [34] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any Petitioners with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of this Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by a Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into a Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

I. Non-Derogation of Rights

- [35] **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Petitioners shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of this Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

m. Interim Financing (DIP)

- [36] **ORDERS** that the Petitioners be and are hereby authorized to borrow from NBC and Export Development Canada (collectively, the "**Interim Lenders**") such amounts from time to time as the Petitioners may consider necessary or desirable, up to an aggregate principal amount not exceeding \$3,000,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed under seal as Exhibit P-2A in support of the Application (the "**DIP Term Sheet**") and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioners and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents (as defined hereinafter) (the "**DIP Facility**").
- [37] **ORDERS** that the Petitioners are hereby authorized to execute and deliver the DIP Term Sheet and other security documents and ancillary documents as may be required by the Interim Lenders in connection with the DIP Facility and the DIP Term Sheet (collectively, the "**Interim Financing Documents**"), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to with the Interim Lenders, but only with the consent of the Monitor, and the Petitioners are hereby authorized to perform all of its obligations under the DIP Term Sheet and the Interim Financing Documents.

- [38] **ORDERS** that Petitioners shall pay to the Interim Lenders, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other reasonably required advisors to or agents of the Interim Lenders on a full indemnity basis (the “**Interim Lender Expenses**”)) under the DIP Term Sheet and the Interim Financing Documents and shall perform all of their other obligations owed to the Interim Lenders pursuant to the DIP Term Sheet, the Interim Financing Documents and the Order.
- [39] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,600,000 (the “**DIP Charge**”) in favour of the Interim Lenders as security for all obligations of the Petitioners to the Interim Lenders with respect to the payment of the DIP Facility (including principal, interest and the Interim Lender Expenses) owing to the Interim Lenders under or in connection with the DIP Term Sheet and the Interim Financing Documents. Such Interim Lender Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs [61] and [62] of this Order.
- [40] **ORDERS** that the claims of the Interim Lenders pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lenders, in that capacity, shall be treated as unaffected creditors in these proceedings and in any Plan.
- [41] **ORDERS** that the Interim Lenders may:
- (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the DIP Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
 - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Petitioners if the Petitioners fail to meet the provisions of the DIP Term Sheet and the Interim Financing Documents.
- [42] **ORDERS** that the Interim Lenders shall not take any enforcement steps under the DIP Term Sheet, the Interim Financing Documents or the DIP Charge without providing at least 3 business days written notice (the “**Notice Period**”) of a default thereunder to the Petitioners, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lenders shall be entitled to take any and all steps, the DIP Term Sheet, the Interim Financing Documents, the DIP Charge and otherwise permitted at law, but without having to send any additional demands under Section 244 of the BIA, under the Civil Code of Quebec or any other similar legislation.

- [43] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [68] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [36] to [43] of this Order unless either (a) notice of a motion for such order is served on the Interim Lenders by the moving party within at least seven (7) days prior to the presentation thereof or (b) the Interim Lenders apply for or consents to such order.

n. Directors' and Officers' Indemnification and Charge

- [44] **ORDERS** that the Petitioners shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioners after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.
- [45] **ORDERS** that the Directors of the Petitioners shall be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$3,700,000 (the "**D&O Charge**"), as security for the indemnity provided in paragraph [44] of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The D&O Charge shall have the priority set out in paragraphs [61] and [62] of this Order.
- [46] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Directors shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph [44] of this Order.

o. Restructuring

- [47] **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioners, subject to prior approval of the Monitor or further order of the Court, as the case may be, shall have the right to:
- (a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate;

- (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
 - (c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$750,000 or \$1,500,000 in the aggregate;
 - (d) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioners and such employee, or failing such agreement, make provision to deal with, any consequences thereof in a Plan, as the Petitioners may determine;
 - (e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the relevant Petitioner, as applicable, and the relevant party, or failing such agreement, to make provision for the consequences thereof in a Plan; and
 - (f) subject to section 11.3 CCAA, assign any rights and obligations of Petitioners.
- [48] **DECLARES** that, in order to facilitate the Restructuring, the Petitioners may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.
- [49] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, C 5, and equivalent provisions of the *Act Respecting the Protection of Personal Information in the Private Sector*, RSQ, c P-39.1, the Petitioners are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a “**Third Party**”), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of a Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them

to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of a Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

p. Powers of the Monitor & Administration Charge

[50] **ORDERS** that *Deloitte Restructuring Inc.* is hereby appointed to monitor the business and financial affairs of the Petitioners as an officer of this Court (the “**Monitor**”) and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

- (a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, in La Presse (French version) and the Globe and Mail National Edition (English version) and (ii) within four (4) business days after the date of this Order (A) post on the Monitor’s website a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioners of more than \$1,000, advising them that this Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective 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;
- (b) shall monitor the Petitioners’ receipts and disbursements;
- (c) shall assist the Petitioners, to the extent required by the Petitioners, in dealing with their creditors and other interested Persons during the Stay Period;
- (d) shall assist the Petitioners, to the extent required by the Petitioners, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (e) shall advise and assist the Petitioners, to the extent required by the Petitioners, to review the Petitioners’ business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;

- (f) shall assist the Petitioners, to the extent required by the Petitioners, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider a Plan;
- (g) shall report to the Court on the state of the business and financial affairs of the Petitioners or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated reports for the Petitioners;
- (h) shall report to this Court and interested parties, including but not limited to creditors affected by a Plan, with respect to the Monitor's assessment of, and recommendations with respect to, a Plan;
- (i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under this Order or under the CCAA;
- (k) may give any consent or approval as may be contemplated by this Order or the CCAA;
- (l) may hold and administer funds in connection with arrangements made among the Petitioners, any counter-parties and the Monitor, or by Order of this Court; and
- (m) may perform such other duties as are required by this Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioners, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Petitioners.

- [51] **ORDERS** that the Petitioners and their current and former shareholders, Directors, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties, rights and obligations as provided and set out in this Order.

- [52] **ORDERS** that, without limiting the generality of anything herein, the Petitioners and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of this Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioners in connection with the Monitor's duties and responsibilities hereunder.
- [53] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioners with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioners' counsel. In the case of information that the Monitor has been advised by the Petitioners is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioners unless otherwise directed by this Court.
- [54] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioners or continues the employment of the Petitioners' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
- [55] **DECLARES** that Section 215 of the BIA applies *mutatis mutandis* and that no action or other proceedings shall be commenced against the Monitor or its representatives relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least seven (7) days' notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor and their representatives shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [56] **DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.
- [57] **ORDERS** that the Petitioners shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
- [58] **DECLARES** that the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel, as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, any Plan and the Restructuring, as well as National Bank Financial Inc. ("**NBF**"), as security for the Engagement Fee and the Fairness Opinion Fee

(as such terms are defined in the engagement letter filed as Exhibit P-3 in support of the Initial Application, the “**Engagement Letter**”) and all disbursements incurred by NBF pursuant to the Engagement Letter, be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$93,000,000 (the “**Administration Charge**”), having the priority established by paragraphs [61] and [62] of this Order.

q. KERPs and KERP Charge

[59] **ORDERS** that the key employee retention plan, key vice-president retention plan and the key executive incentive plan (collectively, the “**KERPs**”) described in the Application and summarized in the document filed under seal as Exhibit P-3 to the Application are hereby approved, and the Petitioners are hereby authorized and empowered to perform their obligations set forth thereunder, including by making the payments in accordance with the terms set out therein.

[60] **ORDERS** that the employees designated in the KERPs shall be entitled to the benefit of and are hereby granted a charge and security in the on the Property, to the extent of the aggregate amount of \$1,080,000 (the “**KERP Charge**”), having the priority established by paragraphs [61] and [62] of this Order.

r. Priorities and General Provisions Relating to CCAA Charges

[61] **DECLARES** that the priorities of the Administration Charge and the D&O Charge (collectively, the “**CCAA Charges**”), as between them with respect to any Property to which they apply, shall be as follows:

- (a) first, the Administration Charge;
- (b) second, the D&O Charge;
- (c) third, the DIP Charge;
- (d) fourth, the Transaction Charge (as defined in the Bidding Procedures Order dated September 29, 2022);
- (e) fifth, the KERP Charge.

[62] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Property whether or not charged by such Encumbrances, save that, as regards the Transaction Charge and the KERP Charge only, the question with respect to its priority ranking as regards any

amounts owing by the Petitioners pursuant to paragraph [23](a) of this Order shall be determined by the Court at a later date and time.

- [63] **ORDERS** that, except as otherwise expressly provided for herein, the Petitioners shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioner, as applicable, obtains the prior written consent of the Monitor and the prior approval of the Court.
- [64] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
- [65] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease or other arrangement which binds the Petitioners (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:
- (a) the creation of any of the CCAA Charges shall not create nor be deemed to constitute a breach by the Petitioners of any Third Party Agreement to which any of the Petitioners is a party; and
 - (b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.
- [66] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any Petitioners pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent

conveyances, preferential payments, transfers at undervalue or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

- [67] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners.

s. Hearing Scheduling and Details

- [68] **ORDERS** that, subject to further Order of this Court, all applications in these CCAA proceedings are to be brought on not less than five (5) calendar days' notice to all Persons on the service list prepared by the Monitor or counsel for the Monitor in connection with these CCAA proceedings (the "**Service List**"). Each application shall specify a date (the "**Initial Return Date**") and time (the "**Initial Return Time**") for the hearing.
- [69] **ORDERS** that any Person wishing to object to the relief sought on an application in these CCAA proceedings must serve responding materials or a notice stating the objection to the application and the grounds for such objection (a "**Notice of Objection**") in writing to the moving party, the Petitioners and the Monitor, with a copy to all Persons on the Service List, no later than 5 P.M. on the date that is three (3) calendar days prior to the Initial Return Date (the "**Objection Deadline**").
- [70] **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of these proceedings (the "**Presiding Judge**") may determine: (a) whether a hearing is necessary; (b) whether such hearing will be in person, by videoconference, by telephone or by written submissions only; and (c) the parties from whom submissions are required (collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.
- [71] **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Monitor or the Monitor's counsel shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor or the Monitor's counsel shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in these proceedings.

- [72] **ORDERS** that, if a Notice of Objection is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time, or such earlier or later time as may be directed by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial Return Date and at the Initial Return Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested application and such other matters, including interim relief, as the Court may direct.

t. General

- [73] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, representatives, legal counsel or financial advisers of the Petitioners or of the Monitor in relation to the Business or Property of the Petitioners, without first obtaining leave of this Court, upon ten (10) calendar days' written notice to the Petitioners' counsel, the Monitor's counsel, and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
- [74] **DECLARES** that this Order and any proceeding or affidavit leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioners under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [75] **DECLARES** that, except as otherwise specified herein, the Petitioners and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery, electronic mail, or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioners and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.
- [76] **DECLARES** that the Petitioners and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses.
- [77] **ORDERS** that Exhibits-P-3, P-8, P-10 and Schedule D to Exhibit P-5 to the Initial Application ~~and~~, Exhibits P-2, P-2A and P-3 to the Application [for the Issuance of an Amended and Restated Initial Order, and Exhibit ● to the Report](#) shall be filed under seal and kept confidential until further order of this Court.

- [78] **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served an Answer on the counsel for the Petitioners and the Monitor and has filed such notice with this Court, or appears on the Service List, save and except when an order is sought against a Person not previously involved in these proceedings.
- [79] **DECLARES** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.
- [80] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [81] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order and to assist the Petitioners, 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 Petitioners and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Petitioners in any foreign proceeding, to assist the Petitioners, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.
- [82] **AUTHORIZES** the Monitor or the Petitioners to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the U.S. Bankruptcy Code, including an order for recognition of these CCAA proceedings as "Foreign Main Proceedings" in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, for which Xebec Adsorption Inc., shall be the foreign representative of the Petitioners. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be deemed necessary or appropriate for that purpose.
- [83] **DECLARES** that, for the purposes of any applications authorized by paragraph [82] of this Order, Petitioners' centre of main interest is located in Montréal, Québec, Canada.

[84] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.

[85] **THE WHOLE WITHOUT COSTS.**

Christian Immer, J.S.C.

MTRE SANDRA ABITAN
MTRE JULIEN MORISSETTE
MTRE ILIA KRAVTSOV
(OSLER HOSKIN & HARCOURT LLP)
COUNSEL TO THE PETITIONERS

Hearing date: ~~October 20~~February 3, 20223

EXHIBIT P-2

Draft ACS Approval and Vesting
Order

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 3, 2023

BEFORE THE HONOURABLE CHRISTIAN IMMER, J.S.C.

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
APPLIED COMPRESSION SYSTEMS LTD.
COMPRESSED AIR INTERNATIONAL INC.
XEBEC HOLDING USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES – WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC
Debtors / Petitioners**

and
DELOITTE RESTRUCTURING INC.
Monitor

and
1396905 B.C. LTD
Impleaded Party (Buyer)

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and

**THE REGISTRAR OF THE BRITISH COLUMBIA PERSONAL PROPERTY
REGISTRY**

Impleaded Party (Registrar)

APPROVAL AND VESTING ORDER

- [1] **CONSIDERING** the *Application for the Issuance of a Second Amended and Restated Initial Order and of an Approval and Vesting Order* and (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”), the exhibits thereto, and the affidavit of Dimitrios Vounassis filed in support thereof;
- [2] **CONSIDERING** the Fifth Report of Deloitte Restructuring Inc. (in such capacity, the “**Monitor**”) dated January ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **GIVEN** the provisions of the CCAA:
- [5] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Asset Purchase Agreement dated as of January 27, 2023 (the “**Purchase Agreement**”) between Applied Compression Systems Ltd as seller (the “**Seller**”) and 1396905 B.C. Ltd, as buyer, (the “**Buyer**”), a copy of which was filed as **Exhibit P-3** to the Application, and vesting in the Buyer the Purchased Assets.

THE COURT HEREBY:

- [6] **GRANTS** the Application.

DEFINITIONS

- [7] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Purchase Agreement.

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SERVICE

- [8] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and dispenses with further service thereof.
- [9] **PERMITS** service of this Order at any time and place and by any means whatsoever.

TRANSACTION APPROVAL

- [10] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Seller is hereby authorized and approved *nunc pro tunc*, with such minor alterations, changes, amendments, deletions or additions thereto as may be agreed to by the Seller and the Buyer, with the consent of the Monitor.

EXECUTION OF DOCUMENTATION

- [11] **AUTHORIZES** the Buyer and the Seller to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto, including the Transaction.

AUTHORIZATION

- [12] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Petitioners to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS

- [13] **ORDERS AND DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Buyer, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or

encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges or security evidenced by registration, publication or filing pursuant to the Civil Code of Québec, the Personal Property Security Act of the Province of British Columbia, or any other applicable legislation providing for a security interest in personal or movable property, and those Claims listed on **Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "C"**).

- [14] For greater certainty, **ORDERS** that all of the Encumbrances, other than those listed on Schedule "C" hereto, affecting or relating to the Purchased Assets be cancelled and discharged as against the Purchased Assets, in each case effective as of the issuance of the Monitor's Certificate.
- [15] **ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
- [16] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.
- [17] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Purchase Agreement and shall have no liability with respect to the delivery of the Monitor's Certificate.
- [18] **ORDERS AND DIRECTS** the Monitor to serve on the service list in the within CCAA proceedings, post on the Monitor's website and file with the Court a copy of the Monitor's Certificate, as soon as practicable after the issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

- [19] **ORDERS** that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the *British Columbia Personal Property Security Registry* (the "**BC PPR**"), as may be necessary, from any registration filed against the Petitioners in the BC PPR, provided that the Petitioners shall not be authorized

to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

PROTECTION OF PERSONAL INFORMATION

[20] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the “**Applicable Privacy Laws**”), the Petitioners and the Monitor are authorized to disclose and transfer to the Buyer the personal information in the custody or control of the Petitioners set out in the Purchase Agreement (the “**Disclosed Information**”). The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Petitioners.

[21] **ORDERS** that the Buyer shall:

- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;
- (b) use and disclose the Disclosed Information for the purposes for which the Disclosed Information was collected by the Petitioners and as may otherwise be permitted by Applicable Privacy Laws; and
- (c) give effect to any withdrawals of consent of the individuals to whom the Disclosed Information relates.

VALIDITY OF THE TRANSACTION

[22] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any petition for a bankruptcy order now or hereafter issued pursuant to the BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

the vesting of Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement authorized by this Order, and the payments, distributions and disbursements made pursuant to or in connection with this Order are to be binding on any trustee in bankruptcy that may be appointed, and shall

not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Petitioners, the Buyer, or the Monitor.

RELEASES

- [23] **ORDERS** that effective as of the issuance of the Monitor's Certificate (a) the current and former directors, officers, employees, legal counsel and advisors of the Petitioners; (b) the Monitor and its legal counsel; and (c) the Buyer and its respective current and former directors, officers, employees, legal counsel and advisors; (in such capacities, collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released by the Releasing Parties (as hereinafter defined) and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the issuance of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the business, operations, assets, property and affairs of the Petitioners wherever or however conducted or governed, the administration and/or management of the Petitioners, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, or (ii) the Purchase Agreement and any agreement, document, instrument, matter or transaction involving the Petitioners arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively the "**Released Claims**"), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Purchase Agreement and/or any agreement, document, instrument, matter or transaction involving the Petitioners arising in connection with or pursuant to any of the foregoing. "**Releasing Parties**" means any and all Persons (besides the Petitioners and their respective current and former affiliates),

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and their current and former affiliates' current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment vehicles, managed accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisory board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors, partners, legal counsel, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

THE MONITOR

- [24] **DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.
- [25] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.
- [26] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.
- [27] **ORDERS AND DECLARES** that no provision of this Order is intended to appoint the Monitor as an officer, director or employee of any of the Petitioners, de facto or otherwise, or to create a fiduciary duty to any party, including any creditor or shareholder of the Petitioners. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Petitioners and any distribution made to the creditors of the Petitioners will be deemed to have been made by the Petitioners.

SEALING

- [28] **ORDERS** that the Purchase Agreement, **Exhibit P-3** shall be filed under seal and kept confidential until further order of this Court.

Draft

GENERAL

- [29] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [30] **DECLARES** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other and the Buyer.
- [31] **DECLARES** that the Petitioners and the Monitor shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.
- [32] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order, and to assist the Petitioners, 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 Petitioners and the Monitor as may be necessary or desirable to give effect to this Order in any foreign proceeding, to assist the Petitioners, the Monitor and their respective agents in carrying out this Order.
- [33] **ORDERS** provisional execution of this Order notwithstanding any appeal and without security.
- [34] **THE WHOLE** without costs.

Christian Immer, J.S.C.

MTRE. SANDRA ABITAN
MTRE. JULIEN MORISSETTE
MTRE. ILIA KRAVTSOV
(OSLER HOSKIN & HARCOURT LLP)
Attorneys for the Petitioners

Hearing date: **February 3, 2023**

Draft

SCHEDULE A
DRAFT CERTIFICATE OF THE MONITOR

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to
the *Bankruptcy and Insolvency Act*, RSC
1985, c B-3)

**IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:**

XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
**APPLIED COMPRESSION SYSTEMS
LTD.**
**COMPRESSED AIR INTERNATIONAL
INC.**
XEBEC HOLDING USA INC.
**ENERPHASE INDUSTRIAL SOLUTIONS,
INC.**
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES - WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

CERTIFICATE OF THE MONITOR

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & Al. filed an Application pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**") and Deloitte Restructuring Inc. was appointed as monitor thereto (the "**Monitor**").

WHEREAS on February 3, 2023, the Court issued an Order (the "**Approval and Vesting Order**") authorizing and approving, *inter alia*, the execution of a Asset Purchase Agreement by and among Applied Compression Systems Ltd as Seller (the "**Seller**") and 1396905 B.C. Ltd as buyer (the "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

WHEREAS the Approval and Vesting Order contemplates the issuance of this Certificate of the Monitor once (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Buyer to the Seller; and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE MONITOR CERTIFIES THAT IT HAS BEEN ADVISED BY THE SELLER AND THE BUYER AS TO THE FOLLOWING:

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Monitor on _____ [DATE].

Draft

Draft

Deloitte Restructuring Inc., in its capacity as Monitor
to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

SCHEDULE B

ENCUMBRANCE TO BE VESTED

PPSA Security Agreement with the National Bank of Canada (BC Personal Property Registry no. 779666M)

Draft

SCHEDULE C

PERMITTED ENCUMBRANCE

PPSA Security Agreement with Ford Credit Canada Company with Vehicle Collateral
(BC Personal Property Registry no. 589688K)

Draft

EXHIBIT P-2A

Comparison - Draft ACS Approval
and Vesting Order to the model
approval and vesting order published
by the Barreau de Montréal

May 2014

SUPERIOR COURT

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 3, 2023

BEFORE THE HONOURABLE CHRISTIAN IMMER, J.S.C.

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
APPLIED COMPRESSION SYSTEMS LTD.
COMPRESSED AIR INTERNATIONAL INC.
XEBEC HOLDING USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES – WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC

Debtors / Petitioners

and

DELOITTE RESTRUCTURING INC.

Monitor

and

1396905 B.C. LTD

Draft

Impleaded Party (Buyer)

and

THE REGISTRAR OF THE BRITISH COLUMBIA PERSONAL PROPERTY
REGISTRY

Impleaded Party (Registrar)

APPROVAL AND VESTING ORDER

~~(Commercial Division)~~

~~CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No. 500-11-
DATE: ●~~

~~PRESIDING : THE HONOURABLE, J.S.C.~~

~~IN THE MATTER OF ●:~~

~~●
Debtor~~

~~-and-~~

~~●
THE LAND REGISTRAR FOR THE LAND REGISTRY
OFFICE FOR THE REGISTRATION DIVISION OF ● (Québec)/
THE LAND REGISTRAR FOR THE LAND REGISTRY OFFICE
OF ● (Rest of Canada) / THE REGISTRAR OF THE REGISTER OF PERSONAL AND
MOVABLE REAL RIGHTS (Québec)~~

~~Mis-en-Cause~~

~~-and-~~

~~●~~

[Petitioner]¹

-and-

•

[Receiver/Trustee/Monitor]

APPROVAL AND VESTING ORDER^{2, 3}

- [1] ~~ON-READING~~ **CONSIDERING** the ~~[Debtor/Petitioner/Receiver/Trustee/Monitor]'s~~ *Motion* Application for the Issuance of a Second Amended and Restated Initial Order and of an Approval and Vesting Order and (the "~~Motion~~"; "Application") pursuant to the Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended ("**CCAA**"), the exhibits thereto, and the affidavit ~~and the exhibits of~~ Dimitrios Vounassis filed in support thereof, ~~as well as;~~
- [2] **CONSIDERING** the Fifth Report of Deloitte Restructuring Inc. (in such capacity, the ~~[Receiver/Trustee/~~ "Monitor") dated ~~• (the "Report")~~ January 10, 2023;
- ~~[2] SEEING~~ the service of the *Motion*⁴;
- [3] ~~SEEING~~ **CONSIDERING** the submissions of counsel;
- [4] **GIVEN** the provisions of ~~[Debtor/Receiver/Trustee/Monitor]'s~~ attorneys and the submissions of ~~•;~~ the CCAA;

¹ Under section 243(1) of the BIA, the sale of assets of an insolvent debtor by the receiver may be ordered at the request of the secured creditor. In such a case, the secured creditor would be the petitioner.

² A blacklined version must to be included with the Motion

³ This Model Authorization and Vesting Order (the "~~Model Order~~") is an order authorizing an insolvent debtor under Court protection (whether under the *Bankruptcy and Insolvency Act* ("**BIA**") or the *Companies' Creditors Arrangement Act* ("**CCAA**") or a receiver appointed under s. 243 of the BIA to enter into a transaction for the sale of its assets and vesting the purchased assets in the purchaser, free and clear of any liens, charges, hypothecs or other encumbrances.

⁴ The Motion should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should be prepared to provide proof of service to the Court. The practice in Quebec is to implead (as mis-en-cause) and serve the proceedings requesting the issuance of an authorization and vesting orders on the land registry named in the orders sought and on the Register of personal and movable real rights, as the case may be. The practice of impleading the registries concerned does not appear to be followed in Canadian provinces outside of Quebec, however, such that preliminary inquiries with the registries concerned are recommended before serving any proceedings on land or other registries outside of Quebec.

[5] ~~[4] SEEING~~ **CONSIDERING** that it is appropriate to issue an order approving the sale transaction~~(s)~~ (the "**Transaction**") contemplated by the agreement entitled ~~• (the "Asset Purchase Agreement") by and between~~ **[Debtor/Receiver/Trustee/Monitor] (the "Vendor")** dated as of January 27, 2023 (the "**Purchase Agreement**") between Applied Compression Systems Ltd as seller (the "**Seller**") and 1396905 B.C. Ltd, as ~~vendor~~ **buyer**, ~~and • (the "Purchaser" "Buyer")~~, ~~as purchaser,~~ a copy of which was filed as **Exhibit RP-3** to the **Motion Application**, and vesting in the **Purchaser Buyer** the ~~assets described in the Purchase Agreement (the "Purchased Assets")~~⁵.

~~WHEREFORE~~ THE COURT **HEREBY**:

[6] ~~[5]~~ **GRANTS** the ~~Motion;~~ **Application**.

DEFINITIONS

[7] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Purchase Agreement.

SERVICE

[8] ~~[6]~~ **ORDERS** that any prior delay for the presentation of ~~this Motion~~ **the Application** is hereby abridged and validated so that ~~this Motion~~ **the Application** is properly returnable today and ~~hereby~~ dispenses with further service thereof.

[9] ~~[7]~~ **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE TRANSACTION APPROVAL

[10] ~~[8]~~ **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the ~~Vendor~~ **Seller** is hereby authorized and approved *nunc pro tunc*, with such ~~non-material~~ **minor** alterations, changes, amendments, deletions or additions thereto as may be agreed to ~~but only~~ **by the Seller and the Buyer**, with the consent of the **[Receiver/Trustee/Monitor]**.

⁵ ~~To allow this Order to be free-standing (and not require reference to the Court record and/or the Purchase Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

EXECUTION OF DOCUMENTATION

[11] ~~[9]~~ **AUTHORIZES** the ~~[Vendor/Receiver/Trustee/Monitor]~~ Buyer and the ~~Purchaser~~ Seller to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement (~~Exhibit R-1~~) and any other ancillary document which could be required or useful to give full and complete effect thereto, including the Transaction.

AUTHORIZATION

[12] ~~[10]~~ **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the ~~Vendor~~ Petitioners to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS ~~(choose A or B whether Purchased Assets are only located in Quebec (A) or also outside of Quebec (B))~~

[13] ~~[11]~~ **A** ~~ORDERS~~ and **AND** **DECLARES** that upon the issuance of a ~~[Receiver/Trustee/Monitor]~~'s certificate substantially in the form appended as **Schedule "A"** hereto (the **"Monitor's Certificate"**), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the ~~Purchaser~~ Buyer, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, ~~right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the Property, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "Encumbrances"⁶), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the Civil Code of Québec in movable / immovable property, excluding however, the permitted encumbrances and restrictive covenants listed on **Schedule "B"** hereto (the **"Permitted Encumbrances"**) and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be cancelled and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.~~

⁶ ~~The "Encumbrances" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served.~~

- [11] ~~B~~ ~~ORDERS~~ and ~~DECLARES~~ that upon the issuance of a ~~[Receiver/Trustee/Monitor]'s~~ certificate substantially in the form appended as Schedule "A" hereto (the "~~Certificate~~"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "~~Encumbrances~~" "Claims"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges, or security ~~interests or charges~~ evidenced by registration, publication or filing pursuant to the Civil Code of Québec, the ~~[Province(s)]~~ Personal Property Security Act of the Province of British Columbia, or any other applicable legislation providing for a security interest in personal or movable property, ~~excluding however, and those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "B" hereto (the "Permitted Encumbrances") and, for greater certainty,~~ **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.
- [12] ~~ORDERS~~ and ~~DECLARES~~ that upon the issuance of the Certificate, the rights and obligations of the Vendor under the Agreements listed on ~~Schedule "C" hereto (the "Assigned Agreements")~~ are assigned to the Purchaser ~~[and ORDERS that all monetary defaults of the Debtor in relation to the Assigned Agreements – other than those arising by reason only of the insolvency of the Debtor, the commencement of proceedings under the [BIA/CCAA] or the failure to perform non-monetary obligations – shall be remedied on or before ●].~~
- [13] ~~DECLARES~~ that upon issuance of the Certificate, the Transaction shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the ~~Code of Civil Procedure~~ and a forced sale as per the provisions of the ~~Civil Code of Quebec~~. ~~[This paragraph is only required when the sale is done by a Receiver]~~
- [14] ~~ORDERS~~ and ~~DIRECTS~~ the ~~[Vendor/Receiver/Trustee/Monitor]~~ to serve a copy of this Order to every party to the Assigned Agreements.
- [15] ~~ORDERS~~ and ~~DIRECTS~~ the ~~[Receiver/Trustee/Monitor]~~ to file with the Court a copy of the Certificate, forthwith after issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS⁷⁸⁹**For Quebec Property:**

~~[16] ORDERS the Land Registrar of the Land Registry Office for the Registry Division of ●, upon presentation of the Certificate in the form appended as Schedule "A" and a certified copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to publish this Order and (i) to make an entry on the Land Register showing the Purchaser as the owner of the immovable property identified in Schedule "●" hereto (the "Quebec Real Property") and (ii) to cancel any and all Encumbrances on Quebec Real Property (other than Permitted Encumbrances), including, without limitation, the following registrations published at the said Land Registry Office:~~

~~▪ [provide details of security/encumbrances to be discharged]~~

~~[17] ORDERS the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to [reduce the scope of] or [strike] the registrations number [provide details of security/encumbrances to be discharged] in connection with the Purchased Asset in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations.~~

For Ontario Property:

~~[18] ORDERS that upon registration in the Land Registry Office~~

~~(a) [NTD: For Land Titles System]: for the Land Titles Division of ● of an Application for Vesting Order in the form prescribed by the Land Registration Reform Act (Ontario), including a law statement confirming that the Certificate has been filed, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule "●" (the "Ontario Real Property") hereto in fee simple, and is hereby directed to delete and expunge from title to the ● ● Real Property all of the Encumbrances, which for the sake of clarity do not include the Permitted Encumbrances listed on Schedule B;~~

⁷ This Model Order provides a model for Quebec Courts to effect the vesting of assets in the Province of Quebec as well as in other Canadian provinces. In each province other than Quebec, the provisions of the Model Order dealing with registration of title and the discharge of encumbrances will have to be adjusted to refer to the appropriate registry and related offices and the appropriate terminology. Province-specific orders are identified in this Model Order. While the Model Order contains proposed language, verifications with lawyers in the relevant jurisdiction is advisable.

⁸ Land registries in both in Quebec and in the rest of Canada may be consulted prior to the issuance of a vesting order so as to validate the language of the proposed orders relating to said land registries. This procedure, known as a "pre-validation procedure" in Quebec, is recommended so as to ensure that the vesting order is properly registered without undue delay after its issuance.

⁹ The registration of a vesting order with a land registry may be subject to statutory delays. For instance, in Quebec, land registrars require the expiry of the delay for appeal before a judgment cancelling a registration can be published.

~~(b) [NTD: For Land Registry System]: for the Registry Division of ~~●~~ of a Vesting Order in the form prescribed by the Land Registration Reform Act (Ontario), including a law statement confirming that the Certificate has been filed, the Land Registrar is hereby directed to record such Vesting Order in respect of the subject real property identified in Schedule "~~●~~" (the "~~Ontario Real Property~~"), which for the sake of clarity do not include the Permitted Encumbrances listed on Schedule B;~~

~~[19] [NTD: For Movable Assets]: ORDERS that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the Ontario Personal Property Registry ("OPPR") as may be necessary, from any registration filed against the Vendor in the OPPR, provided that the Vendor shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendor shall be authorized to take any further steps by way of further application to this Court.~~

For British Columbia Property:

~~[20] [NTD: For Immovable Assets]: ORDERS the British Colombia Registrar of Land Titles (the "~~BC Registrar~~"), upon the registration in the Land Title Office for the Land Title District of ~~●~~ of a certified copy of this Order, together with a letter from [Receiver/Trustee/Monitor's counsel], solicitors for the [Receiver/Trustee/Monitor], authorizing registration of this Order,~~

~~(a) to enter the Purchaser as the owner of the lands, as identified in Schedule "~~●~~" hereto (the "~~BC Real Property~~"), together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the BC Real Property; and~~

~~(b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the BC Real Property all of the registered Encumbrances except for those listed in Schedule "~~●~~".~~

~~[21] [NTD: For Immovable Assets]: DECLARES that it has been proven to the satisfaction of this Court on investigation that the title of the Purchaser in and to the BC Real Property is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid.~~

~~[22] [NTD: For Movable Assets]: ORDERS that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the British Columbia Personal Property Security Registry (the "~~BC PPR~~") as may be necessary, from any registration filed against the Vendors in the BC PPR, provided that the Vendors shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendors shall be authorized to take any further steps by way of further application to this Court.~~

Draft

For New Brunswick Property:

~~[23] [NTD: For Immovable Assets]: ORDERS that upon registration in the Land Registry Office for the Registry Division of ● of an Application for Vesting Order in the form prescribed by the Registry Act (New Brunswick) duly executed by the [Receiver/Trustee/Monitor], the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule "●" (the "NB Real Property") in fee simple, and is hereby directed to delete and expunge from title to the NB Real Property, all of the Encumbrances, other than the Permitted Encumbrances.~~

~~[24] [NTD: For Movable Assets]: ORDERS that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the New Brunswick Personal Property Registry (the "NBPPR") as may be necessary, from any registration filed against the Vendor in the NBPPR, provided that the Vendor shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the ● Assets, and the Vendor shall be authorized to take any further steps by way of further application to this Court.~~

NET PROCEEDS

~~[25] ORDERS that the net proceeds¹⁰ from the sale of the Purchased Assets (the "Net Proceeds") shall be remitted to the [Receiver/Trustee/Monitor] and shall be distributed in accordance with applicable legislation.~~

~~[26] "C").~~

[14] For greater certainty, **ORDERS** that all of the Encumbrances, other than those listed on Schedule "C" hereto, affecting or relating to the Purchased Assets be cancelled and discharged as against the Purchased Assets, in each case effective as of the issuance of the Monitor's Certificate.

[15] **ORDERS** that for the purposes of determining the nature and priority of the ~~Encumbrances~~Claims, the ~~Net Proceeds~~net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that ~~upon payment~~from and after the delivery of the ~~Purchase Price (as defined in the Purchase Agreement)~~ by the Purchaser, all Encumbrances except for the ~~Permitted~~Monitor's Certificate all Claims and Encumbrances shall attach to the ~~Net Proceeds~~net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the

¹⁰ ~~The Motion and related draft order should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "Net Proceeds".~~

possession or control of the person having that possession or control immediately prior to the sale.

- [16] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.
- [17] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Purchase Agreement and shall have no liability with respect to the delivery of the Monitor's Certificate.
- [18] **ORDERS AND DIRECTS** the Monitor to serve on the service list in the within CCAA proceedings, post on the Monitor's website and file with the Court a copy of the Monitor's Certificate, as soon as practicable after the issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

- [19] **ORDERS** that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the *British Columbia Personal Property Security Registry* (the "**BC PPR**"), as may be necessary, from any registration filed against the Petitioners in the BC PPR, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

PROTECTION OF PERSONAL INFORMATION

- [20] ~~[27]~~ **ORDERS** that, pursuant to sub-section 7(3)(c) of the ~~Canada~~ *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the ~~Receiver is~~ "Applicable Privacy Laws"), the Petitioners and the Monitor are authorized and permitted to disclose and transfer to the ~~Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including~~ Buyer the personal information ~~of those employees listed on Schedule "A" to~~ in the custody or control of the Petitioners set out in the Purchase Agreement (the "Disclosed Information"). The ~~Purchaser~~ Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~⁴⁴. ~~[NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause];~~ Petitioners.

⁴⁴ ~~____ This paragraph may not be necessary depending on the nature of the Purchased Assets.~~

[21] **ORDERS** that the Buyer shall:

- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;
- (b) use and disclose the Disclosed Information for the purposes for which the Disclosed Information was collected by the Petitioners and as may otherwise be permitted by Applicable Privacy Laws; and
- (c) give effect to any withdrawals of consent of the individuals to whom the Disclosed Information relates.

VALIDITY OF THE TRANSACTION

[22] ~~[28]~~ **ORDERS** that notwithstanding:

- (a) ~~(i)~~ the pendency of these proceedings;
- (b) ~~(ii)~~ any petition for a ~~receiving~~ bankruptcy order now or hereafter issued pursuant to the ~~Bankruptcy and Insolvency Act ("BIA")~~ and any order issued pursuant to any such petition; or
- (c) ~~(iii)~~ the provisions of any federal or provincial legislation;

the vesting of ~~the~~ Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement authorized by this Order, and the payments, distributions and disbursements made pursuant to or in connection with this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the ~~Vendor~~ Petitioners, the ~~Purchaser~~ [Buyer], or the ~~Receiver/Trustee/Monitor~~.

LIMITATION OF LIABILITY

[29] ~~DECLARES~~ that, ~~subject to other orders of this Court, nothing herein contained shall require the [Receiver/Trustee/Monitor] to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The [Receiver/Trustee/Monitor] shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the [BIA/CCAA];~~

Draft

RELEASES

[23] **ORDERS** that effective as of the issuance of the Monitor's Certificate (a) the current and former directors, officers, employees, legal counsel and advisors of the Petitioners; (b) the Monitor and its legal counsel; and (c) the Buyer and its respective current and former directors, officers, employees, legal counsel and advisors; (in such capacities, collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released by the Releasing Parties (as hereinafter defined) and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the issuance of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the business, operations, assets, property and affairs of the Petitioners wherever or however conducted or governed, the administration and/or management of the Petitioners, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, or (ii) the Purchase Agreement and any agreement, document, instrument, matter or transaction involving the Petitioners arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively the "**Released Claims**"), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Purchase Agreement and/or any agreement, document, instrument, matter or transaction involving the Petitioners arising in connection with or pursuant to any of the foregoing. "**Releasing Parties**" means any and all Persons (besides the Petitioners and their respective current and former affiliates), and their current and former affiliates' current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment

Draft

vehicles, managed accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisory board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors, partners, legal counsel, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

THE MONITOR

[24] **DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.

[25] ~~[30]~~ **DECLARES** that no action lies against the ~~[Receiver/Trustee]~~ Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the ~~[Receiver/Trustee]~~ Monitor or belonging to the same group as the ~~Receiver~~ Monitor shall benefit from the protection arising under the present paragraph.

[26] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

[27] **ORDERS AND DECLARES** that no provision of this Order is intended to appoint the Monitor as an officer, director or employee of any of the Petitioners, de facto or otherwise, or to create a fiduciary duty to any party, including any creditor or shareholder of the Petitioners. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Petitioners and any distribution made to the creditors of the Petitioners will be deemed to have been made by the Petitioners.

SEALING

[28] **ORDERS** that the Purchase Agreement, **Exhibit P-3** shall be filed under seal and kept confidential until further order of this Court.

GENERAL

~~[31] **ORDERS AND DECLARES** that the Transaction is exempt from the application of the Bulk Sales Act (Ontario). [NOTE: It is desirable to obtain specific evidence in order~~

~~to convince the Tribunal of the necessity of this clause} [Ontario – Adapt for other common law Provinces where applicable]~~

~~[32] ORDERS that the Purchaser or the [Vendor/Receiver/Trustee/Monitor] shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.~~

~~[33] ORDERS that the Purchase Agreement be kept confidential and under seal until the earlier of a) the closing of the Transaction; or b) further order of this Court.~~

[29] ~~[34]~~ **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;

~~[35] DECLARES that the [Vendor/Receiver/Trustee/Monitor] shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the [Vendor/Receiver/Trustee/Monitor] shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the [Vendor/Receiver/Trustee/Monitor] as may be deemed necessary or appropriate for that purpose;~~

[30] **DECLARES** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other and the Buyer.

[31] **DECLARES** that the Petitioners and the Monitor shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.

[32] ~~[36]~~ **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or ~~administrative body and any federal or state court or administrative body~~ in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to ~~act in aid of and to be complementary to this Court~~ give effect to this Order, and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of the this Order; All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order in any foreign proceeding, to assist the Petitioners, the Monitor and their respective agents in carrying out this Order.

[33] ~~[37]~~ **ORDERS** the provisional execution of ~~the present~~ this Order notwithstanding any appeal and without ~~the requirement to provide any security or provision for costs whatsoever;~~

Draft

[34] THE WHOLE ~~[WITH/WITHOUT] COSTS~~ without costs.

• Christian Immer, J.S.C.

MTRE. SANDRA ABITAN
MTRE. JULIEN MORISSETTE
MTRE. ILIA KRAVTSOV
(OSLER HOSKIN & HARCOURT LLP)

•
Attorneys for • the Petitioners

Hearing date: February 3, 2023

Draft

Draft

SCHEDULE "A"

DRAFT CERTIFICATE OF THE ~~[RECEIVER/ TRUSTEE/MONITOR]~~

CANADA

PROVINCE OF ~~QUEBEC~~ QUÉBEC
DISTRICT OF MONTRÉAL

~~SUPERIOR COURT~~

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to
the *Bankruptcy and Insolvency Act*, RSC
1985, c B-3)

No.: 500-11-061483-224

~~File: No: 500-11-●~~

IN THE MATTER OF ● THE NOTICE
OF INTENTION TO MAKE A
PROPOSAL OF:

●
~~Debtor~~

-and-

●
~~[Petitioner]~~

-and-

●
~~[Receiver/Trustee/Monitor]~~

●
XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
APPLIED COMPRESSION SYSTEMS LTD.
COMPRESSED AIR INTERNATIONAL INC.
XEBEC HOLDING USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS, INC.

CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES - WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC XEBEC SYSTEMS USA, LLC

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

Draft

CERTIFICATE OF THE [RECEIVER/TRUSTEE/MONITOR]

RECITALS:

WHEREAS on ~~●~~, the Superior Court of Quebec (the "**Court**") issued a ~~●~~ order (the "**Order**") pursuant to the ~~●~~ (the "**Act**") in respect of ~~●~~ (the "**Petitioners**"); [NTD: refer to BIA notice of intention/proposal if applicable]

~~WHEREAS~~ pursuant to the terms of the [~~●~~ **Order/NOI**], ~~●~~ (the "~~[Receiver/Trustees/Monitor]~~") was named ~~[Receiver/Trustees/Monitor]~~ of the Petitioner; and September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & Al. filed an Application pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**") and Deloitte Restructuring Inc. was appointed as monitor thereto (the "**Monitor**").

WHEREAS on ~~●~~ February 3, 2023, the Court issued an Order (the "**Approval and Vesting Order**") thereby, *inter alia*, authorizing and approving, *inter alia*, the execution by the Petitioner of an agreement entitled ~~●~~ Agreement (the "**a Asset Purchase Agreement**") by and between ~~●~~, among Applied Compression Systems Ltd as ~~vendor~~ Seller (the "**Vendor Seller**") and ~~●~~ 1396905 B.C. Ltd as ~~purchaser~~ buyer (the "**Purchaser**" "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the [Receiver/Trustees/Monitor].

WHEREAS the Approval and Vesting Order contemplates the issuance of this Certificate of the [Receiver/Trustees/Monitor] once ~~the~~ (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Purchaser/Buyer to the Seller; and (c) ~~and~~ all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE [RECEIVER/TRUSTEES/MONITOR] CERTIFIES [THAT IT HAS BEEN ADVISED BY THE VENDOR/SELLER AND THE PURCHASER/BUYER AS TO] THE FOLLOWING:

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

Draft

This Certificate was issued by the ~~[Receiver/Trustees]~~ Monitor ~~at _____ [TIME]~~ on _____ [DATE].

• Deloitte Restructuring Inc., in its capacity as
• Monitor to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

Name: _____

Title: _____

Draft

SCHEDULE "B"
PERMITTED ENCUMBRANCES

ENCUMBRANCE TO BE VESTED

PPSA Security Agreement with the National Bank of Canada (BC Personal Property
Registry no. 779666M)

Draft

SCHEDULE "C"
ASSIGNED AGREEMENTS

PERMITTED ENCUMBRANCE

PPSA Security Agreement with Ford Credit Canada Company with Vehicle Collateral
(BC Personal Property Registry no. 589688K)

Draft

EXHIBIT P-3

Redacted copy of the APA

ASSET PURCHASE AGREEMENT

APPLIED COMPRESSION SYSTEMS LTD.

as Seller

- and -

1396905 B.C. LTD.

as Buyer

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of January 27, 2023

AMONG:

APPLIED COMPRESSION SYSTEMS LTD., a corporation governed by the laws of British Columbia (“**ACS**” or the “**Seller**”)

- and -

1396905 B.C. LTD., a corporation governed by the laws of British Columbia (the “**Buyer**”)

RECITALS:

- A. On the Filing Date, Xebec Adsorption Inc. (“**Xebec**”) and certain of its affiliates and subsidiaries (the “**Xebec Group**”) applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the CCAA Court.
- B. On September 30, 2022, Xebec, in its capacity as the foreign representative for the Xebec Group, commenced ancillary insolvency proceedings under chapter 15 of the U.S. Bankruptcy Code (the “**U.S. Proceedings**”) in the U.S. Bankruptcy Court.
- C. Pursuant to the Initial Order, the CCAA Court appointed Deloitte Restructuring Inc. as monitor, and National Bank Financial Inc. as financial advisor, in connection with the CCAA Proceedings.
- D. On September 29, 2022, the CCAA Court granted the SISP Order which, among other things, approved the SISP. The SISP Order and the SISP govern the process for soliciting and selecting bids for the sale of the Business (as defined in the SISP) of the Xebec Group.
- E. On October 20, 2022, the CCAA Court granted an amended and restated initial order (the “**Amended and Restated Initial Order**”) approving, among other things, the DIP Facility and the Key Employee Retention Plan.
- F. The Buyer has been selected as a Successful Bidder (as defined in the SISP) in accordance with the SISP.
- G. The Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, the Purchased Assets (as defined herein), which constitute substantially all of the property and assets owned by the Seller and used in connection with the Acquired Business, and the Buyer further wishes to assume from the Seller the Assumed Liabilities (as defined herein), subject to the terms and conditions of this Agreement.

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

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement,

- (a) **“Accounts Receivable”** means accounts receivable, bills receivable, trade accounts, book debts and insurance claims relating to the Acquired Business, recorded as receivables in the books and records of the Seller relating to the Acquired Business or the Purchased Assets, and other amounts due or deemed to be due to the Seller relating to the Acquired Business including refunds and rebates receivable relating to the Acquired Business or the Purchased Assets;
- (b) **“Accrued Liabilities”** means liabilities relating to the Acquired Business incurred as of the Closing Time but which are not yet due and payable as of the Closing Time (excluding reserves and contingent amounts) to the extent they are Assumed Liabilities (for example, accounts payable and accrued wages payable and accruals for vacation pay and bonuses).
- (c) **“Acquired Business”** means all of the business carried on by ACS.
- (d) **“affiliate”** of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, in each case, whether directly or indirectly through one or more intermediaries, and “control” and any derivation thereof means the control by one Person of another Person in accordance with the following: a Person (“A”) controls another Person (“B”) where A has the power to determine the management and policies of B by contract or status (for example, the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B; and, for certainty and without limitation, if A owns shares to which are attached more than 50% of the votes permitted to be cast in the election of directors (or other Persons performing a similar role) of B, then A controls B for this purpose.
- (e) **“Agreement”** means this Asset Purchase Agreement, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Asset Purchase Agreement in its entirety, and unless otherwise indicated, references to Articles and Sections are to Articles and Sections in this Asset Purchase Agreement.
- (f) **“Allocation Statement”** has the meaning given to such term in Section 3.2.
- (g) **“Amended and Restated Initial Order”** has the meaning given to such term in Recital E.
- (h) **“Applicable Law”** means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them)

law (including without limitation the common law), statute, ordinance, rule, regulation, restriction, standard, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Governmental Authorizations, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Seller, the Buyer, the Acquired Business, or any of the Purchased Assets or the Assumed Liabilities.

- (i) **“Approval and Vesting Order”** means an order granted by the CCAA Court, in substantially the form attached as Schedule 1.1(i) (with only such changes as the Buyer and the Seller approve in their reasonable discretion, but in all cases in form and substance acceptable to the Monitor), and served on those Persons identified by the Seller and the Buyer, which will, among other things:
 - (i) authorize and approve this Agreement and the execution and delivery thereof by the Seller;
 - (ii) authorize and direct the Seller to complete the transactions contemplated by this Agreement; and
 - (iii) provide for the vesting of title to the Purchased Assets in and to the Buyer in accordance with the terms and conditions of this Agreement, free and clear of any and all claims against the Purchased Assets of every nature or kind whatsoever and howsoever arising, including all Encumbrances, save for Permitted Encumbrances, upon the delivery of the Monitor’s Certificate to the Buyer indicating that the conditions precedent to the consummation of the transactions contemplated by this Agreement have been satisfied or waived (where permissible).
- (j) **“Assignment Order”** means an order or orders of the CCAA Court pursuant to applicable provisions of the CCAA, in form and substance acceptable to the Seller, the Buyer, and the Monitor, each acting in a commercially reasonable manner, authorizing and approving the assignment to the Buyer of any Assumed Contract or Real Property Lease for which a required consent has not been obtained and preventing any counterparty to the Assumed Contract or Real Property Lease from exercising any right or remedy under the Assumed Contract or Real Property Lease by reason of any default(s) arising from the CCAA Proceedings, the insolvency of the Seller, the assignment of the Assumed Contract or Real Property Lease, or the failure of the Seller to perform a non-monetary obligation under the Assumed Contract or Real Property Lease.
- (k) **“Assumed Contracts”** has the meaning given to such term in Section 2.1(h).
- (l) **“Assumed Employee Plans”** has the meaning given to such term in Section 7.8(e).
- (m) **“Assumed Employees”** has the meaning given to such term in Section 7.8(c).
- (n) **“Assumed Liabilities”** has the meaning given to such term in Section 2.3.

- (o) “**Business Day**” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Montréal, Québec are open for commercial banking business during normal banking hours.
- (p) “**Buyer**” has the meaning given to such term in the preamble to this Agreement.
- (q) “**Buyer Employee Plans**” means the Plans maintained, funded or otherwise contributed to, or required to be maintained, funded or contributed to, by or on behalf of the Buyer.
- (r) “**Cash and Cash Equivalents**” means cash, bank balances, moneys in possession of banks and other depositories, term or time deposits, marketable securities, bankers’ acceptance, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents of, owned or held by or for the account of the Seller (but specifically excluding any cash payable by the Buyer to the Seller pursuant to this Agreement).
- (s) “**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada).
- (t) “**CCAA Court**” means the Superior Court of Québec (Commercial Division) in the District of Montréal.
- (u) “**CCAA Proceedings**” means the proceedings commenced under the CCAA by the Seller pursuant to the Initial Order (Court File No. 500-11-061483-224).
- (v) “**Claims**” includes all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.
- (w) “**Closing**” means the completion of the sale and purchase of the Purchased Assets pursuant to this Agreement at the Closing Time, and all other transactions contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Assets.
- (x) “**Closing Date**” means a date no later than five (5) Business Days after the conditions set forth in Article 6 have been satisfied (or such other date agreed to by the Parties in writing), other than the conditions set forth in Article 6 that by their terms are to be satisfied or waived at the Closing; provided that, the Closing Date shall be no later than the Sunset Date.
- (y) “**Closing Documents**” means all contracts, agreements and instruments required by this Agreement to be delivered by or on behalf of a Party at or before the Closing.

- (z) **“Closing Time”** means 0:01 a.m. (Montréal time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.
- (aa) **“Commitment Letter”** has the meaning given to such term in Section 5.3.
- (bb) **“Confidential Information”** means non-public, confidential, personal or proprietary information which is furnished to the Buyer by the Seller or any of the Seller’s representatives or the Monitor, including, without limitation, information about identifiable individuals, any information relating to the Seller and their affiliates, or any customer or supplier of the Seller, but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Buyer or its representatives in breach of this Agreement or that is received by the Buyer from an independent third party that, to the knowledge of the Buyer, after good faith inquiry, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by the Buyer’s employees or representatives without access or reference to any Confidential Information.
- (cc) **“Contracts”** means contracts, licenses, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which any of the Seller is a party or by which any of the Seller are bound or under which any of the Seller has, or will have, any right or any liability or contingent right or liability (in each case, whether written or oral, express or implied) relating to the Acquired Business or the Purchased Assets and includes quotations, orders, proposals or tenders which remain open for acceptance and warranties and guarantees, but excluding the Real Property Leases.
- (dd) **“Contracts Assignment and Assumption Agreements”** means the assignment and assumption agreements for the Assumed Contracts, in a form satisfactory to the Seller and the Buyer acting in a commercially reasonable manner.
- (ee) **“Cure Costs”** means all amounts necessary to cure any monetary defaults as a condition to assuming the Assumed Contracts and the Real Property Leases.
- (ff) **“Deposit”** means the amount of **REDACTED** delivered by the Buyer to the Monitor in accordance with the SISP.
- (gg) **“DIP Facility”** means the senior secured superpriority debtor-in-possession credit agreement among Xebec (as borrower), certain subsidiaries and affiliates of Xebec (as guarantors) and National Bank of Canada and Export Development Canada (as pari passu lenders) dated as of October 20, 2022, and as may be amended, restated, supplemented and/or modified from time to time.
- (hh) **“EDC Credit Agreement”** means the credit facility agreement dated as of July 16, 2021, among Xebec Holding USA Inc. (as borrower), Xebec (as guarantor) and Export Development Canada, as lender, as renewed, replaced, amended, substituted or restated from time to time.

- (ii) **“Employee Plans”** means the Plans that are: (i) for the benefit of Employees (or any spouses, dependents, survivors or beneficiaries of such Employees); (ii) maintained, sponsored or funded by the Seller; or (iii) under which the Seller has, or will have, any liability, each such Plan being listed on Schedule 1.1(ii).
- (jj) **“Employees”** means any and all: (i) Employees of the Seller who are actively at work (including full-time, part-time or temporary employees); and (ii) Employees of the Seller who are on statutory or approved leaves of absence (including maternity leave, parental leave, short-term or long-term disability leave, workers’ compensation and other statutory leaves).
- (kk) **“Employees of the Seller”** means all current or former officers, employees, individual consultants and service providers of the Seller or any predecessors of the Seller.
- (ll) **“Encumbrance”** means any security interest, lien (statutory or otherwise), prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, liability, mortgage, right-of-way, servitude, easement, lease, restriction, development or similar agreement, title defect, option or adverse claim or encumbrance of any nature or kind including any and all CCAA Court ordered charges granted in the CCAA Proceedings.
- (mm) **“Environment”** means the environment or natural environment as defined in any Environmental Laws and includes air, surface water, ground water, land surface, soil and subsurface strata.
- (nn) **“Environmental Approvals”** means permits, certificates, licences, authorizations, consents, agreements, instructions, directions, registrations or approvals required by a Governmental Authority pursuant to an Environmental Law relating to the Acquired Business or the Purchased Assets.
- (oo) **“Environmental Law”** means Applicable Laws relating to the protection of human health and the Environment, and includes Applicable Laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, Release, remediation, management and disposal of Hazardous Substances.
- (pp) **“Equity Interests”** means any capital share, capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities (whether voting or nonvoting, whether preferred, common or otherwise, and including share appreciation, contingent interest or similar rights) of a Person.
- (qq) **“Excluded Assets”** has the meaning given to such term in Section 2.2.
- (rr) **“Excluded Contracts”** has the meaning given to such term in Section 2.2(c).
- (ss) **“Excluded Liabilities”** has the meaning given to such term in Section 2.4.
- (tt) **“Filing Date”** means September 29, 2022.

- (uu) **“Final”** with respect to any order of any court of competent jurisdiction, means that such order shall not have been stayed, appealed, varied (except with the consent of the Buyer and Seller, each acting in a commercially reasonable manner) or vacated, and all time periods within which such order could at law be appealed shall have expired.
- (vv) **“General Assignments and Bills of Sale”** means the general assignments and bills of sale for the Purchased Assets, in a form reasonably satisfactory to each of the Seller and the Buyer.
- (ww) **“Governmental Authority”** means any applicable transnational, federal, provincial, municipal, state, local, national or other government, regulatory authority, governmental department, agency, commission, board, tribunal, bureau, ministry, court, system operator, judicial body, arbitral body or other law, rule or regulation-making entity, or any entity, officer, inspector, investigator or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case:
 - (i) having jurisdiction over the Seller, the Buyer, the Acquired Business, the Purchased Assets or the Assumed Liabilities on behalf of any country, province, state, locality, or other geographical or political subdivision thereof; or
 - (ii) exercising or entitled to exercise any administrative, judicial, legislative, regulatory or taxing authority or power.
- (xx) **“Governmental Authorizations”** means authorizations, approvals (including the Environmental Approvals), plans, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued to or required by the Seller relating to the Acquired Business or any of the Purchased Assets by or from any Governmental Authority.
- (yy) **“GST”** means goods and services tax payable under the GST and HST Legislation.
- (zz) **“GST and HST Legislation”** means Part IX of the *Excise Tax Act* (Canada).
- (aaa) **“GST/HST and QST Certificate, Undertaking and Indemnity”** has the meaning given to such term in Section 7.7(g).
- (bbb) **“Hazardous Substances”** means pollutants, contaminants, wastes of any nature, hazardous substances, hazardous materials, toxic substances, prohibited substances, dangerous substances or dangerous goods regulated by or under Environmental Laws.
- (ccc) **“HST”** means harmonized sales tax payable under the GST and HST Legislation.
- (ddd) **“including”, “include” and “includes”** shall be interpreted on an inclusive basis and shall be deemed to be followed by the words “without limitation” and the words

following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.

- (eee) **“Initial Order”** means the Initial Order granted by the CCAA Court on September 29, 2022, pursuant to which Xebec and certain of its affiliates and subsidiaries were granted protection from their creditors under the CCAA (as amended, restated, supplemented and/or modified from time to time).
- (fff) **“Insolvency Proceedings”** means any action, application, petition, suit or other proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect, for the relief from or otherwise affecting creditors of any of the Seller, including without limitation under the *Bankruptcy and Insolvency Act* (Canada) (including the filing of a notice of intention to make a proposal), CCAA (including the CCAA Proceedings), the *Winding-Up and Restructuring Act* (Canada), the *Canada Business Corporations Act* or the U.S. Bankruptcy Code by, against or in respect of any of the Seller.
- (ggg) **“Intellectual Property”** means any and all intellectual property or similar proprietary rights used or held by the Seller for use in or relating to the Acquired Business, including all patents, patent applications, trademarks, industrial designs, trade names, service marks (and all goodwill associated with any of the foregoing), copyrights, technology, software, data and database rights, trade secrets, proprietary information, domain names, know-how and processes and other intellectual property, whether registered or not, throughout the world.
- (hhh) **“Investment Canada Act”** means the *Investment Canada Act* (Canada).
- (iii) **“IP Assignment and Assumption Agreements”** means the intellectual property assignment and assumption agreements for Intellectual Property and rights in Intellectual Property owned by the Seller and that is used or held for use in or otherwise relates to the Acquired Business, in a form reasonably satisfactory to each of the Seller and the Buyer.
- (jjj) **“IT Assets”** has the meaning given to such term in Section 2.1(j).
- (kkk) **“Key Employee Retention Plan”** means the key employee retention plan approved by the CCAA Court on October 20, 2022, as amended from time to time.
- (lll) **“Landlords”** means, collectively, the landlords under the Real Property Leases.
- (mmm) **“Lease Assignment and Assumption Agreements”** means the lease assignment and assumption agreements for the Personal Property Leases and Real Property Leases, in a form reasonably satisfactory to each of the Seller and the Buyer.
- (nnn) **“Letters of Credit”** means letters of credit, letters of guarantee, deposits and/or security deposits provided by or on behalf of the Seller in respect of any of the Purchased Assets.

- (ooo) “**Matching Security**” has the meaning given to such term in Section 2.6.
- (ppp) “**Material Adverse Effect**” means any change, event, occurrence or circumstance, individually or in the aggregate that: (i) has, or would reasonably be expected to have, a material adverse effect on the operations, results of operations or condition (financial or otherwise) of the Acquired Business, (ii) materially and adversely impairs the Purchased Assets or the Acquired Business or materially and adversely increases the Assumed Liabilities, each taken as a whole, or (iii) materially and adversely impedes the consummation of the transactions contemplated by this Agreement, but excluding, in the case of each of clauses (i), (ii) and (iii) any such change, event, occurrence or circumstance that results from or arises out of (A) changes in general economic conditions, (B) changes affecting the industries and markets in which the Acquired Business operates (except to the extent that such changes have a materially disproportionate effect on the Purchased Assets, the Assumed Liabilities or the Acquired Business, in each case, taken as a whole, relative to other comparable companies and entities operating in the industries in which Xebec operates), (C) changes in macroeconomic factors, interest rates, currency exchange rates or general financial or credit market conditions, (D) acts of God, war, terrorism, civil unrest or hostilities, (E) the COVID-19 pandemic or other epidemic or pandemic outbreaks including any continuation thereof, (F) any change in law or its interpretation, administration or application or non-application by any Governmental Authority or in generally acceptable accounting principles, (G) any failure to meet any internal or publicly disclosed projections, forecasts, estimates or budgets of, or guidance relating to, revenue, cash flow, earnings or other financial metrics for any period, (H) any action taken (or omitted to be taken) by the Seller that is permitted under this Agreement or consented to by the Buyer, (I) any announcement of the transactions contemplated by this Agreement, (J) any change or development in respect of any Excluded Asset, Excluded Liability or any matter disclosed pursuant to the terms of this Agreement, or (K) the pendency of the CCAA Proceedings and any action approved by, or motion made before, the CCAA Courts.
- (qqq) “**Material Contracts**” means, collectively:
- (i) any Contract that is reasonably likely to involve payment to or by the Seller in excess of \$50,000.00 in any fiscal year; and
 - (ii) any Contract, which if terminated, would have a Material Adverse Effect.
- (rrr) “**Monitor**” means Deloitte Restructuring Inc., in its capacity as CCAA Court-appointed monitor of the Seller pursuant to the Initial Order and not in its personal capacity.
- (sss) “**Monitor’s Certificate**” means the certificate filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Seller and the Buyer that all conditions to Closing have been satisfied or waived by the applicable Parties and that the cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Buyer to the Seller have been received by the Monitor.

- (ttt) **“NBC Credit Agreement”** means the term loan credit agreement dated as of February 23, 2021, as amended by a consent and first amending agreement executed as of January 26, 2022, a second amending agreement dated June 30, 2022, and a forbearance agreement dated July 7, 2022, as amended on September 28, 2022, October 20, 2022 and November 28, 2022, between Xebec (as borrower), certain subsidiaries and affiliates of Xebec (as guarantors) and National Bank of Canada (as lender).
- (uuu) **“NDA”** means the confidentiality agreement between the Buyer and Xebec dated January 19, 2023.
- (vvv) **“Order”** means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.
- (www) **“Parties”** means the Seller and the Buyer collectively, and **“Party”** means either the Seller or the Buyer, as the context requires.
- (xxx) **“Permits”** has the meaning given to such term in Section 2.1(n).
- (yyy) **“Permitted Encumbrances”** means, except to the extent otherwise provided in the Approval and Vesting Order, the Encumbrances listed in Schedule 2.3(i).
- (zzz) **“Person”** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity, however designated or constituted.
- (aaaa) **“Personal Information”** means information about an identifiable individual in the possession or under the control of any of the Seller.
- (bbbb) **“Personal Property Leases”** has the meaning given to such term in Section 2.1(f).
- (cccc) **“Plan”** means any plan, arrangement or agreement that provides any employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, change of control, pension, supplemental pension, retirement, stock option, stock purchase, stock appreciation, share unit, phantom stock, deferred compensation, health, welfare, medical, dental, disability, life insurance and any similar plans, arrangements or agreements.
- (dddd) **“Post-Closing Tax Period”** has the meaning given to such term in Section 7.7(b).
- (eeee) **“Pre-Closing Tax Period”** has the meaning given to such term in Section 7.7(b).
- (ffff) **“Premises”** means, collectively, the lands and premises which are leased to the Seller pursuant to the Real Property Leases.
- (gggg) **“Purchase Price”** has the meaning given to such term in Section 3.1.
- (hhhh) **“Purchased Assets”** has the meaning given to such term in Section 2.1.

- (iiii) “**QST**” means the Québec sales tax payable under the QST Legislation.
- (jjjj) “**QST Legislation**” means *An Act Respecting the Québec Sales Tax (Québec)*.
- (kkkk) “**Real Property Leases**” has the meaning given to such term in Section 2.1(g).
- (llll) “**Release**” has the meaning prescribed in any Environmental Law and includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction.
- (mmmm) “**Restricted Rights**” has the meaning given to such term in Section 2.5.
- (nnnn) “**Seller**” has the meaning given to such term in the preamble to this Agreement.
- (oooo) “**Seller Parties**” has the meaning given to such term in Section 7.6(c).
- (pppp) “**Seller Subsidiaries**” means collectively each Person that is controlled by the Seller (for the purposes of this definition, “control”, as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise).
- (qqqq) “**SISP**” means the Sale and Investment Solicitation Process approved by the SISP Order (as amended, restated, supplemented and/or modified from time to time).
- (rrrr) “**SISP Order**” means the Order granted by the CCAA Court on September 29, 2022 (as amended, restated, supplemented and/or modified from time to time), which, among other things, approved the SISP.
- (ssss) “**Sunset Date**” has the meaning given to such term in Section 9.1(b).
- (tttt) “**Tax**” and “**Taxes**” includes:
 - (i) taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada Pension Plan, Québec Pension Plan and other government pension plan premiums or contributions; and

- (ii) any liability in respect of any items described in clause (i) payable by reason of contract, assumption, transferee liability, operation of law or otherwise.

(uuuu) “**Transferred Permits**” has the meaning given to such term in Section 2.1(n).

(vvvv) “**U.S. Bankruptcy Code**” means title 11 of the United States Code, 11 U.S.C. §§ 101 et seq.

(www) “**U.S. Bankruptcy Court**” means the United States Bankruptcy Court for the District of Delaware.

(xxxx) “**U.S. Proceedings**” has the meaning given to such term in Recital B.

(yyyy) “**Xebec Group**” has the meaning given to such term in Recital A.

1.2 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute and the regulations thereunder as they may be amended, or to any restated or successor legislation of comparable effect.

1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and *vice versa*, and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to “\$” are to Canadian dollars. References to “US\$” are to United States dollars. References to “€” are to Euros.

1.6 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. Upon such a determination of invalidity or unenforceability, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

1.7 Knowledge

Where any representation or warranty, or other provision, contained in this Agreement is expressly qualified by reference to, or otherwise refers to, the knowledge of: (a) the Seller, it will be deemed to refer to the actual knowledge of Xebec's Chief Executive Officer and Chief Financial Officer; and (b) the Buyer, it will be deemed to refer to the actual knowledge of the Buyer's directors and officers, in each case, after due inquiry and without personal liability on the part of any of them.

1.8 Entire Agreement

This Agreement, the schedules to this Agreement, the NDA and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.9 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.10 Governing Law; Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Québec and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the exclusive jurisdiction and venue of the CCAA Court prior to a Final Order of the CCAA Court terminating the CCAA Proceedings and thereafter to the Superior Court of Québec in the district of Montréal for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.8 shall be deemed effective service of process on such Party.

1.11 Schedules

The schedules to this Agreement, listed below, are an integral part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule 1.1(i)	Form of Approval and Vesting Order

Schedule 1.1(ii)	Employee Plans
Schedule 2.1(f)	Personal Property Leases
Schedule 2.1(g)	Real Property Leases
Schedule 2.1(i)	Intellectual Property
Schedule 2.1(j)	IT Assets
Schedule 2.1(p)	Actions, etc.
Schedule 2.1(s)	Other Assets
Schedule 2.2(c)	Excluded Contracts
Schedule 2.3(b)	Trade Debt
Schedule 2.3(i)	Permitted Encumbrances
Schedule 3.2	Allocation Statement

ARTICLE 2

PURCHASE AND SALE

2.1 Agreement to Purchase and Sell Purchased Assets

Upon and subject to the terms and conditions of this Agreement (including the provisions of Section 2.5), at the Closing and effective as of the Closing Time, the Seller shall sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, transferred, assigned and delivered, pursuant to the Approval and Vesting Order, and the Buyer shall purchase, free and clear of all Encumbrances other than Permitted Encumbrances, all of the Seller's right, title and interest in, to and under, or relating to, the assets, property and undertaking owned or used or held for use by the Seller in connection with the Acquired Business, as applicable (collectively, the "**Purchased Assets**"), including without limitation the following properties, assets and rights:

- (a) *Accounts Receivable* – the Accounts Receivable and the benefit of all security (including cash deposits), guarantees and other collateral held by the Seller relating to the Acquired Business;
- (b) *Prepaid Expenses* – all prepaid expenses, including *ad valorem* Taxes, of the Seller relating to the Acquired Business or the Purchased Assets, and all deposits of the Seller with any supplier, public utility, lessor under any Personal Property Lease or Real Property Lease, or Governmental Authority;
- (c) *Inventory* – all items that are owned by the Seller for sale, license, rental, lease or other distribution in the ordinary course of business, or are being produced for sale, or are to be consumed, directly or indirectly, in the production of goods or services to be available for sale, of every kind and nature and wheresoever situated relating to the Acquired Business including inventories of raw materials, spare parts, work in progress, finished goods and by-products, operating supplies and packaging materials;

- (d) *Fixed Assets and Equipment* – all machinery, equipment, furnishings, furniture, parts, dies, molds, tooling, tools, computer hardware, supplies, accessories, office equipment and other tangible personal and moveable property (other than inventory) owned by the Seller for use in or relating to the Acquired Business, whether located on the Seller’s premises or elsewhere, and all rights of the Seller under warranties, indemnities, licenses, and all similar rights of the Seller against third Persons with respect to the equipment, fixed assets and tangible assets referenced herein;
- (e) *Vehicles* – all motor vehicles, including all trucks, vans, cars and forklifts owned by the Seller for use in or relating to the Acquired Business, and all rights of the Seller under warranties, indemnities, licenses, and all similar rights of the Seller against third Persons with respect to the motor vehicles referenced herein;
- (f) *Personal Property Leases* – all leases of personal or moveable property of the Seller that relate to the Acquired Business listed on Schedule 2.1(f), including all benefits, rights and options of the Seller pursuant to such leases and all leasehold improvements forming part thereof (collectively, the “**Personal Property Leases**”);
- (g) *Real Property Leases* – the leases and other agreements to occupy the Premises entered into by, or assigned in favour of any of the Seller and listed in Schedule 2.1(g), including all purchase options, prepaid rents, security deposits, rights to appurtenances and improvements, licenses and permits relating thereto and all leasehold improvements thereon (collectively, the “**Real Property Leases**”). If the Premises comprise more than one leased location, the Real Property Leases related to any one leased location are referred to as a “**Real Property Lease**”;
- (h) *Assumed Contracts* – all Contracts to which any of the Seller is a party, together with any Contracts that are entered into by the Seller in the ordinary course of business from the date of this Agreement to the Closing Date (but excluding any Excluded Contracts) (collectively, the “**Assumed Contracts**”);
- (i) *Intellectual Property* – all Intellectual Property and rights in Intellectual Property owned by the Seller and that is used or held for use in or otherwise relate to the Acquired Business, including:
 - (i) all trade-marks, trade names, business names, websites and domain names, certification marks, service marks, and other source indicators, and the goodwill of any business symbolized thereby, patents, copyrights, code, applications, systems, databases, data, website content, know-how, formulae, processes, inventions, technical expertise, research data, trade secrets, industrial designs and other similar property or proprietary rights, including those listed and described in Schedule 2.1(i);
 - (ii) all registrations and applications for registration thereof, including those listed and described in Schedule 2.1(i);

- (iii) the right to obtain renewals, extensions, substitutions, continuations, continuations-in-part, divisions, re-issues, re-examinations or similar legal protections related thereto, including those listed and described in Schedule 2.1(i); and
 - (iv) the right to bring an action at law or equity for the infringement of the foregoing before the Closing Time, including the right to receive all proceeds and damages therefrom;
- (j) *Information Technology Systems* – all software (including source code and object code form), computer hardware, licenses, and documentation therefor and rights therein owned by the Seller used in the Acquired Business, and any other information technology systems owned by the Seller and used in the Acquired Business, including all electronic data processing systems, program specifications, source codes, object code, input data, report layouts, formats, algorithms, record file layouts, diagrams, functional specifications, narrative descriptions, flow charts, operating manuals, training manuals and other related material (collectively, the “**IT Assets**”), including those listed and described in Schedule 2.1(j);
- (k) *Goodwill* – the goodwill of the Acquired Business and relating to the Purchased Assets, and information and documents of the Seller relevant thereto, including lists of customers and suppliers, credit information, telephone and facsimile numbers, research materials, research and development files, Confidential Information and the exclusive right of the Buyer to represent itself as carrying on the Acquired Business in succession to the Seller. The Seller will sign a Consent to Use of Name which is required from the BC Registry Office;
- (l) *Employee Records* – personnel and employment records relating to the Assumed Employees;
- (m) *Business Records* – all business and financial records and files of the Acquired Business, including the general ledger and accounting records relating to the Acquired Business, marketing materials, market research, all customer lists and lists of suppliers, information relating to any Tax imposed on the Purchased Assets, all operating manuals, plans and specifications and all of the right, interest and benefit, if any, thereunder and to and in the domain names, telephone numbers and facsimile numbers used by the Seller in the conduct of the Acquired Business, and all records, files and information necessary for the Buyer to conduct or pursue the rights described in Section 2.1(p); provided, however, that the Seller may retain copies of all books and records included in the Purchased Assets to the extent necessary or useful for the administration of the CCAA Proceedings or any Insolvency Proceedings in respect of any of the Seller or the filing of any Tax return or compliance with any Applicable Law or the terms of this Agreement or related to the Excluded Assets;
- (n) *Permits* – the Governmental Authorizations (including those relating to Environmental Law) of the Seller required for the Acquired Business or the Purchased Assets from any Governmental Authority (collectively, the “**Permits**”),

to the extent transferable to the Buyer or its permitted assignees (collectively, the “**Transferred Permits**”);

- (o) *Insurance* –
 - (i) the Contracts of insurance, insurance policies and insurance plans of the Seller relating to the Purchased Assets or the Acquired Business, to the extent transferable;
 - (ii) any insurance proceeds net of any deductibles and retention recovered by the Seller under all other Contracts of insurance, insurance policies (excluding proceeds paid directly by the insurer to or on behalf of directors and officers under director and officer policies) and insurance plans relating to the Purchased Assets or the Acquired Business between the date of this Agreement and the Closing Date; and
 - (iii) the full benefit of the Seller’s rights to insurance claims (excluding proceeds paid directly by the insurer to or on behalf of directors and officers under director and officer policies) relating to the Purchased Assets or the Acquired Business and amounts recoverable in respect thereof net of any deductible;
- (p) *Actions, etc.* – any claims, refunds, causes of action, rights of recovery, rights of set-off, subrogation and rights of recoupment of the Seller related to the Acquired Business or any of the Purchased Assets or any of the Assumed Liabilities, including those listed on Schedule 2.1(p), and the interest of the Seller in any litigation and in the proceeds of any judgment, order or decree issued or made in respect thereof in respect of occurrences, events, accidents or losses suffered prior to the Closing Time (but excluding any of the foregoing in respect of any of the Excluded Assets or Excluded Liabilities);
- (q) *Loans* – any loans or debts due prior to the Closing Time from any Person to the Seller;
- (r) *Plan Assets* – all trust funds or other entities holding assets (or, in the case of a dedicated bank account held by the Seller, the assets of such account) related to any Assumed Employee Plan;
- (s) *Other Assets* – the other assets of the Seller specified on Schedule 2.1(s).

2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, the Purchased Assets shall not include any of the following assets of the Seller (collectively, the “**Excluded Assets**”):

- (a) *Cash and Cash Equivalents* – all Cash and Cash Equivalents;
- (b) *Corporate Records* – original Tax records and books and records pertaining thereto, minute books, share ledgers, organizational documents, corporate seals, taxpayer and other identification numbers and other documents, in each case, relating to the

organization, maintenance and existence of the Seller as a Person; provided that the Buyer may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Acquired Business after Closing, including the filing of any Tax return to the extent permitted under Applicable Law;

- (c) *Excluded Contracts* – all Contracts of the Seller set forth on Schedule 2.2(c) (collectively, the “**Excluded Contracts**”);
- (d) *Collateral* – all letters of credit, cash or cash equivalents of the Seller granted by the Seller as collateral to secure outstanding letters of credit in respect of any Excluded Liability or Excluded Asset;
- (e) *Rights under Agreements* – all of the Seller’s rights under this Agreement; the NDA; any confidentiality, non-disclosure or similar agreements entered into in connection with the CCAA Proceedings or the SISF; the DIP Facility, the EDC Credit Agreement and the NBC Credit Agreement; the Excluded Contracts; the Closing Documents and the transactions contemplated by hereby and thereby;
- (f) *Director and Officer Insurance Policies* – all rights of the Seller and the directors and officers of the Seller under any director and officer insurance policies including any proceeds received or receivable by such Persons thereunder;
- (g) *Licenses and Registrations* – extra-provincial, sales, excise or other Permits (other than Transferred Permits), licenses or registrations issued to or held by any of the Seller, whether relating to the Acquired Business or otherwise to the extent not transferable;
- (h) *Tax Refunds* – the benefit of the Seller to any refundable Taxes payable or paid by the Seller, net of any amounts withheld by any Governmental Authority, having jurisdiction over the assessment, determination, collection, or other imposition of any Tax, and the benefit of the Seller to any claim or right of the Seller to any refund, rebate, or credit of Taxes;
- (i) *Avoidance Claims* – all rights and Claims against any Person for any liability of any kind based on or arising out of the occurrence of any fraudulent conveyance, settlement, reviewable transaction, transfer at undervalue, fraudulent preference or similar claim;
- (j) *Plan Assets* – all trust funds or other entities holding assets (or, in the case of a dedicated bank account held by the Seller, the assets of such account) related to any Employee Plan which is not part of the Assumed Employee Plans;
- (k) *Certain Securities* – all Equity Interests of the Seller Subsidiaries;
- (l) *Ordinary Course Assets* – any asset of the Seller that would otherwise constitute a Purchased Asset but for the fact that it is conveyed, leased or otherwise disposed of in the ordinary course of business in compliance with Section 7.2 or as obsolete

during the period beginning on the date of this Agreement and ending on the Closing Date; and

- (m) *Intercompany Accounts Receivable* – any debts due or accruing due prior to the Closing Time from any shareholder, director, or affiliate of the Sellers.

2.3 Assumption of Liabilities

The Buyer shall assume as of the Closing Time and shall pay, discharge and perform, as the case may be, from and after the Closing Time, the following obligations and liabilities of the Seller with respect to the Acquired Business or the Purchased Assets, other than the Excluded Liabilities (collectively, the “**Assumed Liabilities**”), which Assumed Liabilities shall only consist of:

- (a) *Obligations under Contracts and Real Property Leases, etc.* – (i) all liabilities and obligations arising under the Assumed Contracts, Personal Property Leases and Real Property Leases to the extent first arising on or after the Closing Time, in each case, which are assigned to the Buyer hereunder and (ii) all Cure Costs;
- (b) *Trade Debt* – all post-Filing Date trade payables relating to the Acquired Business, excluding all inter-company trade payables, incurred prior to the Closing Time, as applicable, as listed on Schedule 2.3(b), which Schedule is to be delivered by the Seller one (1) Business Day prior to the Closing Date (excluding, for the avoidance of doubt, all pre-Filing Date trade payables), and any post-Filing Date trade payables relating to the Acquired Business incurred following the date such Schedule is delivered;
- (c) *Acquired Business and Purchased Assets* – all other liabilities and obligations relating to the Purchased Assets and the operation of the Acquired Business to the extent such liabilities and obligations consist of liabilities and obligations that arise in respect of and relate to the period on and after the Closing Time;
- (d) *Warranties* – all liabilities arising out of or relating to services, products, or product or service warranties of the Seller sold or distributed prior to or after the Closing Time excluding any and all products provided to third parties on behalf of XEBEC or the XEBEC Group which are not related to the Acquired Business;
- (e) *Employee Matters* – all liabilities and obligations (i) of or expressly assumed by the Buyer pursuant to Section 7.8; (ii) relating to the Buyer’s employment or termination of employment (whether or not arising under or in respect of any Buyer Employee Plan) of any Assumed Employees, to the extent arising on or after the Closing Date of such Employees; (iii) relating to the Buyer’s offer of employment or notice of continued employment to any Employee pursuant to the terms of Section 7.8; (iv) the failure of the Buyer to satisfy its obligations under Section 7.8 with respect to any Employee; (v) under any Buyer Employee Plan; (vi) relating to or arising from or in connection with any Assumed Employee Plan or other Employee Plan transferred (or the liabilities of which are transferred) to the Buyer pursuant to this Agreement or by operation of Applicable Law; and (vii) related to the Assumed Employees which arise out of or result from any termination of

employment, layoff, or the closing or relocation of worksites or the like of such Employees by the Buyer on or after the Closing Date;

- (f) *Environmental* – any liabilities to the extent arising out of or relating to the Acquired Business’ or the Purchased Assets’ non-compliance with Environmental Law or a Release to the Environment, and in either case, whether in respect of any facts, conditions or circumstances existing or occurring after the Closing Time;
- (g) *Taxes* – real property, personal property, and similar *ad valorem* obligations, in each case, relating to the Purchased Assets for a Tax period (or the portion thereof) beginning on or after the Closing Date, excluding, for the avoidance of doubt, any amounts described in this paragraph that are (i) income Tax or similar liabilities of the Seller for any Tax period, (ii) any Tax or similar liability related to the Excluded Assets;
- (h) *Other Taxes* – all liabilities for (i) Canadian federal and provincial source deductions or withholding Taxes in respect of Employees of the Seller, arising after Closing; and (ii) any Tax that the Buyer is required to bear pursuant to Section 7.7; and
- (i) *Permitted Encumbrances* – all liabilities, if any, arising from or in relation to the Permitted Encumbrances.

2.4 Excluded Liabilities

Except as expressly assumed pursuant to Section 2.3, all pre-Filing Date and post-Filing Date debts, obligations, contracts and liabilities of or relating to the Acquired Business, Purchased Assets, Seller or any predecessors of the Seller, and the Seller’s affiliates, of any kind or nature, shall remain the sole responsibility of the Seller and their affiliates, and the Buyer shall not assume, accept or undertake, any debt, obligation, duty, contract or liability of the Seller and their affiliates of any kind whatsoever, except as expressly assumed pursuant to Section 2.3, whether accrued, contingent, known or unknown, express or implied, primary or secondary, direct or indirect, liquidated, unliquidated, absolute, accrued, contingent or otherwise, and whether due or to become due, and specifically excluding (without limitation) the following liabilities or obligations which shall be retained by, and which shall remain the sole responsibility of, the Seller and their affiliates (collectively, the “**Excluded Liabilities**”):

- (a) *General* – except as expressly included in Assumed Liabilities, all liabilities to the extent arising out of the operation of the Acquired Business or the Purchased Assets for periods prior to the Closing Time (including, for the avoidance of doubt, breaches of contract, infringement, violations of law, tortious conduct, Tax liabilities, indebtedness for borrowed money (except as expressly included in Assumed Liabilities) and intercompany liabilities);
- (b) *Contract and Real Property Leases Liabilities* – all liabilities of the Seller under the Assumed Contracts, Personal Property Leases and Real Property Leases, excluding the Cure Costs and any trade payables or other liabilities which, in each case, are Assumed Liabilities, incurred prior to the Closing Time;

- (c) *Excluded Assets* – all liabilities and obligations relating to the Excluded Assets (including any Excluded Contracts, this Agreement and the DIP Facility);
- (d) *Employee Matters* –
 - (i) any liabilities or other obligations arising under, relating to or with respect to any Employee Plan, save and except for liabilities and obligations under the Assumed Employee Plans; and
 - (ii) except as included in the Assumed Liabilities, all liabilities related to the Employees of the Seller;
- (e) *Trade Debt* – all pre-Filing Date trade payables relating to the Acquired Business or the Purchased Assets;
- (f) *Intercompany Accounts Payable* – any debts due or accruing due prior to the Closing Time from the Seller to any shareholder, director, officer (except amounts owing to any officer for service to the Acquired Business as an employee) or affiliate of the Seller, including but not limited to Xebec and the Xebec Group;
- (g) *Intellectual Property Claims* – any claims against the Seller for infringement, misappropriation or other violation of any Intellectual Property of any third Person relating to any period prior to the Closing Time;
- (h) *Pre-Filing Debt* – all liabilities, obligations and related guarantees relating to the EDC Credit Agreement and the NBC Credit Agreement;
- (i) *Taxes* – all liabilities for Taxes of the Seller; and
- (j) *Other* – Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Time, including without limitation liabilities relating to any breach of law and product liability claims, except, in each case, as specifically defined in Section 2.3 as an Assumed Liability.

2.5 Assignment of Purchased Assets

- (a) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Purchased Asset or any right thereunder if an attempted assignment or transfer (i) without the consent of a third Person, would constitute a breach or in any way adversely affect the rights of the Buyer thereunder or (ii) is not permitted or enforceable under Applicable Law (collectively, “**Restricted Rights**”), unless the assignment is subject to an Assignment Order. The Seller shall use commercially reasonable efforts to take all such action, and do or cause to be done all such things as are reasonably necessary or proper (provided that the Seller shall not be required to incur any costs or expenses in relation thereto unless the Buyer agrees in advance to reimburse the Seller for any such costs and expenses), following the Closing Time, in order that the obligations of the Seller under such Restricted Rights may be performed in such manner that the value of such Restricted Rights is preserved and enures to the

benefit of the Buyer, and that any amounts due and payable, or which become due and payable, in and under the Restricted Rights are received by the Buyer and the liabilities are satisfied by the Buyer. Subject to payment of all liabilities in respect thereof by the Buyer, the Seller shall reasonably promptly pay to the Buyer all amounts collected by or paid to the Seller in respect of all such Restricted Rights. Subject to Section 7.2, the Seller shall not, without the prior written consent of the Buyer, agree to any modification of any Restricted Rights.

- (b) If a consent to transfer the Restricted Rights to the Buyer is not obtained by the Closing Time or such assignment is not attainable, the Seller and the Buyer will cooperate and use their respective commercially reasonable efforts, from and after the Closing Time, to implement a mutually agreeable arrangement pursuant to which the Buyer will obtain the benefits, and assume the liabilities and obligations, related to such Restricted Rights in accordance with this Agreement; provided, however, that the Buyer acknowledges and agrees that nothing in this Section 2.5 shall operate to prohibit or diminish in any way the right of the Seller to dissolve, windup or otherwise cease operations as it may determine in its sole discretion, or require the Seller to take any illegal action or commit fraud on any Person.
- (c) Notwithstanding the foregoing: (i) nothing in this Section 2.5 shall require the Seller to renew any Restricted Rights once they have expired, (ii) any efforts required of the Seller pursuant to this Section 2.5 shall (A) be subject to receipt of adequate compensation in respect of all direct incremental costs and expenses incurred in respect of or related to such arrangement, (B) be strictly on an interim basis and in no event required to continue for more than 90 days following Closing, and (C) to the extent not prohibited, be of an administrative nature only, without any substantive function. The Buyer shall reimburse the Seller for any direct incremental cost incurred and indemnify and hold the Seller harmless from and against all Claims, incurred or asserted, as a result of any actions taken pursuant to this Section 2.5.
- (d) For the avoidance of doubt, the Parties acknowledge that the fact that any Purchased Asset constitutes a Restricted Right shall not (i) constitute a breach of any covenant hereunder, (ii) entitle Buyer to terminate this Agreement or (iii) result in any reduction of the Purchase Price payable hereunder. Any non-Restricted Right assigned pursuant to the terms of this Section 2.5 shall, when assigned, constitute an Assumed Contract hereunder from and after such date.
- (e) Subject to the terms and conditions of this Agreement, the Seller hereby agree to assign to the Buyer on the Closing Date, effective as of the Closing Time, all of the Seller's rights, benefits and interests in, to and under the Assumed Contracts and Real Property Leases, in accordance with either this Agreement or an Assignment Order. The Seller shall use their commercially reasonable efforts to obtain any necessary consents or approvals in order to assign the Assumed Contracts and Real Property Leases. The Seller will use their commercially reasonable efforts to take such other actions necessary to cause the Assumed Contracts and Real Property Leases to be assigned by the Seller to the Buyer as of the Closing Time at the

expense of the Buyer. The Buyer will use its commercially reasonable efforts to assist the Seller in obtaining any such consent.

2.6 Letters of Credit

On the Closing Date, the Buyer shall issue replacement letters of credit and/or security deposits for the Letters of Credit and shall use its best efforts to cause the Letters of Credit to be released and returned to the Seller without any further drawings thereunder, as soon as reasonably practicable but in no event later than thirty (30) days after the Closing Date. Provided that to the extent that the Buyer is unable to cause all of the Letters of Credit to be released and returned to the Seller, without any further drawings thereunder, in lieu of issuing the replacement letters of credit and/or security deposits referred to above, the Buyer shall cause matching, unconditional and irrevocable letters of credit and/or security deposits in favour of the Seller to be provided to the Seller on the Closing Date (collectively, the “**Matching Security**”) which Matching Security may be drawn upon by the Seller if and to the extent that the Seller’s Letters of Credit are drawn upon from time to time and the Buyer shall reimburse the Seller for any direct incremental cost incurred and indemnify and hold the Seller harmless from and against all Claims, incurred or asserted, as a result of any Letters of Credit which are not so released and returned to the Seller. The Seller is obligated to disclose any Letters of Credit or security deposits to the Purchaser.

ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

The purchase price payable to the Seller for the Purchased Assets shall be **REDACTED** plus the amount of Accrued Liabilities (the “**Purchase Price**”), exclusive of all applicable sales and transfer taxes.

3.2 Purchase Price Allocation

The Purchase Price shall be allocated among the Seller and the Purchased Assets in accordance with a written allocation agreed mutually between the Buyer and the Seller prior to the Closing Date (the “**Allocation Statement**”). The Buyer and the Seller shall: (a) report the purchase and sale of the Purchased Assets in any income Tax returns relating to the transactions contemplated in this Agreement in accordance with the Allocation Statement; and (b) act in accordance with the Allocation Statement in the preparation, filing and audit of any Tax return.

3.3 Payment of Purchase Price and Treatment of Deposit

- (a) The Purchase Price will be satisfied as follows:
 - (i) the portion of the Purchase Price equal to the amount of the Deposit that is being held by the Monitor in a non-interest-bearing trust account in accordance with the SISP;
 - (ii) the balance of the Purchase Price will be satisfied by the payment of such amount by wire transfer of immediately available funds at the Closing Time

from the Buyer to an account of the Monitor specified in writing by the Seller not less than two (2) Business Days prior to the Closing Date; and

- (iii) as to the dollar value of the Accrued Liabilities, by the Buyer assuming the Accrued Liabilities.
- (b) The Deposit paid to the Monitor by the Buyer will be:
- (i) credited to the Seller, as applicable, at the Closing Time in accordance with Section 3.3(a)(i), if the sale and purchase of the Purchased Assets provided for herein is completed in accordance with the terms and conditions hereof;
 - (ii) forfeited to the Seller, less any applicable withholding tax, if the Closing does not occur by reason that this Agreement is terminated by the Seller pursuant to Section 9.1(h) in order to compensate the Seller for expenses incurred in connection with the transactions contemplated in this Agreement and the delay caused to the Seller's efforts to sell the Purchased Assets. The entitlement of the Seller to the Deposit in such circumstances shall not limit the Seller's right to exercise any other rights which the Seller may have against the Buyer; and
 - (iii) returned to the Buyer, less any applicable withholding tax, if the Closing does not occur and the conditions in 3.3(b)(ii) are not met and the Buyer shall have no further recourse against the Seller.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES BY THE SELLER

The Seller, solidarily (within the meaning of the *Civil Code of Québec*), represent and warrant to the Buyer as follows, and acknowledge that the Buyer is relying upon the following representations and warranties in connection with its purchase of the Purchased Assets:

4.1 Corporate Existence

The Seller is a corporation duly formed and validly existing under the laws of British Columbia.

4.2 Due Authorization and Enforceability of Obligations

Subject to the issuance of the Approval and Vesting Order:

- (a) the Seller has all necessary corporate power, authority and capacity to:
 - (i) enter into and deliver this Agreement and the Closing Documents;
 - (ii) carry out its obligations under this Agreement and the Closing Documents; and
 - (iii) own or lease and to operate and use the Purchased Assets and carry on the Acquired Business as now conducted by the Seller;

- (b) the execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of the Seller; and
- (c) assuming the accuracy of the representations and warranties of the Buyer in Article 5, this Agreement does and the Closing Documents when executed by the Seller will constitute valid and binding obligations of the Seller enforceable against it in accordance with its terms.

4.3 Residence of the Seller

The Seller is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

4.4 Taxes

The Seller are duly registered under Subdivision (d) of Division V of the GST and HST Legislation with respect to the GST and HST, and under Division I of Chapter VIII of Title I of the QST Legislation with respect to the QST and will provide their respective registration numbers to the Buyer prior to Closing.

4.5 No Other Representations, Warranties or Covenants

Unless and solely to the extent expressly set forth in this Agreement, no representation, warranty or covenant is expressed or implied by the Seller, including any warranties as to title, Encumbrance, description, merchantability or fitness for a particular purpose, environmental compliance, condition, quantity or quality, or in respect of any other matter or thing whatsoever concerning the Acquired Business, the Purchased Assets, the Assumed Liabilities or the right of the Seller to sell or assign the same, as applicable. The disclaimer in this Section 4.5 is made notwithstanding the delivery or disclosure to the Buyer or its directors, officers, employees, agents or representatives of any documentation or other information (including any financial projections, estimates, budgets, offering memoranda, management presentations, due diligence materials or other supplemental data not included in this Agreement). Without limiting the generality of the foregoing, any and all conditions, warranties or representations, express or implied, pursuant to Applicable Law (including under Article 1716 of the *Civil Code of Québec*, the *Sale of Goods Act* (Ontario), the *International Convention on Contracts for the Sale of Goods* (Geneva Convention) and any other applicable sale of goods legislation) do not apply hereto and are hereby expressly waived by the Buyer.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Seller as follows, and acknowledges that the Seller are relying upon the following representations and warranties in connection with their sale of the Purchased Assets:

5.1 Corporate Existence

The Buyer is a corporation duly formed, validly existing and in good standing under the laws of British Columbia.

5.2 Residence of the Buyer

The Buyer is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

5.3 Financial Ability

As of the date hereof, subject to applicable borrowing conditions, the Buyer has undrawn committed revolving credit facilities and firm commitments from lenders of pursuant to executed commitment letters (each, a “**Commitment Letter**”) (copies of which have been provided to the Seller), which collectively with Buyer’s available unrestricted cash and cash equivalents are, and at Closing will be, sufficient to allow it to pay the Purchase Price, and all other costs and expenses in connection with the consummation of the transactions contemplated by this Agreement. Notwithstanding anything to the contrary contained herein, the Buyer’s obligations to consummate the transactions contemplated by this Agreement are not conditioned or contingent in any way upon the receipt of financing from any person or the availability of funds to the Buyer.

Each Commitment Letter, in the form so delivered, is a valid and legally binding obligation of the Buyer, and to the knowledge of the Buyer, the other parties thereto, and is enforceable by the Buyer in accordance with its terms, and is in full force and effect. The Buyer has fully paid any and all commitment fees or other fees required to be paid by the Buyer prior to the date of this Agreement pursuant to the terms of each Commitment Letter. As of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, would constitute a default on the part of the Buyer under a Commitment Letter. As of the date of this Agreement, the Buyer has no reason to believe that it will be unable to satisfy on a timely basis any term or condition of closing to be satisfied by it contained in a Commitment Letter. Each Commitment Letter constitutes, as of the date of this Agreement, the entire and complete agreement between the parties thereto with respect to the financing contemplated thereby (other than any fee letter executed in connection therewith), and, except as set forth, described or provided for therein, as of the date of this Agreement, (i) there are no conditions precedent to the respective obligations of any financing provider to provide the financing contemplated under a particular Commitment Letter, and (ii) there are no contractual contingencies or other provisions under any agreement (including any side letters) relating to the transactions contemplated by this Agreement to which the Buyer or any of its affiliates is a party that would permit the financing provider to reduce the total amount of the financing contemplated under a particular Commitment Letter below the amount required to enable to the Buyer to have sufficient funds available to pay the Purchase Price or impose any additional condition precedent to the availability of the financing under the Commitment Letter.

5.4 Absence of Conflicts

The Buyer is not a party to, bound or affected by or subject to (and the assets of the Buyer are not affected by): (a) any charter or by-law provision; (b) any Applicable Law or governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority; or (c) any agreement or other document, in each case, that would be violated, breached by, or under which any default would occur or with notice or the passage of

time would, be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except in the case of (b) and (c) for any violations, breaches or defaults or any Applicable Law or any governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority, that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

5.5 Due Authorization and Enforceability of Obligations

The Buyer has all necessary corporate power, authority and capacity to enter into and deliver this Agreement and the Closing Documents, and to carry out its obligations under this Agreement and the Closing Documents. The execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of the Buyer. This Agreement does and when executed and delivered by the Buyer the Closing Documents will constitute valid and binding obligations of the Buyer enforceable against it in accordance with its terms.

5.6 Approvals and Consents

Except for (a) the issuance of the Approval and Vesting Order, (b) the Assignment Order, and (c) any consent that may be required in connection with the assignment of a Purchased Asset, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Buyer, and each of the agreements to be executed and delivered by the Buyer hereunder or the purchase of any of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices of any Governmental Authority, court or Person that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

5.7 GST, HST and QST Registration

The Buyer is or will be duly registered under subdivision (d) of Division V of the GST and HST Legislation with respect to the GST and HST, and QST Legislation with respect to the QST, and has provided or will prior to Closing provide its registration number to the Seller in accordance with Section 7.7(g).

5.8 Litigation

There are no Claims, investigations or other proceedings, including appeals and applications for review, in progress or, to the knowledge of the Buyer, pending or threatened against or relating to the Buyer which, if determined adversely to the Buyer, would

- (a) prevent the Buyer from paying the Purchase Price to the Seller;
- (b) enjoin, restrict or prohibit the transfer of all or any part of the Purchased Assets as contemplated by this Agreement; or

- (c) prevent the Buyer from or delay the Buyer in fulfilling any of its obligations set out in this Agreement or arising from this Agreement.

5.9 Personal Information

The Buyer's use and disclosure of Personal Information in connection with the conduct of the Acquired Business after Closing will be carried out in compliance with all Applicable Laws.

5.10 As Is, Where Is

- (a) The Buyer acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Acquired Business, the Purchased Assets (including the state of title thereto and/or the state of any Encumbrances and Permitted Encumbrances), the Assumed Liabilities and all related operations of the Seller, and, based solely thereon, has determined to proceed with the transactions contemplated by this Agreement. The Buyer has relied solely on the results of its own independent investigation and verification, and the representations and warranties of the Seller expressly and specifically set forth in Article 4, and the Buyer understands, acknowledges and agrees that all other representations, warranties and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Seller or the Acquired Business, or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Seller. Except for the representations and warranties of the Seller expressly and specifically set forth in Article 4, none of the Seller makes or provides any warranty or representation, express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples or condition of the Purchased Assets, or any part thereof. THE BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE Seller EXPRESSLY AND SPECIFICALLY SET FORTH IN ARTICLE 4: (A) THE BUYER IS ACQUIRING THE PURCHASED ASSETS ON AN "AS IS, WHERE IS" BASIS; AND (B) NONE OF THE Seller, NOR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF THE Seller, WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY OR THE MONITOR) IS MAKING, AND THE BUYER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE Seller, THE BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES, THE EXCLUDED ASSETS, THE EXCLUDED LIABILITIES, THIS AGREEMENT OR THE TRANSACTIONS, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE BUYER OR ANY OF ITS RESPECTIVE REPRESENTATIVES, INCLUDING WITH RESPECT TO, THE REAL PROPERTY LEASES AND THE STATUS OF ANY OF THE REAL PROPERTY LEASES, THE PERMITTED ENCUMBRANCES, THE RENTABLE AREA OF THE PREMISES, THE EXISTENCE OF ANY DEFAULT ON THE PART OF THE Seller OR

LANDLORDS, THE USE PERMITTED AT ANY OF THE PREMISES, THE EXISTENCE OF ANY ENCUMBRANCE AFFECTING THE PURCHASED ASSETS, OR THE SELLER'S LEASEHOLD INTEREST THEREIN; AND WITHOUT LIMITING THE FOREGOING, ANY AND ALL CONDITIONS OR WARRANTIES EXPRESSED OR IMPLIED PURSUANT TO THE SALE OF GOODS ACT (ONTARIO), THE INTERNATIONAL CONVENTION ON CONTRACTS FOR THE SALE OF GOODS (GENEVA CONVENTION) AND ANY OTHER APPLICABLE SALE OF GOODS LEGISLATION, WILL NOT APPLY AND ARE HEREBY WAIVED BY THE Seller AND THE PARTIES AGREE TO EXCLUDE THE EFFECT OF THE LEGAL WARRANTY PROVIDED FOR BY ARTICLE 1716 OF THE CIVIL CODE OF QUÉBEC AND THAT THE BUYER IS PURCHASING THE PURCHASED ASSETS AT ITS OWN RISK FROM A SELLER WHO IS NOT A PROFESSIONAL SELLER WITHIN THE MEANING OF ARTICLE 1733 OF THE CIVIL CODE OF QUÉBEC, AND ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, REGARDING MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY FOR DEVELOPMENT, TITLE, DESCRIPTION, USE OR ZONING, ENVIRONMENTAL CONDITION, EXISTENCE OF LATENT DEFECTS, QUALITY, QUANTITY, ANY NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR REGARDING THE SCOPE, VALIDITY OR ENFORCEABILITY OF ANY TRANSFERRED INTELLECTUAL PROPERTY, ACQUIRED COMPANY INTELLECTUAL PROPERTY OR LICENSED INTELLECTUAL PROPERTY RIGHTS, OR ANY OTHER THING AFFECTING THE ACQUIRED BUSINESS, ANY OF THE PURCHASED ASSETS OR THE ASSUMED LIABILITIES, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAW IN ANY JURISDICTION, WHICH THE BUYER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE BUYER.

- (b) The Buyer acknowledges and agrees that: (i) the representations and warranties of the Seller set forth in Article 4 will merge on, and shall not survive, the Closing; and (ii) the Seller will not have or be subject to any liability or indemnification obligation to the Buyer or any other Person resulting from (nor will the Buyer or any other Person have any claim with respect to) the distribution to the Buyer, the Buyer's use of, or reliance on, any information, documents, projections, forecasts or other material made available to the Buyer in certain "data rooms," confidential information memoranda or management presentations in expectation of, or in connection with, the transactions contemplated by this Agreement, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise. None of the representatives of the Seller, whether in an individual, corporate or other capacity, will have or be subject to any such liability or indemnification obligations.

- (c) The remedies expressly set forth in this Agreement are the Buyer's sole and exclusive remedies relating to this Agreement, the Closing Documents, the transactions contemplated hereby and thereby, the Acquired Business, the Purchased Assets, the Assumed Liabilities and all related operations of the Seller or either of them.
- (d) This Section 5.10 will not merge on Closing and is deemed incorporated by reference in all Closing Documents.
- (e) The Buyer acknowledges and agrees that the enforceability of this Agreement against the Seller is subject to entry of the Approval and Vesting Order.

5.11 Investment Canada Act

The Buyer is a "Canadian" or a "WTO Investor", and is not a "state-owned enterprise" within the meaning of the Investment Canada Act, and the regulations thereunder.

ARTICLE 6 CONDITIONS

6.1 Conditions for the Benefit of the Buyer and the Seller

The respective obligations of the Buyer and of the Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets or any of the other transactions pursuant to this Agreement shall be in effect; and
- (b) *Court Orders* – the Approval and Vesting Order and, where required, the Assignment Orders shall have been issued and entered and such orders shall not have been reversed, modified, amended or stayed.

The Parties acknowledge that the foregoing conditions are for the mutual benefit of the Seller, on the one hand, and the Buyer, on the other hand. Any condition in this Section 6.1 may be waived by the Seller, on the one hand, or by the Buyer, on the other hand, in whole or in part, without prejudice to any of their respective rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver will be binding on the Seller or the Buyer, as applicable, only if made in writing.

6.2 Conditions for the Benefit of the Buyer

The obligation of the Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver by the Buyer of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Buyer):

- (a) *Compliance with Covenants* – there shall have been no breach or non-compliance with any of the covenants, agreements and conditions under this Agreement by the Seller resulting in a Material Adverse Effect;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Seller contained in Article 4 shall be true and correct on and as of the Closing Date, as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date), except where the failure to be so true and correct would not, individually or in the aggregate, have a Material Adverse Effect; and
- (c) *Officer's Certificate* – the Buyer shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.2(a) (*Compliance with Covenants*) and 6.2(b) (*Truth of Representations and Warranties*), signed for and on behalf of the Seller without personal liability by an executive officer of the Seller or other Persons acceptable to the Buyer, in each case in form and substance reasonably satisfactory to the Buyer.

6.3 Conditions for the Benefit of the Seller

The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver where applicable by the Seller of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Seller):

- (a) *Performance of Covenants* – the covenants contained in this Agreement to be performed by the Buyer at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Buyer contained in Article 5 shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date); and
- (c) *Officer's Certificate* – the Seller shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.3(a) (*Performance of Covenants*) and 6.3(b) (*Truth of Representations and Warranties*) signed for and on behalf of the Buyer without personal liability by an executive officer of the Buyer, in form and substance satisfactory to the Seller, each acting in a commercially reasonable manner.

ARTICLE 7 ADDITIONAL AGREEMENTS OF THE PARTIES

7.1 Access to Information

Until the Closing Time, the Seller shall give to the Buyer's personnel engaged in the transactions contemplated by this Agreement and their accountants, legal advisors, consultants,

financial advisors and representatives during normal business hours reasonable access to its premises and to all of the books and records relating to the Acquired Business, the Purchased Assets and the Assumed Liabilities and to the Employees (who are actively at work), and shall furnish them with all such information relating to the Acquired Business, the Purchased Assets and the Assumed Liabilities as the Buyer may reasonably request in connection with the transactions contemplated by this Agreement; provided that any such access shall be conducted at the Buyer's expense, in accordance with Applicable Law, under the supervision of the Seller's personnel and in such a manner as to maintain confidentiality and not to unreasonably interfere with the normal operations of the Acquired Business, and the Seller will not be required to provide access to or copies of any such books and records if (a) the provision thereof would cause the Seller to be in contravention of any Applicable Law, (b) the Seller reasonably consider such information to be commercially sensitive, (c) making such information available would (A) result in the loss of any lawyer-client or other legal privilege, or (B) cause the Seller to be found in contravention of any Applicable Law, or contravene any fiduciary duty or agreement (including any confidentiality agreement to which the Seller or any of their affiliates are a party), it being understood that the Seller shall cooperate in any reasonable efforts and requests that would enable otherwise required disclosure to the Buyer to occur without so jeopardizing privilege or contravening such Applicable Law, duty or agreement.

7.2 Conduct of Business Until Closing Time

Except: (1) as contemplated or permitted by this Agreement; (2) as contemplated by the budget delivered in accordance with the DIP Facility; (3) as necessary in connection with the CCAA Proceedings; (4) as otherwise provided in the Initial Order and any other court orders, prior to the Closing Time; (5) as required by Applicable Law, to the extent reasonably practicable having regard to the CCAA Proceedings; or (6) as consented to by the Buyer, such consent not to be unreasonably withheld, conditioned or delayed, the Seller shall:

- (a) (i) operate the Acquired Business only in the ordinary course of business in all material respects consistent with past practice; (ii) use commercially reasonable efforts to preserve the Purchased Assets; (iii) use commercially reasonable efforts to preserve its business organization, including the services of its officers and employees, and its business relationships and goodwill with customers, suppliers and others having business dealings with it; (iv) pay and discharge the debts authorized by the CCAA Court in accordance with the DIP Facility; and (v) use commercially reasonable efforts to maintain in full force and effect all material insurance policies and binders relating to the Acquired Business; and
- (b) not, without the prior written consent of the Buyer (the granting of such consent to be in the Buyer's sole discretion): (i) transfer, lease, license, sell, abandon, create any Encumbrance (other than Permitted Encumbrances and Encumbrances associated with or permitted by the DIP Facility) on or otherwise dispose of any of the Purchased Assets (except in the ordinary course of business, in all material respects consistent with past practice); (ii) materially increase the compensation or benefits of any Employee, except for increases in all material respects consistent with past practice or in accordance with employment Contracts, Employee Plan or Applicable Law; (iii) establish, adopt, enter into, amend or terminate any Employee Plan or any plan, agreement or other arrangement that would be an Employee Plan

if it were in existence as of the date of this Agreement; (iv) (A) materially amend, terminate or assign any Personal Property Lease, Real Property Lease or other Material Contract, (B) enter into any lease, Contract, license or other commitment related to the Acquired Business that would constitute a Personal Property Lease, Real Property Lease or other Material Contract; (v) enter into any Contract which materially restricts the ability of the Acquired Business to engage in any business in any geographic area or channel of distribution; (vi) acquire any material businesses or assets outside of the ordinary course of business in all material respects; or (vii) agree or make a commitment, whether in writing or otherwise, to do any of the foregoing.

7.3 Approvals and Consents

The Seller shall use their commercially reasonable efforts to obtain all consents, approvals and Governmental Authorizations with respect to, and provide any notices under, any Permits or Contracts required in connection with the completion of the transactions contemplated by this Agreement at or before the Closing Time on terms acceptable to the Buyer, acting reasonably. The Buyer shall use its commercially reasonable efforts to cooperate with the Seller in connection with the foregoing.

7.4 No Broker

The Buyer acknowledges and agrees that the Seller shall not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Buyer.

7.5 Covenants Relating to this Agreement

- (a) Each of the Parties shall perform, and shall cause their affiliates to perform, all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties and the Monitor in connection therewith, and, subject to the directions of any applicable courts to the Seller, use commercially reasonable efforts to do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable and in any event prior to the Sunset Date, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, each Party shall and, where appropriate, shall cause each of its affiliates to:
 - (i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and

- (ii) not take any action, or refrain from taking any action, and use commercially reasonable efforts to not permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.
- (b) The Buyer hereby agrees, and hereby agrees to cause its representatives to, keep the Seller informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by the Seller or the Monitor, as to the Buyer's progress in terms of the satisfaction of the conditions precedent contained herein.
- (c) The Seller and the Buyer agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions as may be reasonably required to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

7.6 Release; Acknowledgements; Indemnity

- (a) Except as otherwise contained herein, effective as of the Closing, the Buyer hereby releases and forever discharges each of the Seller and its respective affiliates, and their respective successors and assigns, and all officers, directors, partners, members, shareholders, employees and agents of each of them, from any and all actual or potential Claims which such Person had, has or may have in the future to the extent relating to the Purchased Assets, the Assumed Liabilities, the Excluded Assets or the Excluded Liabilities.
- (b) The Buyer shall use its best efforts to assist the Seller and shall co-operate with the Seller, as reasonably requested, to obtain from third parties, effective as of the Closing Time, a full release of the Seller's obligations under the Assumed Contracts, the Permitted Encumbrances and the Real Property Leases, and shall provide such financial and other information and enter into such assumption agreements as such third parties may reasonably require, in form and substance acceptable to each of the parties thereto acting reasonably and without delay.
- (c) The Buyer hereby agrees to indemnify the Seller, the Monitor, their respective affiliates and their respective present or former trustees, officers, directors, employees, agents and shareholders (the "**Seller Parties**"), and saves each of them fully harmless from and against, and will reimburse or compensate each of them on demand for, all losses and Claims arising from, in connection with or related in any manner whatsoever to:
 - (i) the Buyer's failure to pay when due, and perform and discharge, the Assumed Liabilities; and
 - (ii) the Buyer's access in accordance with Section 7.1.

7.7 Tax Matters

- (a) For purposes of any income Tax return related to the transactions contemplated in this Agreement, the Buyer and the Seller agree to report the transactions contemplated in this Agreement in a manner consistent with the Allocation Statement, and the Buyer and the Seller shall not voluntarily take any action inconsistent therewith in any such Tax return, refund claim, litigation or otherwise, unless required by applicable Tax laws. The Buyer and the Seller shall each be responsible for the preparation of their own statements required to be filed under the *Income Tax Act* (Canada) and other similar forms in accordance with applicable Tax laws.
- (b) All real property Taxes, personal property Taxes and similar *ad valorem* obligations levied with respect to the Purchased Assets for a taxable period which includes (but does not end on) the Closing Date shall be apportioned between the Seller and the Buyer based on the number of days of such taxable period up to and including the Closing Date (such portion of such taxable period, the “**Pre-Closing Tax Period**”) and the number of days of such taxable period after the Closing Date (such portion of such taxable period, the “**Post-Closing Tax Period**”). Except as otherwise provided herein, the Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and the Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period.
- (c) In respect of the purchase and sale of the Purchased Assets under this Agreement, to the extent permitted by Applicable Law, the Buyer shall pay direct to the appropriate Governmental Authority all sales and transfer Taxes, registration charges and transfer fees payable by it and, upon the reasonable request of the Seller, the Buyer shall furnish proof of such payment, and the Buyer shall otherwise be liable for and shall pay to the Seller an amount equal to any such Tax payable by the Buyer and collectible by the Seller including under the GST and HST Legislation and the QST Legislation and under any similar provincial or territorial legislation imposing a similar value-added or multi-staged Tax. The Buyer shall deliver to Seller any purchase exemption certificates being relied on by the Buyer in accordance with and in the form and manner as required under Applicable Laws governing provincial sales and transfer Taxes.
- (d) To the extent permitted under subsection 167(1) of the GST and HST Legislation, Section 75 of the QST Legislation and any equivalent or corresponding provision under any applicable provincial or territorial legislation imposing a similar value added or multi-staged Tax, the Buyer and the Seller shall jointly elect that no Tax be payable with respect to the purchase and sale of the Purchased Assets under this Agreement. The Buyer and the Seller shall make such election(s) in prescribed form containing prescribed information and the Buyer shall file such election(s) in compliance with the requirements of the applicable legislation. Notwithstanding such election(s), in the event it is determined by the Canada Revenue Agency or Revenu Québec (or another applicable provincial Governmental Authority) that there is a liability of the Buyer to pay, or of the Seller to collect and remit, any

Taxes payable under the GST and HST Legislation or the QST Legislation (or any applicable provincial legislation) in respect of the sale and transfer of the Purchased Assets, such Taxes (including any associated interest, costs, and/or penalties) shall be paid by the Buyer.

- (e) If requested by the Buyer and to the extent permitted thereunder, the Seller and the Buyer will jointly execute, and each of them will file promptly following the Closing Date, an election under Section 22 of the *Income Tax Act* (Canada), and any corresponding provisions of any applicable provincial income Tax legislation. For the purposes of such elections, the Buyer and the Seller will, acting reasonably, jointly determine the amount that the parties will designate as the portion of the Purchase Price allocable to the debts in respect of which such elections are made. For greater certainty, the Seller and the Buyer agree to prepare and file their respective Tax returns in a manner consistent with such election(s).
- (f) If requested by the Buyer and to the extent permitted thereunder, the Seller and the Buyer will jointly execute an election in the prescribed manner and within the prescribed time limits, to have the rules in subsection 20(24) of the *Income Tax Act* (Canada), and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of the Seller in respect of undertakings which arise from the operation of the Acquired Business and to which paragraph 12(1) (a) and 12(1)(e) of the *Income Tax Act* (Canada) apply. For the purposes of such election(s), the Buyer, acting reasonably, shall determine the elected amount and the Buyer and the Seller acknowledge that the Seller is transferring assets to the Buyer which have a value equal to such elected amount as consideration for the assumption by the Buyer of such obligations of the Seller.
- (g) On Closing, the Buyer shall have executed and delivered a certificate, undertaking and indemnity which includes its certification of its registration numbers issued under the GST and HST Legislation and QST Legislation, and incorporates the provisions of this Section 7.7 (the “**GST/HST and QST Certificate, Undertaking and Indemnity**”). The Buyer shall indemnify and save the Seller harmless from and against any and all Taxes including, transfer Taxes and goods and services tax or harmonized sales tax, as the case may be, imposed under the GST and HST Legislation, the QST Legislation and any other value added or multi-staged tax or sales tax, penalties, costs and/or interest which may become payable by or assessed against any of the Seller as a result of any failure by the Seller to collect and remit any goods and services tax or harmonized sales tax payable under the GST and HST Legislation and the QST Legislation or any similar value added or multi-staged tax or sales tax (including, for greater certainty, as a result of any failure or refusal of any Governmental Authority to accept any election filed pursuant to Section 7.7(d)) and applicable on the sale and conveyance of the Purchased Assets by the Seller to the Buyer or as a result of any inaccuracy, misstatement, or misrepresentation made by the Buyer in connection with any matter raised in this Section 7.7 or in the GST/HST and QST Certificate, Undertaking and Indemnity or any failure by the Buyer to comply with the provisions of this Section 7.7 or the GST/HST and QST Certificate, Undertaking and Indemnity.

7.8 Employee Matters

- (a) No more than five (5) days after the date of this Agreement, Seller will deliver a schedule of all Employees (without reference to names), together with, their positions and wages/salary, incentive compensation, service date, material benefits and vacation entitlement and accrual. Such schedule will be updated immediately prior to the Closing Time as reasonably requested by the Buyer.
- (b) No later than two (2) Business Days following the date on which the Approval and Vesting Order is granted, conditional on Closing and with effect as of the Closing Time, the Buyer shall in a form agreed by the Seller and in compliance with Applicable Law, provide notice of continuing employment to the Employees on terms and conditions, including compensation, benefits, hours of work and duties, that are substantially similar and no less favourable in the aggregate to those terms and conditions of employment currently available to each such Employee immediately prior to the Closing Date (including the Key Employee Retention Plan, if applicable). This excludes any employees on long-term disability at the time of Closing. For purposes of this Agreement, to the extent certain terms and conditions of employment are required to be maintained under any Employee Plans in order to avoid Seller's incurring severance or other employment termination obligations, such terms and conditions shall be deemed to be required by Applicable Law. Employees' employment with the Buyer after the Closing Date, shall not include a probationary period and shall not be conditioned upon such Employees satisfactorily completing a background investigation, drug test or other employment screening processes. Buyer shall notify the Seller of the acceptance and rejections of its offers of continued employment that have been received from each of the Employees.
- (c) The Employees whose employment is transferred to the Buyer by operation of law and other Employees who accept the Buyer's offer of continued employment, shall hereinafter be collectively referred to as the "**Assumed Employees**". The Buyer shall recognize service of the Assumed Employees with the Seller. The Seller will cooperate with the Buyer in giving notice to the Employees of the Seller concerning such matters referred to in this Section 7.8 as are reasonable under the circumstances.
- (d) The Buyer shall assume and be responsible for all liabilities and obligations with respect to the Assumed Employees following the Closing Date, including, but not limited to, any required notice of termination, termination or severance pay required under Applicable Law or under any Contract, employment insurance, workplace safety and insurance/workers' compensation, Canada Pension Plan, Québec Pension Plan, salary or wages, vacation pay, overtime pay, payroll or employer health Taxes, commissions, bonuses or vacation entitlements and accruals. The Buyer shall also assume and be responsible for any vacation pay, bonus accrual or wage liability with respect to the Assumed Employees, whether accruing or arising prior to or following the Closing Date.
- (e) The Buyer may, at its sole discretion provide written notice to the Seller at least five (5) Business Days prior to the Closing Date that the Buyer wishes to assume

one or more Employee Plans (to the extent transferable) (the “**Assumed Employee Plans**”), and, effective as of the Closing Date, the Seller shall assign to the Buyer, and the Buyer assumes, the Assumed Employee Plans and all agreements and policies forming part of or relating to any Assumed Employee Plan and all of the Seller’s rights, obligations and liabilities under and in relation to the Assumed Employee Plans and all agreements and policies forming part of or relating to any Assumed Employee Plan and the Seller and the Buyer agree to co-operate to take all reasonable steps to effect such assignment.

- (f) The Buyer shall be responsible for any and all Claims Incurred by the Assumed Employees (and their respective eligible spouses, beneficiaries and dependents) on and after the Closing Date. For these purposes, “Incurred” means, in relation to Claims under Employee Plans or Buyer Employee Plans, the date on which the event giving rise to such claim occurred and, in particular: (i) with respect to a death or dismemberment claim, shall be the date of the death or dismemberment; (ii) with respect to a short-term or long-term disability Claim, shall be the date that the period of short-term or long-term disability commenced; (iii) with respect to an extended health care claim, including, without limitation, dental and medical treatments, shall be the date of the treatment; and (iv) with respect to a prescription drug or vision care claim, the date that the prescription was filled.
- (g) After the date hereof, the Seller and the Buyer shall cooperate promptly and in good faith in preparing the transition of the Assumed Employees as applicable from coverage under the Employee Plans to coverage under the Buyer Employee Plans effective as of the Closing Date. On and after the Closing Date, the Buyer shall be responsible for and make all required contributions and payments in relation to the Assumed Employees that are transitioned to coverage under the Buyer Employee Plans. If, at the Closing Date, the transition of any Assumed Employees to coverage under any Buyer Employee Plan has not been completed, the Buyer shall be responsible for all liabilities and obligations under any Employee Plan in respect of any such Assumed Employees until the Assumed Employees have been transitioned to coverage under the applicable Buyer Employee Plan.
- (h) For purposes of the Buyer Employee Plans in which any Assumed Employees participate, the Buyer shall recognize the service date of each such Employee, to the same extent that service credit would be given under the analogous Employee Plan, for purposes of eligibility, level of benefits and vesting, but not for purposes of benefit accrual. With respect to each Assumed Employee (and their eligible dependents, as applicable), the Buyer shall use best efforts to cause such Buyer Employee Plans to (i) waive any eligibility periods, evidence of insurability or pre-existing condition limitations and (ii) honor any deductibles, co-payments, co-insurance or out-of-pocket expenses paid or incurred by such Employees, including with respect to their dependents, under comparable Employee Plans.

7.9 Certain Payments or Instruments Received from Third Persons

To the extent that, after the Closing Date: (a) Buyer or any of its affiliates receives any payment or instrument that is for the account of the Seller according to the terms of any Closing Document, Excluded Asset or Excluded Liability, the Buyer shall, and shall cause its affiliates to,

promptly deliver such amount or instrument to the Seller; or (b) any of the Seller or any of their controlled affiliates receives any payment or instrument that is for the account of the Buyer according to the terms of any Closing Document or that relates to the Acquired Business, Purchased Assets or Assumed Liabilities, the Seller shall, and shall cause their controlled affiliates to, promptly deliver such amount or instrument to the Buyer. All amounts due and payable under this Section 7.9 shall be due and payable by the applicable Party in immediately available funds, by wire transfer to the account designated in writing by the relevant Party. Notwithstanding the foregoing, the Seller, on the one hand, and the Buyer, on the other hand, hereby undertakes to, as reasonably requested and at the other's expense, direct or forward all bills, invoices or like instruments to the appropriate Party.

7.10 Intellectual Property Matters

The Seller shall cooperate with and assist the Buyer, at the Buyer's expense, with the registration of the assignment of the registrable rights relating to Intellectual Property forming part of the Purchased Assets.

7.11 Notice of Certain Events

The Seller, on the one hand, and the Buyer, on the other hand, shall give prompt written notice to the other Party of: (a) the occurrence or non-occurrence of any fact, change, condition or event, the occurrence or non-occurrence of which would render any representation or warranty of such Party contained in this Agreement or any of the Closing Documents untrue or inaccurate in any material respect; (b) any failure of such Party to comply with or satisfy any covenant or agreement to be complied with or satisfied by such Party hereunder in any material respect or any event or condition that would otherwise reasonably be expected to result in the nonfulfillment of any of the conditions to such Party's obligations hereunder; (c) any notice (whether written or oral) from any Person (including any Governmental Authority or counterparty to a Contract) alleging that the consent of such Person is or may be required in connection with, or that any Contract with any such Person is or may be breached or otherwise violated in connection with, the consummation of the Closing or any of the other transactions contemplated by this Agreement or any of the Closing Documents; or (d) any proceeding pending or, to the knowledge of such Party, threatened, against such Party relating to the Agreement and the other transactions contemplated by this Agreement or any of the Closing Documents.

7.12 Risk of Loss

In the event the Purchased Assets are damaged or destroyed or appropriated, expropriated or seized by any Person, on or prior to the Closing Date, the Buyer will complete the transactions contemplated by this Agreement without reduction of the Purchase Price. In such event all proceeds of insurance or compensation for expropriation or seizure in respect thereof to a maximum of that portion of the Purchase Price allocated in the Purchased Assets relating to the Premises which are so damaged or expropriated, will be payable to the Buyer and all right and claim of the Seller to any such amounts not paid by the Closing Date will be assigned to the Buyer.

ARTICLE 8 COURT ORDERS

8.1 Court Orders

- (a) The Seller shall serve and file a motion for the issuance of the Approval and Vesting Order and, if applicable, the Assignment Order, by January 30, 2023.
- (b) The Buyer shall cooperate with the Seller and the Monitor acting reasonably, as may be necessary, including by providing such information and taking such actions as may be reasonably requested, in obtaining the Approval and Vesting Order and any Assignment Order.
- (c) Notice of the motions seeking the issuance of the Approval and Vesting Order shall be served by the Seller on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, the Amended and Restated Initial Order and any other Person determined necessary by the Seller or the Buyer.
- (d) Notwithstanding any other provision herein, it is expressly acknowledged and agreed that in the event that (i) the Approval and Vesting Order has not been issued and entered by the CCAA Court by February 10, 2023 or such later date agreed to in writing by the Buyer and the Seller, in consultation with the Monitor, the Seller may terminate this Agreement.

8.2 CCAA Process

If the Approval and Vesting Order or any other orders of the CCAA Court relating to this Agreement shall be appealed or motion for rehearing or reargument shall be filed with respect thereto, the Seller agree to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion and the Buyer agrees to use its commercially reasonable efforts to cooperate in such efforts.

ARTICLE 9 TERMINATION

9.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of the Buyer and the Seller (with the consent of the Monitor) or on further order of the CCAA Court;
- (b) by the Seller (with the consent of the Monitor) if Closing has not occurred on or before February 10, 2023 or such later date agreed to in writing by both the Buyer and the Seller (with the consent of the Monitor) (the “**Sunset Date**”); provided, that the Seller are not in breach of any representation, warranty, covenant or other agreement in this Agreement to cause the conditions in Article 6 to be satisfied;
- (c) by the Seller pursuant to Section 8.1(d);
- (d) by the Buyer or the Seller upon the dismissal or conversion of the CCAA Proceedings;

- (e) by the Buyer or the Seller upon permanent denial of the Approval and Vesting Order;
- (f) by the Buyer or the Seller if a court of competent jurisdiction or other Governmental Authority has issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of Closing and such order or action has become Final (provided the same was not initiated by the Buyer or the Seller);
- (g) by the Seller, if required under any Order of a court of competent jurisdiction including the CCAA Court;
- (h) by the Seller (with the consent of the Monitor), if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Sunset Date and such violation or breach has not been waived by the Seller or cured within ten (10) Business Days after written notice thereof from the Seller, unless the Seller are in material breach of their obligations under this Agreement; or
- (i) by the Buyer, if there has been a material violation or breach by either of the Seller of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.2, as applicable, by the Sunset Date and such violation or breach has not been waived by the Buyer or cured within ten (10) Business Days after written notice thereof from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement.

The Party desiring to terminate this Agreement pursuant to this Section 9.1 (other than pursuant to Section 9.1(a)) shall give written notice of such termination to the other Party or Parties, as applicable, specifying in reasonable detail the basis for such Party's exercise of its termination rights.

9.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that (a) this Section 9.2 and Sections 3.3(b), 11.1, 11.3, 11.5, 11.6, 11.7 and 11.8 shall survive, (b) the confidentiality, non-use and non-disclosure obligations under the NDA shall survive in accordance with the terms of the NDA, and (b) no termination of this Agreement shall relieve any Party of any liability for any wilful breach by it of this Agreement.

ARTICLE 10 CLOSING

10.1 Location and Time of the Closing

The Closing shall take place at the Closing Time on the Closing Date at the offices of Osler, Hoskin & Harcourt LLP located at Suite 2100, 1000 De La Gauchetière Street West, Montréal,

Québec, or at such other location as may be agreed upon by the Parties. The Closing shall, unless otherwise agreed between the Parties, be conducted virtually.

10.2 Seller's Deliveries at Closing

At Closing, the Seller shall deliver to the Buyer the following:

- (a) a copy of the Approval and Vesting Order;
- (b) the General Assignments and Bills of Sale for the Purchased Assets duly executed by the applicable Seller;
- (c) the Lease Assignment and Assumption Agreements for the Personal Property Leases and Real Property Leases duly executed by the applicable Seller;
- (d) the Contracts Assignment and Assumption Agreements for the Assumed Contracts duly executed by the applicable Seller;
- (e) assignment of any existing realty Tax appeals and any other documents required to permit the Buyer to continue such appeals and to receive payments resulting therefrom;
- (f) all documents of title and instruments of conveyance (duly executed by the applicable Seller) necessary to transfer record and/or beneficial ownership to the Buyer of all vehicles owned by the Seller which are included in the Purchased Assets;
- (g) the IP Assignment and Assumption Agreements duly executed by the applicable Seller;
- (h) copies of any Assignment Order obtained by the Seller pursuant to this Agreement;
- (i) an executed copy of the Monitor's Certificate;
- (j) the certificates contemplated by Section 6.2(c);
- (k) a duly executed election pursuant to GST and HST Legislation and QST Legislation, and any certificates, elections or other documents required to be delivered pursuant to Section 7.7; and
- (l) all other documents required to be delivered by the Seller on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Buyer in good faith.
- (m) Consent to Use of Name regarding the name Applied Compression Systems Ltd.

10.3 Buyer's Deliveries at Closing

At Closing, the Buyer shall deliver to the Seller:

- (a) the Purchase Price;
- (b) any sales or transfer Taxes payable on Closing by the Buyer to the Seller pursuant to Section 7.7(c) hereof;
- (c) the General Assignments and Bills of Sale for the Purchased Assets duly executed by the Buyer;
- (d) the Lease Assignment and Assumption Agreements for the Personal Property Leases and Real Property Leases duly executed by the Buyer;
- (e) the Contracts Assignment and Assumption Agreements for the Assumed Contracts duly executed by the Buyer;
- (f) the IP Assignment and Assumption Agreements duly executed by the Buyer;
- (g) the Matching Security, if applicable;
- (h) the certificate contemplated by Section 6.3(c);
- (i) a duly executed election pursuant to GST and HST Legislation and QST Legislation, and any certificates, elections or other documents required to be delivered pursuant to Section 7.7;
- (j) the GST/HST and QST Certificate, Undertaking and Indemnity; and
- (k) all other documents required to be delivered by the Buyer on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Seller in good faith.

10.4 Possession of Assets

The Seller will remain in possession of the Purchased Assets until Closing. On Closing, the Buyer will take possession of the Purchased Assets wheresoever situated at Closing. In no event will the Purchased Assets be sold, assigned, transferred or set over to the Buyer until the conditions set out in the Approval and Vesting Order have been satisfied, and the Buyer has satisfied all delivery requirements outlined in Section 10.3.

10.5 Monitor

The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from the Seller and the Buyer that all conditions to Closing have been satisfied or waived and upon receiving the cash portion of the Purchase Price and any sales or transfer Taxes confirmed in writing by the Seller and the Buyer (on which the Monitor shall be entitled to rely without independent investigation) to be payable on Closing by the Buyer to the Seller pursuant to Section 7.7(c) hereof, and the Monitor will have no liability to the Seller or the Buyer or any other Person as a result of filing the Monitor's Certificate or otherwise in connection with this Agreement or the transactions contemplated hereunder (whether based on contract, tort or any other theory).

10.6 Simultaneous Transactions

All actions taken and transactions consummated at the Closing shall be deemed to have occurred simultaneously, and no such transaction shall be considered consummated unless all are consummated.

ARTICLE 11 GENERAL MATTERS

11.1 Confidentiality

The Buyer shall keep confidential all Confidential Information relating to the Seller, the Acquired Business, the Purchased Assets, the Assumed Liabilities, the Excluded Assets and the Excluded Liabilities in accordance with the terms of the NDA.

11.2 Public Notices

No press release or other announcement concerning the transactions contemplated by this Agreement shall be made by the Seller, on the one hand, or by the Buyer, on the other hand, without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that subject to the last sentence of this Section 11.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings and the U.S. Proceedings) or by any stock exchange on which any of the securities of such Party or any of its affiliates are listed, or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by the Seller with the CCAA Court, the U.S. Bankruptcy Court and posted on SEDAR or such other website as may be required pursuant to Applicable Law or the rules of any relevant stock exchange; and (ii) the transactions contemplated in this Agreement may be disclosed by the Seller to the CCAA Court and the U.S. Bankruptcy Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. The Parties further agree that:

- (a) the Monitor may prepare and file reports and other documents with the CCAA Court and the U.S. Bankruptcy Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and
- (b) the Seller and their professional advisors may prepare and file such reports and other documents with the CCAA Court and the U.S. Bankruptcy Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

Wherever possible, the Buyer shall be afforded an opportunity to review and comment on such materials prior to their filing. The Parties may issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to by them.

11.3 Injunctive Relief

- (a) The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek specific performance, injunctive and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such specific performance, injunctive or other equitable relief, this being in addition to any other remedy to which the Parties may be entitled at law or in equity.
- (b) Each Party hereby agrees not to raise any objections to the availability of the equitable remedies provided for herein and the Parties further agree that by seeking the remedies provided for in this Section 11.3, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement.
- (c) Notwithstanding anything herein to the contrary herein, under no circumstances shall a Party be permitted or entitled to receive both monetary damages and specific performance and election to pursue one shall be deemed to be an irrevocable waiver of the other.

11.4 Survival

None of the representations, warranties, covenants (except the covenants in Article 2, Article 3, Article 11 and Sections 7.6, 7.7, 7.8, 7.9, 7.10, 11.1 and 11.5 to the extent they are to be performed after the Closing) of any of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive the Closing.

11.5 Expenses

Except as otherwise specifically provided herein, the Seller, on the one hand, and the Buyer, on the other hand, shall be responsible for the expenses (including fees and expenses of legal advisors, accountants and other professional advisors) incurred by each of them, respectively, in connection with the negotiation and settlement of this Agreement, and the completion of the transactions contemplated hereby.

11.6 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner, securityholder, affiliate, agent, lawyer or representative of the respective Parties, in such capacity, shall have any liability for any obligations or liabilities of the Buyer or the Seller, as applicable, under this Agreement, or for any Claim based on, in respect of or by reason of the transactions contemplated hereby.

11.7 Assignment; Binding Effect

No Party may assign its right or benefits under this Agreement without the consent of each of the other Parties, except that without such consent any Party may, upon prior notice to the other Parties: (a) assign this Agreement, or any or all of its rights and obligations hereunder, to one or more of its subsidiaries or affiliates; or (b) the Buyer may direct that title to all or some of the Purchased Assets be transferred to, and the corresponding Assumed Liabilities be assumed by, one or more of its subsidiaries or affiliates; provided, that no such assignment or direction shall relieve such assigning Party of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Except as provided in Section 7.6 and Section 7.7(d), nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

11.8 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as a “**Notice**”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transferred by facsimile or email:.

- (a) in the case of a Notice to the Buyer at:

1396905 B.C. Ltd.
400 Industrial Rd A
Cranbrook, BC V1C 4Z3

Attention: Mike Sanderman
Telephone: 778-517-8482
Email: mike@appliedcompression.com

with copies (which shall not in themselves constitute notice) to:

Spruce Notary & Legal
101 – 9th Avenue S
Cranbrook, BC V1C 2M1

Attention: Russell W. Sheppard
Telephone: 250-489-3334
Email: russ@sprucelegal.ca

- (b) in the case of a Notice to the Seller at:

Xebec Adsorption Inc.

730 Industriel Boulevard
Blainville, Québec
J7C 3V4

Attention: Jim Vounassis and Stéphane Archambault
Telephone: 450-979-8700 / 450-979-8738
email: jvounassis@xebecinc.com / sarchambault@xebecinc.com

with copies (which shall not in themselves constitute notice) to:

Osler, Hoskin & Harcourt LLP
Suite 2100
1000 De La Gauchetière Street West
Montréal, QC, H3B 0A2

Attention: Sandra Abitan and François Paradis
Telephone: 514-904-5648 / 514-904-5366
Email: sabitan@osler.com / fparadis@osler.com

and the Monitor:

Deloitte Restructuring Inc.
La Tour Deloitte
500 - 1190 Av. des Canadiens-de-Montréal
Montréal, QC H3B 0M7

Attention: Jean-François Nadon and Julie Mortreux
Telephone: 514-390-0959 / 514-393-5400 / 514-393-5258
Email: jnadon@deloitte.ca / jmortreux@deloitte.ca

and counsel to the Monitor:

McCarthy Tétrault LLP
Suite 2500
1000 De La Gauchetière Street West
Montréal, QC, H3B 0A2

Attention: Jocelyn T. Perreault and Marc-Etienne Boucher
Telephone: 514-397-7092
Email: jperreault@mccarthy.ca / meboucher@mccarthy.ca

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the Notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section.

11.9 Counterparts; Facsimile Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by facsimile signature or by electronic means which, for all purposes, shall be deemed to be an original signature.


11.10 Language

Les Parties aux présentes ont expressément exigé que la présente convention et tous les documents et avis qui y sont afférents soient rédigés en anglais. The Parties have expressly required that this Agreement and all documents and notices relating hereto be drafted in English.

[Signature pages follow]

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

APPLIED COMPRESSION SYSTEMS LTD.

By: 
Name: Dimitrios (Jim) Vounassis
Title: Chief Executive Officer and President

1396905 B.C. LTD.

By: _____
Name:
Title:

By: _____
Name:
Title:

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

**APPLIED COMPRESSION SYSTEMS
LTD.**

By: _____
Name: Dimitrios (Jim) Vounassis
Title: Chief Executive Officer and
President

1396905 B.C. LTD.

By: _____
Name: Mike SANDERMAN
Title:

By: _____
Name:
Title:

Schedule 1.1 (i)
Form of Approval of Vesting Order

(see attached)

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 3, 2023

BEFORE THE HONOURABLE CHRISTIAN IMMER, J.S.C.

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
APPLIED COMPRESSION SYSTEMS LTD.
COMPRESSED AIR INTERNATIONAL INC.
XEBEC HOLDING USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES – WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC
Debtors / Petitioners**

and
DELOITTE RESTRUCTURING INC.
Monitor

and
1396905 B.C. LTD
Impleaded Party (Buyer)

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and

**THE REGISTRAR OF THE BRITISH COLUMBIA PERSONAL PROPERTY
REGISTRY**

Impleaded Party (Registrar)

APPROVAL AND VESTING ORDER

- [1] **CONSIDERING** the *Application for the Issuance of an Approval and Vesting Order* and the *Issuance of a Second and Restated Initial Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”), the exhibits thereto, and the affidavit of Dimitrios Vounassis filed in support thereof;
- [2] **CONSIDERING** the Fifth Report of Deloitte Restructuring Inc. (in such capacity, the “**Monitor**”) dated January ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **GIVEN** the provisions of the CCAA:
- [5] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Asset Purchase Agreement dated as of January 27, 2023 (the “**Purchase Agreement**”) between Applied Compression Systems Ltd as seller (the “**Seller**”) and 1396905 B.C. Ltd, as buyer, (the “**Buyer**”), a copy of which was filed as **Exhibit P-●** to the Application, and vesting in the Buyer the Purchased Assets.

THE COURT HEREBY:

- [6] **GRANTS** the Application.

DEFINITIONS

- [7] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Purchase Agreement.

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SERVICE

- [8] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and dispenses with further service thereof.
- [9] **PERMITS** service of this Order at any time and place and by any means whatsoever.

TRANSACTION APPROVAL

- [10] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Seller is hereby authorized and approved *nunc pro tunc*, with such minor alterations, changes, amendments, deletions or additions thereto as may be agreed to by the Seller and the Buyer, with the consent of the Monitor.

EXECUTION OF DOCUMENTATION

- [11] **AUTHORIZES** the Buyer and the Seller to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto, including the Transaction.

AUTHORIZATION

- [12] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Petitioners to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS

- [13] **ORDERS AND DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Buyer, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or

encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges or security evidenced by registration, publication or filing pursuant to the Civil Code of Québec, the Personal Property Security Act of the Province of British Columbia, or any other applicable legislation providing for a security interest in personal or movable property, and those Claims listed on **Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "C"**).

- [14] For greater certainty, **ORDERS** that all of the Encumbrances, other than those listed on Schedule "C" hereto, affecting or relating to the Purchased Assets be cancelled and discharged as against the Purchased Assets, in each case effective as of the issuance of the Monitor's Certificate.
- [15] **ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
- [16] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.
- [17] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Purchase Agreement and shall have no liability with respect to the delivery of the Monitor's Certificate.
- [18] **ORDERS AND DIRECTS** the Monitor to serve on the service list in the within CCAA proceedings, post on the Monitor's website and file with the Court a copy of the Monitor's Certificate, as soon as practicable after the issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

- [19] **ORDERS** that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the *British Columbia Personal Property Security Registry* (the "**BC PPR**"), as may be necessary, from any registration filed against the Petitioners in the BC PPR, provided that the Petitioners shall not be authorized

to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

PROTECTION OF PERSONAL INFORMATION

[20] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the “**Applicable Privacy Laws**”), the Petitioners and the Monitor are authorized to disclose and transfer to the Buyer the personal information in the custody or control of the Petitioners set out in the Purchase Agreement (the “**Disclosed Information**”). The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Petitioners.

[21] **ORDERS** that the Buyer shall:

- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;
- (b) use and disclose the Disclosed Information for the purposes for which the Disclosed Information was collected by the Petitioners and as may otherwise be permitted by Applicable Privacy Laws; and
- (c) give effect to any withdrawals of consent of the individuals to whom the Disclosed Information relates.

VALIDITY OF THE TRANSACTION

[22] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any petition for a bankruptcy order now or hereafter issued pursuant to the BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

the vesting of Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement authorized by this Order, and the payments, distributions and disbursements made pursuant to or in connection with this Order are to be binding on any trustee in bankruptcy that may be appointed, and shall

not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Petitioners, the Buyer, or the Monitor.

RELEASES

- [23] **ORDERS** that effective as of the issuance of the Monitor's Certificate (a) the current and former directors, officers, employees, legal counsel and advisors of the Petitioners; (b) the Monitor and its legal counsel; and (c) the Buyer and its respective current and former directors, officers, employees, legal counsel and advisors; (in such capacities, collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released by the Releasing Parties (as hereinafter defined) and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the issuance of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the business, operations, assets, property and affairs of the Petitioners wherever or however conducted or governed, the administration and/or management of the Petitioners, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, or (ii) the Purchase Agreement and any agreement, document, instrument, matter or transaction involving the Petitioners arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively the "**Released Claims**"), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Purchase Agreement and/or any agreement, document, instrument, matter or transaction involving the Petitioners arising in connection with or pursuant to any of the foregoing. "**Releasing Parties**" means any and all Persons (besides the Petitioners and their respective current and former affiliates),

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and their current and former affiliates' current and former members, directors, managers, officers, investment committee members, special committee members, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, participants, subsidiaries, affiliates, partners, limited partners, general partners, affiliated investment funds or investment vehicles, managed accounts or funds, and each of their respective current and former members, equity holders, officers, directors, managers, principals, members, management companies, advisory board members, investment fund advisors or managers, employees, agents, trustees, investment managers, financial advisors, partners, legal counsel, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

THE MONITOR

- [24] **DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.
- [25] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.
- [26] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.
- [27] **ORDERS AND DECLARES** that no provision of this Order is intended to appoint the Monitor as an officer, director or employee of any of the Petitioners, de facto or otherwise, or to create a fiduciary duty to any party, including any creditor or shareholder of the Petitioners. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Petitioners and any distribution made to the creditors of the Petitioners will be deemed to have been made by the Petitioners.

SEALING

- [28] **ORDERS** that the Purchase Agreement, Exhibit **P-●**, shall be filed under seal and kept confidential until further order of this Court.

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GENERAL

- [29] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [30] **DECLARES** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other and the Buyer.
- [31] **DECLARES** that the Petitioners and the Monitor shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.
- [32] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order, and to assist the Petitioners, 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 Petitioners and the Monitor as may be necessary or desirable to give effect to this Order in any foreign proceeding, to assist the Petitioners, the Monitor and their respective agents in carrying out this Order.
- [33] **ORDERS** provisional execution of this Order notwithstanding any appeal and without security.
- [34] **THE WHOLE** without costs.

Christian Immer, J.S.C.

MTRE. SANDRA ABITAN
MTRE. JULIEN MORISSETTE
MTRE. ILIA KRAVTSOV
(OSLER HOSKIN & HARCOURT LLP)
Attorneys for the Petitioners

Hearing date: **February 3, 2023**

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SCHEDULE A
DRAFT CERTIFICATE OF THE MONITOR

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to
the *Bankruptcy and Insolvency Act*, RSC
1985, c B-3)

**IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:**

XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
**APPLIED COMPRESSION SYSTEMS
LTD.**
**COMPRESSED AIR INTERNATIONAL
INC.**
XEBEC HOLDING USA INC.
**ENERPHASE INDUSTRIAL SOLUTIONS,
INC.**
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES - WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

CERTIFICATE OF THE MONITOR

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & Al. filed an Application pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**") and Deloitte Restructuring Inc. was appointed as monitor thereto (the "**Monitor**").

WHEREAS on February 3, 2023, the Court issued an Order (the "**Approval and Vesting Order**") authorizing and approving, *inter alia*, the execution of a Asset Purchase Agreement by and among Applied Compression Systems Ltd as Seller (the "**Seller**") and 1396905 B.C. Ltd as buyer (the "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

WHEREAS the Approval and Vesting Order contemplates the issuance of this Certificate of the Monitor once (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Buyer to the Seller; and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE MONITOR CERTIFIES THAT IT HAS BEEN ADVISED BY THE SELLER AND THE BUYER AS TO THE FOLLOWING:

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Monitor on _____ [DATE].

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Deloitte Restructuring Inc., in its capacity as Monitor
to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

SCHEDULE B

ENCUMBRANCE TO BE VESTED

PPSA Security Agreement with the National Bank of Canada (BC Personal Property Registry no. 779666M)

Draft

SCHEDULE C

PERMITTED ENCUMBRANCE

PPSA Security Agreement with Ford Credit Canada Company with Vehicle Collateral
(BC Personal Property Registry no. 589688K)

Draft

Schedule 1.1 (ii)
Employee Plans

See Attached. **REDACTED**

Schedule 2.1 (f)
Personal Property Leases

None.

Schedule 2.1 (g)
Real Property Leases

- Main Upper ACS Shop - 400 Industrial Rd A, Cranbrook, BC V1C 4Z3
Lease Expires August 1, 2023
- Lower ACS Shop - 1479 Theatre Rd, Cranbrook, BC V1C 7G3
No Current Lease

Excluded Leases

- Xebec BioStream Shop - 338 King Street, Cranbrook, BC V1C 4E3
Location empty and cancellation notice given
Lease payable until April 30, 2023.

Schedule 2.1 (i)
Intellectual Property

None.

Schedule 2.1 (j)
IT Assets

- All computers, printers, computer hardware
- Email addresses, including old emails and back ups
- Company Website

Schedule 2.1 (p)
Actions, etc.

None.

Schedule 2.1 (s)
Other Assets

All Inventory, fixed assets and equipment, and chattels that are owned by Applied Compression Systems Ltd. inclusive of all assets located on the real property leases as set out in schedule 2.1 (g).

Schedule 2.2 (c)
Excluded Contracts

None.

Schedule 2.3 (b)
Trade Debt

See attached. **REDACTED**

Schedule 2.3 (i)
Permitted Encumbrances

1. Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under any Personal Property Leases.
2. Encumbrances affecting a landlord's, lessor's, licensor's or sublandlord's, as applicable, interest in any applicable Real Property Leases, including for greater certainty any registered servitudes or rights of way by Hydro-Québec or Bell Canada to install any circuits, poles and necessary equipment.
3. Notices registered on title in respect of the Real Property Leases.
4. Reservations, limitations, provisos and conditions, if any, expressed in any original grants of land from the Crown and any statutory limitations, exceptions, reservations and qualifications.
5. Any rights of expropriation, access or use or any other similar rights conferred or reserved by Applicable Law.
6. Applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, other agreements, building and other restrictions, easements, servitudes, rights of way and licences.
7. Minor survey exceptions, minor encumbrances, easements or reservations of, or rights of other for, rights-of-way, sewers, electric lines, telephone lines and other similar purposes, or zoning or similar restriction as to the use of any applicable Real Property Leases.
8. Encumbrances permitted in writing by the Buyer.

Schedule 3.2
Allocation Statement

Description	Price Allocation
Accounts Receivable	REDACTED
Inventory	REDACTED
WIP	REDACTED
Fixed Assets	REDACTED
Trade A/P	REDACTED
TOTAL:	REDACTED

No: 500-11-061483-224

**SUPERIOR COURT
(Commercial Division)**

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, RSC 1985, c.
C-36)

DISTRICT OF MONTRÉAL

**IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF:**

XEBEC ADSORPTION INC. & AL

Debtors / Petitioners

and.

DELOITTE RESTRUCTURING INC.

Monitor

**APPLICATION FOR THE ISSUANCE OF A
SECOND AMENDED AND RESTATED INITIAL
ORDER AND AN APPROVAL AND VESTING
ORDER, AFFIDAVIT, NOTICE OF
PRESENTATION, LIST OF EXHIBITS, EXHIBITS
P-1 – P-3 (Sections 11 and 11.2 of the
Companies' Creditors Arrangement Act,
RSC 1985, c C-36)**

ORIGINAL

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