CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-

SUPERIOR COURT
(Commercial Division)

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

XEBEC ADSORPTION INC., a legal person having its elected domicile at 700-1130 Sherbrooke Street West, in the city and judicial district of Montréal, Québec, H3A 2M8

-and-

XEBEC RNG HOLDINGS INC., a legal person having its registered office at 730 Industriel Boulevard, in the city and judicial district of Terrebonne, Québec, J7C 3V4

-and-

APPLIED COMPRESSION SYSTEMS LTD., a legal person having its registered office at 900 West Hastings Street, 9th Floor, in the city of Vancouver, British Columbia, V6C 1E5

-and-

COMPRESSED AIR INTERNATIONAL INC., a legal person having a place of business at 60 Haist Ave, Unit #1 in the city of Woodbridge, Ontario, L4L 5V4

-and-

XEBEC HOLDING USA INC., a legal person having its registered office at 532 Patterson Avenue, Suite 180, in the town of Mooresville, North Carolina, 28115-2173, United States

-and-

ENERPHASE INDUSTRIAL SOLUTIONS, INC., a legal person having its registered office at 532 Patterson Avenue, Suite 180, in the town of

Mooresville, North Carolina, 28115-2173, United States

-and-

CDA SYSTEMS, LLC, a legal person having its registered office at 532 Patterson Avenue, Suite 180, in the town of Mooresville, North Carolina, 28115-2173, United States

-and-

XEBEC ADSORPTION USA INC., a legal person having its registered office at 532 Patterson Avenue, Suite 180, in the town of Mooresville, North Carolina, 28115-2173, United States

-and-

THE TITUS COMPANY, a legal person having a place of business at 36 Mountain View Rd, in the city of Morgantown, Pennsylvania, 19543, United States

-and-

NORTEKBELAIR CORPORATION, a legal person having a place of business at 1713 Henry G Ln St, in the city of Maryville, Tennessee, 37801, United States

-and-

XBC FLOW SERVICES – WISCONSIN INC., a legal person having its registered office at 532 Patterson Avenue, Suite 180, in the town of Mooresville, North Carolina, 28115-2173, United States

-and-

CALIFORNIA COMPRESSION, LLC, a legal person having its registered office at 532 Patterson Avenue, Suite 180, in the town of Mooresville, North Carolina, 28115-2173, United States

-and-

XEBEC SYSTEMS USA, LLC, a legal person having its registered office at 532 Patterson Avenue, Suite

180, in the town of Mooresville, North Carolina, 28115-2173, United States

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC., a legal person having a place of business at 500-1190 des Canadiens-de-Montréal Avenue, in the city and judicial district of Montréal, Québec, H3B 0G7

Proposed Monitor

APPLICATION FOR THE ISSUANCE OF A FIRST DAY INITIAL ORDER, A DEEMED EXTENSION OF THE STAY PERIOD AND A BIDDING PROCEDURES ORDER

(Sections 4, 9, 10, 11, 11.02, 11.03, 11.51, 11.52, 11.7 and 23 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, 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 Inc.**"), Xebec RNG Holdings Inc. ("**RNG Holdings**"), Applied Compression Systems Ltd. ("**Applied**"), Compressed Air International Inc. ("**Compressed**"), Xebec Holding USA Inc. ("**Holding USA**"), Enerphase Industrial Solutions, Inc. ("**Enerphase**"), California Compression, LLC ("**California Compression**"), CDA Systems, LLC ("**CDA**"), Xebec Adsorption USA Inc. ("**Xebec USA**"), The Titus Company ("**Titus**"), Nortekbelair Corporation ("**Nortekbelair**"), Xebec Systems USA, LLC ("**Xebec Systems**"), XBC Flow Services – Wisconsin Inc. ("**XBC Wisconsin**", collectively, the "**Petitioners**") hereby seek relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**").

2. The Petitioners and the various overseas subsidiaries of Xebec Inc. are collectively defined herein as the "**Xebec Group**" or the "**Company**".

3. Headquartered in Montréal, Québec and established in 1967, Xebec Group operates in the energy transition space. As described herein, the Xebec Group is a global provider of sustainable gas solutions used in energy, mobility and industry applications.

4. The Company specializes in (i) deploying a portfolio of proprietary technologies for the distributed production of hydrogen, renewable and low-emission natural gas, oxygen and nitrogen and (ii) the manufacturing and servicing industrial equipment for compressed air, gas dehydration, sequestration, purification and filtration.

5. By the present Application, the Petitioners are seeking the issuance of the following orders by this court:

   (a) At the first day hearing, a first-day initial order (the "**Initial Order**"), a draft copy of which is communicated herewith as **Exhibit P-1**:

      i) declaring that the Petitioners are corporations to which the CCAA applies;

      ii) staying all proceedings and remedies taken or that might be taken in respect of the Petitioners and their respective Directors and Officers (as defined below), or any of their property, except as otherwise set forth in the Initial Order or as otherwise permitted by law (the "**Stay**"), for an initial period of ten (10) days in accordance with the CCAA (the "**Stay Period**");

      iii) ordering that unless any contestation is served and filed on, or prior to, October 5, 2022, the Stay Period be deemed to have been extended to October 11, 2022;

      iv) appointing Deloitte Restructuring Inc. ("**Deloitte**" or the "**Proposed Monitor**") as the monitor of the Petitioners in these proceedings (the "**Monitor**");

      v) granting an Administration Charge and a D&O Charge (as such terms are defined below) in amounts sufficient to cover the potential exposure of the beneficiaries of such charges for the initial Stay Period and the deemed extension thereof;

      vi) authorizing the Petitioners to pay, with the consent of the Monitor or the Court, any pre-filing unpaid claims of suppliers it deems critical, up to an aggregate amount of $700,000;

      vii) declaring that Québec is the "*center of main interest*" of the Petitioners and, accordingly, authorizing 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 (the "**U.S. Bankruptcy Code**");

viii) suspending any and all continuous disclosure, reporting and filing obligations of, and audit committee requirements applicable to Xebec Inc. as a result of its status as a reporting issuer in each of the provinces and territories of Canada subject to Canadian securities laws, rules, regulations and policy statements;

ix) ordering the sealing of certain confidential exhibits which may be filed in support of this Application; and

x) granting other relevant first day relief.

A comparison of draft Initial Order (Exhibit P-1) and the Model CCAA Initial Order issued by the Bar of Montréal is communicated herewith as **Exhibit P-1A**.

(b) at the first day hearing, an order (the “**Bidding Procedures Order**”), a draft copy of which is communicated herewith as **Exhibit P-2**:

i) approving the proposed Sale and Investment Solicitation Process (the “**SISP**”);

ii) approving the engagement of NBF (as defined below) to assist in the implementation of the SISP in accordance with the terms of the engagement letter dated September 27, 2022 (the “**Engagement Letter**”), communicated herewith, under seal, as **Exhibit P-3**; and

iii) approving the Transaction Fee Charge (as defined below).

6. At the “*comeback*” hearing, the Petitioners intend to seek an amended and restated initial order (the “**ARIO**”), to be communicated in due course and providing for, *inter alia*, the following additional relief:

i) extending the Stay Period until on or about November 26, 2022;

ii) increasing the authorization for Petitioners to pay, with the consent of the Monitor or the Court, any pre-filing unpaid claims of suppliers it deems critical, up to an aggregate amount of $1,000,000;

iii) approving the KERP and the KERP Charge (as such terms are defined below);

iv) increasing the quantum of the Administration Charge and the D&O Charge previously granted in the Initial Order in amounts sufficient to cover the potential exposure of the beneficiaries of such charges during the Stay Period; and

v) granting other relevant relief sought by the Petitioners.

TABLE OF CONTENTS

II. COMPANY OVERVIEW

A. Xebec's Business

Products and Services Offered by the Xebec Group

7. The Company primarily supplies a wide range of renewable and low-emission gas products and services sold globally through several channels including direct sales, channel partners, project developers, and e-commerce.

8. The Company's portfolio includes proprietary technologies for the on-site and distributed production of hydrogen, renewable and low-emission natural gas, oxygen and nitrogen and proprietary technologies that transform raw gases into clean sources of renewable energy.

9. The Company's operations include manufacturing, research and development, service and sales. It operates in North America, Europe, the Middle East and Asia.

10. The Xebec Group's business is divided into three key segments: a cleantech solutions segment, an industrial service and support segment (including the Cleantech Service Network, as defined below) and a renewable gas infrastructure segment.

(a) Cleantech Solutions Segment (Equipment/Systems)

(i) PSA Systems

11. Key to the Xebec Group's business in the three segments mentioned above is its proprietary pressure swing adsorption technology (the "**PSA**"), which is used to remove targeted impurities or separate bulk mixtures of gases and to efficiently upgrade hydrogen-containing reformate, petrochemical process gas streams and refinery off-gas streams to pure and ultra-pure hydrogen.

12. The Xebec Group's PSA system is among the most compact, cost-effective and reliable available on the market. It is used in several products manufactured by the Xebec Group, including the Biostream (as defined below), industrial gas recycling systems and its industrial gas purification systems. The Xebec Group also supplies its PSA system to customers around the world.

13. To date, the Company has supplied more than 10,000 PSA systems to more than 1,500 customers for a wide variety of industrial applications such as manufacturing, food processing, as well as medical, pharmaceutical and petrochemical industries.

14. The PSA system is manufactured in the Xebec Group's facility in Blainville, Québec.

(ii) Biogas Conversion to Renewable Natural Gas

15. The Company deploys systems to convert biogas to renewable and low-emission natural gas from agricultural digesters, source separated organics facilities, landfills and wastewater treatment plants.

16. The Xebec Group is also implementing a shift towards standardized biogas upgrading products for the renewable and low-emission natural gas market. In 2020, it launched its proprietary fully containerized and standardized unit for small-scale biogas upgrading applications (the "**Biostream**").

17. The Biostreams are manufactured in the Xebec Systems facility in Colorado for the U.S. market and in the Xebec Group's facility in Blainville, Québec for the Canadian market.

18. The Xebec Group's research and development activities related to biogas conversion to renewable and to carbon capture are located in Blainville, Québec.

(iii) Hydrogen (Purification, Generation and Distribution)

19. The Company provides systems for on-site hydrogen generation (the "**Hy.Gen Systems**"), which are manufactured at the HyGear Entities' (as defined below) facility located in Arnhem, The Netherlands.

20. They are built inside shipping containers, which makes them easy to transport and small in environmental footprint. Hy.Gen Systems are based on steam methane reforming technology, a process by which hydrogen is created out of water and natural gas. PSA Systems operate autonomously.

21. The Company also supplies hydrogen to its clients by way of on-site generation technologies and conventional gas distribution methods, in addition to producing containerized electrolysis systems.

(iv) On-site Oxygen and Nitrogen Generation

22. The Xebec Group offers several products for the on-site generation of oxygen and nitrogen, including compact generators. These products are produced at their manufacturing facility in Herrsching am Ammersee, Germany.

23. On-site generators of oxygen and nitrogen allow customers to avoid delivery issues and costs and to support the protection of the climate and the environment by reducing emissions.

24. On-site oxygen generators are used in multiple applications, including notably in for medical oxygen supply, aquatic farming, industrial applications and the production of biogas and renewable and low-emission natural gas.

25. On-site Nitrogen generators are used in food processing, metal hardening and other industrial processes.

(v) Carbon Capture and Sequestration

26. Carbon capture and sequestration is an emerging segment for the Xebec Group, with demand from customers to assist them in further reducing the carbon emissions from their equipment and to build new cleantech solutions.

27. The Company is utilizing its PSA system for new applications in separating associated gas streams, and is now accelerating its efforts to gain more exposure in this market.

28. The Company's extensive experience in compressing gases has also allowed it to gain traction in the CO2 sequestration market by providing compression technology to pipeline builders and operators.

(b) Industrial Service and Support Segment

29. The Xebec Group has historically been involved in the manufacturing and servicing of industrial equipment for compressed air and gas dehydration, separation, purification and filtration worldwide. This business segment is the core segment of the Xebec Group.

30. In this context, the Company supplies energy-efficient compressed air dryers and compressed air and gas filters for a broad range of industrial applications, as well as industrial purification systems, dryers and chillers from air and gas streams. This equipment is manufactured in the Xebec Group's facilities in Blainville, Québec and Maryville, Tennessee. The Company also assembles compressor packages in Cranbrook, British Columbia and in Henderson, Colorado.

31. The Xebec Group also provides customers with parts, service, operations and maintenance through a long-term initiative to build a service footprint to support customers, create a competitive advantage and capture aftermarket value (the "**Cleantech Service Network**").

32. The Cleantech Service Network is primarily North American-based and composed of a network of seventeen cleantech service centers. Company technicians service industrial compressed air equipment and cleantech equipment for renewable and low-emission natural gas, hydrogen and carbon capture.

33. This historically high margin business segment provides a recurring revenue base with 60% to 70% of revenues recurring from sales of parts and service.

(c) Renewable Gas Infrastructure Segment

34. The Xebec Group has entered into a partnership in Québec with the Fonds de solidarité des travailleurs du Québec (F.T.Q.) ("**FSTQ**") with the goal of accelerating the development of projects generating renewable gas. Xebec Inc. holds directly and indirectly a 50% interest in this partnership, known as GNR Québec Capital L.P.

35. To achieve this objective, the partnership actively participates in renewable gas projects and acts as an active investor through strategic partnerships to support the growth of companies developing renewable energy and waste recovery projects.

36. To date, the partnership has evaluated 34 projects and is actively engaged with 18 projects in agriculture, municipal, landfill, mixed use, and industrial waste applications and has successfully executed several letters of intent for projects in Québec, Canada.

Facilities and Employees

(a) Facilities

37. The Xebec Group does not own any real estate and operates out of leased facilities and offices.

38. Headquartered in Montréal, Québec, the Xebec Group operates 5 manufacturing facilities, 15 cleantech service centers, and two research and development facilities in North America.

39. The Company also operates three manufacturing facilities, two cleantech service centers and three sales offices in Europe, as well as one research and development facility in the Netherlands, one sales office in Singapore, and one in the United Arab Emirates.

(b) Employees and Employee Benefits

40. As of the date hereof, the Xebec Group employs close to 600 employees globally. The distribution of the Company's employees is as follows, as of September 15, 2022:

Entity (Location)	Number of Employees
Canada	
Xebec Inc. (Québec)	157
Applied (British Columbia)	27
Compressed (Ontario)	14
Total (Canada)	*198*
United States	
Enerphase (North Carolina)	28
CDA (California)	10
Xebec USA (North Carolina)	17

Entity (Location)	Number of Employees
Titus (Pennsylvania)	24
Nortekbelair (Tennessee)	21
XBC Wisconsin	10
California Compression (California)	18
Xebec Systems (Colorado)	77
Total (United States)	*205*
Europe	
Tiger Filtration Limited (United Kingdom)	23
Xebec Italy SRL (Italy)	6
HyGear Entities (as defined below, but excluding Xebec Adsorption Asia PTE LTD) (The Netherlands)	82
Inmatec Entities (as defined below, but excluding Inmatec Gas Technology FZC RAK) (Germany)	53
Total (Europe)	*164*
Other	
Xebec Adsorption (Shanghai) Co. Ltd. (China)	4
Xebec Adsorption Asia PTE LTD (Singapore)	10
Inmatec Gas Technology FZC RAK (United Arab Emirates)	5
Total (overall)	***586***

41. None of the employees of the Petitioners are unionized.

(c) Stock-Based Compensation Plans

42. Stock-based compensation plans currently maintained by Xebec Inc. for certain of the employees of the Xebec Group are described below.

i) Employee Share Ownership Program

43. Certain employees of the Xebec Group are eligible to participate in the Employee Share Ownership Program ("**ESOP**") that awards Common Shares (as defined below), subject to the terms and conditions of the ESOP.

44. Pursuant to the ESOP, the Company has undertaken to contribute an amount representing 35% of each participating employee's contribution as follows:

(i) an amount equal to 20% of the participating employee's contribution made in a given calendar year to be credited to the participating employee on January 31st of the first year following such year; and

(ii) an amount equal to 15% of the participating employee's contribution made in a given calendar year to be credited to the participating employee on January 31st of the second year following such year

45. As at July 31, 2022, 52 employees, located in Canada and in the U.S., were participating to the ESOP Plan.

46. The administrative agent for the ESOP is the TSX Trust Company.

ii) Long Term Incentive Plan

47. The Company's Long Term Incentive Plan (the "**LTIP**") was adopted on April 14, 2020 and provides for the issuance of Restricted Share Units (the "**RSUs**"), options (the "**LTIP Options**") and Deferred Share Units (the "**DSUs**").

48. Prior to the adoption of the LTIP, the Company's former stock option plan provided for issuance of stock options (the "**Legacy Options**").

49. As of August 31, 2022, there were 295,801 RSUs, 787,000 Legacy Options, 50,000 LTIP Options and 351,965 DSUs issued.

50. Furthermore, certain employees were granted DSUs as their 2021 bonus in lieu of cash and RSUs and LTIP Options pursuant to their 2022 LTIP entitlements. However, due to the ongoing blackout period, these RSUs, DSUs and LTIP Options were never issued to the relevant employees.

(d) Deferred Profit Sharing Plan

51. Certain full-time employees are entitled to participate in the deferred profit sharing plan ("**DPS Plan**") maintained by the Xebec Group.

52. Full time Canadian employees that contribute to the Company group RRSP, are entitled to participate in the DPS Plan. The Xebec Group contributes to the DPS Plan in an amount equal to half or the totality of the RRSP contribution of the

participating employee, up to an amount of 3 or 6 percent of any DPS Plan registered-employee's yearly salary, excluding overtime and bonuses.

53. DPS Plan funds are vested to the participating employee only if such employee remains at the employment of the Company for at least two years. DPS Plan funds are held in trust and administered by a trustee. Upon retirement or death, the value of the DPS Plan of the registered-employee's account is paid out in the form of a cash refund or transferred to a qualified registered retirement plan.

54. If the DPS Plan-registered employee is terminated prior to retirement after two years of continuous membership in the DPS Plan, he or she is entitled to receive a cash refund equal to the value of his or her account, or to transfer the funds to a qualified registered retirement plan.

Banking and Cash Management

55. The cash of the Xebec Group is managed and tracked weekly by the finance team of Xebec Inc.

56. Xebec Inc. and its operating subsidiaries each have their own bank accounts for daily operations and collection of client payments.

B. Corporate Structure

57. Xebec Inc. is the ultimate parent company of the Xebec Group and the other Petitioners are all wholly owned, direct or indirect subsidiaries of Xebec Inc.

58. The Xebec Group has grown considerably through strategic acquisitions in recent years.

59. An organizational chart showing the corporate structure of the Xebec Group as of the date hereof is communicated herewith as **Exhibit P-4**.

Xebec Inc.

60. Xebec Inc. is a corporation incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44 and a reporting issuer in each of the provinces and territories of Canada.

61. The Common Shares (as defined below) of Xebec Inc. are listed on the Toronto Stock Exchange (the "**TSX**") and are trading under the ticker symbol "**XBC**". They are also trading on the OTCQX International, a marketplace for over-the-counter trading of securities, under the ticker symbol "**XEBEF**".

62. The executive offices and senior management team of the Xebec Group operate out of premises located at 1130 Sherbrooke West, Suite 700, Montréal, Québec.

63. Xebec Inc. operates a 41,753 square foot leased manufacturing facility located at 730 Industriel Boulevard, Blainville, Québec.

Canadian Subsidiaries

64. The wholly-owned Canadian subsidiaries of Xebec Inc. are set out below:

(a) *Compressed*: operates two facilities in the Greater Toronto area, and is responsible for sales and servicing of compressed air products, while supporting all Xebec products in Ontario.

(b) *Applied*: 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 a facility in Cranbrook, British Columbia.

(c) *RNG Holdings*: holds the shares of:

(a) GNR Québec Capital Management Inc., the general partner of GNR Québec Capital L.P.*,* which is a limited partnership with FSTQ. The partnership was formed for the primary purpose of investing in the development, design, construction and operation of renewable natural gas projects (see the Renewable Gas Infrastructure Segment detailed in the section above); and

(b) GNR Bromont Management Inc., the general partner of GNR Bromont L.P. This entity and the partnership have no assets or operations.

Holding USA and U.S. Subsidiaries

65. Holding USA is a direct and wholly owned subsidiary of Xebec Inc. In turn, Holding USA directly and wholly owns the U.S. subsidiaries set out below:

(a) *CDA:* is part of the Cleantech Service Network of the Xebec Group. It is responsible for sales, rentals and services of compressed air products and also supports all of Xebec Group's products in California.

(b) *Xebec USA*: leases and operates an administrative office in Mooresville, North Carolina.

(c) *Enerphase*: is part of the Cleantech Service Network of the Xebec Group, with a focus on preventative maintenance solutions, air energy system audits and analysis, timely machine rentals and parts and service. It also sells compressed air products. It leases and operates facilities in Greensboro, Woodleaf and Rocky Mount, North Carolina.

(d) *Titus*: is a supplier of compressed air services and a part of the Cleantech Service Network. It notably supplies nitrogen generators and membrane products to the United States Navy. It leases a facility in Morgantown, Pennsylvania.

(e) *Nortekbelair*: operates a 18,500 square foot facility in Maryville, Tennessee, which is a “Center of Excellence” for the Xebec Group’s dehydration products comprised of compressed air dryers, renewable and low-emission natural gas dryers and hydrogen dryers and supports its Cleantech Service Network as well as other third party customers.

(f) *California Compression*: A part of the Cleantech Service Network, California Compression is a compressed air distributor and provides the Xebec Group with distribution and service capabilities for customers located in Northern California.

(g) *XBC Wisconsin*: A part of the Cleantech Service Network, XBC Wisconsin supplies U.S. customers with high-quality compressed air products from the industry’s top manufacturers, in addition to providing service and support.

(h) *Xebec Systems*: operates a 100,000 square foot facility located in Henderson, Colorado, which manufactures containerized Biostream systems and hydrogen units. Xebec Systems also designs and manufactures air and gas processing systems with references in landfill gas, natural gas, biogas, hydrogen and carbon dioxide compression. Xebec Systems also provides services as part of the Cleantech Service Network.

<u>Overseas Subsidiaries</u>

66. The overseas subsidiaries of Xebec Inc. are set out below (collectively the “**Overseas Subsidiaries**”):

(a) *Xebec Holding UK Limited:* has no active operations and is the sole shareholder of Tiger Filtration Limited, which operates a facility located in Sunderland, United Kingdom, focused on the manufacturing of elements and filters. This business was acquired by the Xebec Group in June 2021 in order to vertically integrate into the valuable aftermarket business for filters and elements.

(b) *Xebec Italy SRL*: an Italian-based entity services all Xebec legacy RNG systems sold in Europe.

(c) *Xebec Europe B.V.*: has no active operations, and is the sole shareholder of two subsidiaries, Xebec Deutschland GmbH and Green Vision Holding B.V.:

(i) Xebec Deutschland GmbH, which in turn has three wholly owned subsidiaries: Xebec Komplementär GmbH, Inmatec Gase

Technologie GmbH & Co. KG (collectively, "**Inmatec Germany**") and Inmatec Gas Technology FZC-LLC ("**Inmatec RAK**", collectively with Inmatec Germany, the "**Inmatec Entities**").

Inmatec Germany manufactures, sell and services on-site nitrogen and oxygen generators.

Inmatec RAK is responsible for sales of the Inmatec Entities' sytems in the Middle East and Africa and is located in Ras Al Khaimah, United Arab Emirates.

The Inmatec Entities were acquired by the Xebec Group in February 2021 to position the Xebec Group as a worldwide leader in on-site nitrogen and oxygen generation products and leverage cross-selling opportunities.

(ii) Green Vision Holding B.V. which owns HyGear Technologies and Services B.V., which in turn has six subsidiaries: HyGear Operations B.V., HyGear B.V., Xebec Adsorption Asia PTE LTD, HyGear Fuel Cell B.V. and HyGear Hydrogen Plant B.V., which are wholly owned, and Buse HyGear LTD which is 50% owned (collectively, the "**HyGear Entities**"). Mainly based in the Netherlands, the HyGear Entities combine on-site generation technologies of the Hy.Gen Systems which generate hydrogen from natural gas, renewable natural gas or water and electricity with conventional gas distribution methods. The HyGear Entities were acquired by the Xebec Group in December 2020 with the strategic support of Caisse de dépôt et de placement du Québec, in the context of the Company's global hydrogen strategy. Xebec Adsorption Asia PTE LTD is responsible for sales of the Xebec Group in Asia and the Middle East.

(d) *Xebec Adsorption (Shanghai) Co. Ltd.:* in which Xebec Inc. has a 60% equity interest, is a joint venture with the Shanghai-based Shenergy Group. This joint venture operates a 20,451 square foot manufacturing facility in the Songjiang district of Shanghai, China. It is responsible for engineering, supply chain, product assembly, marketing, sales, technical service and after sales support for the Chinese, South East Asian and Middle Eastern markets. The Xebec Group supplies multiple products to the joint venture, including most importantly PSA systems.

III. ASSETS, INDEBTEDNESS AND OBLIGATIONS

A. Assets

67. The Q2 2022 Financial Statement of Xebec Inc. (as defined below) reflected assets of $503 million, summarized as follows:

(a) Inventory: $65 million;

(b) Net book value of property and equipment: $38 million;

(c) Net book value of intangible assets (primarily intellectual property): $86 million;

(d) Net book value of goodwill: $151 million;

(e) Investment in associates and joint ventures: $22 million; and

(f) Other assets (primarily cash, accounts receivable and prepaid expenses): $201 million.

B. Secured Indebtedness

National Bank of Canada

68. Xebec Inc. is party to a Credit Agreement dated as of February 23, 2021 with NBC, as amended from time to time, pursuant to which NBC provides an operating line of credit in an initial amount of up to $30,000,000 (the "**Operating Facility**") and a letter of credit facility in an amount of $16,500,000 (the "**LOC Facility**", collectively with the Operating Facility, the "**NBC Loan**").

69. The Operating Facility is used by Xebec Inc. to finance its operating requirements, general purposes, and historically, to finance certain acquisitions as permitted thereunder.

70. The obligations of Xebec Inc. under the NBC Loan have been guaranteed by the following subsidiaries (the "**NBC Guarantors**"):

(a) Applied;

(b) XBC Wisconsin;

(c) Xebec USA;

(d) Holding USA;

(e) CDA;

(f) Enerphase;

(g) Titus;

(h) Compressed;

(i) Tiger;

(j) California Compression;

(k) Nortekbelair;

(l) Holding UK; and

(m) Xebec Systems.

71. The obligations of Xebec Inc. under the NBC Loan are secured by first ranking hypothecs and liens on its assets, as well as those of the NBC Guarantors (the "**NBC Security**"), subject to:

(a) in the case of California Compression, Xebec Systems, Nortekbelair and XBC Wisconsin only, prior ranking security granted by these entities in favor of EDC (as defined below); and

(b) in the case of Holding USA, prior ranking security over shares held in Nortekbelair, Xebec Systems, California Compression and XBC Wisconsin granted in favor of EDC.

72. As of September 26, 2022 the outstanding aggregate indebtedness owing to NBC under the Operating Facility totalled approximately $7,000,000, excluding interest, costs, fees and expenses.

73. This amount is in addition to all amount relating to outstanding letters of credit issued under the LOC Facility totalling in excess of $7,000,000.

74. EDC (as defined below) has guaranteed in favor of NBC the reimbursement of substantially all amounts owed under the LOC Facility.

75. As a result of certain events of default that occurred under the NBC Loan, on July 7, 2022, Xebec Inc. the NBC Guarantors and NBC entered into a Forbearance Agreement (the "**NBC Forbearance Agreement**") with NBC.

76. The NBC Forbearance Agreement was disclosed by Xebec Inc. in the Q2 2022 MD&A (as defined below).

77. The NBC Forbearance Agreement sets out the terms and conditions under which NBC has agreed to tolerate the various defaults under the NBC Loan and to continue to finance Xebec Inc.'s operations. The tolerance period under the NBC Forbearance Agreement was set to expire on September 30, 2022.

78. In the context of the ongoing discussions with NBC and in order to ensure that the Petitioners would continue to have access to their banking facilities, the tolerance period under the NBC Forbearance Agreement was extended to October 11, 2022 (subject to further extensions as may be agreed to by the parties), pursuant to the terms of a First Amendment to the NBC Forbearance Agreement dated September 28, 2022. In this context, the Petitioners have agreed that NBC shall be treated as

an unaffected creditor in these CCAA proceedings and in any plan resulting therefrom and have waived the delays required under the notices of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act*.

Export Development Canada

79. Holding USA is party to a Loan Agreement dated as of July 16, 2021 with Export Development Canada ("**EDC**"), as amended from time to time, pursuant to which EDC provided a loan in the aggregate principal amount of USD 15,000,000 (the "**EDC Loan**").

80. The purpose of the EDC Loan was to allow Holding USA to fund the acquisitions of certain U.S.-based businesses.

81. The obligations of Holding USA under the EDC Loan have been guaranteed by Xebec Inc. and by the following subsidiaries (the "**EDC Guarantors**"):

(a) CDA;

(b) Nortekbelair;

(c) Xebec Systems;

(d) California Compression; and

(e) XBC Wisconsin.

82. The obligations of Holding USA under the EDC Loan are secured by (the "**EDC Security**"):

(a) first ranking security over the shares held by Holding USA in the EDC Guarantors Nortekbelair, Xebec Systems, California Compression and XBC Wisconsin (collectively, the "**TargetCo Shares**");

(b) first ranking hypothecs and liens on same EDC Guarantors' assets (except for CDA and Xebec Inc.);

(c) second ranking hypothecs and liens on the assets of Xebec Inc.; and

(d) second ranking hypothecs and liens on the assets of Holding USA, except for TargetCo Shares.

83. As of September 18, 2022, the outstanding aggregate indebtedness owing to EDC under the EDC Loan totalled approximately USD $13,269,478, excluding interest, costs, fees and expenses. This amount excludes any obligations which may arise under the letters of credit issued by NBC, in respect of which EDC has provided a guarantee to NBC, as mentioned above.

84. A snapshot of the borrowers and guarantors under the NBC Loan and the EDC Loan, respectively is set out below for convenience purposes:

NBC Loan (aggregate indebtedness as of September 26: approx. $7,000,000)	
Borrower	Xebec Inc.
Guarantors	Applied; XBC Wisconsin; Xebec USA; Holding USA; CDA; Enerphase; Titus; Compressed; Tiger; California Compression; Nortekbelair; Holding UK; and Xebec Systems.
Security	First ranking hypothecs and liens on the assets of Xebec Inc., as well as those of the NBC Guarantors, subject to any prior ranking EDC Security, as applicable.
EDC Loan (aggregate indebtedness as of September 18, 2022: approx. USD $13,269,478)	
Borrower	Holding USA
Guarantors	Xebec Inc.; CDA; Nortekbelair; Xebec Systems; California Compression; and XBC Wiconsin.
Security	- First ranking security on TargetCo Shares;

	- First ranking hypothecs and liens on same EDC Guarantors' assets (except for CDA and Xebec Inc.; - second ranking hypothecs and liens on the assets of Xebec Inc.; and - second ranking hypothecs and liens on the assets of Holding USA, except; for TargetCo Shares.

85. As appears from the Pre-Filing Report of the Proposed Monitor (the "**Pre-Filing Report**"), communicated herewith as **Exhibit P-5,** the Proposed Monitor has retained independent legal counsel, which is to conduct a review of the NBC Security and the EDC Security, in order to confirm the validity and opposability of same.

C. FSTQ Loan

86. Xebec Inc. is party to an Amended and Restated Unsecured Loan Agreement dated as of November 9, 2021 with FSTQ, pursuant to which FSTQ provided Xebec Inc. with a financing facility in the aggregate principal amount up to $25,000,000 (the "**FSTQ Loan**").

87. The FSTQ Loan was used by Xebec Inc. for working capital purposes, operational and investment activities and acquisitions.

88. The FSTQ Loan is unsecured, bears interest at the rate of 8.5% per annum, subject to adjustment as per the FSTQ Loan agreement, and matures on May 5, 2025.

89. As of September 19, 2022, the outstanding aggregate indebtedness owing to FSTQ under the FSTQ Loan totalled approximately $15,000,000, excluding interest, costs, fees and expenses.

D. Other Unsecured Indebtedness

90. As of August 31, 2022, the Petitioners had accounts payable and accrued liabilities in an aggregate amount of approximately $162,600,000 including to suppliers and landlords.

91. The Petitioners intend to pay in the normal course of business the trade obligations in connection with services to be rendered and products to be supplied after the issuance of the Initial Order.

92. Certain suppliers and customers are the beneficiaries of letters of credit issued by NBC pursuant to the NBC Loan Agreement.

E. Contingent Liabilities

93. Certain Petitioners are also defendants in various litigation proceedings, including two proposed class actions pending before the Superior Court of Québec and the

Ontario Superior Court of Justice against Xebec Inc. and other defendants, alleging misrepresentations in its disclosure documents with respect to revenue accounting practices and internal controls, all of which are denied and contested.

F. Employee Entitlements

94. As of the date hereof, the Petitioners are current in their payroll obligations. In addition, except for the DPS Plan described above, there are no pension plans in place.

95. The Petitioners intend to continue to pay their employees in the normal course of business.

G. Tax Liabilities

96. All amounts owed to tax authorities by the Petitioners are paid in the normal course of business and there is therefore no known past due amount owing to tax authorities as of the date hereof.

97. As of the date hereof, the Petitioners are current in their source deductions and sales tax obligations including GST/QST/HST, in jurisdictions where they apply.

98. Source deductions and GST/QST/HST obligations in connection with services to be rendered/products supplied after the issuance of the Initial Order are expected to be paid in the normal course of business.

H. Equity

99. Xebec Inc.'s authorized share capital consists of an unlimited number of Common Shares and an unlimited number of preferred shares ("**Preferred Shares**"), without par value. As at August 31, 2022, there were 154,727,549 Common Shares issued and outstanding (the "**Common Shares**") and nil Preferred Shares issued and outstanding. As indicated above, the Common Shares are listed on the TSX and are also listed on the OTCQX International.

IV. FINANCIAL DIFFICULTIES

100. The latest consolidated audited financial statements, for the years ended on December 31, 2021 and 2020 a copy of which is communicated herewith as **Exhibit P-6** indicate that Xebec Inc. realized successive material operating losses in 2021 and 2020.

101. The latest financial results for the six month period ending on June 30, 2022, indicate that Xebec Inc. continued to incur material losses, incurring a net loss of $41.997 million, as appears from a copy of the Condensed Interim Consolidated Financial Statements (Unaudited) for the three-month and six-month periods ended June 30, 2022, and 2021 ("**Q2 2022 Financial Statements**") communicated herewith as **Exhibit P-7**.

102. The Xebec Group's financial difficulties were attributable to a number of factors, including its inability to raise additional capital given the state of capital markets, supply chain constraints, impact of the COVID-19 pandemic, the geopolitical factors and increasing selling, general and administrative expenses ("**SG&A**") resulting from the number of acquisitions completed over the last two years and the completion costs of legacy renewable natural gas ("**RNG**") contracts and the costs associated with discontinuing such product line, the whole as described more fully below.

A. Inability to Raise Additional Capital and the State of Capital Markets

103. The challenging state of the capital markets which commenced in late 2021 and has been ongoing and has resulted in lower share price performance for many companies, including those in the clean energy solutions market segment.

104. Xebec Inc.'s share price was negatively impacted, *inter alia*, by this market trend, which in turn adversely affected Xebec Inc.'s ability to source and secure the critical financing it requires.

105. This phenomenon was further exacerbated by the decrease of equity capital interest for unprofitable growth companies in general.

106. As a result, the execution of the Company's business plan, including its ability to appropriately capitalize its business, was seriously compromised.

B. Supply Chain Constraints and Other Market Conditions

107. In addition to the inability to secure required financing, the Company also faced worldwide supply chain issues and increased costs resulting, *inter alia*, from the COVID-19 pandemic and geopolitical factors.

108. As appears from Xebec Inc.'s Management's Discussion and Analysis for the Second Quarter ended June 30, 2022 (the "**Q2 2022 MD&A**"), while 2022 started off with strong sales quoting activity in the RNG business, quotes were slow to book into Xebec Inc.'s backlog, due to a combination of factors including economic uncertainty, low carbon fuel credits' volatility and the early adopter nature of Xebec Inc.'s second-generation Biostream product.

109. The second quarter of year 2022 also saw a slowdown in Xebec Inc.'s oxygen business as the strong demand generated by the COVID-19 pandemic subsided.

110. Xebec Inc.'s oxygen and nitrogen generation businesses operate on a cash-neutral basis and their ability to produce material positive cash flows depends on the resolution of supply chain issues and increasing the nitrogen portion of the business in the face of declining oxygen demand triggered by declining intensity of the COVID-19 pandemic.

111. Furthermore, the geopolitical situation resulting from the Russo-Ukrainian War brought significant pressure on the nitrogen market, where customers had to reduce their capital expenditures in light of significantly higher energy costs.

112. In 2022, Xebec Inc. noted a lower level of sales in Europe, primarily attributable to supply chain constraints and reduced sales of oxygen and hydrogen generators. In addition, while the Company's hydrogen business continued to develop, significant capital is still required to support this business which continues to suffer losses.

C. Selling and Administrative Expenses

113. As indicated above, the Company grew significantly through acquisitions, investments and joint ventures.

114. According to the Q2 2022 Financial Statements, Xebec Inc. incurred $33.6 million in SG&A, an increase of $10.7 million, compared to $22.9 million for the same six months of 2021. The increase was associated to SG&A relating to newly acquired companies.

D. Legacy RNG Contracts

115. In addition, the Company incurred significant costs in connection with finalizing its legacy RNG contracts and discontinuing this product line. The impact of the COVID-19 pandemic, the supply chain constraints and the inflation described above further affected these costs.

116. As appears from the Q2 2022 MD&A, the Company encompassed the impact of such legacy RNG contracts in a special charge resulting in a net loss impact of $11.9 million and a gross margin impact of $8.3 million, representing remaining costs on projects, potential penalties, an inventory obsolescence provision, potential warranty claims, and legal settlement and related costs.

117. In summary, volatile market conditions and inability to raise capital, lower sales volumes, ongoing supply chain constraints, material increase of SG&A and the completion costs of legacy RNG contracts and the costs associated with discontinuing the product line had a direct negative impact on the Petitioners' cash flow.

V. PRE-FILING RESTRUCTURING EFFORTS

A. Company's Efforts to Improve Financial Performance

118. Given the capital intensive nature of the business of the Xebec Group, particularly in light of the recent acquisition of the HyGear Entities, the Company initiated various attempts to raise additional capital, including via private placements, equity offerings or subordinated debt. Such efforts were assisted by two leading financial advisory firms. Potential convertible debt transactions and equity offerings were

contemplated in the fall of 2021 and the spring of 2022, but based on overall market conditions, and advice from the Company's financial advisors, such transactions could not be launched. Notwithstanding all of its efforts, the Company was as a result unable to secure additional capital.

119. In light of the foregoing, in the spring of 2022, the Company initiated a comprehensive review of all of the activities of the Xebec Group to improve margins and increase cash from operations, focusing on production rationalization, workforce and supply chain synergies to streamline and simplify the organization (the "**Operational Review**").

120. In the context of the Operational Review, Xebec Inc. implemented a number of cost-reduction measures, including the discontinuance of certain business activities, primarily relating to its RNG segment, to focus on products and services that had the potential for yielding higher margins on a long-term basis, the whole as appears from the Q2 2022 MD&A.

121. Furthermore, in July 2022, in the context of the Operational Review, Xebec Inc. announced the reduction of its full-time workforce by 51 employees, representing approximately 13% of its North American employee base, resulting in approximately $4.0 million in annual cost savings, as appears from the Q2 2022 MD&A.

122. The Company continued to evaluate its business revolving around three levers: 1) core vs. non-core activities, 2) product rationalization, and 3) workforce and supply chain synergies, all of which aim to pursue operational efficiencies and focus its efforts across the business.

123. Unfortunately, the above-noted measures alone proved to be insufficient in addressing the Petitioners' urgent liquidity concerns.

B. Strategic Review

124. As appears from the Q2 2022 MD&A, in addition to, and in parallel with the Operational Review, the Company initiated a process to identify and evaluate a variety of potential strategic alternatives to enhance shareholder value, including via potential asset divestitures or joint ventures (the "**Strategic Review**").

125. In this context, a special committee of the board of Xebec Inc., comprised of independent directors (the "**Special Committee**") was established to review and consider any strategic alternatives (including potential asset divestitures or joint ventures) and make recommendations to the Xebec Inc. board with respect thereto.

126. On June 3, 2022, further to a recommendation of the Special Committee, Xebec Inc. engaged National Bank Financial Inc. ("**NBF**") as financial advisor in connection with the Strategic Review. NBF had not been involved as financial advisor in the Company's prior financing efforts, as appears from a redacted

version of an engagement letter dated June 6, 2022, communicated herewith under seal as **Exhibit P-8**.

127. Further to its engagement, NBF conducted a broad solicitation of expressions of interest targeting institutional investors and well capitalized, strategic acquirers that had either previously expressed an interest in a combination with the Company and/or were believed to have a strong strategic rationale to consider a potential transaction (collectively, the “**Market Check**”).

128. In the context of the Market Check:

(a) 76 potential targets were solicited and received a teaser letter, including 47 potential investors and 29 potential strategic acquirers; and

(b) 14 potential targets signed a confidentiality agreement giving them access to the virtual data room to advance their due diligence process;

129. The Market Check resulted in the receipt by Xebec of only one non-binding letter of intent for the purchase of XBC Flow Services, the brand encompassing the Company’s U.S. Cleantech Service Network and industrial product sales and distribution activities (the “**LOI**”).

130. Xebec Inc., with the assistance of NBF and its other advisors, determined that the LOI was not a viable solution, given that:

(a) the time needed to execute the transaction contemplated by the LOI and the inherent uncertainty would not provide a solution for Xebec Inc.’s liquidity needs;

(b) the complexity of the transaction, including isolating the subject assets and undertakings, would take considerable effort and time;

(c) the assets in question are integral to the core business of the Xebec Group; and

(d) the transaction would negatively impact the overall future cash flow of the Xebec Group.

131. Throughout all of its financing efforts, from the fall of 2021 until September 2022, the Company, directly and through its financial advisors (including NBF during the Strategic Review), remained in close communication with key stakeholders in order to assess whether they may have an interest in an investment or transaction with the Company in some capacity. Certain key stakeholders engaged in ongoing due diligence and discussions with management and NBF, but recently confirmed that they would not be prepared to proceed at this time.

VI. RESTRUCTURING OBJECTIVES

132. Despite all of the efforts enumerated above and following extensive analysis and consideration, in light of their financial situation, the Petitioners concluded that their only alternative was to engage in a formal restructuring process in order to achieve the best possible outcome for their stakeholders.

133. With the assistance of their advisors and upon the recommendation of the Special Committee, the Petitioners determined that the best course of action in the current circumstances includes the implementation of the SISP in order to maximize value of the Petitioners' business while maintaining going concern operations, a further streamlining of their operations, and a divestiture of their non-core assets.

134. In order to achieve their objectives, the Petitioners, with this Court's approval, are seeking the relief more fully described below.

VII. APPLICATION OF THE CCAA AND RELIEF SOUGHT

135. As set out above, the Petitioners are affiliated debtor companies indebted towards various creditors in an aggregate amount that well exceeds the $5 million requirement of the CCAA.

136. Furthermore, as outlined in greater detail in the Pre-Filing Report (Exhibit P-5), the Petitioners are, or will become within reasonable proximity of time as compared with the time reasonably required to implement a restructuring, unable to meet their obligations as they become due given the ongoing liquidity crisis.

137. In light of the foregoing, each of the Petitioners clearly qualifies as a "debtor company" under the CCAA and together are affiliated debtor companies.

138. As more fully set out below, the "*center of main interest*" of each of the Petitioners is Montréal, Québec.

A. General CCAA Relief

139. The Petitioners submit that the orders sought herein are appropriate and necessary, as they are insolvent, and require a stay of proceedings for the benefit of their creditors and other stakeholders.

140. The Petitioners are concerned that unless the Stay is granted, certain suppliers, creditors and other stakeholders may take steps that will deplete their estates to the detriment of all stakeholders.

141. The CCAA proceedings are therefore necessary to preserve the value of the Xebec Group's business with minimal disruption while it continues its restructuring process and to provide the Petitioners with the various restructuring tools available under the CCAA to implement restructuring measures and facilitate any potential transaction resulting from the SISP, the whole with a view to restructuring the

Xebec Group in an orderly manner and maximizing the value of the Petitioners' business.

142. The Petitioners hereby seek a Stay until October 9, 2022 (subject to a deemed extension to October 11, 2022 as requested herein) and, at the comeback hearing, intend to seek a Stay until on or about November 26, 2022.

143. Given the requirement that the initial Stay Period be limited to a maximum duration of 10 days and the fact that the expiry of such 10 day period falls on a non-judicial day and the day before Thanksgiving Day, the Petitioners seek an order declaring that unless any contestation is served and filed on or prior to October 5, 2022, that the Stay Period be deemed to have been extended to October 11, 2022.

144. The Stay will preserve the status quo and prevent creditors and others from taking steps to try to improve their positions to the detriment of other creditors. All stakeholders generally, including creditors, will benefit from the relief sought herein.

145. As of the date hereof, no CCAA relief or other insolvency filing is being sought or pursued in respect of the Overseas Subsidiaries.

B. Appointment of the Monitor

146. Deloitte has consented to act as Monitor of the Petitioners under the CCAA proceedings and to assist the Petitioners with all aspects of their restructuring pursuant to and subject to Orders of the Court and the statutory provisions of the CCAA, as appears from a consent letter, communicated herewith as **Exhibit P-9**.

147. Deloitte is a licensed trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

148. Deloitte has provided various advisory services to the Xebec Group over the past two years, including valuation and purchase price allocation of some acquired entities, conducting impairment tests, assisting with respect to pre-acquisition due diligence analyses for some acquired entities, and assisting with refining Xebec Group's four-month cash flow forecast, including the related assumptions.

149. Furthermore, Deloitte has been assisting the Petitioners in connection with the Market Check and in its financial analysis and restructuring considerations, including in respect of these proceedings under the CCAA. In this context, Deloitte has become familiar with the Petitioners' assets, businesses and restructuring efforts.

150. Such knowledge will be useful and will enable Deloitte to assume the role of the Monitor in these CCAA proceedings without delay.

151. Furthermore, Deloitte has offices in all the countries where the Xebec Group has subsidiaries and therefore will be able to draw upon its own network for assistance with local issues as required.

C. DIP Financing

152. In light of their current liquidity challenges, and as demonstrated in the Pre-Filing Report (Exhibit P-5), the Petitioners require interim financing to provide the stability required to continue all of their operations on a going concern basis, while pursuing their restructuring efforts under these CCAA proceedings, including the SISP.

153. As soon as the Company was advised by NBF that, in the context of discussions referred-to above, certain key stakeholders were not prepared to proceed with an investment or transaction with the Company, it immediately mandated NBF to initiate a targeted sollicitation process to identify parties interested in providing immediate superpriority interim funding to the Company (the "**DIP Process**").

154. In the context of the DIP Process:

   (a) 15 potential interim lenders were sollicited, including existing stakeholders and alternative lenders;

   (b) 8 potential interim lenders signed a confidentiality agreement giving them access to the virtual data room to advance their due diligence process.

155. Given the tight timelines and complex corporate structure and activities, all third parties contacted by NBF were unable to complete their diligence and internal processes prior to the filing of these CCAA proceedings.

156. The Petitioners have been engaged in discussions and exchanges of information with NBC and EDC and their respective financial advisors in connection with their interim financing requirements. Both NBC and EDC are continuing their analysis of the interim financing needs of the Petitioners.

157. The Petitioners are hopeful that NBC and/or EDC will determine that it is appropriate to provide interim financing in the circumstances and that they will be in a position to seek approval thereof before the Court at the comeback hearing.

158. In the absence of interim financing, the Petitioners intend to continue their restructuring proceedings and the SISP, but may be required to take further operational measures to preserve liquidity.

D. Employee, Vice-President and Executive Retention Plans

159. The contribution of certain employees is essential to the success of these CCAA proceedings. Therefore, with a view of securing their ongoing support, the Petitioners are seeking approval of a key employee retention plan, a key vice-president retention plan and a key executive incentive plan (collectively, the

"**KERPs**"). Summaries of the KERPs are communicated herewith, *en liasse*, under seal, as **Exhibit P-10**.

160. The KERPs were developed by the Petitioners, with the oversight of the Monitor, to facilitate and encourage the continued participation of the executive, senior management and other key employees of the Petitioners who are required to guide the business through the restructuring and preserve value for stakeholders.

161. The KERPs will provide participants with additional payments as an incentive to continue their employment through the CCAA proceedings. These employees have significant experience and specialized expertise that cannot be easily replicated or replaced. Further, these key employees will likely have other, more certain employment opportunities and will be faced with a significantly increased workload during the restructuring process.

162. The KERPs are ventilated as follows:

Group	Approximate Number of Employees	Approximate Estimated Cost
Executives	4	550,000
VPs	4	285,000
Other Key Employees	7	195,000
Total	15	1,030,000

163. In addition to the executives, the KERPs include employees in human resources, legal, finance, operations, research and development, and product management groups of the Petitioners.

164. The KERP payments will be made in 3 instalments payable as follows: (i) 30 percent payable two months following the filing date of these CCAA Proceedings; (ii) 30 percent payable four months following the filing date of these CCAA Proceedings; and (iii) 40 percent payable on the earlier of eight months following the filing date of these CCAA proceedings or a Successful Restructuring (as defined in the Summaries of the KERPs (Exhibit P-10).

165. The total KERP payments range from 20 percent to 40 percent of the base salary of the relevant employees.

166. The Petitioners intend to seek approval of the KERPs at the comeback hearing in the context of the ARIO.

167. In addition, in order to secure the payment owed to the above mentioned key employees in accordance with the KERPs, the Petitioners intend to seek an order from this Court at the comeback granting to such employees a superpriority charge on all of their present and future assets, property and undertakings, ranking ahead

of all other secured and unsecured creditors up to a maximum amount of $1,030,000 (the “**KERP Charge**”).

E. Engagement of NBF and SISP Approval

168. The Petitioners, in consultation with NBF the Proposed Monitor, have determined that it is appropriate to conduct the SISP as a means of seeking to maximize the value of the Petitioners’ assets, on a going concern basis.

<u>Engagement of NBF</u>

169. For the purpose of conducting the SISP, the Petitioners hereby seek the formal appointment of NBF as sale advisor, in order to provide consultation and assistance in the conduct of the SISP pursuant to the terms of the Engagement Letter (Exhibit P-3).

170. It is in the Petitioners’ best interest to retain the services of NBF in the context of the SISP, given its knowledge of the business of the Xebec Group and its familiarity with potential strategic partners, purchasers and investors, acquired in the context of the Market Check.

171. NBF will be able to leverage and expand the scope of the Market Check in order to conduct the SISP in a timely and cost-efficient manner, the whole with a view to maximize the value of the Petitioners’ assets on a going concern basis in the context of these CCAA proceedings.

172. NBF has extensive experience in acting as sales and investment advisor to significant actors in the manufacturing and energy sectors as well as experience in court-supervised CCAA sales and investment solicitation processes.

173. NBF’s role, which is essentially to assist in conducting a sales process and concluding one or more transactions, will be distinct from and complimentary to the role of the Monitor.

174. As appears from the Engagement Letter, NBF’s fee structure negotiated by the Petitioners contemplates a fixed work fee payable on a monthly basis (the “**Work Fee**”), a percentage-based commission payable upon the closing of a designated financing transaction (the “**Financing Advisory Fee**”), and a percentage-based commission payable upon the closing of a designated transaction (the “**Transaction Fee**”).

175. The Petitioners are of the view that this fee structure is reasonable in light of the prevailing market conditions.

176. The engagement of NBF is conditional upon the Court’s approval thereof, and the approval of the Engagement Letter.

177. The Engagement Letter provides that the payment of the Work Fee (whether incurred before or after the date of any order approving this agreement) is to be secured by the Administrative Charge (as defined below), and that the Transaction Fee and the Financing Advisory Fee (in the maximum amount of $975,000) is to be secured by a charge (the "**Transaction Fee Charge**"), such charge having priority over all other security interests, hypothecs, charges and liens, except the Administration Charge and the D&O Charge (as such terms are defined below), but before the KERP Charge and the DIP Charge.

178. The Proposed Monitor has advised the Petitioners that it supports the engagement of NBF pursuant to the terms set out of the Engagement Letter.

<u>SISP Approval</u>

179. The Petitioners, in consultation with NBF and the Proposed Monitor, have developed the SISP, and are seeking the approval thereof by this Court.

180. The SISP, if approved by the Court, is to be conducted in accordance with the proposed bidding procedures (the "**Bidding Procedures**") and is intended to solicit interest in, and opportunities for: (i) sales in respect of the Xebec Group's businesses; and/or (ii) an investment, restructuring, recapitalization, refinancing or other form of reorganization transaction(s), in respect of the Petitioners, as appears from a copy of the Procedures for the Sale and Investment Solicitation Process dated September 28, 2022, communicated as Schedule A to the Bidding Procedures Order (Exhibit P-2).

181. The SISP is to be conducted by NBF, with the oversight of the Monitor, in accordance with the Bidding Procedures. It is contemplated to be deployed in the briefest of delays and, subject to the Order of this Court, by no later than September 29, 2022.

182. The SISP contemplates a two-phase bidding process according to the following timeline (subject to any extensions and modifications that may be made pursuant to the Bidding Procedures):

Event	Date
1. Approval of the SISP and Bidding Procedures by the Court	September 29, 2022
<u>Phase 1</u>	
2. Distribution of Solicitation Letter to potentially interested parties	Starting on September 29, 2022
3. Access granted to CIM and VDR	By no later than October 6, 2022
4. Phase 1 Bid Deadline (non-binding LOI)	By no later than November 11, 2022

5. Identification and notification in respect of Phase 1 Sucessful Bid(s)	By no later than November 18, 2022
Phase 2	
6. Phase 2 Bid Deadline (definitive offers)	January 6, 2023
7. Auction (if multiple Phase 2 Qualified Bids)	Week of January 9, 2023
8. Selection of Sucessful Bid	By no later than January 13, 2023
9. Definitive Documentation (Sucessful Bid retained)	By no later than January 27, 2023
10. Approval Application	On or about January 30, 2023
11. Closing	On or about January 31, 2023

183. As noted above, the Petitioners have consulted with the Proposed Monitor in developing the SISP and the Bidding Procedures, which they consider to be in line with those used in other recent comparable insolvency proceedings.

184. As appears from the Pre-Filing Report (Exhibit P-5), the Proposed Monitor is of the view that the SISP and the Bidding Procedures are reasonable and appropriate in the circumstances.

F. Charges

185. The Petitioners respectfully request that this Court grant the following superpriority charges on all of their present and future assets, property and undertakings, ranking ahead of all other secured and unsecured creditors, in the following order of priority:

(a) A charge to benefit of the Proposed Monitor and its counsel and counsel to the Petitioners as security for their respective fees and disbursements relating to services rendered in respect of the Petitioners up to a maximum amount of $250,000 (the "**Administration Charge**");

(b) A charge to the benefit of the Directors and Officers (as defined below) in the amount of $2,200,000 (the "**D&O Charge**"); and

(c) The Transaction Fee Charge, as described above, in a maximum amount of $975,000.

186. At the comeback hearing, the Petitioners intend to seek the ARIO, providing for the following superpriority charges on all of their present and future assets,

property and undertakings, ranking ahead of all other secured and unsecured creditors, in the following order of priority:

(a) The Administration Charge, increased to a maximum amount of $900,000;

(b) The D&O Charge, increased to a maximum amount of $2,300,000;

(c) The Transaction Fee Charge, as described above, in a maximum amount of $975,000; and

(d) The KERP Charge, as described above, in a maximum amount of $1,030,000.

Administration Charge

187. The support of the Proposed Monitor, its counsel and the Petitioners' counsel (collectively, the "**Professionals**") is essential to the Petitioners' restructuring. As such, the Professionals have requested that their respective fees and disbursements be secured by the Administration Charge.

D&O Charge

188. The Petitioners will only be able to bring the current proceedings to fruition with the continued participation of the Petitioners' respective directors and officers (the **"Directors and Officers**"). They are essential to the viability of the restructuring efforts, especially in the context of the SISP.

189. The Petitioners maintain a primary directors' and officers' liability insurance policy for the Directors and Officers (the "**D&O Insurance**"). Prior to the filing of this Application, the Petitioners obtained an extended reporting period of one year under the D&O Insurance, applying to potential claims arising within the original policy period.

190. The D&O Insurance contains limits and exclusions that could potentially affect the total amount of insurance available to the Directors and Officers.

191. In addition, the D&O Insurance is written on a claims-made basis and is currently set to expire on December 1, 2022, with an extended reporting period until December 1, 2023. Considering the Petitioners' financial situation and the difficult market for such insurance, there is no certainty that the D&O Insurance can be extended or renewed. It is to be noted that the D&O Charge would only apply to the extent that the D&O insurance does not cover a liability, as the case may be.

192. Although the Petitioners intend to comply with all applicable laws and regulations, including the timely remittance of deductions at source and federal and provincial sales tax, the Directors and Officers have expressed concern with respect to potential personal liability if they continue in their current capacities through this restructuring process. The Petitioners submit that it is essential for the Initial Order

sought herein to grant a charge as security for the Petitioners' obligations to their Directors and Officers.

193. The amount of the D&O Charge has been calculated with the assistance of the Proposed Monitor and takes into account payroll obligations, vacation pay obligations, employee source deduction obligations and sales tax obligations that may arise during these proceedings. It is expected that all these amounts will be paid by the Petitioners in the normal course.

194. The Petitioners believe that the amount of the D&O Charge is fair and reasonable in the circumstances.

195. The D&O Charge is intended to allow the Directors and Officers to focus their efforts on these restructuring proceedings, for the benefit of all stakeholders.

196. As appears from the Pre-Filing Report (Exhibit P-5), the Proposed Monitor is supportive of the Administrative Charge and the D&O Charge.

G. Critical Suppliers and Post-Filing Payments

197. During the course of this CCAA proceeding, the Petitioners intend to make payments for goods and services supplied post-filing in the ordinary course as set out in the Pre-Filing Report and as permitted by the Initial Order.

198. Moreover, given that certain suppliers may be highly dependent on continuous payment from the Company and in order to ensure uninterrupted business operations during the CCAA proceeding, the Petitioners are proposing in the Initial Order that they be authorized, with the consent of the Monitor, in consultation with NBC, to make certain payments, including payments owing in arrears, to certain third parties that are critical to the Xebec Group's business and ongoing operations.

199. The Company therefore seeks to be authorized to pay, with the consent of the Monitor or the Court, any pre-filing unpaid claims of third parties it deems critical, up to an initial aggregate amount of $700,000, to be increased to an aggregate amount of $1,000,000 at the comeback hearing.

H. Chapter 15 Case

200. As indicated above, the Xebec Group has operations, assets and valuable business and trade relationships with a number of parties in the U.S.

201. Contemporaneously with commencement of these CCAA proceedings, the Petitioners intend to initiate a case under Chapter 15 of the U.S. Bankruptcy Code, seeking an order to recognize and enforce these CCAA proceedings in the U.S. as foreign main proceedings and grant protection against any potential adverse action taken by the Xebec Group's U.S. creditors and stakeholders (the "**Chapter 15 Case**").

202. The Petitioners intend to file the Chapter 15 Case in the United States Bankruptcy Court for the District of Delaware, where several U.S. Subsidiaries are incorporated. Xebec Inc. intends to act as foreign representative of the Petitioners in the Chapter 15 Case.

203. The Xebec Group is a consolidated business, with offices and operations in Canada, the United States and overseas, which is operationally and functionally integrated in many respects. However, the Petitioners' center of main interest is in Canada given that, *inter alia*:

(a) All strategic decisions for the Petitioners are made in Canada by the senior management of Xebec Inc.;

(b) All U.S. Subsidiaries report to Xebec Inc. and its senior management;

(c) As described above, certain U.S. Subsidiaries are guarantors of the NBC Indebtedness or the EDC Indebtedness, for which respective loan agreements are governed by the laws of Québec;

(d) Xebec Inc. is the ultimate parent, and sole beneficial owner of all U.S. Subsidiaries;

(e) 50% or more of the directors of each of the U.S. Subsidiaries are residents of Canada;

(f) Xebec Inc. acts as a centralized entity providing operational and administrative functions for the Xebec Group as a whole. These functions are performed by Canadian employees and include, among other things:

i) Operational oversight;

ii) Sales, communications and marketing support;

iii) Most enterprise-wide information technology services;

iv) Enterprise-wide support for finance functions, including working capital management, credit management, payment processing, financial reconciliations, managing business expenses, insurance, and taxation;

v) Oversight for the legal, regulatory and compliance functions across the entire Xebec Group;

vi) Certain enterprise-wide human resources functions;

vii) Enterprise-wide health and safety functions and oversight;

viii) Financial planning and analysis services;

ix) Supply planning services; and

x) Internal audit services.

I. Exemptions From Certain Reporting Obligations, Trading Halt and Potential Delisting of Common Shares

204. Xebec Inc. is a public company and is required to, *inter alia*, prepare and file interim financial statements, management's discussions & analysis and other continuous disclosure documents under the *Securites Act* (Québec) and the regulations promulgated thereunder and comparable statutes enacted by other provinces of Canada, the TSX Company Manual and other rules, regulations and policies of the Toronto Stock Exchange (the "**ICFS, MD&A and Other Documents**").

205. Xebec Inc. is presently devoting all its efforts to stabilize its business in the present circumstances, and implement its restructuring efforts, including the SISP, the whole for the benefit of all its stakeholders.

206. Preparing and filing its ICFS, MD&A and Other Documents would divert the attention of senior management away from such tasks, would require significant resources and could impede Xebec Inc.'s ability to achieve its restructuring under the CCAA.

207. In addition, it is neither necessary nor desirable to provide fragmented information to shareholders.

208. Under these circumstances, the Petitioners respectfully submit that it is both impracticable and unnecessary for Xebec Inc. to prepare and publish its ICFS, MD&A and Other Documents during these CCAA proceedings. Accordingly, Xebec Inc. is seeking a suspension of its ordinary course obligation to publish the ICFS, MD&A or Other Documents.

209. In addition, on the morning of the initial hearing on this Application, before the opening of the markets, Xebec Inc. will ask the Investment Industry Regulatory Organization of Canada to issue a trading halt.

210. If an Initial Order is rendered by the Court, Xebec Inc. will issue thereafter a press release announcing that it has obtained creditor protection under the CCAA.

211. Based on the recent experiences of issuers listed on the TSX which have commenced proceedings under the CCAA, upon Xebec Inc. announcing that it is obtained an initial order under the CCAA, the TSX is expected to halt trading of the Common Shares until a review is undertaken by the TSX regarding the suitability of the Xebec Inc. for listing on the TSX, which may possibly lead to a delisting of the Common Shares.

J. Sealing of Confidential Documents

212. The Petitioners are seeking an order declaring that Exhibits P-3, P-8 and P-10 be kept strictly confidential and shall be filed under seal, considering that:

    (a) the summaries of the KERPs (Exhibit P-10) contain sensitive personal information of the Petitioners' employees; and

    (b) the NBF engagement letters (Exhibits P-3 and P-8) contain commercially sensitive information.

K. Execution Notwithstanding Appeal

213. Given the urgency and severity of the circumstances confronting the Petitioners, it is essential that execution of the order sought herein be granted notwithstanding appeal.

214. Considering the urgency of the situation, the Petitioners respectfully submit that the notices given of this Application for the purposes of all orders sought herein are proper and sufficient.

VIII. CONCLUSION

215. For the reasons set forth above, the Petitioners believe that it is both appropriate and necessary that the relief being sought herein be granted. With such relief, the Petitioners will be able to restructure their business and affairs and maximize long-term value for the benefit of all stakeholders.

216. The Proposed Monitor has informed the Petitioners that it supports this Application and the issuance of the orders sought herein, as appears from a copy of the Pre-Filing Report (Exhibit P-5).

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

GRANT the present *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the "**Application**");

ISSUE an order substantially in the form of the draft Initial Order communicated in support of the Application as **Exhibit P-1**;

ISSUE an order substantially in the form of the draft Bidding Procedures Order communicated in support of the Application as **Exhibit P-2**;

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

MONTRÉAL, September 28, 2022

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Mtre. Sandra Abitan | Mtre. Julien Morissette |
Mtre. Ilia Kravtsov
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Email notification: notificationosler@osler.com
Our file: 1233913

AFFIDAVIT

I the undersigned, Dimitrios Vounassis, domiciled for the purpose hereof at 700-1130 Sherbrooke Street West, in the city and judicial district of Montréal, Québec, H3A 2M8, 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 First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the "**Application**").

3. All of the facts alleged in the Application of which I have personal knowledge are true.

4. Where I 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 IN MONTRÉAL, QUÉBEC, ON SEPTEMBER 28, 2022.

Lyne St-Amour
Commissioner for Oaths for the Province of Québec

Commissaire à l'assermentation
LYNE ST-AMOUR
189,450
Pour le Québec

NOTICE OF PRESENTATION
COMMERCIAL DIVISION

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

PRESENTATION OF THE PROCEEDING

TAKE NOTICE that the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in room 16.04, of the Montréal Courthouse, at the virtual calling of the roll on **September 29, 2022, at 2:15 p.m.** or so soon thereafter as counsel may be heard.

HOW TO CONNECT TO THE VIRTUAL ROLL CALL

The coordinates for you to join the virtual calling of the roll in room 16.04 are as follows:

By Teams: by clicking on the link available at http://www.tribunaux.qc.ca: ("*Liens TEAMS pour rejoindre les salles du Palais de justice*")

You must fill in your name and click on «Join now» (« *Rejoindre maintenant* »). To facilitate the process, we invite you to fill in your name as follows:

Lawyers: Me First name, Last name (Name of the party you represent)

Trustees: First name, Last name (Trustee)

Superintendent: First name, Last name (Superintendent)

Parties not represented by a lawyer: First name, Last name (specify: Plaintiff, Defendant, Petitioner, Respondent, Creditor, Opponent or Other)

For individuals attending a public hearing: the mention can be limited to: (public)

By telephone:

Canada, Québec (Charges may apply): +1 581-319-2194

Canada (Toll-free number): (833) 450-1741

Conference ID: 820 742 874#

By VTC videoconference: teams@teams.justice.gouv.qc.ca

Videoconference ID: 11973653703

In person: If and only if you do not have access to one of the above mentioned technological means of connecting, you may then attend in room 16.10 of the Montréal Courthouse located at: 1, Notre-Dame Street East, Montréal, Québec.

DEFAULT TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL

TAKE NOTICE that if you wish to contest the proceeding, you must inform the initiator of the said proceeding in writing at the coordinates mentioned in the present Notice of Presentation at least 48 hours before the date of presentation 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.

OBLIGATIONS

Cooperation

TAKE NOTICE 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*).

Dispute prevention and resolution processes

TAKE NOTICE 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.

MONTRÉAL, September 28, 2022

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Attorneys for the Debtors / Petitioners

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

S U P E R I O R C O U R T
(Commercial Division)

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

No.: 500-11-

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.

Proposed Monitor

LIST OF EXHIBITS

P-1:	Draft Initial Order
P-1A:	Comparison of Draft Initial Order with Model CCAA Initial Order issued by the Bar of Montréal
P-2:	Draft Bidding Procedures Order
P-3:	Engagement Letter of National Bank Financial Inc., dated September 27, 2022, under seal
P-4:	Organizational Chart of the Corporate Structure of the Xebec Group as of December 15, 2021
P-5:	Pre-Filing Report of the Proposed Monitor
P-6:	Consolidated Financial Statements for the years ended December 31, 2021 and 2020
P-7:	Condensed Interim Consolidated Financial Statements for the three-month and six-month periods ended June 30, 2022 and 2021
P-8:	Engagement Letter of National Bank Financial Inc., dated June 6, 2022, under seal
P-9:	Consent Letter of Deloitte Restructuring Inc., dated September 27, 2022

P-10: Summaries of the KERPs, *en liasse* and under seal

MONTRÉAL, September 28, 2022

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Attorneys for Debtors / Petitioners

No:

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 ABSORPTION INC. & AL

Debtors / Petitioners

and.

DELOITTE RESTRUCTURING INC.,

Proposed Monitor

APPLICATION FOR THE ISSUANCE OF A FIRST DAY INITIAL ORDER, A DEEMED EXTENSION OF THE STAY PERIOD AND A BIDDING PROCEDURES ORDER, AFFIDAVIT, NOTICE OF PRESENTATION, LIST OF EXHIBITS, EXHIBITS P-1, P-1A, P-2, P-4, P-5, P-6, P-7, P-9 (Sections 4, 9, 10, 11, 11.02, 11.03, 11.51, 11.52, 11.7 and 23 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36)

ORIGINAL

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