

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

XEBEC HOLDING USA INC., *et al.*,

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 22-10934 (KBO)

Jointly Administered

**ORDER (I) RECOGNIZING AND ENFORCING THIRD AMENDED AND
RESTATED CCAA ORDER; AND (II) AUTHORIZING JUNIOR DIP FINANCING**

Upon the motion (the “**Motion**”)² of Xebec Adsorption Inc., in its capacity as authorized foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”), in a proceeding (the “**Canadian Proceedings**”) commenced under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and pending before the Superior Court of Québec, in the Province of Québec, District of Montréal (the “**Canadian Court**”), seeking entry of an order granting additional relief (this “**Order**”) pursuant to sections 105(a), 364, and 1521 of title 11 of the United States Code, as amended from time to time (the “**Bankruptcy Code**”): (a) recognizing and enforcing the terms, conditions, and provisions of that certain *Third Amended and Restated Initial Order (Rectified)*, issued by the Canadian Court (the “**Third Amended and Restated CCAA Order**”), a copy of which is attached hereto as **Exhibit A**, which authorizes the Debtors to obtain a debtor-in-possession loan (the “**Junior DIP Loan**”) from Export Development Canada (“**EDC**” or the

¹ The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: Xebec Adsorption Inc. (0228), Xebec RNG Holdings Inc. (N/A), Applied Compression Systems Ltd. (N/A), Compressed Air International Inc. (N/A), Xebec Holding USA Inc. (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), Xebec Adsorption USA, Inc. (0821), The Titus Company (9757), Nortekbelair Corporation (1897), XBC Flow Services – Wisconsin Inc. (7493), California Compression, LLC (4752), and Xebec Systems USA LLC (4156). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 730 Industriel Boulevard, Blainville, Quebec, J7C 3V4, Canada.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

“**Lender**”) and granting a charge and security (the “**Junior DIP Charge**”) to the Lender, (b) authorizing the Debtors to enter into the new senior secured superpriority debtor in possession financing facility (the “**Junior DIP Facility**”) and granting to the Lender the Junior DIP Charge; (iii) granting the Lender certain protections afforded by the Bankruptcy Code, including those protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, as made applicable to these chapter 15 cases by section 1521(a)(7) of the Bankruptcy Code; and (iv) granting such other and further relief as the Court deems just and proper; and it appearing that this Court has jurisdiction to consider the Motion pursuant to sections 157 and 1334 of title 28 of the United States Code; venue being proper before the Court pursuant to 28 U.S.C. § 1410; and this Court having entered, on February 13, 2023, the *Order Approving Motion to Shorten Notice With Respect to Foreign Representative’s Motion for Entry of Order (I) Recognizing and Enforcing Third Amended and Restated CCAA Order; and (II) Authorizing Junior DIP Financing* [Docket No. 89], setting a hearing on the Motion for February 16, 2023, at 11:00 a.m. (prevailing Eastern Time) (the “**Hearing**”), and authorizing objections to the Motion to be filed before or at the time of the Hearing (the “**Objection Deadline**”) and; and the Court having determined that appropriate and timely notice of the filing of the Motion, the Objection Deadline, and the Hearing having been given; and this Court having reviewed the Motion and having considered the statements of counsel with respect to the Motion at a hearing before this Court on February 16, 2023; and it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and no other or further notice being necessary or required; and this Court having determined that the legal and factual bases set forth in the Motion, and all other pleadings and papers in these cases establish just cause to grant the relief ordered herein, and no objections or other responses having been filed that have not been overruled, withdrawn, or otherwise resolved, and after due deliberation therefor;

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to rule 7052 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Foreign Representative is the duly appointed “foreign representative” of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.

D. This Court entered an order on October 27, 2022 recognizing, among other things, that the Canadian Proceedings constitute “foreign main proceedings” as defined in section 1502(4) of the Bankruptcy Code (the “**Recognition Order**”).

E. On October 20, 2022, the Canadian Court entered the *Amended and Restated Initial Order of the Canadian Court* (the “**Amended and Restated CCAA Order**”), pursuant to which the Canadian Court (i) authorized the Debtors to borrow from National Bank of Canada (“**NBC**”) and EDC (together with NBC, the “**Original DIP Lenders**”) an aggregate amount not to exceed CAD\$3,000,000.00 (the “**Original DIP Loans**”), and (iii) granted the Original DIP Charge to the Original DIP Lenders.

F. On November 2, 2022, this Court entered an order recognizing and enforcing the Amended and Restated CCAA Order and approving the Original DIP Loans and Original DIP Charge on an interim basis, *see* [Docket No. 42], and on November 22, 2022, this Court granted such approval on a final basis, *see* [Docket No. 48] (the “**Original DIP Order**”).

G. On February 8, 2023, the Debtors filed a motion with the Canadian Court (the “**Canadian Application**”) seeking approval of, among other things, a new senior secured superpriority debtor in possession financing facility authorizing the Debtors to, among other things, (i) borrow from the Lender, Export Development Canada, a total maximum principal amount of up to CAD\$2,500,000.00, and (ii) grant the Lender a superpriority charge and security on all of the Debtors’ Property in an aggregate amount of CAD\$3,000,000 that is junior only to the Original DIP Charge.

H. On February 13, 2023, the Canadian Court entered the Third Amended and Restated CCAA Order approving, among other things, the Debtors’ entry into the Junior DIP Facility and the granting of the Junior DIP Charge.

I. The Foreign Representative has demonstrated that the incurrence of indebtedness under the Junior DIP Facility, as authorized by the Third Amended and Restated CCAA Order, is necessary to prevent irreparable harm to the Debtors, because without such financing, they will be unable to continue operations or the SISP, which will significantly impair the value of the Debtors’ assets.

J. The Foreign Representative has demonstrated that the terms of the Junior DIP Facility, as approved in the Third Amended and Restated CCAA Order, are fair and reasonable and were entered into in good faith by the Debtors and the Lender and that the Lender would not have extended financing without the protections provided by sections 364 of the Bankruptcy Code, made

applicable by section 1521(a)(7) of the Bankruptcy Code. The Foreign Representative has demonstrated that the terms of the Junior DIP Facility are reasonable under the circumstances.

K. The Foreign Representative is further entitled to the discretionary relief expressly set forth in section 1521(a) of the Bankruptcy Code.

L. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to section 1521 of the Bankruptcy Code.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is Granted as set forth herein.
2. The terms of the Junior DIP Facility and the Junior DIP Loan as approved in the Third Amended and Restated CCAA Order shall be given full force and effect as to the Debtors and their property in the United States.
3. Pursuant to section 1521 of the Bankruptcy Code, the Third Amended and Restated CCAA Order, and the transactions consummated or to be consummated thereunder, including without limitation, entry into and performance under the Junior DIP Facility and Junior DIP Loans, shall be granted and given full force and effect in the United States to the same extent that they are given effect in Canada, and each is binding on all creditors of the Debtors and any of their successors or assigns.
4. Pursuant to sections 1521 and 364 of the Bankruptcy Code, to the extent authorized under the Third Amended and Restated CCAA Order, the Court grants the Junior DIP Charge on all of the Debtors' property located in the United States on the same priority set forth in the Third Amended and Restated CCAA Order.

5. Upon entry of this Order, the Foreign Representative and the Debtors, as applicable, shall comply with the terms, conditions, and provisions of the Third Amended and Restated CCAA Order including, without limitation, the provisions relating to the Junior DIP Facility, Junior DIP Loan and the DIP Charge.

6. Without further order of this Court, to the extent authorized under the Third Amended and Restated CCAA Order, and to promote cooperation between jurisdictions in cross-border insolvencies, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, and other documents and filings, and to pay all fees and expenses, and to perform all other obligations, under the Junior DIP Facility.

7. The Junior DIP Facility and related financing and security documents have been negotiated in good faith between the Debtors and the Lender. Any financial accommodations made to the Debtors by the Lender pursuant to the Third Amended and Restated CCAA Order and the Junior DIP Facility shall be deemed to have been made by the Lender in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Accordingly, pursuant to sections 364(e), 1521(a)(7), and 105(a) of the Bankruptcy Code, section 364(e) of the Bankruptcy Code hereby applies for the benefit of the Lender, and the validity of the indebtedness, and the priority of the liens in respect of the Junior DIP Charge authorized by the Third Amended and Restated CCAA Order made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying recognition of the CCAA Proceeding pursuant to section 1517 of the Bankruptcy Code.

8. This Order shall be sufficient and conclusive notice and evidence of the grant, validity, perfection, and priority of the liens granted to the Lender in the Third Amended and

Restated CCAA Order without the necessity of filing or recording this Order or any financing statement, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction; provided that the Debtors are authorized to execute, and the Lender under the Junior DIP Facility may file or record, any financing statements, mortgages, other instruments or any other Interim Financing Documents to further evidence the liens authorized, granted, and perfected hereby and by the Third Amended and Restated CCAA Order.

9. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) neither the Foreign Representative nor the Lender are subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Foreign Representative is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

10. Notwithstanding any stay, injunction or similar relief granted in these chapter 15 cases, the Lender is authorized to exercise all remedies and take any and all enforcement steps permitted under the Third Amended and Restated CCAA Order.

11. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

12. This Court may communicate directly with, or request information or assistance directly from, the Canadian Court or the Foreign Representative, subject to the rights of a party in interest to notice and participation.

13. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any requests for additional relief or any adversary proceeding or contested matter brought in and through these chapter 15 cases, and any request by an entity for

relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

Dated: February 16th, 2023
Wilmington, Delaware

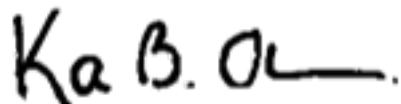

KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Third Amended and Restated CCAA Order

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 13, 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

**THIRD AMENDED AND RESTATED INITIAL ORDER
(RECTIFIED)**

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- [1] **CONSIDERING** the *Application for the Issuance of a Third Amended and Restated Initial Order and Approval and Vesting Orders* (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 *Amended Application for the Issuance of a Second Amended and Restated Initial Order, and an Approval and Vesting Order* (the "**Second ARIO Application**") pursuant to the CCAA;
- [3] **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 "**ARIO Application**") pursuant to the CCAA;
- [4] **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;
- [5] **CONSIDERING** the Sixth Report of the Monitor dated February 10, 2023 (the "**Report**");
- [6] **CONSIDERING** the postponement of the hearing on the issuance of the Approval, Vesting and Assignment Order in Respect of the Assets of Xebec Adsorption Inc. and Compressed Air International Inc. (the "**Ivys AVO**") ~~issued by this Court on February 13, 2023 approving~~ regarding the sale transaction (the "**Ivys Transaction**") contemplated by the agreement entitled Asset Purchase Agreement dated February 8, 2023 between Xebec Adsorption Inc. and Compressed Air International Inc., and Ivys Adsorption Inc. and Ivys, Inc., on behalf of a corporation to be incorporated;
- [7] **CONSIDERING** the Approval, Vesting and Assignment Order in Respect of the Assets of CDA Systems, LLC. And California Compression LLC (the "**Sullair AVO**") issued by this Court on February 13, 2023 approving the sale transaction (the "**Sullair Transaction**") contemplated by the agreement entitled Asset Purchase Agreement dated February 8, 2023 between CDA Systems, LLC and California Compression LLC, and Sullair, LLC, as buyer;
- [8] **CONSIDERING** the Approval and Vesting Order in Respect of GNR LP (the "**FSTQ AVO**") issued by this Court on February 13, 2023 approving the transaction (the "**FSTQ Transaction**") contemplated by the agreement entitled Share Purchase and Unit Repurchase Agreement dated February 8, 2023 between Xebec Adsorption Inc. and Xebec RNG Holdings Inc. as sellers, and Fonds de solidarité des travailleurs du Québec (F.T.Q.) and GNR Québec Capital L.P. as buyers;

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[9] **CONSIDERING** the submissions of counsel and the testimony of Jean-François Nadon on behalf of the Monitor which lead the Court to the following findings and conclusions:

- (a) That the petitioners, and in particular its higher management, are in good faith and are acting with great diligence in both operating the petitioners and fully participating in the court mandated SISF;
- (b) That intensive efforts continue to be carried out to bring about transactions as contemplated in the SISF process, as is evidenced by the vesting orders that the Court has already and is today called upon to approve;
- (c) That impacts continue to be minimized on employees, clients and suppliers and that, in particular, the transaction subject to vesting orders and those with are contemplated ensure that many employees will have continued employment with the purchasers;
- (d) That extending the SARIO to March 17, 2023 continues to serve the objectives of the CCAA;
- (e) That the cash flow projections set out in Schedule F of the Fifth Monitor's Report evidence that further DIP lending is required;
- (f) That the EDC has agreed to provide same as per the terms of the confidential Second DIP Term Sheet subject to the constitution of a Second DIP Charge and that the Monitor has testified that its terms and conditions are financially reasonable;
- (g) That disbursement of the Initial and Subsequent Advance of the Second DIP facility will lead to concomitant reductions of the Administration Charge.

[10] **GIVEN** the provisions of the CCAA;

[11] **GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

THE COURT HEREBY:

[12] **GRANTS** the Application.

[13] **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:

- (a) Service;

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- (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) Second Interim Financing (DIP);
- (o) Directors' and Officers' Indemnification and Charge;
- (p) Restructuring;
- (q) Powers of the Monitor;
- (r) KERPs and KERP Charge;
- (s) Priorities and General Provisions Relating to CCAA Charges;
- (t) Hearing Scheduling and Details;
- (u) General.

a. Service

[14] **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.

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b. Application of the CCAA

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

c. Effective Time

[16] **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

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

[18] **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.

[19] **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

[20] **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

[21] **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 [34] 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.

[22] **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.

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[23] **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

[24] **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

[25] **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 [60] hereof.

[26] **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

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the Monitor, the supplier is critical to the business and ongoing operations of the Petitioners.

- [27] **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.
- [28] **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.
- [29] **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.

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- [30] **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.
- [31] **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**”).
- [32] **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.
- [33] **DECLARES** that paragraph [31] and [32] 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

- [34] **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

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“**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.

- [35] **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

- [36] **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

- [37] **ORDERS** that during the Stay Period and subject to paragraphs [38] and [39] 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

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Petitioners, as applicable, with the consent of the Monitor, or as may be ordered by this Court.

- [38] **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.
- [39] **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

- [40] **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)

- [41] **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 ARIO 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

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permitted by the terms of this Order and the Interim Financing Documents (as defined hereinafter) (the “**DIP Facility**”).

- [42] **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.
- [43] **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.
- [44] **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 [75] and [76] of this Order.
- [45] **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.
- [46] **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

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(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.

[47] **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.

[48] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [82] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [41] to [48] 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. Second Interim Financing (DIP)

[49] **ORDERS** that the Petitioners be and are hereby authorized to borrow from Export Development Canada (“**EDC**”) such amounts from time to time as the Petitioners may consider necessary or desirable, up to an aggregate principal amount not exceeding \$2,500,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed under seal as Exhibit P-8 in support of the Application (the “**Second DIP Term Sheet**”) and in the EDC 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 “**Second DIP Facility**”).

[50] **ORDERS** that the Petitioners are hereby authorized to execute and deliver the Second DIP Term Sheet and other security documents and ancillary documents as may be required by EDC in connection with the Second DIP Facility and the Second DIP Term Sheet (collectively, the “**EDC Interim Financing Documents**”), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to with EDC, but only with the consent of the Monitor, and the Petitioners are hereby authorized to perform all of its obligations under the Second DIP Term Sheet and the EDC Interim Financing Documents.

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- [51] **ORDERS** that Petitioners shall pay to EDC, 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 EDC on a full indemnity basis (the “**EDC Interim Lender Expenses**”)) under the Second DIP Term Sheet and the EDC Interim Financing Documents and shall perform all of their other obligations owed to EDC pursuant to the Second DIP Term Sheet, the EDC Interim Financing Documents and the Order.
- [52] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,000,000 (the “**Second DIP Charge**”) in favour of EDC as security for all obligations of the Petitioners to EDC with respect to the payment of the Second DIP Facility (including principal, interest and the EDC Interim Lender Expenses) owing to EDC under or in connection with the Second DIP Term Sheet and the EDC Interim Financing Documents. Such Second DIP Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs [75] and [76] of this Order.
- [53] **ORDERS** that the claims of EDC pursuant to the EDC Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and EDC, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan.
- [54] **ORDERS** that EDC 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 Second DIP Charge and the EDC 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 Second DIP Term Sheet and the EDC Interim Financing Documents.
- [55] **ORDERS** that EDC shall not take any enforcement steps under the Second DIP Term Sheet, the EDC Interim Financing Documents or the Second 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, EDC shall be entitled to take any and all steps, the Second DIP Term Sheet, the EDC Interim Financing Documents, the Second 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.

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[56] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [82] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [49] to [56] of this Order unless either (a) notice of a motion for such order is served on EDC by the moving party within at least seven (7) days prior to the presentation thereof or (b) EDC apply for or consents to such order.

o. Directors' and Officers' Indemnification and Charge

[57] **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.

[58] **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 [58] 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 [75] and [76] of this Order.

[59] **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 [58] of this Order.

p. Restructuring

[60] **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);

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- (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.

[61] **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.

[62] **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

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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.

q. Powers of the Monitor & Administration Charge

[63] **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;

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- (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.

- [64] **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.
- [65] **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

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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.

- [66] **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.
- [67] **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.
- [68] **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.
- [69] **DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.
- [70] **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.
- [71] **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

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amount of \$3,000,000 (the "**Administration Charge**"), having the priority established by paragraphs [75] and [76] of this Order.

[72] **DECLARES** that:

- (a) at the earliest between: (i) the disbursement of the initial advance of \$1,250,000 by EDC under the EDC Interim Financing Documents (the "**Initial Advance**") or (ii) payments in the aggregate amount of \$1,100,000 by the Monitor of outstanding invoices to the beneficiaries of the Administration Charge out of the net proceeds from the Ivys Transaction (pursuant to paragraph 17 of the Ivys AVO), the Sullair Transaction (pursuant to paragraph 16 of the Sullair AVO) and/or the FSTQ Transaction (pursuant to paragraph 16 of the FSTQ AVO) (the "**Payments from Net Proceeds**"), as confirmed by the issuance of a Monitor's Certificate confirming receipt of the Initial Advance or the Payments from Net Proceeds and First Reduction of the Administration Charge, the Administration Charge shall be reduced by an amount equal to \$750,000 to an amount equal to \$2,250,000; and
- (b) upon the disbursement of the second advance of \$1,250,000 by EDC under the EDC Interim Financing Documents (the "**Second Advance**"), as confirmed by the issuance of a Monitor's Certificate confirming receipt of the Second Advance and Second Reduction of the Administration Charge, the Administration Charge shall be further reduced by an amount equal to \$750,000 to an amount equal to \$1,500,000.

r. KERPs and KERP Charge

[73] **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 Initial 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.

[74] **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 [75] and [76] of this Order.

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s. Priorities and General Provisions Relating to CCAA Charges

- [75] **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 Second DIP Charge;
 - (e) fifth, the Transaction Charge (as defined in the Bidding Procedures Order dated September 29, 2022);
 - (f) sixth, the KERP Charge.
- [76] **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 [28](a) of this Order shall be determined by the Court at a later date and time.
- [77] **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.
- [78] **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.
- [79] **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

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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.

[80] **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.

[81] **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.

t. Hearing Scheduling and Details

[82] **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.

[83] **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

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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**").

- [84] **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.
- [85] **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.
- [86] **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.

u. General

- [87] **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.
- [88] **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.
- [89] **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

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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.

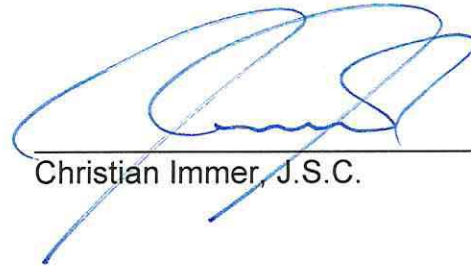
- [90] **DECLARES** that the Petitioners and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses.
- [91] **ORDERS** that Exhibits P-3, P-8, P-10 and Schedule D to Exhibit P-5 to the Initial Application, Exhibits P-2, P-2A and P-3 to the ARIO Application, Appendices A and B to the Fifth Report of the Monitor dated February 1, 2023 and Exhibits P-5, P-6, P-7 and P-8 to the Application shall be filed under seal and kept confidential until further order of this Court.
- [92] **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.
- [93] **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.
- [94] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [95] **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

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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.

- [96] **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.
- [97] **DECLARES** that, for the purposes of any applications authorized by paragraph [96] of this Order, Petitioners' centre of main interest is located in Montréal, Québec, Canada.
- [98] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.
- [99] **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 13, 2023