

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Commercial Division)

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

No.: 500-11-061483-224

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

**FORMERXBC INC.** (formerly **XEBEC ADSORPTION  
INC.**)

-and-

**11941666 CANADA INC.** (formerly **XEBEC RNG  
HOLDINGS INC.**)

-and-

**APPLIED COMPRESSION SYSTEMS LTD.**

-and-

**1224933 ONTARIO INC.** (formerly **COMPRESSED  
AIR INTERNATIONAL INC.**)

-and-

**XEBEC HOLDING USA INC.**

-and-

**ENERPHASE INDUSTRIAL SOLUTIONS, INC.**

-and-

**CDA SYSTEMS, LLC**

-and-

**XEBEC ADSORPTION USA INC.**

-and-

**THE TITUS COMPANY**

-and-

**NORTEKBELAIR CORPORATION**

-and-

**XBC FLOW SERVICES – WISCONSIN INC.**

-and-

**CALIFORNIA COMPRESSION, LLC**

-and-

**XEBEC SYSTEMS USA, LLC**

Debtors / Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

-and-

**ENERGYLINK U.S. INC.**

-and-

**FLUID-AIRE DYNAMICS, INC.**

-and-

**TOTAL ENERGY SYSTEMS, LLC**

Impleaded Parties

**AMENDED APPLICATION FOR THE ISSUANCE OF A FOURTH  
AMENDED AND RESTATED INITIAL ORDER, APPROVAL AND  
VESTING ORDERS, A WAGE EARNER PROTECTION PROGRAM  
ACT ORDER AND ANCILLARY RELIEF**

**(Sections 11, 11.2 and 36 of the *Companies' Creditors  
Arrangement Act*, RSC 1985, c C-36; s. 5(5) of the *Wage Earner  
Protection Program Act*, S.C. 2005, c. 47 and s. 3.2 of the *Wage  
Earner Protection Program Regulations*, SOR/2008-222)**

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

**I. INTRODUCTION**

1. The Debtors / Petitioners FormerXBC Inc. (formerly Xebec Adsorption Inc., "**FormerXBC**"), 11941666 Canada Inc. (formerly Xebec RNG Holdings Inc.), Applied Compression Systems Ltd. ("**ACS**"), 1224933 Ontario Inc. (formerly Compressed Air International Inc., "**Compressed**"), Xebec Holding USA Inc., Enerphase Industrial Solutions, Inc. ("**Enerphase**"), California Compression, LLC, CDA Systems, LLC, Xebec Adsorption USA Inc., The Titus Company ("**Titus**"), Nortekbelair Corporation ("**Nortekbelair**"), Xebec Systems USA, LLC ("**UEC**"), XBC Flow Services – Wisconsin Inc. ("**XBC Wisconsin**") (collectively, the "**Petitioners**") form part of a global provider of sustainable gas solutions used in energy, mobility and industry applications, headquartered in Montréal, Québec.
2. By the present Application, the Petitioners are seeking the issuance of an order (the "**Fourth Amended and Restated Initial Order**"), substantially in the form of

the draft order communicated herewith as **Exhibit P-1** (the “**Draft Fourth ARIO**”), *inter alia*:

- (a) extending the Stay (as defined below) until May 5, 2023 (the “**Extension Date**”);
- (b) terminating the First DIP Charge and the Second DIP Charge (both as defined hereinafter, collectively the “**DIP Charges**”), following payment in full of amounts outstanding under the DIP Facilities;
- (c) terminating the Transaction Charge (as defined hereinafter), following payment in full of all amounts due to NBF;
- (d) approving an amendment to the list of participants in the KERPs (as defined below); and
- (e) sealing the confidential exhibits filed in support of this Application and the updated summary of the offers received in the context of the SISP.

A comparison of the Fourth Amended and Restated Initial Order and the Third ARIO is communicated herewith as **Exhibit P-1A**.

3. The Petitioners are also seeking the issuance of:

- (a) an approval, vesting and assignment order (the “**Fluid-Aire Approval, Vesting and Assignment Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-2**, *inter alia*:
  - i) authorizing the execution by the Petitioner Titus of an asset purchase agreement dated March 11, 2023 (the “**Fluid-Aire APA**”) between Titus, as vendor, and Fluid-Aire Dynamics, Inc. (“**Fluid-Aire**”), as purchaser, for the sale of the Fluid-Aire Purchased Assets (as defined below) (the “**Fluid-Aire Transaction**”);
  - ii) assigning all rights and obligations of Titus under the Assigned Contracts (as defined in the Fluid-Aire APA), upon the issuance to Titus and Fluid-Aire of the relevant Monitor’s Certificate; and
  - iii) approving the Fluid-Aire Transaction.
- (b) an approval, vesting and assignment order (the “**Total Energy Approval, Vesting and Assignment Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-3**, *inter alia*:
  - i) authorizing the execution by the Petitioner XBC Wisconsin of an asset purchase agreement dated March 11, 2023 (the “**Total Energy APA**”) between XBC Wisconsin, as vendor, and Total Energy Systems, LLC (“**Total Energy**”), as purchaser, for the sale of the

Total Energy Purchased Assets (as defined below) (the “**Total Energy Transaction**”);

- ii) assigning all rights and obligations of XBC Wisconsin under the Assigned Contracts (as defined in the Total Energy APA), upon the issuance to XBC Wisconsin and Total Energy of the relevant Monitor’s Certificate; and
- iii) approving the Total Energy Transaction.

(c) an approval, vesting and assignment order (the “**EnergyLink Approval, Vesting and Assignment Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-8**, *inter alia*:

- i) authorizing the execution by the Petitioner UEC of an asset purchase agreement dated March 14, 2023 (the “**EnergyLink APA**”) between UEC, as vendor, and EnergyLink U.S. Inc. (“**EnergyLink**”), as purchaser, for the sale of the EnergyLink Purchased Assets (as defined below) (the “**EnergyLink Transaction**”);
- ii) assigning all rights and obligations of UEC under the Assigned Contracts (as defined in the EnergyLink APA), upon the issuance to UEC and EnergyLink of the relevant Monitor’s Certificate; and
- iii) approving the EnergyLink Transaction.

4. Comparisons of the Fluid-Aire Approval, Vesting and Assignment Order, the Total Energy Approval, Vesting and Assignment Order and the EnergyLink Approval, Vesting and Assignment Order with the model approval and vesting order published by the Barreau de Montréal are communicated herewith respectively as **Exhibits P-2A, P-3A and P-8A**.

5. Finally, the Petitioners are seeking the issuance of an order declaring that pursuant to section 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (“**WEPPA**”) that FormerXBC, ACS and Compressed meet the criteria established by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the “**WEPP Regulations**”) (the “**WEPP Relief**”), substantially in the form of the draft order communicated herewith as **Exhibit P-4**.

## II. PROCEDURAL BACKGROUND

6. On September 29, 2022, at the Petitioners’ request, the Court issued a First Day Initial Order (the “**FDIO**”) pursuant to the CCAA and a Bidding Procedures Order (the “**Bidding Procedures Order**”), as appears from the Court record.

7. The FDIO, *inter alia*:
  - (a) appointed Deloitte Restructuring Inc. as monitor of the Petitioners' CCAA proceedings (the "**Monitor**");
  - (b) ordered a stay of proceedings in respect of the Petitioners and their directors and officers until October 7, 2022, as extended thereafter pursuant to the ARIO (as defined below), (the "**Stay**"); and
  - (c) declared that Québec is the "center of main interest" of the Petitioners and, accordingly, authorized the Petitioners to apply, as they may consider necessary or desirable, to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize and/or assist in carrying out the terms of the Initial Order and any subsequent Orders rendered by this Court in the context of these proceedings, including, without limitation, orders under Chapter 15 of the United States Bankruptcy Code 11 U.S.C. §§ 101-1532.
8. The Bidding Procedures Order, *inter alia*, approved the proposed Sale and Investment Solicitation Process (the "**SISP**") and its implementation in accordance with the Procedures for the Sale and Investment Solicitation Process annexed thereto as Schedule "A" (the "**Bidding Procedures**"), as appears from the Court record.
9. The Bidding Procedures Order also approved the engagement of National Bank Financial Inc. ("**NBF**") to assist in the implementation of the SISP.
10. On October 7, 2022, at the Petitioners' request, the Court issued an Order Extending the Stay until October 20, 2022, as appears from the Court record.
11. On October 20, 2022, at the Petitioners' request, the Court issued an Amended and Restated Initial Order (the "**ARIO**") pursuant to the CCAA, as appears from the Court record.
12. The ARIO, *inter alia*:
  - (a) extended the Stay until November 28, 2022;
  - (b) approved a key employee retention plan, a key vice-president retention plan and a key executive incentive plan (collectively, the "**KERPs**") and granted a Court-ordered charge to secure the payment owed to the key employees in accordance with the KERPs; and
  - (c) approved the debtor-in-possession evolving multiple draw credit facility (the "**First DIP Facility**") provided by the National Bank of Canada ("**NBC**") and Export Development Canada ("**EDC**", and collectively with NBC, the "**Interim Lenders**") in accordance with the Interim Financing Term Sheet filed under seal as Exhibit P-2A in support of the Application for the

Issuance of an Amended and Restated Initial Order and granted a Court-ordered charge (the “**First DIP Charge**”) in an amount sufficient to cover the potential exposure of the Interim Lenders under the First DIP Facility.

13. On November 28, 2022, at the Petitioners’ request, the Court issued an Order Extending the Stay of Proceedings and Granting Ancillary Relief, which extended the Stay until February 3, 2023, as appears from the Court record.
14. On February 3, 2023, at the Petitioners’ request, the Court issued a Second Amended and Restated Initial Order (the “**Second ARIO**”), pursuant to the CCAA, as appears from the Court record.
15. On the same date, the Court also issued an Approval and Vesting Order (the “**ACS AVO**”) with respect to the sale of substantially all assets of ACS (the “**ACS Transaction**”), the whole as appears from the Court record.
16. The Second ARIO, *inter alia*:
  - (a) extended the Stay until February 13, 2023; and
  - (b) increased the Administration Charge to a maximum amount of \$3,000,000.
17. On February 13, 2023, at the Petitioners’ request, the Court issued a Third Amended and Restated Initial Order (the “**Third ARIO**”), pursuant to the CCAA, as appears from the Court record.
18. The Third ARIO, *inter alia*:
  - (a) extended the Stay until March 17, 2023;
  - (b) approved the Second DIP Facility (collectively with the First DIP Facility, the “**DIP Facilities**”) provided by EDC and approved the execution by the Petitioners of the Second DIP Term Sheet (as defined in the Third ARIO) and granted a Court-ordered charge (the “**Second DIP Charge**”); and
  - (c) declared that at the earliest between the disbursement of the initial advance of \$1,250,000 by EDC or payments in the aggregate amount of \$1,100,000 by the Monitor of outstanding invoices to the beneficiaries of the Administration Charge (as defined in the Third ARIO) out of the net proceeds from the Ivys Transaction, the Sullair Transaction and/or the FSTQ Transaction, the Administration Charge shall be reduced by an amount equal to \$750,000 to an amount equal to \$2,250,000 and upon the disbursement of the second advance of \$1,250,000 by EDC, further reduced by an amount equal to \$750,000 to an amount equal to \$1,500,000.
19. On the same date, the Court also issued:

- (a) an Approval, Vesting and Assignment Order (the “**Sullair AVO**”) with respect to the sale of substantially all assets of CDA Systems, LLC and California Compression, LLC (the “**Sullair Transaction**”); and
- (b) an Approval and Vesting Order (the “**FSTQ AVO**”) with respect to the sale of the limited partnership interest held by FormerXBC in the capital of GNR Québec Capital L.P. and the shares held by 11941666 Canada Inc. in the capital of GNR Québec Capital Management Inc. (the “**FSTQ Transaction**”);

the whole as appears from the Court record.

- 20. On February 16, 2023, at the request of the Petitioners, the United States Bankruptcy Court seized with the Chapter 15 Proceedings in respect of the Petitioners (the “**U.S. Bankruptcy Court**”) rendered an order (i) recognizing and enforcing the Sullair AVO; (ii) approving the sale of substantially all assets of CDA Systems, LLC and California Compression, LLC free and clear of any and all liens, claims, and encumbrances; (iii) approving the assumption and assignment of certain contracts; and (iv) granting related relief.
- 21. On February 17, 2023, at the Petitioners’ request, the Court issued an Approval, Vesting and Assignment Order (the “**Ivys AVO**”) with respect to the sale of some assets of FormerXBC and Compressed (the “**Ivys Transaction**”), the whole as appears from the Court record.
- 22. The ACS Transaction, FSTQ Transaction, Sullair Transaction and Ivys Transaction closed on February 7, February 15, February 21 and February 24, 2023, respectively.

### III. **SISP**<sup>1</sup>

- 23. As appears from the Court record, in accordance with the Bidding Procedures Order, the SISP was conducted in accordance with the following milestones:
  - (a) non-binding letters of intent (“**LOIs**”) were due on or before November 11, 2022;
  - (b) NBF notified each Phase 1 Qualified Bidder as to whether its bid constituted a Phase 1 Satisfactory Bid on November 18, 2022; and
  - (c) Definitive offers by Phase 2 Qualified Bidders were due on or before January 6, 2023;

the whole as further provided for in the Bidding Procedures.

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

24. As previously reported to the Court, NBF distributed teasers to 479 potential targets, including potential investors and strategic acquirers.
25. A confidential virtual data room (the “**VDR**”) was made available to potential targets, provided that such potential targets execute a non-disclosure agreement (“**NDA**”).
26. As a result, 101 potential targets executed NDAs and were thereafter granted access to the VDR. Of those 101 potential bidders, 67 were deemed Phase 1 Qualified Bidders.
27. Of the 67 Phase 1 Qualified Bidders, 32 submitted bids in the form of non-binding LOIs.
28. The Petitioners, in consultation with the Monitor and NBF, determined that 19 Phase 1 Qualified Bidders were Phase 2 Qualified Bidders, and invited them to participate in phase 2 of the SISP.
29. On January 6, 2023 (the “**Phase 2 Bid Deadline**”), a number of binding offers were submitted by Phase 2 Qualified Bidders.
30. On January 16, 2023, each of the Phase 2 Qualified Bidders submitted a revised binding offer.
31. As appears from the Court record, these offers ultimately led to the Ivys Transaction, Sullair Transaction and FSTQ Transaction, the whole for the benefit of all stakeholders.
32. Following the approval of these transactions, in order to elicit the best outcome in the circumstances for the remaining assets following the two phases of the SISP, NBF conducted negotiations with parties that:
  - (a) contacted NBF to express interest in the remaining assets;
  - (b) had been contacted, executed an NDA and had been granted access to the VDR during Phase 1 of the SISP, but had not been invited to or did not ultimately submit an offer during Phase 2 of the SISP; and/or
  - (c) were approached by NBF following the two phases of the SISP to determine interest in the remaining assets.
33. The above-mentioned parties were informed that submissions of final offers relating to the remaining assets were due on February 27, 2023 (the “**Remaining Assets Bid Deadline**”).
34. By or on the Remaining Assets Bid Deadline, a number of final offers had been received. An updated summary of the final offers received for the remaining assets



will be appended (under seal) to the Monitor's report to be filed in support of the present Application (the "**Monitor's Report**").

35. Following receipt of same, the Petitioners, in consultation with NBF and the Monitor, conducted numerous meetings to review and evaluate the final offers with a view of entering into definitive agreements relating to remaining assets. These discussions, in addition to various exchanges and negotiations with parties having submitted final offers, have resulted in the contemplated transactions described herein.
36. The SISP is now substantially advanced. The Petitioners, with the assistance of the Monitor, are completing discussions with parties with a view of entering into definitive agreements relating to the remaining assets and are considering the strategy to monetize remaining assets to the benefit of all stakeholders.

#### **IV. FLUID-AIRE TRANSACTION<sup>2</sup>**

##### **A. Description of the Fluid-Aire Transaction**

37. 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.
38. Titus leases a facility in Morgantown, Pennsylvania and is a wholly owned subsidiary of Xebec Holding USA Inc. Titus currently employs approximately 20 employees.
39. Fluid-Aire is an Illinois based company specialized in various compressed air solutions, and notably provides system design, equipment, installation, parts, supplies, maintenance, and repair of industrial and commercial rotary screw air compressors.
40. On or prior to the Remaining Assets Bid Deadline, Fluid-Aire submitted an offer in the context of the sale of the remaining assets.
41. In light of the current context and after careful consideration of all alternatives, the Petitioners determined, in consultation with the Monitor and NBF, that Fluid-Aire's offer was the most advantageous to the stakeholders of Titus, and of the Xebec Group generally.
42. The Fluid-Aire Transaction represents the divestiture of substantially all of Titus' assets (collectively, the "**Fluid-Aire Purchased Assets**").

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<sup>2</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the Fluid-Aire APA.

43. The Fluid-Aire APA contemplates the sale of the Fluid-Aire Purchased Assets for a purchase price of USD 1,353,000 plus Accrued Liabilities, as more fully set forth in Article 3 of the Fluid-Aire APA (the “**Fluid-Aire Purchase Price**”).
44. The Fluid-Aire APA also includes the following key terms:
- (a) the Fluid-Aire Purchased Assets are being sold, and the Assumed Liabilities (as defined in the Fluid-Aire APA) are being assumed, on an “as is, where is” basis;
  - (b) it is a condition of the Fluid-Aire APA that the Fluid-Aire Approval, Vesting and Assignment Order be issued by this Court and that, no later than three business day after the issuance of the Fluid-Aire Approval, Vesting and Assignment Order, Titus file a motion with the U.S. Bankruptcy Court to obtain an order, among other things, recognizing the Fluid-Aire Approval, Vesting and Assignment Order and approving the Fluid-Aire Transaction (the “**Fluid-Aire U.S. Recognition Order**”);
  - (c) certain contracts to which Titus is party shall be assigned to Fluid-Aire by way of the Fluid-Aire Approval, Vesting and Assignment Order. Any and all Cure Costs that may be associated with these assigned contracts and purchase orders, which are listed in Schedule D of the Fluid-Aire Approval, Vesting and Assignment Order, shall be paid in full by Fluid-Aire within thirty 30 days of the issuance of the Monitor’s Closing Certificate, in accordance with paragraph 21 of the Draft Fluid-Aire AVO, and any further liability under the assigned contracts shall be assumed by Fluid-Aire.
  - (d) the Fluid-Aire APA provides that the Fluid-Aire Purchase Price is payable in full by Fluid-Aire to the Monitor at Closing;
  - (e) the Fluid-Aire Transaction must close on or before April 30, 2023.

A redacted copy of the Fluid-Aire APA is communicated herewith as **Exhibit P-5**. A complete copy of the Fluid-Aire APA is communicated herewith under seal as **Exhibit P-5A**.

45. The Fluid-Air Transaction also contemplates the continued employment of substantially all employees currently actively employed by Titus.

## **B. Grounds for Approval of the Fluid-Aire Transaction**

46. The Petitioners are satisfied that, should this Court grant this Application, the remaining conditions to Closing and closing mechanics should lead to the closing of the Fluid-Aire Transaction.
47. In addition, the Petitioners submit that the following important factors favour the approval of the Fluid-Aire APA and Fluid-Aire Transaction:

- (a) the Fluid-Aire Purchase Price for the sale of the Fluid-Aire Purchased Assets is reasonable and fair in the circumstances, and the highest and best transaction available resulting from the SISP and the sale of the remaining assets;
  - (b) the Petitioners have consulted extensively with the Monitor as to the Fluid-Aire APA and Fluid-Aire Transaction and the Monitor has confirmed to the Petitioners that it supports the Fluid-Aire Transaction; and
  - (c) the Fluid-Aire Transaction is the best available option to Titus and will benefit its stakeholders as a whole.
48. As appears from above, the SISP and the sale of the remaining assets was conducted in a fair and reasonable manner.
49. Absent a transaction, Titus is unlikely to have sufficient liquidity to continue its operations in the ordinary course.
50. Should the Court authorize the Fluid-Aire Transaction, the Petitioners will be proceeding before the U.S. Bankruptcy Court to obtain the Fluid-Aire U.S. Recognition Order.
51. The Petitioners understand that the Interim Lenders support the Fluid-Aire Transaction.

## **V. TOTAL ENERGY TRANSACTION<sup>3</sup>**

### **A. Description of the Total Energy Transaction**

52. XBC Wisconsin is part of the Cleantech Service Network. It supplies U.S. customers with high-quality compressed air products from the industry's top manufacturers, in addition to providing service and support.
53. XBC Wisconsin is a wholly owned subsidiary of Xebec Holding USA Inc. and currently employs approximately 9 employees.
54. Total Energy is a sales and servicing distributor of power generation equipment and off-highway engines.
55. On or prior to the Remaining Assets Bid Deadline, Total Energy submitted an offer in the context of the sale of the remaining assets.
56. In light of the current context and after careful consideration of all alternatives, the Petitioners determined, in consultation with the Monitor and NBF, that Total

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<sup>3</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the Total Energy APA.

Energy's offer was the most advantageous to the stakeholders of XBC Wisconsin, and of the Xebec Group generally.

57. The Total Energy Transaction represents the divestiture of substantially all assets of XBC Wisconsin (collectively, the "**Total Energy Purchased Assets**").
58. The Total Energy APA contemplates the sale of the Total Energy Purchased Assets for a purchase price of USD 121,000 plus the sum of 80% of the Accounts Receivable and 80% of the Inventory as of the Closing Date and Assumed Liabilities, as more fully set forth in Article 3 of the Total Energy APA (the "**Total Energy Purchase Price**").
59. The Total Energy APA also includes the following key terms:
  - (a) the Total Energy Purchased Assets are being sold, and the Assumed Liabilities (as defined in the Total Energy APA) are being assumed, on an "as is, where is" basis;
  - (b) it is a condition of the Total Energy APA that the Total Energy Approval, Vesting and Assignment Order be issued by this Court and that, no later than one business day after the issuance of the Total Energy Approval, Vesting and Assignment Order, XBC Wisconsin file a motion with the U.S. Bankruptcy Court for approval of the transaction contemplated by the Total Energy APA and to obtain the U.S. Sale Order (as defined in the Total Energy APA);
  - (c) certain contracts and open purchase orders to which XBC Wisconsin is party shall be assigned to Total Energy by way of the Total Energy Approval, Vesting and Assignment Order and the U.S. Sale Order. Any and all Cure Costs that may be associated with these assigned contracts and purchase orders, which are listed in Schedule C of the Total Energy Approval, Vesting and Assignment Order, shall be paid in full by Total Energy within thirty 30 days of the issuance of the Monitor's Closing Certificate, in accordance with paragraph 21 of the Draft Total Energy AVO, and any further liability under the assigned contracts shall be assumed by Total Energy. However, as of the date of the Total Energy APA, the parties understand that no Cure Costs are outstanding;
  - (d) the Total Energy APA provides that the Total Energy Purchase Price is payable in full by Total Energy to the Monitor at Closing;
  - (e) the Total Energy Transaction must close on or before March 24, 2023.

A redacted copy of the Total Energy APA is communicated herewith as **Exhibit P-6**. A complete copy of the Total Energy APA is filed herewith under seal as **Exhibit P-6A**.

60. The Total Energy Transaction contemplates the continuation of the XBC Wisconsin business by Total Energy, including the continued employment of all or substantially all employees currently actively employed by XBC Wisconsin.

**B. Grounds for Approval of the Total Energy Transaction**

61. The Petitioners are satisfied that, should this Court grant this Application, the remaining conditions to Closing and closing mechanics should lead to the closing of the Total Energy Transaction.

62. In addition, the Petitioners submit that the following important factors favour the approval of the Total Energy APA and Total Energy Transaction:

- (a) the Total Energy Purchase Price for the sale of the Total Energy Purchased Assets is reasonable and fair in the circumstances, and the highest and best transaction available resulting from the SISP and the sale of the remaining assets;
- (b) the Petitioners have consulted extensively with the Monitor as to the Total Energy APA and Total Energy Transaction and the Monitor has confirmed to the Petitioners that it supports the Total Energy Transaction; and
- (c) the Total Energy Transaction is the best available option to XBC Wisconsin and will benefit its stakeholders as a whole.

63. As appears from above, the SISP and the sale of the remaining assets was conducted in a fair and reasonable manner.

64. Absent a transaction, XBC Wisconsin is unlikely to have sufficient liquidity to continue its operations in the ordinary course.

65. Should the Court authorize the Total Energy Transaction, the Petitioners will be proceeding before the U.S. Bankruptcy Court to obtain the U.S. Sale Order.

66. The Petitioners understand that the Interim Lenders support the Total Energy Transaction.

**VI. ENERGYLINK TRANSACTION<sup>4</sup>**

**A. Description of the EnergyLink Transaction**

67. UEC operates a 100,000 square foot facility located in Henderson, Colorado and designs and manufactures air and gas processing systems with references in landfill gas, natural gas, biogas, hydrogen and carbon dioxide compression. UEC

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<sup>4</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the EnergyLink APA.

also manufactures containerized biogas upgrading equipment under the supervision of other divisions of the Petitioners.

68. UEC is a wholly owned subsidiary of Xebec Holding USA Inc., which is in turn a direct and wholly owned subsidiary of FormerXBC UEC currently employs approximately 56 employees.
  69. EnergyLink is a leading supplier of specialized and balanced solutions for air emissions and noise management, acoustic consulting, gas turbine auxiliary systems and turnkey buildings.
  70. On or prior to the Remaining Assets Bid Deadline, EnergyLink submitted an offer in the context of the SISP and the sale of the remaining assets.
  71. In light of the current context and after careful consideration of all alternatives, the Petitioners determined, in consultation with the Monitor and NBF, that EnergyLink's offer was the most advantageous to the stakeholders of UEC, and of the Xebec Group generally.
  72. The EnergyLink Transaction represents the divestiture of substantially all assets of UEC (collectively, the "**EnergyLink Purchased Assets**").
  73. The EnergyLink APA contemplates the sale of the EnergyLink Purchased Assets for a purchase price of USD 3,000,000 plus Accrued Liabilities, as more fully set forth in Article 3 of the EnergyLink APA (the "**EnergyLink Purchase Price**").
  74. The EnergyLink APA also includes the following key terms:
    - (a) the EnergyLink Purchased Assets are being sold, and the Assumed Liabilities (as defined in the EnergyLink APA) are being assumed, on an "as is, where is" basis;
    - (b) it is a condition of the EnergyLink APA that the EnergyLink Approval, Vesting and Assignment Order be issued by this Court and that the U.S. Bankruptcy Court grant an order, among other things, recognizing the EnergyLink Approval, Vesting and Assignment Order and approving the EnergyLink Transaction (the "**EnergyLink U.S. Recognition Order**");
    - (c) the EnergyLink APA provides that the EnergyLink Purchase Price is payable in full by EnergyLink to the Monitor at Closing;
    - (d) the EnergyLink Transaction must close on or before March 31, 2023.
- A redacted copy of the EnergyLink APA is communicated herewith as **Exhibit P-9**. A complete copy of the EnergyLink APA is communicated herewith under seal as **Exhibit P-9A**.

75. The EnergyLink APA provides that certain contracts to which UEC is party shall be assigned to EnergyLink by way of the EnergyLink Approval, Vesting and Assignment Order. Pursuant to the EnergyLink APA, any and all Cure Costs (as defined in the EnergyLink APA) constitute Assumed Liabilities thereunder. Any and all Cure Costs that may be associated with these assigned contracts, which are listed in Schedule C to the EnergyLink Approval, Vesting and Assignment Order shall be paid in full by EnergyLink no later than 30 days following Closing (as defined in the EnergyLink APA), and any further liability under the assigned contracts shall be assumed by EnergyLink. However, as of the date of the EnergyLink APA, the parties understand that no Cure Costs are outstanding;

76. The Petitioners understand that EnergyLink will offer continued employment to a substantial number of active employees of UEC.

**B. Grounds for Approval of the EnergyLink Transaction**

77. UEC is satisfied that, should this Court grant this Application, the remaining conditions to Closing and closing mechanics should lead to the closing of the EnergyLink Transaction.

78. In addition, UEC submits that the following important factors favour the approval of the EnergyLink APA and EnergyLink Transaction:

(a) the EnergyLink Purchase Price for the sale of the EnergyLink Purchased Assets is reasonable and fair in the circumstances, and the highest and best transaction available resulting from the SISP and the sale of the remaining assets;

(b) the Petitioners have consulted extensively with the Monitor as to the EnergyLink APA and EnergyLink Transaction and the Monitor has confirmed to the Petitioners that it supports the EnergyLink Transaction;  
and

(c) the EnergyLink Transaction is the best available option to UEC and will benefit its stakeholders as a whole.

79. As appears from above, the SISP and the sale of the remaining assets was conducted in a fair and reasonable manner.

80. Absent a transaction, UEC is not expected to have sufficient liquidity to continue its manufacturing, distribution and services operations in the ordinary course.

81. Should the Court authorize the EnergyLink Transaction, the Petitioners will be proceeding before the U.S. Bankruptcy Court to obtain the EnergyLink U.S. Recognition Order.

82. The Petitioners understand that the Interim Lenders support the EnergyLink Transaction.

**VII. GROUNDS FOR THE ISSUANCE OF THE FOURTH AMENDED AND RESTATED INITIAL ORDER**

**A. Extension of the Stay**

83. Since the issuance of the Third ARIO, the Petitioners have acted, and continue to act in good faith and with due diligence.
84. The Petitioners, with the assistance of NBF and the Monitor, have continued to diligently advance the SISP.
85. The Stay currently expires on March 17, 2023.
86. The Petitioners are seeking to extend the Stay to the Extension Date, which will provide the Petitioners with sufficient time to notably:
  - (a) close the Fluid-Aire Transaction;
  - (b) close the Total Energy Transaction;
  - (c) close the EnergyLink Transaction;
  - (d) advance and, if possible, complete discussions with other interested parties with a view of entering into definitive agreements relating to the remaining assets.
87. In addition, during the sought extension period, the Petitioners intend to advance the following:
  - (a) Address various legal issues;
  - (b) Analyse whether a plan of arrangement is appropriate with respect to certain entities;
  - (c) Perform an orderly wind-down of operations and legal entities;
  - (d) Determine the disposition strategy for remaining assets, including the Inmatec entities (Xebec Komplementär GmbH, Inmatec Gase Technologie GmbH & Co. KG and Inmatec Gas Technology FZC-LLC); and
  - (e) The Monitor will prepare the Intercompany Transactions Report as part of the allocation process to be completed, which will be filed in due time in the Court record.
88. Should this Honourable Court not extend the Stay, the Petitioners will not be able to close the transactions resulting from the SISP and address post-closing issues, to the detriment of their stakeholders.



89. Should the Court determine it appropriate to issue the Fourth Amended and Restated Initial Order substantially in the form of the Draft Fourth ARIO, the Petitioners' cash flow will be sufficient to continue operations for the coming weeks and, provided that additional financing arrangements can be made, after such time, as further explained below and as will appear more fully from the Monitor's Report.
90. No creditor will be unduly prejudiced by the extension sought.

**B. Modifications to the CCAA Charges**

91. As detailed above, the ACS Transaction, FSTQ Transaction, Sullair Transaction and Ivys Transaction closed on February 7, February 15, February 21 and February 27, 2023, respectively.
92. The Monitor, in consultation with the secured lenders, is holding in trust proceeds in relation to the ACS Transaction, the FSTQ Transaction, the Sullair Transaction and the Ivys Transaction, in the net amount of \$19.3 million (the "**Reserve**").
93. The Monitor intends to pay amounts currently included in the Reserve following approval by this Court of the proposed payments, as appears from the *Application of the Monitor for Authorization of Payments in Connection with the CCAA Charges and Related Relief* to be filed on or about the date hereof (the "**Monitor's Application**").
94. By way of the Monitor's Application, the Monitor also seeks the issuance of an order authorizing the Monitor to issue certificates to reduce and/or discharge the CCAA Charges, as applicable and in the manner described below.
95. The Petitioners are therefore seeking an order declaring that the certificates of the Monitor to be issued and filed in the Court record pursuant to the order sought in the Monitor's Application shall validly reduce and/or discharge the CCAA Charges, as applicable, without the necessity of any amendment to the Fourth Amended and Restated Initial Order or of any other orders of this Court.

Termination of the First DIP Charge

96. Pursuant to the First DIP Facility approved by the ARIO, the Petitioners have been authorized to borrow from the Interim Lenders up to a maximum principal amount of \$3,000,000. As at the date hereof, the First DIP Facility has been fully drawn by the Petitioners.
97. The First DIP Facility is secured by the First DIP Charge for an aggregate amount of \$3,600,000 in favour of the Interim Lenders.
98. Pursuant to the Second DIP Facility approved by the Third ARIO, the Petitioners have been authorized to borrow from EDC up to a maximum principal amount of \$2,500,000. As at the date hereof, the Second DIP Facility has been drawn for an amount of \$1,250,000 by the Petitioners.

99. The Second DIP Facility is secured by the Second DIP Charge for an aggregate maximum amount of \$3,000,000 in favour of EDC, ranking behind the First DIP Charge but before the Transaction Charge and the KERP Charge.
100. In accordance with the order sought under the Monitor's Application, upon confirmation by the Interim Lenders that the First DIP Facility has been repaid in full, the Monitor will issue a certificate which will terminate the DIP Charge.

Reduction of the KERP Charge

101. As of the date hereof, the KERP Charge is equal to an aggregate amount of \$1,080,000.
102. In accordance with the order sought under the Monitor's Application, upon the issuance by the Monitor of certificates confirming that payments have been made pursuant to the KERPs, the KERP Charge will be reduced in amounts equivalent to payments made.

Termination of the Transaction Charge

103. Pursuant to the Bidding Procedures Order, all of the Property (as defined in the FDIO) of the Petitioners is subject to a charge, hypothec and security for an aggregate amount of \$975,000 (the "**Transaction Charge**") in favour of NBF as security for the payment of the Transaction Fee (as defined in the Engagement Letter entered into by FormerXBC and NBF dated September 27, 2022, filed in support of the FDIO Application as Exhibit P-3).
104. As of the date hereof, the Transaction Charge is equal to an aggregate amount of \$975,000 (plus applicable sales tax).
105. In accordance with the order sought under the Monitor's Application, upon the issuance of a certificate by the Monitor confirming that the amount secured by the Transaction Charge has been paid in full to NBF, Transaction Charge will be deemed discharged and cancelled.

**VIII. WEPP RELIEF**

106. In the context of proceedings under the CCAA, WEPPA and the WEPP Regulations give this Court discretion, under sections 5(5) and 3.2, respectively, to order that a former employer meets the criteria prescribed by regulation, where the Court determines that it is a "former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations."
107. At the beginning of these CCAA Proceedings, the Canadian debtors FormerXBC, ACS and Compressed employed 198 employees. They now only employ 11 employees, as appears from the following comparison table:

<b>Entity (Location)</b>	<b>Number of Employees as of September 29, 2022</b>	<b>Number of Employees currently employed</b>
FormerXBC (Québec)	157	9
Applied (British Columbia)	27	2
Compressed (Ontario)	14	0
<b>Total (Canada)</b>	<b>198</b>	<b>11</b>

108. FormerXBC, ACS and Compressed have terminated or are in the process of terminating the employment of substantially all of their employees, with the only employees remaining being those who are crucially necessary to wind down the affairs of FormerXBC, ACS and Compressed.
109. The terminated employees are owed certain amounts that would be covered by the WEPP Relief. Considering the nature and quantum of secured and unsecured claims against FormerXBC, ACS and Compressed, absent application of the WEPP, there may be no funds available for the former employees in payment of such amounts.
110. There is no present intention of FormerXBC, ACS or Compressed to hire back any of the terminated employees.
111. It is therefore in the best interest of all stakeholders, including the former employees, for this Court to determine that, pursuant to section 5(5) of the WEPPA, that FormerXBC, ACS and Compressed meet the criteria prescribed by section 3.2 of the WEPP Regulations, and to render an order substantially in the form of Exhibit P-5.

## **IX. ANCILLARY RELIEF SOUGHT**

### **A. Amendment of the list of participants in the KERPs**

112. Payments contemplated by the KERPs have been in the ordinary course.
113. Since the issuance of the Third ARIO and the closing of the Ivys Transaction, certain participants in the KERPs have resigned or are otherwise no longer employed by the Petitioners.
114. The Petitioners are seeking an order approving the amendment and restatement of the list of participants in the KERPs, in order to include remaining payments to employees already covered under the previously ordered KERPs and to add six employees whom the Petitioners wish to incentivize to remain in their positions given their ongoing contribution. An amended and restated list of participants in

the KERPs is communicated herewith, under seal, as **Exhibit P-7** (the “**Amended KERPs**”).

115. This proposed change would increase the aggregate amount to be paid to the key employees under the Amended KERPs by approximately \$63,000.
116. Remaining payments due under the Amended KERPs are to be secured by the KERP Charge, subject to future reductions following payments made thereunder, as described above.
117. The proposed amendment has been approved by the Monitor.

**B. Sealing of Confidential Documents**

118. The Petitioners are seeking an order declaring that the following be kept strictly confidential and under seal:
  - (a) the complete versions of the Fluid-Aire APA, Total Energy APA and EnergyLink APA (Exhibits P-5A, P-6A and P-9A);
  - (b) the Summary of offers received in the context of the SISP for the remaining assets appended to the Monitor’s Report.
119. The sealing of the unredacted versions of the Fluid-Aire APA, Total Energy APA and EnergyLink APA is necessary considering that:
  - (a) the complete version of the Fluid-Aire APA contains individualized information on the compensation of employees. In the current competitive employment market, such information could be highly prejudicial to Fluid-Aire, allowing competitors to “poach” employees;
  - (b) the complete versions of the Fluid-Aire APA, Total Energy APA and EnergyLink APA contain commercially sensitive information regarding trade payables, which can give an unfair advantage to the competitors of Fluid-Aire and Total Energy, if disclosed; and
  - (c) the complete versions of the Fluid-Aire APA and Total Energy APA contain sensitive financial information relating to agreements with other companies doing business with Fluid-Aire or Total Energy.
120. The sealing of the Summary of offers received in the context of the SISP is justified and necessary for the Petitioners to continue negotiating transactions within the SISP. The disclosure of these documents would have a prejudicial impact on the ongoing SISP.

**C. Increase of Aggregate Amount for Transactions Subject to Monitor Approval**

121. Pursuant to paragraph 60 (c) of the Third ARIO, the Petitioners, subject to prior approval of the Monitor, may dispose of assets outside the ordinary course of business provided that the price in each case does not exceed \$750,000 or \$1,500,000 in the aggregate.
122. The Petitioners are currently engaged in active discussions with interested parties with a view of entering into agreements relating to various remaining assets, in particular smaller transactions which would fall under the above-mentioned \$750,000 threshold. The Petitioners intend to keep the Court apprised of such agreements in due course.
123. To facilitate the process of monetizing remaining assets, the Petitioners are seeking an increase of the aggregate amount of such transactions by an amount of \$1 million, the whole in view of completing certain additional transactions for the benefit of all stakeholders and minimizing costs and delays in connection therewith and generating additional proceeds.
124. As provided under the Third ARIO and contemplated in the Draft Fourth ARIO, these transactions are all subject to prior approval of the Monitor.
125. The Petitioners are therefore seeking an order declaring that they may dispose of assets outside the ordinary course of business provided that the price does not exceed \$2,500,000 in the aggregate, with the threshold for each individual transaction remaining unchanged at \$750,000.

**D. Additional Financing**

126. As shown by the Monitor's Report, the Petitioners will require additional financing in the approximate amount of \$1.5 million to continue their operations starting in April.
127. The Petitioners and the Monitor are currently discussing with EDC the opportunity of providing the Petitioners with a third debtor-in-possession facility, or of distributing a portion of the Reserve to the Petitioners to allow the Petitioners to continue operations up to and until the Extension Date.
128. Prior to or on the date of the hearing on the present Application, the Petitioners may seek additional relief from the Court in connection with financing requirements.

**E. Closing of Transactions and Additional Potential Transaction**

129. The Fluid-Aire Transaction, Total Energy Transaction and EnergyLink Transaction are expected to close immediately following the issuance of the approval, vesting and assignment orders sought herein.

130. However, the proceeds of these transactions will be held in escrow by the Monitor until the issuance of the recognition orders by the U.S. Bankruptcy Court. In the event, which the Petitioners believe to be unlikely, that the sought orders are not issued, the parties will have to commence discussions on next steps.
131. As of the date hereof, the Petitioners are in very advanced discussions with an interested party with respect to another asset sale transaction. The Petitioners anticipate that they will likely amend the present Application prior to its presentation to seek approval of this transaction.

**F. Execution Notwithstanding Appeal**

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

**X. CONCLUSION**

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

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

**GRANT** the present *Application for the Issuance of a Fourth Amended and Restated Initial Order, Approval and Vesting Orders, a Wage Earner Protection Program Act Order and Ancillary Relief* (the "**Application**");

**ISSUE** orders substantially in the form of the draft orders communicated in support of the Application as **Exhibits P-1, P-2, P-3, P-4 and P-8**;

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

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

MONTREAL, March 15, 2023

*Osler, Hoskin & Harcourt LLP*

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**Osler, Hoskin & Harcourt LLP**

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Email notification: [notificationosler@osler.com](mailto:notificationosler@osler.com)

Our file: 1233913

## AFFIDAVIT

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

1. I am the President and CEO of FormerXBC Inc. (formerly 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 Fourth Amended and Restated Initial Order, Approval and Vesting Orders, a Wage Earner Protection Program Act Order and Ancillary Relief* (the "**Application**").
3. All of the facts alleged in the Application of which I have personal knowledge are true.
4. Where the facts alleged in the Application have been obtained from others, I believe them to be true.

AND I HAVE SIGNED:



**Dimitrios Vounassis**

SOLEMNLY DECLARED BEFORE ME BY  
VIRTUAL MEANS IN MONTRÉAL, QUÉBEC,  
ON MARCH 14, 2023.

*Danielle Bherer 189775*

Danielle Bherer  
Commissioner for Oaths for the Province of  
Québec



**NOTICE OF PRESENTATION  
COMMERCIAL DIVISION**

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

## **1. PRESENTATION OF THE PROCEEDING**

**TAKE NOTE** that the *Application for the Issuance of a Fourth Amended and Restated Initial Order, Approval and Vesting Orders, a Wage Earner Protection Program Act Order and Ancillary Relief* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in Courtroom **16.04** of the Montréal Courthouse during the virtual calling of the roll on **March 16, 2023, at 9:00 a.m.**

## **2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL**

The contact information to join the virtual calling of the roll in room 16.04 is 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 then enter your name and click «Join now» («*Rejoindre maintenant*»). To facilitate the process and the identification of participants, we ask that you enter your name in the following manner:

Attorneys: Mtre Name, Surname (name of party represented)

Trustees: Name, Surname (trustee)

Superintendent: Name, Surname (superintendent)

Parties not represented by an attorney: Name, Surname (specify: plaintiff, defendant, applicant, respondent, creditor, opposing party, or other)

Persons attending a public hearing may simply indicate "public".

### **By telephone:**

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

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

Conference ID: 516 211 860#

**By VTC videoconference:** [teams@teams.justice.gouv.qc.ca](mailto:teams@teams.justice.gouv.qc.ca)

Videoconference ID: 1149478699

**In person:** If and only if you do not have access to one of the above-mentioned technological means. You may then go to room 16.04 of the Montréal Courthouse located at:

1, Notre-Dame Street East, Montréal, Québec.

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

**TAKE NOTICE** that in accordance with the Second Amended and Restated Initial Order, if you wish to contest this Application, you must serve responding materials or a notice stating the objection to the Application and the grounds for such objection in writing to the Petitioners and the Monitor, with a copy to all persons on the Service List, no later than **5:00 P.M. on March 13, 2023**, and participate at the virtual calling of the roll, failing which, judgment may be rendered during the presentation of the proceeding, without further notice or delay.

### **4. OBLIGATIONS**

#### 4.1 Duty of cooperation

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

#### 4.2 Dispute prevention and resolution processes

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

**DO GOVERN YOURSELF ACCORDINGLY.**

MONTRÉAL, March 15, 2023



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

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Commercial Division)

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

No.: 500-11-061483-224

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

**FORMERXBC INC.** (formerly **XEBEC ADSORPTION  
INC.**)

-and-

**11941666 CANADA INC.** (formerly **XEBEC RNG  
HOLDINGS INC.**)

-and-

**APPLIED COMPRESSION SYSTEMS LTD.**

-and-

**1224933 ONTARIO INC.** (formerly **COMPRESSED  
AIR INTERNATIONAL INC.**)

-and-

**XEBEC HOLDING USA INC.**

-and-

**ENERPHASE INDUSTRIAL SOLUTIONS, INC.**

-and-

**CDA SYSTEMS, LLC**

-and-

**XEBEC ADSORPTION USA INC.**

-and-

**THE TITUS COMPANY**

-and-

**NORTEKBELAIR CORPORATION**

-and-

**XBC FLOW SERVICES – WISCONSIN INC.**

-and-

**CALIFORNIA COMPRESSION, LLC**

-and-

**XEBEC SYSTEMS USA, LLC**

Debtors / Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

-and-

**ENERGYLINK U.S. INC.**

-and-

**FLUID-AIRE DYNAMICS, INC.**

-and-

**TOTAL ENERGY SYSTEMS, LLC**

Impleaded Parties

<b><u>AMENDED LIST OF EXHIBITS</u></b>
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- P-1: Draft Fourth ARIO
- P-1A: Comparison between the Fourth Amended and Restated Initial Order and the Third ARIO
- P-2: Draft Fluid-Aire Approval, Vesting and Assignment Order
- P-2A: Comparison between the Fluid-Aire Approval, Vesting and Assignment Order and the model approval and vesting order published by the Barreau de Montréal
- P-3: Draft Total Energy Approval, Vesting and Assignment Order
- P-3A: Comparison between the Total Energy Approval, Vesting and Assignment Order and the model approval and vesting order published by the Barreau de Montréal
- P-4: Draft Wage Earner Protection Program Order
- P-5: Redacted copy of the Fluid-Aire APA
- P-5A: Copy of the Fluid-Aire APA (*confidential and under seal*)
- P-6: Redacted copy of the Total Energy APA

- P-6A: Copy of the Total Energy APA (*confidential and under seal*)
- P-7: Amended and Restated List of Participants in the KERPs (*confidential and under seal*)
- P-8: Draft EnergyLink Approval, Vesting and Assignment Order
- P-8A: Comparison between the EnergyLink Approval, Vesting and Assignment Order and the model approval and vesting order published by the Barreau de Montréal
- P-9: Redacted copy of the EnergyLink APA
- P-9A: Copy of the EnergyLink APA (*confidential and under seal*)

MONTRÉAL, March 15, 2023



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

**EXHIBIT P-1**  
**Draft Fourth ARIO**

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March 16, 2023

---

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

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

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)  
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)  
APPLIED COMPRESSION SYSTEMS LTD.  
1224933 ONTARIO INC. (FORMERLY 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

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**FOURTH AMENDED AND RESTATED INITIAL ORDER**

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- [1] **CONSIDERING** the *Application for the Issuance of a Fourth Amended and Restated Initial Order, Approval and Vesting Orders, a Wage Earner Protection Program Order and Ancillary Relief* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the *Application for the Issuance of a Third Amended and Restated Initial Order and Approval and Vesting Orders* (the “**Third ARIO Application**”) pursuant to the CCAA;
- [3] **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;
- [4] **CONSIDERING** the *Application for the Issuance of an Amended and Restated Initial Order* (the “**ARIO Application**”) pursuant to the CCAA;
- [5] **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;
- [6] **CONSIDERING** the Seventh Report of the Monitor dated March ●, 2023 (the “**Report**”);
- [7] **CONSIDERING** the Approval, Vesting and Assignment Order in Respect of the Assets of The Titus Company issued by this Court on March 16, 2023 approving the sale transaction contemplated by the agreement entitled Asset Purchase Agreement dated March 11, 2023 between The Titus Company, as seller, and Fluid-Aire Dynamics, Inc., as buyer;
- [8] **CONSIDERING** the Approval, Vesting and Assignment Order in Respect of XBC Flow Services – Wisconsin Inc. issued by this Court on March 16, 2023 approving the transaction contemplated by the agreement entitled Asset Purchase Agreement dated March 11, 2023 between XBC Flow Services – Wisconsin Inc., as seller, and Total Energy Systems, LLC, as buyer;
- [9] **CONSIDERING** the submissions of counsel and the testimony of the witnesses heard;
- [10] **GIVEN** the provisions of the CCAA;
- [11] **GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

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**THE COURT HEREBY:**

[12] **GRANTS** the Application.

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

- (a) Service;
- (b) Application of the CCAA;
- (c) Effective Time;
- (d) Administrative Consolidation;
- (e) Plan of Arrangement;
- (f) Stay of Proceedings against the Petitioners and the Property;
- (g) Stay of Proceedings against the Directors and Officers;
- (h) Possession of Property and Operations;
- (i) No Exercise of Rights or Remedies;
- (j) No Interference with Rights;
- (k) Continuation of Services;
- (l) Non-Derogation of Rights;
- (m) Interim Financing (DIP);
- (n) 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;

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(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.

**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 May 5, 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

Draft

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.
- [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 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.

- [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.

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**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 “**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.

**i. 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 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.

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**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 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.

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- [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
  - (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.

- [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

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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.

- [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 in part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
- (c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$750,000 or \$2,500,000 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 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;
- (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 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.

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[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 amount of \$2,250,000 (the “**Administration Charge**”), having the priority established by paragraphs [75] and [76] of this Order.

**r. KERPs and KERP Charge**

[72] **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.

[73] **ORDERS** that the amended and restated list of participants in the KERPs filed under seal as Exhibit P-9 to the Application is hereby approved, and the Petitioners are hereby authorized and empowered to perform their obligations set forth in the KERPs, including by making the payments to the individuals listed therein 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.

**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 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.

[82] **DECLARES** that the certificates of the Monitor to be issued and filed in the Court record pursuant to the *Order authorizing the Monitor to Pay Certain Amounts Owed to Beneficiaries of CCAA Charges* issued by this Court on or about the date of this Order shall validly reduce and/or discharge the CCAA Charges, as applicable, without the necessity of any amendment to this Order or of any other orders of this Court.

**t. Hearing Scheduling and Details**

[83] **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.

[84] **ORDERS** that any Person wishing to object to the relief sought on an application in these CCAA proceedings must serve responding materials or a notice stating the objection to the application and the grounds for such objection (a "**Notice of Objection**") in writing to the moving party, the Petitioners and the Monitor, with a copy to all Persons on the Service List, no later than 5 P.M. on the date that is three (3) calendar days prior to the Initial Return Date (the "**Objection Deadline**").

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- [85] **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.
- [86] **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.
- [87] **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

- [88] **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.
- [89] **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.
- [90] **DECLARES** that, except as otherwise specified herein, the Petitioners and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery, electronic mail, or electronic transmission to Persons or other appropriate parties at their respective given

addresses as last shown on the records of the Petitioners and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.

- [91] **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.
- [92] **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, Exhibits P-5, P-6, P-7 and P-8 to the Third ARIO Application, Appendix A to the Seventh Report of the Monitor dated March ●, 2023 and Exhibits P-5A and P-6A to the Application shall be filed under seal and kept confidential until further order of this Court.
- [93] **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.
- [94] **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.
- [95] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [96] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Petitioners in any foreign proceeding, to assist the Petitioners, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

- [97] **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 FormerXBC Inc. (formerly 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.
- [98] **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.
- [99] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.
- [100] **THE WHOLE WITHOUT COSTS.**

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Christian Immer, J.S.C.

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

Hearing date: March 16, 2023

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## **EXHIBIT P-1A**

**Comparison between the Fourth Amended and  
Restated Initial Order and the Third ARIO**

**SUPERIOR COURT**  
(Commercial Division)

CANADA PROVINCE OF QUÉBEC DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: ~~February~~March 13~~6~~, 2023

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

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

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)**  
**11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)**  
**APPLIED COMPRESSION SYSTEMS LTD.**  
**1224933 ONTARIO INC. (FORMERLY 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

**J10082**

**~~THIRD~~**

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**FOURTH 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~~ CONSIDERING the Application for the Issuance of a Fourth Amended and Restated Initial Order, Approval and Vesting Orders, a Wage Earner Protection Program Order and Ancillary Relief (the "Application") pursuant to the Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended ("CCAA") and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] CONSIDERING the Application for the Issuance of a Third Amended and Restated Initial Order and Approval and Vesting Orders (the "Third ARIO Application") pursuant to the CCAA;
- [3] ~~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;
- [4] CONSIDERING the Application for the Issuance of an Amended and Restated Initial Order (the "ARIO Application") pursuant to the CCAA;
- [5] ~~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 Initial 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~~ CONSIDERING the Seventh Report of the Monitor dated February 10 ~~March~~ March, 2023 (the "Report");
- [6] ~~[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") 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;~~ CONSIDERING the Approval, Vesting and Assignment Order in Respect of the Assets of The Titus Company issued by this Court on March 16, 2023 approving the sale transaction contemplated by the agreement entitled Asset Purchase Agreement dated March 11, 2023 between The Titus Company, as seller, and Fluid-Aire Dynamics, Inc., as buyer;
- [7] ~~[7] CONSIDERING the Approval, Vesting and Assignment Order in Respect of the Assets of CDA Systems, LLC. And California Compression LLC (the "Sullair AVO")~~ the Approval, Vesting and Assignment Order in Respect of XBC Flow Services – Wisconsin Inc. issued by this Court on February ~~March~~ March 136, 2023 approving the ~~sale~~ transaction (the "Sullair Transaction") contemplated by the

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agreement entitled Asset Purchase Agreement dated ~~February 8~~March 11, 2023 between ~~COA Systems, LLC and California Compression LLC, and Sullair~~XBC Flow Services – Wisconsin Inc., as seller, and Total Energy Systems, 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;~~

■ [8] **CONSIDERING** the submissions of counsel and the testimony of ~~Jean-François Nadeau 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 SISP~~ the witnesses heard;

~~(b) That intensive efforts continue to be carried out to bring about transactions as contemplated in the SISP 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.~~

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

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

**THE COURT HEREBY:**

[11] **GRANTS** the Application.

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

(a) Service;

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(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

(j)

(k)

(l)

(m)

(n)

(o)

(p)

(q)

(r)

(s)

(t)

(u)

**a. Service**

(b) Application of the CCAA;

(c) Effective Time;

(d) Administrative Consolidation;

(e) Plan of Arrangement;

- (f) Stay of Proceedings against the Petitioners and the Property;
- (g) Stay of Proceedings against the Directors and Officers;
- (h) Possession of Property and Operations;
- (i) No Exercise of Rights or Remedies;
- (j) No Interference with Rights;
- (k) Continuation of Services;
- (l) Non-Derogation of Rights;
- (m) Interim Financing (DIP);
- (n) 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

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

b. Application of the CCAA

[14] **DECLARES** that the Petitioners are debtor companies to which the CCAA applies. ~~g~~

c. Effective Time

[15] **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

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- [16] **ORDERS** the consolidation of these CCAA proceedings of the Petitioners under one single Court file, in file number 500-11-061483-224.
- [17] **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.
- [18] **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**

- [19] **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~~Property**

- [20] **ORDERS** that, until and including ~~March 17~~ May 5, 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~~ 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.

- [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~~Proceedings against Directors and Officers**

- [24] **ORDERS** that during the Stay Period and except as permitted under subsection ~~11.03(2)~~ 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

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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 ~~Proeerty~~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 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.

[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.

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- [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~~ 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 "**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 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.

**l. 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** **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

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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  
1 Petitioners and to pay such other amounts as are

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

- [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

(a)

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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)~~ (7) days prior to the presentation thereof or (b) the Interim Lenders apply for or consents to such order.

**n. Second Interim ~~Financing~~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.

[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

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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] ■ ~~[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.

~~g. Restructuring~~

~~[60a]~~

**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) **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 \$42,500,000 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
- I** 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 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.

**g. Powers of the Monitor & Administration Charge**

[63] **ORDERS** that *Deloitte Restructuring Inc.* is hereby appointed to monitor the business

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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) ~~■(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 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] ~~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

■ amount of ~~\$3,002,250,000~~ \$2,250,000 (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~~

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~~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**

[72] ~~[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.

[73] **ORDERS** that the amended and restated list of participants in the KERPs filed under seal as Exhibit P-9 to the Application is hereby approved, and the Petitioners are hereby authorized and empowered to perform their obligations set forth in the KERPs, including by making the payments to the individuals listed therein 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.

[75]

**s. Priorities and General Provisions Relating Relating to CCAA ChargesCharges**

[76] **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)

(e) fifth, the Transaction Charge (as defined in the Bidding Procedures Order dated September 29, 2022);

(f) sixth, the KERP Charge.

[77] **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.

[78] **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.

[79] **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.

[80] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made

or deemed to be made in respect of any Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease or other arrangement which binds the Petitioners (a **“Third Party Agreement”**), and notwithstanding any provision to the contrary in any Third Party Agreement:

- (a) the creation of any of the CCAA Charges shall not create nor be deemed to constitute a breach by the Petitioners of any Third Party Agreement to which any of the Petitioners is a party; and
- (b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.

[81] **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.

[82] **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.

[83] **DECLARES** that the certificates of the Monitor to be issued and filed in the Court record pursuant to the *Order authorizing the Monitor to Pay Certain Amounts Owed to Beneficiaries of CCAA Charges* issued by this Court on or about the date of this Order shall validly reduce and/or discharge the CCAA Charges, as applicable, without the necessity of any amendment to this Order or of any other orders of this Court.

**t. HearingHearing Scheduling and Details**

[84] **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.

[85] **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**

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**Objection<sup>1</sup>**) in writing to the moving party, the Petitioners and the Monitor, with a copy to all Persons on the Service List, no later than 5 P.M. on the date that is three (3) calendar days prior to the Initial Return Date (the “**Objection Deadline**”).

[86] ~~[84]~~ **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of these proceedings (the “**Presiding Judge<sup>1</sup>**”) 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.

[87] ~~[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.

[88] ~~[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

[89] ~~[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.

[90] ~~[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.

[91] ~~[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 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

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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.

[92] ~~[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.

[93] ~~[94]~~ **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 Third ARIO Application, Appendix A to the Seventh Report of the Monitor dated March 1, 2023 and Exhibits P-5A and P-6A to the Application shall be filed under seal and kept confidential until further order of this Court.

[94] ~~[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.

[95] ~~[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.

[96] ~~[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.

[97] ~~[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



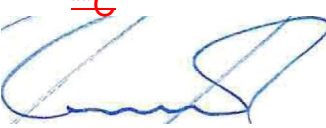
500-11-061483-224 PAGE: 24  
500-11-061483-224  
foreign proceeding, to assist the Petitioners, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order. PAGE: 27

[98] [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 FormerXBC Inc. (formerly 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.

[99] [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.

[100] [98] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.

[101] [99] **THE WHOLE WITHOUT COSTS.**

"G  


Christian ~~Immer~~Immer, J.S.C.

MTRE SANDRA ABITAN  MTRE JULIEN ~~MORISSETTE~~M  
ORISSETTE MTRE ILIA KRAVTSOV MT  
RE SOPHIE COURVILLE  
(OSLER HOSKIN & HARCOURT LLP)  
COUNSEL TO THE PETITIONERS

Hearing date: ~~February~~March 13~~6~~6, 2023

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**EXHIBIT P-2**

**Draft Fluid-Aire Approval, Vesting and  
Assignment Order**

**SUPERIOR COURT  
(Commercial Division)**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March 16, 2023

---

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

---

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

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

and  
**DELOITTE RESTRUCTURING INC.**  
Monitor

and

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**FAD PENNSYLVANIA INC.**  
Impleaded Party (Buyer)

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**APPROVAL, VESTING AND ASSIGNMENT ORDER IN RESPECT OF THE ASSETS  
OF THE TITUS COMPANY**

---

- [1] **CONSIDERING** the *Application for the Issuance of an Approval, Vesting and Assignment Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Seventh Report of the Monitor dated ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **GIVEN** the provisions of the CCAA:
- [5] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Asset Purchase Agreement dated March [9], 2023 (the “**Purchase Agreement**”) between **The Titus Company** (the “**Seller**”), and **FAD Pennsylvania Inc.**, as buyer, (the “**Buyer**”), a copy of which was filed under seal as **Exhibit P-5A** to the Application, and vesting in the Buyer the Purchased Assets.

**THE COURT HEREBY:**

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

**DEFINITIONS**

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

**SERVICE**

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

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

**TRANSACTION APPROVAL**

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

**EXECUTION OF DOCUMENTATION**

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

**AUTHORIZATION**

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

**VESTING OF PURCHASED ASSETS**

- [13] **ORDERS AND DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Buyer, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges or security evidenced by registration, publication or filing pursuant to any applicable legislation providing for a security interest in personal or movable property, and those Claims listed on

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**Schedule “B”** hereto (all of which are collectively referred to as the **"Encumbrances"**) which term shall not include the permitted encumbrances, easements and restrictive covenants listed in **Schedule “C”**.

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

#### **CANCELLATION OF SECURITY REGISTRATIONS**

- [19] **ORDERS** that upon the issuance of the Monitor’s Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets from any registration filed against the Petitioners, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

#### **ASSIGNMENT OF CONTRACTS**

- [20] **ORDERS** and **DECLARES** that upon the issuance of the Monitor’s Closing Certificate, the rights and obligations of the Seller under the agreements listed in **Schedule “D”** hereto, as they may have been amended or restated from time to

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time (the "**Assumed Contract(s)**"), are automatically and irrevocably assigned to the Buyer without any further consents or approvals of this Court.

- [21] **ORDERS** that all Cure Costs in relation to the Assumed Contracts, which are set out in Schedule D, shall be remedied by the Buyer no later than thirty (30) days following issuance of the Monitor's Closing Certificate.
- [22] **ORDERS** that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.
- [23] **ORDERS** that the Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the Buyer in accordance with their terms for the benefit of the Buyer.
- [24] **ORDERS** and **DIRECTS** the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts, if any.
- [25] **AUTHORIZES** the Petitioners, the Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts to the Buyer in accordance with this Order.

#### **PROTECTION OF PERSONAL INFORMATION**

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

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

**VALIDITY OF THE TRANSACTION**

[28] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act.*, RSC 1985, c B-3 BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

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

**THE MONITOR**

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

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

[31] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in

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possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

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

### **SEALING**

- [33] **ORDERS** that Exhibit P-5A to the Application shall be filed under seal and kept confidential until further order of this Court.

### **GENERAL**

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

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[39] **THE WHOLE** without costs.

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**Christian Immer, JCS**

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

Hearing date: **March 16, 2023**

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**SCHEDULE A  
CERTIFICATE OF THE MONITOR**

**CANADA**

**PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Commercial Division)

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

No.: 500-11-061483-224

---

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

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

Debtor/Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

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## CERTIFICATE OF THE MONITOR

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### RECITALS:

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

**WHEREAS** on March [16], 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") authorizing and approving, *inter alia*, the execution of a Asset Purchase Agreement dated March [9], 2023 by and among **The Titus Company** (the "**Seller**") and **FAD Pennsylvania Inc.** as buyer (the "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

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

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

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

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

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

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\*\*\*\*\*

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**SCHEDULE B**  
**ENCUMBRANCES TO BE VESTED**

## **SCHEDULE C**

### **PERMITTED ENCUMBRANCES**

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

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## SCHEDULE D

### ASSUMED CONTRACTS

<b>Assumed Contract</b>	<b>Cure Costs (US\$)</b>
Lease agreement between Southgate Lease Services, Inc. and Xebec Adsorption USA, Inc. dated February 15, 2022 regarding a 2019 Ford Transit T250, VIN 1FTYR2CM6KKA87848, License Plate ZVD-4351.	<b>[nil]</b>
Rental Agreement dated August 12, 2020, between Pure Water Technology of Central PA, Inc. and The Titus Company.	<b>\$477.00</b>
Lease Agreement dated December 11, 2018, between Stratix Systems, Inc. and The Titus Company.	<b>[nil]</b>
Lease dated June 19, 2017, between Titus Properties, LLC and The Titus Company in respect of premises located at 36 Mountain View Road, Morgantown, PA 17543, USA.	<b>[nil]</b>
Indemnity Agreement for Negotiable Instruments, Cas and/or Other Valuable Goods dated November 14, 2022, between CareersUSA and The Titus Company.	<b>\$855.05 in the aggregate</b>
Personnel Services Agreement dated November 15, 2022, between CareersUSA and The Titus Company.	
Customer Service Agreement signed August 23, 2022, between Republic Services and The Titus Company.	<b>\$236.06</b>
Janitorial Services Agreement dated August 22, 2022, between J&M Janitorial Services, Inc. and The Titus Company.	<b>[nil]</b>
Promissory note dated August 1, 2020 between Christopher Titus and The Titus Company for loan principal \$13,700.	<b>[nil]</b>
Promissory note dated August 1, 2020 between James Good and The Titus Company for loan principal \$9,558.	<b>[nil]</b>
Promissory note dated August 1, 2020 between James Bowers and The Titus Company for loan principal \$7,745.	<b>[nil]</b>
Promissory note dated August 1, 2020 between Sean Patrick Dempsey and The Titus Company for loan principal \$9,815.	<b>[nil]</b>
Promissory note dated August 1, 2020 between Brian Titus and The Titus Company for loan principal \$17,996.	<b>[nil]</b>

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## **EXHIBIT P-2A**

**Comparison between the Fluid-Aire Approval,  
Vesting and Assignment Order and the model  
approval and vesting order published by the  
Barreau de Montréal**

May 2014

SUPERIOR COURT

(Commercial Division)

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

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

IN THE MATTER OF ●:

●  
\_\_\_\_\_ Debtor

-and-

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

\_\_\_\_\_ Mis-en-Cause

-and-

●  
\_\_\_\_\_ [Petitioner]<sup>4</sup>

-and-

●  
\_\_\_\_\_ [Receiver/Trustee/Monitor]

<sup>4</sup> Under section 243(1) of the BIA, the sale of assets of an insolvent debtor by the receiver may be ordered at the request of the secured creditor. In such a case, the secured creditor would be the petitioner.

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**APPROVAL AND VESTING ORDER<sup>2-3</sup>**

**SUPERIOR COURT**  
**(Commercial Division)**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March 16, 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.**

<sup>2</sup>—A blacklined version must to be included with the Motion

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

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THE TITUS COMPANY  
NORTEKBLAIR CORPORATION  
XBC FLOW SERVICES – WISCONSIN INC.  
CALIFORNIA COMPRESSION, LLC  
XEBEC SYSTEMS USA, LLC  
Debtors / Petitioners

and  
DELOITTE RESTRUCTURING INC.  
Monitor

and  
FAD PENNSYLVANIA INC.  
Impleaded Party (Buyer)

APPROVAL, VESTING AND ASSIGNMENT ORDER IN RESPECT OF THE ASSETS  
OF THE TITUS COMPANY

[1] ~~ON READING~~ **CONSIDERING** the ~~[Debtor/Petitioner/Receiver/Trustee/Monitor]'s~~ *Motion* ~~Application~~ for the Issuance of an Approval ~~and~~, Vesting *and Assignment* Order (the "~~Motion~~", ~~the affidavit~~ "**Application**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**") and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof, ~~as well as~~;

[2] **CONSIDERING** the Seventh Report of the ~~[Receiver/Trustee/Monitor]~~ dated ~~the "Report"~~ ~~●~~, 2023;

~~[2] SEEING~~ the service of the Motion<sup>4</sup>;

[3] ~~SEEING~~ **CONSIDERING** the submissions of ~~[Debtor/Receiver/Trustee/Monitor]'s~~ attorneys ~~and the submissions of~~ ~~●~~ counsel;

[4] **GIVEN** the provisions of the CCAA:

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

[5] ~~[4] SEEING~~ **CONSIDERING** that it is appropriate to issue an order approving the sale transaction~~(s)~~ (the "**Transaction**") contemplated by the agreement entitled ~~the~~ (the "**Asset Purchase Agreement**") ~~by and between~~ ~~[Debtor/Receiver/Trustee/Monitor] (the "Vendor"), as vendor, and~~ dated March ~~9,~~ 2023 (the "**Purchase Agreement**") between **The Titus Company** (the "**Seller**"), and **FAD Pennsylvania Inc.**, as buyer, (the "**Purchaser**" "**Buyer**"), as ~~purchaser,~~ a copy of which was filed under seal as **Exhibit RP-5A** to the Motion Application, and vesting in the Purchaser/Buyer the ~~assets described in the Purchase Agreement (the "Purchased Assets")~~<sup>5</sup>.

**WHEREFORE THE COURT HEREBY:**

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

**DEFINITIONS**

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

**SERVICE**

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

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

**SALE TRANSACTION APPROVAL**

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

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

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**EXECUTION OF DOCUMENTATION**

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

**AUTHORIZATION**

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

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

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

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

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

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~~[14] ORDERS and DIRECTS the [Vendor/Receiver/Trustee/Monitor] to serve a copy of this Order to every party to the Assigned Agreements.~~

~~[15] ORDERS and DIRECTS the [Receiver/Trustee/Monitor] to file with the Court a copy of the Certificate, forthwith after issuance thereof.~~

\*\*\*\*\*

**CANCELLATION OF SECURITY REGISTRATIONS<sup>789</sup>**

**For Quebec Property:**

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

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

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

**For Ontario Property:**

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

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

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

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

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

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

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

**For British Columbia Property:**

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

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

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

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

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

~~**For New Brunswick Property:**~~

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

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

\*\*\*\*\*

**NET PROCEEDS**

~~[25] ORDERS that the net proceeds<sup>10</sup> from the sale of the Purchased Assets (the "Net Proceeds") shall be remitted to the [Receiver/Trustee/Monitor] and shall be distributed in accordance with applicable legislation.~~

~~[26] ORDERS that for the purposes of determining the nature and priority of the Encumbrances Claims, the Net Proceeds net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment from and after the delivery of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances except for the Permitted Monitor's Certificate all Claims and Encumbrances shall attach to the Net Proceeds net proceeds from the sale of the Purchased Assets with the same~~

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

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

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

### CANCELLATION OF SECURITY REGISTRATIONS

- [19] ORDERS that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets from any registration filed against the Petitioners, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

### ASSIGNMENT OF CONTRACTS

- [20] ORDERS and DECLARES that upon the issuance of the Monitor's Closing Certificate, the rights and obligations of the Seller under the agreements listed in Schedule "D" hereto, as they may have been amended or restated from time to time (the "Assumed Contract(s)"), are automatically and irrevocably assigned to the Buyer without any further consents or approvals of this Court.
- [21] ORDERS that all Cure Costs in relation to the Assumed Contracts, which are set out in Schedule D, shall be remedied by the Buyer no later than thirty (30) days following issuance of the Monitor's Closing Certificate.
- [22] ORDERS that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.

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- [23] ORDERS that the Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the Buyer in accordance with their terms for the benefit of the Buyer.
- [24] ORDERS and DIRECTS the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts, if any.
- [25] AUTHORIZES the Petitioners, the Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts to the Buyer in accordance with this Order.

### PROTECTION OF PERSONAL INFORMATION

[26] ~~[27]~~ ORDERS that, pursuant to sub-section 7(3)(c) of the ~~Canada~~ *Personal Information Protection and Electronic Documents Act, SC 2000, c 5* or any similar provision of any applicable provincial legislation (collectively, the ~~Receiver~~ is "Applicable Privacy Laws"), the Petitioners and the Monitor are authorized and ~~permitted~~ to disclose and transfer to the ~~Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including~~ Buyer the personal information ~~of those employees listed on Schedule "•" to~~ in the custody or control of the Petitioners set out in the Purchase Agreement (the "Disclosed Information"). The ~~Purchaser~~ Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~<sup>44</sup>. ~~[NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause];~~ Petitioners.

[27] ORDERS that the Buyer shall:

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

<sup>44</sup> ~~\_\_This paragraph may not be necessary depending on the nature of the Purchased Assets.~~

**VALIDITY OF THE TRANSACTION**

[28] **ORDERS** that notwithstanding:

- (a) ~~(i)~~ the pendency of these proceedings;
- (b) ~~(ii)~~ any petition for a ~~receiving~~bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("BIA", RSC 1985, c B-3) and any order issued pursuant to any such petition; or
- (c) ~~(iii)~~ the provisions of any federal or provincial legislation;

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

**LIMITATION OF LIABILITY**

**THE MONITOR**

[29] ~~DECLARES that, subject to other orders of this Court, nothing herein contained shall require the [Receiver/Trustee/Monitor] to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The [Receiver/Trustee/Monitor] shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the [BIA/CCAA];~~**DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.

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

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

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

### SEALING

[33] ORDERS that Exhibit P-5A to the Application shall be filed under seal and kept confidential until further order of this Court.

### GENERAL

~~[31] ORDERS AND DECLARES that the Transaction is exempt from the application of the Bulk Sales Act (Ontario). [NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause] [Ontario – Adapt for other common law Provinces where applicable]~~

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

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

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

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

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powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other and the Buyer.

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

[37] ~~[36]~~ **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or ~~administrative body and any federal or state court or administrative body~~ in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to ~~act in aid of and to be complementary to this Court~~ give effect to this Order, and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of ~~the~~ this Order; All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order in any foreign proceeding, to assist the Petitioners, the Monitor and their respective agents in carrying out this Order.

[38] ~~[37]~~ **ORDERS** ~~the~~ provisional execution of ~~the present~~ this Order notwithstanding any appeal and without ~~the requirement to provide any security or provision for costs whatsoever;~~

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

●, J.S.C.Christian Immer, JCS

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

● Attorneys for ● the Petitioners

Hearing date: **March 16, 2023**

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~~[Draft](#)~~



SCHEDULE "A"

DRAFT CERTIFICATE OF THE [RECEIVER/TRUSTEE/MONITOR]

CANADA

~~SUPERIOR COURT~~

PROVINCE OF ~~QUEBEC~~ QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)

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

No.: 500-11-061483-224

File: No: 500-11-●

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

●  
~~Debtor~~

-and-

●  
~~[Petitioner]~~

-and-

●  
~~[Receiver/Trustee/Monitor]~~

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

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

-and-

DELOITTE RESTRUCTURING INC.  
Monitor

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**CERTIFICATE OF THE [RECEIVER/TRUSTEE/MONITOR]**

---

**RECITALS:**

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

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

**WHEREAS** on ~~●~~ March [16], 2023, the Court issued an Order (the "Approval, Vesting and Assignment Order") ~~thereby, inter alia,~~ authorizing and approving, *inter alia*, the execution ~~by the Petitioner of an agreement entitled ● Agreement (the "a Asset Purchase Agreement")~~ dated March [9], 2023 by and ~~between ●, as vendor~~ among The Titus Company (the "Vendor/Seller") and ~~● FAD Pennsylvania Inc.~~ as purchaser/buyer (the "Purchaser/Buyer"), a copy of which was filed in the Court record (the "Purchase Agreement"), and into all the transactions contemplated therein (the "Transaction") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the ~~[Receiver/Trustees/Monitor]~~.

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

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

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

Draft

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

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

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

\*\*\*\*\*

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Draft

SCHEDULE "B"

ENCUMBRANCES TO BE VESTED

Draft

## SCHEDULE C

### **PERMITTED ENCUMBRANCES**

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

Draft

**SCHEDULE "C"  
ASSIGNED AGREEMENTS**

**ASSUMED CONTRACTS**

<u>Assumed Contract</u>	<u>Cure Costs (US\$)</u>
<u>Lease agreement between Southgate Lease Services, Inc. and Xebec Adsorption USA, Inc. dated February 15, 2022 regarding a 2019 Ford Transit T250, VIN 1FTYR2CM6KKA87848, License Plate ZVD-4351.</u>	<u>[nil]</u>
<u>Rental Agreement dated August 12, 2020, between Pure Water Technology of Central PA, Inc. and The Titus Company.</u>	<u>\$477.00</u>
<u>Lease Agreement dated December 11, 2018, between Stratix Systems, Inc. and The Titus Company.</u>	<u>[nil]</u>
<u>Lease dated June 19, 2017, between Titus Properties, LLC and The Titus Company in respect of premises located at 36 Mountain View Road, Morgantown, PA 17543, USA.</u>	<u>[nil]</u>
<u>Indemnity Agreement for Negotiable Instruments, Cas and/or Other Valuable Goods dated November 14, 2022, between CareersUSA and The Titus Company.</u>	<u>\$855.05 in the aggregate</u>
<u>Personnel Services Agreement dated November 15, 2022, between CareersUSA and The Titus Company.</u>	
<u>Customer Service Agreement signed August 23, 2022, between Republic Services and The Titus Company.</u>	<u>\$236.06</u>
<u>Janitorial Services Agreement dated August 22, 2022, between J&amp;M Janitorial Services, Inc. and The Titus Company.</u>	<u>[nil]</u>
<u>Promissory note dated August 1, 2020 between Christopher Titus and The Titus Company for loan principal \$13,700.</u>	<u>[nil]</u>
<u>Promissory note dated August 1, 2020 between James Good and The Titus Company for loan principal \$9,558.</u>	<u>[nil]</u>
<u>Promissory note dated August 1, 2020 between James Bowers and The Titus Company for loan principal \$7,745.</u>	<u>[nil]</u>
<u>Promissory note dated August 1, 2020 between Sean Patrick Dempsey and The Titus Company for loan principal \$9,815.</u>	<u>[nil]</u>
<u>Promissory note dated August 1, 2020 between Brian Titus and The Titus Company for loan principal \$17,996.</u>	<u>[nil]</u>

Draft



**EXHIBIT P-3**

**Draft Total Energy Approval, Vesting and  
Assignment Order**

**SUPERIOR COURT  
(Commercial Division)**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March 16, 2023

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

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

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

and  
**DELOITTE RESTRUCTURING INC.**  
Monitor

and

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**Total Energy Systems, LLC**  
Impleaded Party (Buyer)

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**APPROVAL VESTING AND ASSIGNMENT ORDER IN RESPECT OF THE ASSETS  
OF XBC FLOW SERVICES – WISCONSIN INC.**

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- [1] **CONSIDERING** the *Application for the Issuance of an Approval, Vesting and Assignment Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Seventh Report of the Monitor dated ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **GIVEN** the provisions of the CCAA:
- [5] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Asset Purchase Agreement dated March 11, 2023 (the “**Purchase Agreement**”) between **XBC Flow Services – Wisconsin Inc.** (the “**Seller**”), and **Total Energy Systems, LLC**, as buyer, (the “**Buyer**”), a copy of which was filed under seal as **Exhibit P-6A** to the Application, and vesting in the Buyer the Purchased Assets.

**THE COURT HEREBY:**

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

**DEFINITIONS**

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

**SERVICE**

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

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

**TRANSACTION APPROVAL**

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

**EXECUTION OF DOCUMENTATION**

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

**AUTHORIZATION**

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

**VESTING OF PURCHASED ASSETS**

- [13] **ORDERS AND DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Buyer, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges or security evidenced by registration, publication or filing pursuant to any applicable legislation providing for a security interest in personal or movable property, and those Claims listed on

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**Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**").

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

#### **CANCELLATION OF SECURITY REGISTRATIONS**

- [19] **ORDERS** that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets from any registration filed against the Petitioners, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

#### **ASSIGNMENT OF CONTRACTS**

- [20] **ORDERS** and **DECLARES** that upon the issuance of the Monitor's Closing Certificate, the rights and obligations of the Seller under the agreements listed in **Schedule "C"** hereto, as they may have been amended or restated from time to time (the "**Assumed Contract(s)**"), are automatically and irrevocably assigned to the Buyer without any further consents or approvals of this Court.

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- [21] **ORDERS** that all Cure Costs in relation to the Assumed Contracts, which are set out in Schedule C, shall be remedied by the Buyer no later than thirty (30) days following issuance of the Monitor's Closing Certificate.
- [22] **ORDERS** that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.
- [23] **ORDERS** that the Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the Buyer in accordance with their terms for the benefit of the Buyer.
- [24] **ORDERS** and **DIRECTS** the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts, if any.
- [25] **AUTHORIZES** the Petitioners, the Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts to the Buyer in accordance with this Order.

#### **PROTECTION OF PERSONAL INFORMATION**

- [26] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the "**Applicable Privacy Laws**"), the Petitioners and the Monitor are authorized to disclose and transfer to the Buyer the personal information in the custody or control of the Petitioners set out in the Purchase Agreement (the "**Disclosed Information**"). The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Petitioners.
- [27] **ORDERS** that the Buyer shall:
- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;
  - (b) use and disclose the Disclosed Information for the purposes for which the Disclosed Information was collected by the Petitioners and as may otherwise be permitted by Applicable Privacy Laws; and

- (c) give effect to any withdrawals of consent of the individuals to whom the Disclosed Information relates.

**VALIDITY OF THE TRANSACTION**

[28] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act.*, RSC 1985, c B-3 BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

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

**THE MONITOR**

- [29] **DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.
- [30] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.
- [31] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

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

**SEALING**

- [33] **ORDERS** that Exhibit P-6A to the Application shall be filed under seal and kept confidential until further order of this Court.

**GENERAL**

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

Draft



[39] **THE WHOLE** without costs.

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**Christian Immer, JCS**

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

Hearing date: **March 16, 2023**

Draft

**SCHEDULE A  
CERTIFICATE OF THE MONITOR**

**CANADA**

**PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Commercial Division)

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

No.: 500-11-061483-224

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

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

Debtor/Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

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## CERTIFICATE OF THE MONITOR

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### RECITALS:

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

**WHEREAS** on March [16], 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") authorizing and approving, *inter alia*, the execution of a Asset Purchase Agreement dated March [9], 2023 by and among **XBC Flow Services - Wisconsin** (the "**Seller**") and **Total Energy Systems, LLC** as buyer (the "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

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

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

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

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

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

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\*\*\*\*\*

Draft

**SCHEDULE B**  
**ENCUMBRANCES TO BE VESTED**

## **SCHEDULE C**

### **ASSUMED CONTRACTS**

1. AT&T Contract(s) including the landline telephone number and employee cell phones.
2. All open Purchase Orders as of the Effective Date excluding, for greater certainty, any intercompany Purchase Orders.

Draft

# XBC Flow Services

## Open Purchase Order List by Vendor

DATE	NUM
<b>ABB Motors and Mechanical- Baldor Electric</b>	
03/31/2023	2507-2
<b>AIR SERVICES COMPANY</b>	
02/03/2023	3677
02/07/2023	21651
02/09/2023	3696
02/09/2023	3701
02/13/2023	3699
02/14/2023	3700
02/17/2023	3729
02/23/2023	21663
02/23/2023	3170
02/24/2023	2851
02/24/2023	3759
02/24/2023	21661-1
03/31/2023	2507-4
03/31/2023	21625
04/30/2023	21626 - Revised
04/30/2023	21627
04/30/2023	21631
04/30/2023	21638
<b>Applied System Technologies</b>	
02/23/2023	3743-1
03/31/2023	21566
03/31/2023	3072
<b>Boge America Inc.</b>	
02/20/2023	3742
03/31/2023	2831
03/31/2023	3394
04/30/2023	21593
04/30/2023	2912-2
04/30/2023	3508
<b>BRABAZON</b>	
01/31/2023	3575-1
03/31/2023	3459

# XBC Flow Services

## Open Purchase Order List by Vendor

### **CMS, Inc.**

02/13/2023 3149-2

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### **CP**

02/15/2023 3723

02/22/2023 3756

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### **ELGI COMPRESSOR USA, Inc.**

02/06/2023 22-8879-TM

02/08/2023 21655

02/17/2023 3732

02/17/2023 3734

02/20/2023 3740

04/30/2023 22-8878-TM

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### **Grainger**

02/13/2023 3704

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### **Great Lakes Air Products**

02/06/2023 21649

02/14/2023 22-8880-TM

02/15/2023 21660

03/31/2023 3103

04/30/2023 3513

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### **HARDY PRO-AIR**

02/24/2023 3760

04/30/2023 22-8876-TM

06/30/2023 3187

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### **Hertz Kompressoren USA, Inc.**

02/09/2023 3697

02/23/2023 3698

03/31/2023 2905-3

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### **Ingersoll Rand (IR)\_**

04/30/2023 3528

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### **JORC INDUSTRIAL**

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DATE	NUM
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02/14/2023	3702
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# XBC Flow Services

## Open Purchase Order List by Vendor

### Keltec Technolab

02/15/2023	3715-1
02/22/2023	3704-2
03/31/2023	21284
03/31/2023	2286
03/31/2023	2272
03/31/2023	1332-1
03/31/2023	2282-1
04/30/2023	1332
04/30/2023	21589
04/30/2023	2978-1
04/30/2023	21599
04/30/2023	21636

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### LINCOLN CONTRACTORS SUPPLY

03/31/2023	2372-1
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### MARTECH SERVICES CO.

03/31/2023	3053
04/30/2023	2927

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### Midwest Control Devices

02/01/2023	21646
02/08/2023	21656
04/30/2023	1810
04/30/2023	3560-1

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### Milton Industries

03/31/2023	3118
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### Parker / Zander

04/30/2023	3622-1
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### PORTER PIPE AND SUPPLY

03/31/2023	21450
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### Quality Transportation, Inc.

03/31/2023	2975
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### ROGERS MACHINERY CO.

DATE	NUM	MEMO/DESCRIPTION	SHIP VIA	AMOUNT	OPEN BALANCE
03/31/2023	3145-1				

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# XBC Flow Services

## Open Purchase Order List by Vendor

### Samuel Pressure Vessel Group

04/30/2023 22-8864-TM2

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### Saylor-Beall Manufacturing

04/30/2023 22-8877-TM

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### SPX/Deltech

03/31/2023 21579

04/30/2023 22-8837-01

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### Summit Industrial - Kluber Lubrication NA LP

02/21/2023 3743

02/21/2023 3744

03/31/2023 21623

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### SUTO ITECH

03/31/2023 21560

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### Vacuum, Pump & Compressor (Vendor)

04/30/2023 3029

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### Zorn Compressor & Equipment, Inc.

02/15/2023 3715

04/30/2023 2878-2

04/30/2023 3207-1

04/30/2023 3279

04/30/2023 3052-1

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## **EXHIBIT P-3A**

**Comparison between the Total Energy  
AVO and the model AVO published by  
the Barreau de Montréal**

May 2014

SUPERIOR COURT

(Commercial Division)

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

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

IN THE MATTER OF ●:

●  
\_\_\_\_\_ Debtor

-and-

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

\_\_\_\_\_ Mis-en-Cause

-and-

●  
\_\_\_\_\_ [Petitioner]<sup>4</sup>

-and-

●  
\_\_\_\_\_ [Receiver/Trustee/Monitor]

<sup>4</sup> Under section 243(1) of the BIA, the sale of assets of an insolvent debtor by the receiver may be ordered at the request of the secured creditor. In such a case, the secured creditor would be the petitioner.

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**APPROVAL AND VESTING ORDER<sup>2-3</sup>**

**SUPERIOR COURT**  
**(Commercial Division)**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March 16, 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.**

<sup>2</sup>—A blacklined version must to be included with the Motion

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

**Draft**

THE TITUS COMPANY  
NORTEKBELAIR CORPORATION  
XBC FLOW SERVICES – WISCONSIN INC.  
CALIFORNIA COMPRESSION, LLC  
XEBEC SYSTEMS USA, LLC  
Debtors / Petitioners

and  
DELOITTE RESTRUCTURING INC.  
Monitor

and  
Total Energy Systems, LLC  
Impleaded Party (Buyer)

APPROVAL VESTING AND ASSIGNMENT ORDER IN RESPECT OF THE ASSETS  
OF XBC FLOW SERVICES – WISCONSIN INC.

[1] ~~ON READING~~ **CONSIDERING** the ~~Debtor/Petitioner/Receiver/Trustee/Monitor's~~ *Motion Application for the Issuance of an Approval and Vesting and Assignment Order* (the "~~Motion~~", the affidavit "**Application**") pursuant to the *Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended ("CCAA")* and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof, ~~as well as;~~

[2] **CONSIDERING** the Seventh Report of the ~~Receiver/Trustee/Monitor~~ dated ~~(the "Report")~~ ●, 2023;

~~[2] SEEING the service of the Motion<sup>4</sup>;~~

[3] ~~SEEING~~ **CONSIDERING** the submissions of ~~Debtor/Receiver/Trustee/Monitor's~~ attorneys and the submissions of ~~●~~ counsel;

[4] **GIVEN** the provisions of the CCAA:

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

[5] ~~[4] SEEING~~ **CONSIDERING** that it is appropriate to issue an order approving the sale transaction~~(s)~~ (the "**Transaction**") contemplated by the agreement entitled ~~the~~ (the "**Asset Purchase Agreement**") ~~by and between~~ ~~[Debtor/Receiver/Trustee/Monitor]~~ (the "**Vendor**") dated March 11, 2023 (the "**Purchase Agreement**") between **XBC Flow Services – Wisconsin Inc.** (the "**Seller**"), and **Total Energy Systems, LLC**, as ~~vendor~~ **buyer**, ~~and~~ (the "**Purchaser**" "**Buyer**"), ~~as purchaser,~~ a copy of which was filed under seal as **Exhibit RP-6A** to the Motion Application, and vesting in the Purchaser/Buyer the ~~assets described in the Purchase Agreement (the "Purchased Assets")~~<sup>5</sup>.

**WHEREFORE THE COURT HEREBY:**

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

**DEFINITIONS**

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

**SERVICE**

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

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

**SALE TRANSACTION APPROVAL**

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

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

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**EXECUTION OF DOCUMENTATION**

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

**AUTHORIZATION**

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

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

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

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

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

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~~[14] ORDERS and DIRECTS the [Vendor/Receiver/Trustee/Monitor] to serve a copy of this Order to every party to the Assigned Agreements.~~

~~[15] ORDERS and DIRECTS the [Receiver/Trustee/Monitor] to file with the Court a copy of the Certificate, forthwith after issuance thereof.~~

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**CANCELLATION OF SECURITY REGISTRATIONS<sup>789</sup>**

**For Quebec Property:**

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

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

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

**For Ontario Property:**

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

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

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

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

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

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

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

**For British Columbia Property:**

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

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

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

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

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

~~**For New Brunswick Property:**~~

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

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

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**NET PROCEEDS**

~~[25] ORDERS that the net proceeds<sup>10</sup> from the sale of the Purchased Assets (the "Net Proceeds") shall be remitted to the [Receiver/Trustee/Monitor] and shall be distributed in accordance with applicable legislation.~~

~~[26] ORDERS that for the purposes of determining the nature and priority of the Encumbrances Claims, the Net Proceeds net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment from and after the delivery of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances except for the Permitted Monitor's Certificate all Claims and Encumbrances shall attach to the Net Proceeds net proceeds from the sale of the Purchased Assets with the same~~

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

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

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

### CANCELLATION OF SECURITY REGISTRATIONS

- [19] ORDERS that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets from any registration filed against the Petitioners, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

### ASSIGNMENT OF CONTRACTS

- [20] ORDERS and DECLARES that upon the issuance of the Monitor's Closing Certificate, the rights and obligations of the Seller under the agreements listed in Schedule "C" hereto, as they may have been amended or restated from time to time (the "Assumed Contract(s)"), are automatically and irrevocably assigned to the Buyer without any further consents or approvals of this Court.
- [21] ORDERS that all Cure Costs in relation to the Assumed Contracts, which are set out in Schedule C, shall be remedied by the Buyer no later than thirty (30) days following issuance of the Monitor's Closing Certificate.
- [22] ORDERS that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.

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- [23] ORDERS that the Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the Buyer in accordance with their terms for the benefit of the Buyer.
- [24] ORDERS and DIRECTS the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts, if any.
- [25] AUTHORIZES the Petitioners, the Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts to the Buyer in accordance with this Order.

### PROTECTION OF PERSONAL INFORMATION

[26] ~~[27]~~ ORDERS that, pursuant to sub-section 7(3)(c) of the ~~Canada~~ *Personal Information Protection and Electronic Documents Act, SC 2000, c 5* or any similar provision of any applicable provincial legislation (collectively, the ~~Receiver~~ is "Applicable Privacy Laws"), the Petitioners and the Monitor are authorized and ~~permitted~~ to disclose and transfer to the ~~Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including~~ Buyer the personal information ~~of those employees listed on Schedule "•" to~~ in the custody or control of the Petitioners set out in the Purchase Agreement (the "Disclosed Information"). The ~~Purchaser~~ Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~<sup>44</sup>. ~~[NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause];~~ Petitioners.

[27] ORDERS that the Buyer shall:

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

<sup>44</sup> ~~\_\_This paragraph may not be necessary depending on the nature of the Purchased Assets.~~

**VALIDITY OF THE TRANSACTION**

[28] **ORDERS** that notwithstanding:

- (a) ~~(i)~~ the pendency of these proceedings;
- (b) ~~(ii)~~ any petition for a ~~receiving~~bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("BIA", RSC 1985, c B-3) and any order issued pursuant to any such petition; or
- (c) ~~(iii)~~ the provisions of any federal or provincial legislation;

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

**LIMITATION OF LIABILITY**

**THE MONITOR**

[29] ~~DECLARES that, subject to other orders of this Court, nothing herein contained shall require the [Receiver/Trustee/Monitor] to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The [Receiver/Trustee/Monitor] shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the [BIA/CCAA];~~**DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.

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

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

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

### SEALING

[33] ORDERS that Exhibit P-6A to the Application shall be filed under seal and kept confidential until further order of this Court.

### GENERAL

~~[31] ORDERS AND DECLARES that the Transaction is exempt from the application of the Bulk Sales Act (Ontario). [NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause] [Ontario – Adapt for other common law Provinces where applicable]~~

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

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

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

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

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powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other and the Buyer.

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

[37] ~~[36]~~ **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or ~~administrative body and any federal or state court or administrative body~~ in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to ~~act in aid of and to be complementary to this Court~~ give effect to this Order, and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of ~~the~~ this Order; All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order in any foreign proceeding, to assist the Petitioners, the Monitor and their respective agents in carrying out this Order.

[38] ~~[37]~~ **ORDERS** ~~the~~ provisional execution of ~~the present~~ this Order notwithstanding any appeal and without ~~the requirement to provide any security or provision for costs whatsoever;~~

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

●, J.S.C. Christian Immer, JCS

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

● Attorneys for ● the Petitioners

Hearing date: **March 16, 2023**

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SCHEDULE "A"

DRAFT CERTIFICATE OF THE [RECEIVER/TRUSTEE/MONITOR]

CANADA

~~SUPERIOR COURT~~

PROVINCE OF ~~QUEBEC~~ QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)

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

No.: 500-11-061483-224

File: No: 500-11-●

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

●  
~~Debtor~~

-and-

●  
~~[Petitioner]~~

-and-

●  
~~[Receiver/Trustee/Monitor]~~

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

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

-and-

DELOITTE RESTRUCTURING INC.  
Monitor

Draft

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

### RECITALS:

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

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

~~WHEREAS~~ on ~~●~~ ~~March [16], 2023~~, the Court issued an Order (the "~~Approval, Vesting and Assignment Order~~") ~~thereby, inter alia,~~ authorizing and approving, *inter alia*, the execution ~~by the Petitioner of an agreement entitled ● Agreement (the "a Asset Purchase Agreement")~~ dated ~~March [9], 2023~~ by and ~~between ●, as vendor~~ among ~~XBC Flow Services - Wisconsin~~ (the "~~Vendor/Seller~~") and ~~● Total Energy Systems, LLC~~ as ~~purchaser/buyer~~ (the "~~Purchaser/Buyer~~"), a copy of which was filed in the Court record (the "~~Purchase Agreement~~"), and into all the transactions contemplated therein (the "~~Transaction~~") with such ~~non-material~~ alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the ~~[Receiver/Trustees/Monitor]~~.

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

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

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

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

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

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

\*\*\*\*\*

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SCHEDULE "B"

PERMITTED ENCUMBRANCES TO BE VESTED

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**SCHEDULE "C"**  
**ASSIGNED AGREEMENTS**

**ASSUMED CONTRACTS**

1. AT&T Contract(s) including the landline telephone number and employee cell phones.
2. All open Purchase Orders as of the Effective Date excluding, for greater certainty, any intercompany Purchase Orders.

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# XBC Flow Services

## Open Purchase Order List by Vendor

DATE                      NUM

### ABB Motors and Mechanical- Baldor Electric

03/31/2023    2507-2

### AIR SERVICES COMPANY

02/03/2023    3677  
02/07/2023    21651  
02/09/2023    3696  
02/09/2023    3701  
02/13/2023    3699  
02/14/2023    3700  
02/17/2023    3729  
02/23/2023    21663  
02/23/2023    3170  
02/24/2023    2851  
02/24/2023    3759  
02/24/2023    21661-1  
03/31/2023    2507-4  
03/31/2023    21625  
04/30/2023    21626 - Revised  
04/30/2023    21627  
04/30/2023    21631  
04/30/2023    21638

### Applied System Technologies

02/23/2023    3743-1  
03/31/2023    21566  
03/31/2023    3072

### Boge America Inc.

02/20/2023    3742  
03/31/2023    2831  
03/31/2023    3394  
04/30/2023    21593  
04/30/2023    2912-2  
04/30/2023    3508

### BRABAZON

01/31/2023    3575-1  
03/31/2023    3459

# XBC Flow Services

## Open Purchase Order List by Vendor

### CMS, Inc.

02/13/2023    3149-2

### CP

02/15/2023    3723

02/22/2023    3756

### ELGI COMPRESSOR USA, Inc.

02/06/2023    22-8879-TM

02/08/2023    21655

02/17/2023    3732

02/17/2023    3734

02/20/2023    3740

04/30/2023    22-8878-TM

### Grainger

02/13/2023    3704

### Great Lakes Air Products

02/06/2023    21649

02/14/2023    22-8880-TM

02/15/2023    21660

03/31/2023    3103

04/30/2023    3513

### HARDY PRO-AIR

02/24/2023    3760

04/30/2023    22-8876-TM

06/30/2023    3187

### Hertz Kompressoren USA, Inc.

02/09/2023    3697

02/23/2023    3698

03/31/2023    2905-3

### Ingersoll Rand (IR)

04/30/2023    3528

<u>DATE</u>	<u>NUM</u>
<u>02/14/2023</u>	<u>3702</u>

### JORC INDUSTRIAL

# XBC Flow Services

## Open Purchase Order List by Vendor

### Keltec Technolab

<u>02/15/2023</u>	<u>3715-1</u>
<u>02/22/2023</u>	<u>3704-2</u>
<u>03/31/2023</u>	<u>21284</u>
<u>03/31/2023</u>	<u>2286</u>
<u>03/31/2023</u>	<u>2272</u>
<u>03/31/2023</u>	<u>1332-1</u>
<u>03/31/2023</u>	<u>2282-1</u>
<u>04/30/2023</u>	<u>1332</u>
<u>04/30/2023</u>	<u>21589</u>
<u>04/30/2023</u>	<u>2978-1</u>
<u>04/30/2023</u>	<u>21599</u>
<u>04/30/2023</u>	<u>21636</u>

### LINCOLN CONTRACTORS SUPPLY

<u>03/31/2023</u>	<u>2372-1</u>
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### MARTECH SERVICES CO.

<u>03/31/2023</u>	<u>3053</u>
<u>04/30/2023</u>	<u>2927</u>

### Midwest Control Devices

<u>02/01/2023</u>	<u>21646</u>
<u>02/08/2023</u>	<u>21656</u>
<u>04/30/2023</u>	<u>1810</u>
<u>04/30/2023</u>	<u>3560-1</u>

### Milton Industries

<u>03/31/2023</u>	<u>3118</u>
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### Parker / Zander

<u>04/30/2023</u>	<u>3622-1</u>
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### PORTER PIPE AND SUPPLY

<u>03/31/2023</u>	<u>21450</u>
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### Quality Transportation, Inc.

<u>03/31/2023</u>	<u>2975</u>
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<u>DATE</u>	<u>NUM</u>	<u>MEMO/DESCRIPTION</u>	<u>SHIP VIA</u>	<u>AMOUNT</u>	<u>OPEN BALANCE</u>
<u>03/31/2023</u>	<u>3145-1</u>				

### ROGERS MACHINERY CO.

# XBC Flow Services

## Open Purchase Order List by Vendor

### Samuel Pressure Vessel Group

04/30/2023   22-8864-TM2

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### Saylor-Beall Manufacturing

04/30/2023   22-8877-TM

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### SFX/Deltech

03/31/2023   21579

04/30/2023   22-8837-01

### Summit Industrial - Kluber Lubrication NA LP

02/21/2023   3743

02/21/2023   3744

03/31/2023   21623

### SUTO ITECH

03/31/2023   21560

### Vacuum, Pump & Compressor (Vendor)

04/30/2023   3029

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### Zorn Compressor & Equipment, Inc.

02/15/2023   3715

04/30/2023   2878-2

04/30/2023   3207-1

04/30/2023   3279

04/30/2023   3052-1

**EXHIBIT P-4**

**Draft Wage Earner Protection Program Order**

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March 16, 2023

---

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

---

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

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)  
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)  
APPLIED COMPRESSION SYSTEMS LTD.  
1224933 ONTARIO INC. (FORMERLY 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

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**WAGE EARNER PROTECTION PROGRAM ACT ORDER**

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Draft

- [1] **CONSIDERING** the *Application for the Issuance of a Fourth Amended and Restated Initial Order, Approval and Vesting Orders and Ancillary Relief* (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 Seventh Report of the Monitor dated March ●, 2023 (the “**Report**”);
- [3] **CONSIDERING** the submissions of counsel and the testimony of the witnesses heard, including with regard to the application of section 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c.47, s.1 (the “**WEPPA**”) and section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the “**WEPP Regulations**”);
- [4] **GIVEN** the provisions of the CCAA, the WEPPA and the WEPP Regulations;
- [5] **GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

**THE COURT HEREBY:**

- [6] **GRANTS** the Application.
- [7] **DECLARES** that pursuant to section 5(5) of the WEPPA, FormerXBC Inc. (formerly Xebec Adsorption Inc.), Applied Compression Systems Ltd., 1224933 Ontario Inc. (formerly Compressed Air International Inc.) and their former employees meet the criteria prescribed by section 3.2 of the WEPP Regulations and are individuals to whom the WEPPA applies.
- [8] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.
- [9] **THE WHOLE WITHOUT COSTS.**

---

Christian Immer, J.S.C.

MTRE SANDRA ABITAN  
MTRE JULIEN MORISSETTE  
MTRE ILIA KRAVTSOV  
MTRE SOPHIE COURVILLE

Draft

500-11-061483-224

PAGE: 3

(OSLER HOSKIN & HARCOURT LLP)  
COUNSEL TO THE PETITIONERS

Hearing date: March 16, 2023

Draft



**EXHIBIT P-5**

**Redacted copy of the Fluid-Aire APA**

**ASSET PURCHASE AGREEMENT**

**THE TITUS COMPANY**

**as Seller**

**- and -**

**FAD PENNSYLVANIA INC.**

**as Buyer**

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## ASSET PURCHASE AGREEMENT

**THIS AGREEMENT** is made as of March 11, 2023

### AMONG:

**THE TITUS COMPANY**, a corporation governed by the laws of Pennsylvania (the “**Seller**”)

- and -

**FAD PENNSYLVANIA INC.**, a corporation governed by the laws of Pennsylvania (the “**Buyer**”)

### RECITALS:

- A. On the Filing Date, Xebec Adsorption Inc. (“**Xebec**”) and certain of its affiliates and subsidiaries (the “**Xebec Group**”) applied for and were granted protection from their creditors under the CCAA pursuant to the Initial Order of the CCAA Court.
- B. On September 30, 2022, Xebec, in its capacity as the foreign representative for the Xebec Group, commenced ancillary insolvency proceedings under chapter 15 of the U.S. Bankruptcy Code (the “**U.S. Proceedings**”) in the U.S. Bankruptcy Court.
- C. Pursuant to the Initial Order, the CCAA Court appointed Deloitte Restructuring Inc. as “**Monitor**”, and National Bank Financial Inc. as “**Financial Advisor**”, in connection with the CCAA Proceedings.
- D. On September 29, 2022, the CCAA Court granted the SISP Order which, among other things, approved the SISP. The SISP Order and the SISP govern the process for soliciting and selecting bids for the sale of the Business (as defined in the SISP) of the Xebec Group.
- E. On October 20, 2022, the CCAA Court granted an amended and restated initial order, which was further amended and restated on February 3, 2023 and February 13, 2023 (the “**Amended and Restated Initial Order**”) approving, among other things, the DIP Facility and a key employee retention plan.
- F. The Buyer has been selected as a Successful Bidder (as defined in the SISP) in accordance with the SISP.
- G. The Seller wishes to sell to the Buyer, and the Buyer wishes to purchase from the Seller, the Purchased Assets (as defined herein), which constitute substantially all of the property and assets owned by the Seller and used in connection with the Acquired Business, and the Buyer further wishes to assume from the Seller the Assumed Liabilities (as defined herein), subject to the terms and conditions of this Agreement.

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

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Agreement,

- (a) **“Accounts Receivable”** means accounts receivable, bills receivable, trade accounts, book debts and insurance claims relating to the Acquired Business, recorded as receivables in the books and records of the Seller relating to the Acquired Business or the Purchased Assets, and other amounts due or deemed to be due to the Seller relating to the Acquired Business including refunds and rebates receivable relating to the Acquired Business or the Purchased Assets, in each case excluding any Intercompany Accounts Receivables;
- (b) **“Accrued Liabilities”** means (i) accruals for vacation pay in respect of the Assumed Employees; (ii) Cure Costs assumed by the Buyer under Section 2.3(a); and (iii) trade payables assumed by the Buyer under Section 2.3(b).
- (c) **“Acquired Business”** means the business conducted or provided by the Seller immediately prior to the date of this Agreement.
- (d) **“affiliate”** of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, in each case, whether directly or indirectly through one or more intermediaries, and “control” and any derivation thereof means the control by one Person of another Person in accordance with the following: a Person (“A”) controls another Person (“B”) where A has the power to determine the management and policies of B by contract or status (for example, the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B; and, for certainty and without limitation, if A owns shares to which are attached more than 50% of the votes permitted to be cast in the election of directors (or other Persons performing a similar role) of B, then A controls B for this purpose.
- (e) **“Agreement”** means this Asset Purchase Agreement, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Asset Purchase Agreement in its entirety, and unless otherwise indicated, references to Schedule, Articles and Sections are to Schedules, Articles and Sections in this Asset Purchase Agreement.
- (f) **“Allocation Statement”** has the meaning given to such term in Section 3.2.
- (g) **“Amended and Restated Initial Order”** has the meaning given to such term in Recital E.
- (h) **“Applicable Law”** means any transnational, domestic or foreign, federal, provincial, territorial, state, county, local or municipal (or any subdivision of any

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

- (i) **“Approval and Vesting Order”** means an order granted by the CCAA Court, in substantially the form attached as Schedule 1.1(i) (with only such changes as the Buyer and the Seller approve in their reasonable discretion, but in all cases in form and substance acceptable to the Monitor), and served on those Persons identified by the Seller and the Buyer, which will, among other things:
  - (i) authorize and approve this Agreement and the execution and delivery thereof by the Seller;
  - (ii) authorize and direct the Seller to complete the transactions contemplated by this Agreement; and
  - (iii) provide for the vesting of title to the Purchased Assets in and to the Buyer in accordance with the terms and conditions of this Agreement, free and clear of any and all claims against the Purchased Assets of every nature or kind whatsoever and howsoever arising, including all Encumbrances, save for Permitted Encumbrances, upon the delivery of the Monitor’s Certificate to the Buyer indicating that the conditions precedent to the consummation of the transactions contemplated by this Agreement have been satisfied or waived (where permissible).
- (j) **“Assignment Order”** means an order or orders of the CCAA Court pursuant to applicable provisions of the CCAA, in form and substance acceptable to the Seller, the Buyer, and the Monitor, each acting in a commercially reasonable manner, authorizing and approving the assignment to the Buyer of any Assumed Contract, Personal Property Lease or Real Property Lease for which a required consent has not been obtained and preventing any counterparty to the Assumed Contract, Personal Property Lease or Real Property Lease from exercising any right or remedy under the Assumed Contract, Personal Property Lease or Real Property Lease by reason of any default(s) arising from the CCAA Proceedings, the insolvency of the Seller, the assignment of the Assumed Contract, Personal Property Lease or Real Property Lease, or the failure of the Seller to perform a non-monetary obligation under the Assumed Contract, Personal Property Lease or Real Property Lease.
- (k) **“Assumed Contracts”** has the meaning given to such term in Section 2.1(h).
- (l) **“Assumed Employees”** has the meaning given to such term in Section 7.7(d).
- (m) **“Assumed Liabilities”** has the meaning given to such term in Section 2.3.



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

- (y) “**Closing Time**” means 0:01 a.m. (Montréal time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.
- (z) “**Commitment Letter**” has the meaning given to such term in Section 5.2.
- (aa) “**Confidential Information**” means non-public, confidential, personal or proprietary information which is furnished to the Buyer by the Seller or any of the Seller’s representatives or the Monitor, including, without limitation, information about identifiable individuals, any information relating to the Seller and their affiliates, or any customer or supplier of the Seller, but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Buyer or its representatives in breach of this Agreement or that is received by the Buyer from an independent third party that, to the knowledge of the Buyer, after good faith inquiry, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by the Buyer’s employees or representatives without access or reference to any Confidential Information.
- (bb) “**Contracts**” means contracts, licenses, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which the Seller is a party or by which the Seller is bound or under which the Seller has, or will have, any right or any liability or contingent right or liability (in each case, whether written or oral, express or implied) relating to the Acquired Business or the Purchased Assets and includes quotations, orders, proposals or tenders which remain open for acceptance and warranties and guarantees, but excluding the Real Property Leases.
- (cc) “**Contracts Assignment and Assumption Agreements**” means the assignment and assumption agreements for the Assumed Contracts, in a form satisfactory to each Party acting in a commercially reasonable manner.
- (dd) “**Cure Costs**” means all amounts necessary to cure any monetary defaults as a condition to assuming the Assumed Contracts and the Real Property Leases.
- (ee) “**Deposit**” means the amount of \$135,300 delivered by the Buyer to the Monitor in accordance with the SISP.
- (ff) “**DIP Facility**” means the senior secured superpriority debtor-in-possession credit agreement among Xebec (as borrower), certain subsidiaries and affiliates of Xebec (as guarantors) and National Bank of Canada and Export Development Canada (as pari passu lenders) dated as of October 20, 2022, and as may be amended, restated, supplemented and/or modified from time to time.
- (gg) “**EDC Credit Agreement**” means the credit facility agreement dated as of July 16, 2021, among Xebec Holding USA Inc. (as borrower), Xebec (as guarantor) and Export Development Canada, as lender, as renewed, replaced, amended, substituted or restated from time to time.

- (hh) “**Employee Plans**” means the Plans that are: (i) for the benefit of Employees (or any spouses, dependents, survivors or beneficiaries of such Employees); (ii) maintained, sponsored or funded by a Seller; or (iii) under which a Seller has, or will have, any liability, each such Plan being listed on Schedule 1.1(hh).
- (ii) “**Employees**” means any and all: (i) Employees of the Seller who are actively at work (including full-time, part-time or temporary employees); and (ii) Employees of the Seller who are on statutory or approved leaves of absence (including maternity leave, parental leave, short-term or long-term disability leave, workers’ compensation and other statutory leaves).
- (jj) “**Employees of the Seller**” means all current or former officers, employees, individual consultants and service providers of the Seller or any predecessors of the Seller.
- (kk) “**Encumbrance**” means any security interest, lien (statutory or otherwise), prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, liability, mortgage, right-of-way, servitude, easement, lease, restriction, development or similar agreement, title defect, option or adverse claim or encumbrance of any nature or kind including any and all CCAA Court ordered charges granted in the CCAA Proceedings.
- (ll) “**Environment**” means the environment or natural environment as defined in any Environmental Laws and includes air, surface water, ground water, land surface, soil and subsurface strata.
- (mm) “**Environmental Approvals**” means permits, certificates, licences, authorizations, consents, agreements, instructions, directions, registrations or approvals required by a Governmental Authority pursuant to an Environmental Law relating to the Acquired Business or the Purchased Assets.
- (nn) “**Environmental Law**” means Applicable Laws relating to the protection of human health and the Environment, and includes Applicable Laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, Release, remediation, management and disposal of Hazardous Substances.
- (oo) “**Excluded Assets**” has the meaning given to such term in Section 2.2.
- (pp) “**Excluded Contracts**” has the meaning given to such term in Section 2.2(c).
- (qq) “**Excluded Intellectual Property**” has the meaning given to such term in Section 2.2(g).
- (rr) “**Excluded Liabilities**” has the meaning given to such term in Section 2.4.
- (ss) “**Filing Date**” means September 29, 2022.
- (tt) “**Final**” with respect to any order of any court of competent jurisdiction, means that such order shall not have been stayed, appealed, varied (except with the consent of the Buyer and Seller, each acting in a commercially reasonable manner) or vacated,

and all time periods within which such order could at law be appealed shall have expired.

- (uu) “**Financial Advisor**” means National Bank Financial Inc. in its capacity as financial advisor of the Seller in connection with the SISP and not in its personal capacity.
- (vv) “**General Assignments and Bills of Sale**” means the general assignments and bills of sale for the Purchased Assets, in a form reasonably satisfactory to each Party.
- (ww) “**Governmental Authority**” means any applicable transnational, federal, provincial, municipal, state, county, local, national or other government, regulatory authority, governmental department, agency, commission, board, tribunal, bureau, ministry, court, system operator, judicial body, arbitral body or other law, rule or regulation-making entity, or any entity, officer, inspector, investigator or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case:
  - (i) having jurisdiction over the Seller, the Buyer, the Acquired Business, the Purchased Assets or the Assumed Liabilities on behalf of any country, province, state, locality, or other geographical or political subdivision thereof; or
  - (ii) exercising or entitled to exercise any administrative, judicial, legislative, regulatory or taxing authority or power.
- (xx) “**Governmental Authorizations**” means authorizations, approvals (including the Environmental Approvals), plans, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued to or required by the Seller relating to the Acquired Business or any of the Purchased Assets by or from any Governmental Authority.
- (yy) “**Hazardous Substances**” means pollutants, contaminants, wastes of any nature, hazardous substances, hazardous materials, toxic substances, prohibited substances, dangerous substances or dangerous goods regulated by or under Environmental Laws.
- (zz) “**including**”, “**include**” and “**includes**” shall be interpreted on an inclusive basis and shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.
- (aaa) “**Initial Order**” means the Initial Order granted by the CCAA Court on September 29, 2022, pursuant to which Xebec and certain of its affiliates and subsidiaries were granted protection from their creditors under the CCAA (as amended, restated, supplemented and/or modified from time to time).
- (bbb) “**Insolvency Proceedings**” means any action, application, petition, suit or other proceeding under any bankruptcy, arrangement, reorganization, dissolution,

liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect, for the relief from or otherwise affecting creditors of the Seller or Xebec, including without limitation under the *Bankruptcy and Insolvency Act* (Canada) (including the filing of a notice of intention to make a proposal), CCAA (including the CCAA Proceedings), the *Winding-Up and Restructuring Act* (Canada), the *Canada Business Corporations Act* or the U.S. Bankruptcy Code by, against or in respect of the Seller or Xebec.

- (ccc) “**Intellectual Property**” means any and all intellectual property or similar proprietary rights used or held by the Seller for use in or relating to the Acquired Business, including all patents, patent applications, trademarks, industrial designs, trade names, service marks (and all goodwill associated with any of the foregoing), copyrights, technology, software, data and database rights, trade secrets, proprietary information, domain names, know-how and processes and other intellectual property, whether registered or not, throughout the world.
- (ddd) “**Intercompany Accounts Receivable**” has the meaning given to such term in Section 2.2(m).
- (eee) “**IP Assignment and Assumption Agreements**” means the intellectual property assignment and assumption agreements for Intellectual Property and rights in Intellectual Property owned by the Seller and that is used or held for use in or otherwise relates to the Acquired Business, in a form reasonably satisfactory to the Parties.
- (fff) “**IT Assets**” has the meaning given to such term in Section 2.1(k).
- (ggg) “**Landlords**” means, collectively, the landlords under the Real Property Leases.
- (hhh) “**Lease Assignment and Assumption Agreements**” means the lease assignment and assumption agreements for the Personal Property Leases and Real Property Leases, in a form reasonably satisfactory to the Parties.
- (iii) “**Material Adverse Effect**” means any change, event, occurrence or circumstance, individually or in the aggregate that: (i) has, or would reasonably be expected to have, a material adverse effect on the operations, results of operations or condition (financial or otherwise) of the Acquired Business, (ii) materially and adversely impairs the Purchased Assets or the Acquired Business or materially and adversely increases the Assumed Liabilities, each taken as a whole, or (iii) materially and adversely impedes the consummation of the transactions contemplated by this Agreement, but excluding, in the case of each of clauses (i), (ii) and (iii) any such change, event, occurrence or circumstance that results from or arises out of (A) changes in general economic conditions, (B) changes affecting the industries and markets in which the Acquired Business operates, (C) changes in macroeconomic factors, interest rates, currency exchange rates or general financial or credit market conditions, (D) acts of God, war, terrorism, civil unrest or hostilities, (E) the COVID-19 pandemic or other epidemic or pandemic outbreaks including any continuation thereof, (F) any change in law or its interpretation, administration or application or non-application by any Governmental Authority or in generally

acceptable accounting principles, (G) any failure to meet any internal or publicly disclosed projections, forecasts, estimates or budgets of, or guidance relating to, revenue, cash flow, earnings or other financial metrics for any period, (H) any action taken (or omitted to be taken) by the Seller that is permitted under this Agreement or consented to by the Buyer, (I) any announcement of the transactions contemplated by this Agreement, (J) any change or development in respect of any Excluded Asset, Excluded Liability or any matter disclosed pursuant to the terms of this Agreement, or (K) the pendency of the CCAA Proceedings and any action approved by, or motion made before, the CCAA Courts (except with respect to clauses (A) through (F) to the extent that such changes have a materially disproportionate effect on the Purchased Assets, the Assumed Liabilities or the Acquired Business, in each case, taken as a whole, relative to other comparable companies and entities operating in the industries in which Xebec or the Seller operates),

- (jjj) “**Material Contracts**” means, collectively:
- (i) any Contract that is reasonably likely to involve payment to or by the Seller in excess of \$100,000 in any fiscal year; and
  - (ii) any Contract that is material to the Acquired Business.
- (kkk) “**Minimum Book Value**” means the aggregate at the Closing Time of the book value of the Accounts Receivable (excluding Intercompany Accounts Receivables) immediately prior to the Closing Time, the book value of the inventory of the Seller immediately prior to the Closing Time and the “Cost” listing in the trial balance of the Seller of the other Purchased Assets listed in the trial balance of the Seller.
- (lll) “**Monitor**” means Deloitte Restructuring Inc., in its capacity as CCAA Court-appointed monitor of the Seller pursuant to the Initial Order and not in its personal capacity.
- (mmm) “**Monitor’s Certificate**” means the certificate filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Parties that all conditions to Closing have been satisfied or waived by the applicable Party and that the cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Buyer to the Seller have been received by the Monitor.
- (nnn) “**NBC Credit Agreement**” means the term loan credit agreement dated as of February 23, 2021, as amended by a consent and first amending agreement executed as of January 26, 2022, a second amending agreement dated June 30, 2022, and a forbearance agreement dated July 7, 2022, as amended on September 28, 2022, October 20, 2022 and November 28, 2022, between Xebec (as borrower), certain subsidiaries and affiliates of Xebec (as guarantors) and National Bank of Canada (as lender).
- (ooo) “**NDA**” means the confidentiality agreement between Derrick Taylor and/or Fluid-Aire Dynamics, Inc. and Xebec dated February 8, 2023.

- (ppp) “**Order**” means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.
- (qqq) “**Parties**” means the Seller and the Buyer collectively, and “**Party**” means either the Seller or the Buyer, as the context requires.
- (rrr) “**Permits**” has the meaning given to such term in Section 2.1(o).
- (sss) “**Permitted Encumbrances**” means, except to the extent otherwise provided in the Approval and Vesting Order, the Encumbrances listed in Schedule 2.3(g).
- (ttt) “**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity, however designated or constituted.
- (uuu) “**Personal Information**” means information about an identifiable individual in the possession or under the control of the Seller.
- (vvv) “**Personal Property Leases**” has the meaning given to such term in Section 2.1(f).
- (www) “**Plan**” means any plan, arrangement or agreement that provides any employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, change of control, pension, supplemental pension, retirement, stock option, stock purchase, stock appreciation, share unit, phantom stock, deferred compensation, health, welfare, medical, dental, disability, life insurance and any similar plans, arrangements or agreements.
- (xxx) “**Premises**” means, collectively, the lands and premises which are leased to a Seller pursuant to the Real Property Leases.
- (yyy) “**Purchase Price**” has the meaning given to such term in Section 3.1.
- (zzz) “**Purchased Assets**” has the meaning given to such term in Section 2.1.
- (aaaa) “**Real Property Leases**” has the meaning given to such term in Section 2.1(g).
- (bbbb) “**Recognition Order**” means an order or orders of the U.S. Bankruptcy Court in the U.S. Proceedings in form and substance acceptable to the Seller, the Buyer and the Monitor, each acting in a commercially reasonable manner:
  - (i) recognizing and giving effect to the Approval and Vesting Order, and the Assignment Order;
  - (ii) authorizing and approving the assignment to the Buyer of any Assumed Contract, Personal Property Lease or Real Property Lease for which a required consent has not been obtained and preventing any counterparty to the Assumed Contract, Personal Property Lease or Real Property Lease from exercising any right or remedy under the Assumed Contract, Personal

Property Lease or Real Property Lease by reason of any default(s) arising from the U.S. Proceedings, the insolvency of the Seller, the assignment of the Assumed Contract, Personal Property Lease or Real Property Lease, or the failure of the Seller to perform a non-monetary obligation under the Assumed Contract, Personal Property Lease or Real Property Lease;

- (iii) approving this Agreement and all of the terms and conditions hereof with respect to the Seller's property within the territorial jurisdiction of the U.S. and approving and authorizing the Seller to consummate the transactions contemplated by this Agreement and the Assignment Order.
- (cccc) "**Release**" has the meaning prescribed in any Environmental Law and includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction.
- (dddd) "**Retained Business**" means any and all businesses conducted by the Seller as of the Closing, other than the Acquired Business.
- (eeee) "**Seller**" has the meaning given to such term in the preamble to this Agreement.
- (ffff) "**SISP**" means the Sale and Investment Solicitation Process approved by the SISP Order (as amended, restated, supplemented and/or modified from time to time).
- (gggg) "**SISP Milestones**" means the milestones set forth in the DIP Facility.
- (hhhh) "**SISP Order**" means the Order granted by the CCAA Court on September 29, 2022 (as amended, restated, supplemented and/or modified from time to time), which, among other things, approved the SISP.
- (iiii) "**Sunset Date**" has the meaning given to such term in Section 9.1(b).
- (jjjj) "**Tax**" and "**Taxes**" includes:
  - (i) taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions; and



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

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

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

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

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

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

(pppp) “**Xebec Names**” has the meaning given to such term in Section 10.8.

## **1.2 Statutes**

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

## **1.3 Headings and Table of Contents**

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

## **1.4 Gender and Number**

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

## **1.5 Currency**

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

## **1.6 Invalidity of Provisions**

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

## **1.7 Knowledge**

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

### **1.8 Entire Agreement**

This Agreement, the schedules to this Agreement, the NDA and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise, including (i) the non-binding letter of intent dated February 21, 2023 between the Seller and the Buyer and (ii) the non-binding letter of intent dated March 2, 2023 between the Seller and the Buyer. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

### **1.9 Waiver, Amendment**

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

### **1.10 Governing Law; Jurisdiction and Venue**

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

### **1.11 Schedules**

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

<u>Schedule</u>	<u>Description</u>
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Schedule 1.1(i)	Form of Approval and Vesting Order
Schedule 1.1(hh)	Employee Plans
Schedule 2.1(e)	Vehicles
Schedule 2.1(f)	Personal Property Leases
Schedule 2.1(g)	Real Property Leases
Schedule 2.1(h)	Assumed Contracts
Schedule 2.1(j)	Intellectual Property
Schedule 2.1(q)	Loans
Schedule 2.3(b)	Trade Debt
Schedule 2.3(g)	Permitted Encumbrances
Schedule 7.7	Employees

## **ARTICLE 2 PURCHASE AND SALE**

### **2.1 Agreement to Purchase and Sell Purchased Assets**

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

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

equipment and other tangible personal and moveable property (other than inventory) owned by the Seller for use in or relating to the Acquired Business, whether located on the Seller's premises or elsewhere, and all rights of the Seller under warranties, indemnities, licenses, and all similar rights of the Seller against third Persons with respect to the equipment, fixed assets and tangible assets referenced herein;

- (e) *Vehicles* – all motor vehicles, including all trucks, vans, cars and forklifts owned by the Seller for use in or relating to the Acquired Business, including the vehicles set out in Schedule 2.1(e), and all rights of the Seller under warranties, indemnities, licenses, and all similar rights of the Seller against third Persons with respect to the motor vehicles referenced herein;
- (f) *Personal Property Leases* – all leases of personal or moveable property of the Seller that relate to the Acquired Business listed on Schedule 2.1(f), including all benefits, rights and options of the Seller pursuant to such leases and all leasehold improvements forming part thereof (collectively, the “**Personal Property Leases**”);
- (g) *Real Property Leases* – the leases and other agreements to occupy the Premises entered into by, or assigned in favour of the Seller and listed in Schedule 2.1(g), including all purchase options, prepaid rents, security deposits, rights to appurtenances and improvements, licenses and permits relating thereto and all leasehold improvements thereon (collectively, the “**Real Property Leases**”). If the Premises comprise more than one leased location, the Real Property Leases related to any one leased location are referred to as a “**Real Property Lease**”;
- (h) *Assumed Contracts* – all the Contracts listed in Schedule 2.1(h) (collectively, the “**Assumed Contracts**”);
- (i) *Non-Competition, Non-Solicitation and Confidentiality Covenants* – all covenants in favour of the Seller in respect of non-competition, non-solicitation and confidentiality from the Assumed Employees of the Seller and potential acquirers of shares or assets of the Seller other than any confidentiality or similar agreements entered into by the Seller, Xebec or any member of the Xebec Group in connection with the SISP;
- (j) *Intellectual Property* – all Intellectual Property and rights in Intellectual Property owned by the Seller and that is used or held for use in or otherwise relate to the Acquired Business, including the following, but not including any Excluded Intellectual Property:
  - (i) all trade-marks, trade names, business names, websites and domain names, certification marks, service marks, and other source indicators, and the goodwill of any business symbolized thereby, patents, copyrights, code, applications, systems, databases, data, website content, know-how, formulae, processes, inventions, technical expertise, research data, trade secrets, industrial designs and other similar property or proprietary rights, including those listed and described in Schedule 2.1(j);

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

- (o) *Permits* – the Governmental Authorizations (including those relating to Environmental Law) of the Seller required for the Acquired Business or the Purchased Assets from any Governmental Authority (collectively, the “**Permits**”), to the extent transferable to the Buyer or its permitted assignees (collectively, the “**Transferred Permits**”);
- (p) *Actions, etc.* – any claims, refunds, causes of action, rights of recovery, rights of set-off, subrogation and rights of recoupment of the Seller related to the Acquired Business or any of the Purchased Assets or any of the Assumed Liabilities, and the interest of the Seller in any litigation and in the proceeds of any judgment, order or decree issued or made in respect thereof in respect of occurrences, events, accidents or losses suffered prior to the Closing Time (but excluding any of the foregoing in respect of any of the Excluded Assets or Excluded Liabilities) as well as any right that the Seller may have to make a claim or seek a remedy under any confidentiality or similar agreements entered into by the Seller, Xebec or any member of the Xebec Group in connection with the SISP in respect of the Acquired Business, any of the Purchased Assets or any of the Assumed Liabilities; and
- (q) *Loans* – any loans or debts due prior to the Closing Time from any Person to the Seller, including the loans or debts set out in Schedule 2.1(q).

## 2.2 Excluded Assets

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

- (a) *Cash and Cash Equivalents* – all Cash and Cash Equivalents;
- (b) *Corporate Records* – original Tax records and books and records pertaining thereto, minute books, share ledgers, organizational documents, corporate seals, taxpayer and other identification numbers and other documents, in each case, relating to the organization, maintenance and existence of the Seller as a Person; provided that the Buyer may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Acquired Business after Closing, including the filing of any Tax return to the extent permitted under Applicable Law;
- (c) *Excluded Contracts* – all Contracts of the Seller other than the Assumed Contracts (collectively, the “**Excluded Contracts**”);
- (d) *Collateral* – all letters of credit, cash or cash equivalents of the Seller granted by the Seller as collateral to secure outstanding letters of credit in respect of any Excluded Liability or Excluded Asset;
- (e) *Rights under Agreements* – all of the Seller’s rights under this Agreement; the NDA; any confidentiality, non-disclosure or similar agreements entered into in connection with the CCAA Proceedings or the SISP; the DIP Facility, the EDC Credit Agreement and the NBC Credit Agreement; the Excluded Contracts; the Closing Documents and the transactions contemplated hereby and thereby;

- (f) *Director and Officer Insurance Policies* – all rights of the Seller and the directors and officers of the Seller under any director and officer insurance policies including any proceeds received or receivable by such Persons thereunder;
- (g) *Excluded Intellectual Property* - all Intellectual Property relating to or in used in connection with any Xebec Marks (the “**Excluded Intellectual Property**”);
- (h) *Licenses and Registrations* – extra-provincial, sales, excise or other Permits (other than Transferred Permits), licenses or registrations issued to or held by the Seller, whether relating to the Acquired Business or otherwise to the extent not transferable;
- (i) *Tax Refunds* – the benefit of the Seller to any refundable Taxes payable or paid by the Seller, net of any amounts withheld by any Governmental Authority, having jurisdiction over the assessment, determination, collection, or other imposition of any Tax, and the benefit of the Seller to any claim or right of the Seller to any refund, rebate, or credit of Taxes;
- (j) *Avoidance Claims* – all rights and Claims against any Person for any liability of any kind based on or arising out of the occurrence of any fraudulent conveyance, settlement, reviewable transaction, transfer at undervalue, fraudulent preference or similar claim;
- (k) *Plan Assets* – all trust funds or other entities holding assets (or, in the case of a dedicated bank account held by the Seller, the assets of such account) related to any Employee Plan;
- (l) *Ordinary Course Assets* – any asset of the Seller that would otherwise constitute a Purchased Asset but for the fact that it is conveyed or otherwise disposed of in the ordinary course of business in compliance with Section 7.2 or as obsolete during the period beginning on the date of this Agreement and ending on the Closing Date.
- (m) *Intercompany Accounts Receivable* – any debts due or accruing due prior to the Closing Time from any shareholder, director, or affiliate of the Seller (the “**Intercompany Accounts Receivables**”);

### 2.3 Assumption of Liabilities

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

- (a) *Obligations under Contracts and Real Property Leases, etc.* – (i) all liabilities and obligations arising under the Assumed Contracts, Personal Property Leases and Real Property Leases to the extent first arising on or after the Closing Time, in each case, which are assigned to the Buyer hereunder and (ii) all Cure Costs disclosed in Schedule 2.3(a);

- (b) *Trade Debt* – all post-Filing Date trade payables relating to the Acquired Business incurred prior to the Closing Time, as applicable, as listed on Schedule 2.3(b), an updated version of which is to be delivered by the Seller one (1) Business Day prior to the Closing Date (excluding, for the avoidance of doubt, all pre-Filing Date trade payables;
- (c) *Acquired Business and Purchased Assets* – all other liabilities and obligations relating to the Purchased Assets and the operation of the Acquired Business to the extent such liabilities and obligations consist of liabilities and obligations that arise in respect of and relate to the period on and after the Closing Time;
- (d) *Employee Matters* – all liabilities and obligations: (i) expressly assumed by the Buyer pursuant to Section 7.7; (ii) relating to the Buyer’s employment or termination of employment (whether or not arising under or in respect of any Buyer Employee Plan) of any Assumed Employees, to the extent arising after the Closing; (iii) relating to the Buyer’s offer of employment to any Employee pursuant to the terms of Section 7.7 (including retention bonuses); (iv) the failure of the Buyer to satisfy its obligations under Section 7.7 with respect to any Assumed Employee; (v) under any Buyer Employee Plan; and (vi) related to the Assumed Employees which arise out of or result from any termination of employment, layoff, or the closing or relocation of worksites or the like of such Assumed Employees by the Buyer after the Closing;
- (e) *Taxes* – real property, personal property, and similar *ad valorem* obligations, and similar recurring Taxes and fees on the Purchased Assets in each case, relating to the Purchased Assets for a Tax period (or the portion thereof) beginning on or after the Closing Date, excluding, for the avoidance of doubt, any amounts described in this paragraph that are (i) income Tax or similar liabilities of the Seller for any Tax period, (ii) any Tax or similar liability related to the Excluded Assets;
- (f) *Other Taxes* – all liabilities for any Tax that the Buyer is required to bear pursuant to Section 7.6; and
- (g) *Permitted Encumbrances* – all liabilities, if any, arising from or in relation to the Permitted Encumbrances.

## 2.4 Excluded Liabilities

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



- (a) *General* – except as expressly included in Assumed Liabilities, all liabilities to the extent arising out of the operation of the Acquired Business or the Purchased Assets for periods prior to the Closing Time (including, for the avoidance of doubt, breaches of contract, infringement, violations of law, tortious conduct, Tax liabilities, indebtedness for borrowed money (except as expressly included in Assumed Liabilities) and intercompany liabilities);
- (b) *Contract and Real Property Leases Liabilities* – all liabilities of the Seller under the Assumed Contracts, Personal Property Leases and Real Property Leases, excluding the Cure Costs and any trade payables or other liabilities which, in each case, are Assumed Liabilities, incurred prior to the Closing Time;
- (c) *Excluded Assets* – all liabilities and obligations relating to the Excluded Assets (including any Excluded Contracts, this Agreement, the EDC Credit Agreement, the NBC Credit Agreement and the DIP Facility);
- (d) *Employee Matters* –
  - (i) any liabilities or other obligations arising under, relating to or with respect to any Employee Plan; and
  - (ii) except as included in the Assumed Liabilities, all liabilities related to the Employees of the Seller;
- (e) *Trade Debt* – all pre-Filing Date trade payables of the Seller, whether or not relating to the Acquired Business or the Purchased Assets;
- (f) *Intercompany Accounts Payable* – any debts due or accruing due prior to the Closing Time from the Seller to any shareholder, director, officer (except amounts owing to any officer for service to the Acquired Business as an employee) or affiliate of the Seller;
- (g) *Warranties* – all liabilities arising out of or relating to services, products, or product or service warranties of the Seller or any predecessors of the Seller sold or distributed prior to or after the Closing Time;
- (h) *Environmental* – any liabilities of the Seller, whether or not arising out of or relating to the Acquired Business or the Purchased Assets, relating to non-compliance with Environmental Law or a Release to the Environment;
- (i) *Intellectual Property Claims* – any claims against the Seller for infringement, misappropriation or other violation of any Intellectual Property of any third Person relating to any period prior to the Closing Time;
- (j) *Pre-Filing Debt* – all liabilities, obligations and related guarantees relating to the DIP Facility, the EDC Credit Agreement and the NBC Credit Agreement;
- (k) *Taxes* – all liabilities for Taxes of the Seller; and

- (1) *Other* – Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Time, including without limitation liabilities relating to any breach of law and product liability claims, except, in each case, as specifically defined in Section 2.3 as an Assumed Liability.

### **ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS**

#### **3.1 Purchase Price**

The purchase price payable to the Seller for the Purchased Assets (the “**Purchase Price**”), exclusive of all applicable sales and transfer taxes, shall be the total of:

- (a) the amount of \$1,353,000 in cash, plus
- (b) the amount of the Accrued Liabilities;

provided that such amount shall be reduced to the extent that the Minimum Book Value is less than \$3,200,000 or the Accrued Liabilities exceed \$150,000.

#### **3.2 Purchase Price Allocation**

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

#### **3.3 Payment of Purchase Price and Treatment of Deposit**

- (a) The Purchase Price will be satisfied as follows:
  - (i) the portion of the Purchase Price equal to the amount of the Deposit that will be paid one Business Day after the date hereof to the Monitor in a non-interest-bearing trust account in accordance with the SISP will be satisfied by the application of the Deposit by the Monitor for the payment of such portion of the Purchase Price;
  - (ii) the balance of the Purchase Price will be satisfied by the payment of such amount by wire transfer of immediately available funds at the Closing Time from the Buyer to an account of the Monitor specified in writing by the Seller not less than two (2) Business Days prior to the Closing Date;
  - (iii) as to the dollar value of the Accrued Liabilities, by the Buyer assuming the Accrued Liabilities.
- (b) The Deposit will be paid to the Monitor by the Buyer one Business Day after the date hereof and will be:

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

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES BY THE SELLER**

The Seller represents and warrants to the Buyer as follows, and acknowledge that the Buyer is relying upon the following representations and warranties in connection with its purchase of the Purchased Assets:

##### **4.1 Corporate Existence**

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

##### **4.2 Due Authorization and Enforceability of Obligations**

Subject to the issuance of the Approval and Vesting Order:

- (a) the Seller has all necessary corporate power, authority and capacity to:
  - (i) enter into and deliver this Agreement and the Closing Documents;
  - (ii) carry out its obligations under this Agreement and the Closing Documents; and
  - (iii) own or lease and to operate and use the Purchased Assets and carry on the Acquired Business as now conducted by the Seller;
- (b) the execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of Seller; and
- (c) assuming the accuracy of the representations and warranties of the Buyer in Article 5, this Agreement does, and the Closing Documents when executed by the Seller

will, constitute valid and binding obligations of the Seller enforceable against it in accordance with its terms.

#### **4.3 Intentionally Deleted**

#### **4.4 No Other Representations, Warranties or Covenants**

Unless and solely to the extent expressly set forth in this Agreement, no representation, warranty or covenant is expressed or implied by the Seller, including any warranties as to title, Encumbrance, description, merchantability or fitness for a particular purpose, environmental compliance, condition, quantity or quality, or in respect of any other matter or thing whatsoever concerning the Acquired Business, the Purchased Assets, the Assumed Liabilities or the right of the Seller to sell or assign the same, as applicable. The disclaimer in this Section 4.4 is made notwithstanding the delivery or disclosure to the Buyer or its directors, managers, officers, employees, agents or representatives of any documentation or other information (including any financial projections, estimates, budgets, offering memoranda, management presentations, due diligence materials or other supplemental data not included in this Agreement). Without limiting the generality of the foregoing, any and all conditions, warranties or representations, express or implied, pursuant to Applicable Law (including under Article 1716 of the *Civil Code of Québec*, the *Sale of Goods Act* (Ontario), the *International Convention on Contracts for the Sale of Goods* (Geneva Convention) and any other applicable sale of goods legislation) do not apply hereto and are hereby expressly waived by the Buyer.

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER**

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

#### **5.1 Corporate Existence**

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

#### **5.2 Financial Ability**

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

Each Commitment Letter, in the form so delivered, is a valid and legally binding obligation of the Buyer, and to the knowledge of the Buyer, the other parties thereto, and is enforceable by

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

### **5.3 Absence of Conflicts**

The Buyer is not a party to, bound or affected by or subject to (and the assets of the Buyer are not affected by): (a) any charter, articles or by-law provision; (b) any Applicable Law or governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority; or (c) any agreement or other document, in each case, that would be violated, breached by, or under which any default would occur or with notice or the passage of time would, be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except in the case of (b) and (c) for any violations, breaches or defaults or any Applicable Law or any governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority, that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

### **5.4 Due Authorization and Enforceability of Obligations**

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

### **5.5 Approvals and Consents**

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

## **5.6 Litigation**

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

- (a) prevent the Buyer from paying the Purchase Price to the Seller;
- (b) enjoin, restrict or prohibit the transfer of all or any part of the Purchased Assets or the assumption of the Assumed Liabilities as contemplated by this Agreement; or
- (c) prevent the Buyer from or delay the Buyer in fulfilling any of its obligations set out in this Agreement or arising from this Agreement.

## **5.7 Personal Information**

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

## **5.8 As Is, Where Is**

- (a) The Buyer acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Acquired Business, the Purchased Assets (including the state of title thereto and/or the state of any Encumbrances and Permitted Encumbrances), the Assumed Liabilities and all related operations of the Seller, and, based solely thereon, has determined to proceed with the transactions contemplated by this Agreement. The Buyer has relied solely on the results of its own independent investigation and verification, and the representations and warranties of the Seller expressly and specifically set forth in Article 4, and the Buyer understands, acknowledges and agrees that all other representations, warranties and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Seller or the Acquired Business, or the quality, quantity or condition of the Purchased Assets or the Assumed Liabilities) are specifically disclaimed by the Seller. Except for the representations and warranties of the Seller expressly and specifically set forth in Article 4, the Seller does not make or provide any warranty or representation, express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples or

condition of the Acquired Business, the Purchased Assets or the Assumed Liabilities, or any part thereof. THE BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE SELLER EXPRESSLY AND SPECIFICALLY SET FORTH IN ARTICLE 4: (A) THE BUYER IS ACQUIRING THE PURCHASED ASSETS ON AN "AS IS, WHERE IS" BASIS AND ASSUMING THE ASSUMED LIABILITIES ON AN "AS IS, WHERE IS" BASIS; AND (B) NEITHER THE SELLER, NOR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF THE SELLER, WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY, XEBEC OR THE MONITOR) IS MAKING, AND THE BUYER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE SELLER, THE BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES, THE EXCLUDED ASSETS, THE EXCLUDED LIABILITIES, THIS AGREEMENT OR THE TRANSACTIONS, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE BUYER OR ANY OF ITS RESPECTIVE REPRESENTATIVES, INCLUDING WITH RESPECT TO THE REAL PROPERTY LEASES AND THE STATUS OF ANY OF THE REAL PROPERTY LEASES, THE PERMITTED ENCUMBRANCES, THE RENTABLE AREA OF THE PREMISES, THE EXISTENCE OF ANY DEFAULT ON THE PART OF THE SELLER OR LANDLORDS, THE USE PERMITTED AT ANY OF THE PREMISES, THE EXISTENCE OF ANY ENCUMBRANCE AFFECTING THE PURCHASED ASSETS, OR THE SELLER'S LEASEHOLD INTEREST THEREIN; AND WITHOUT LIMITING THE FOREGOING, ANY AND ALL CONDITIONS OR WARRANTIES EXPRESSED OR IMPLIED PURSUANT TO THE INTERNATIONAL CONVENTION ON CONTRACTS FOR THE SALE OF GOODS (GENEVA CONVENTION) AND ANY OTHER APPLICABLE SALE OF GOODS LEGISLATION, WILL NOT APPLY AND ARE HEREBY WAIVED BY THE BUYER AND THE SELLER AND THE PARTIES AGREE TO EXCLUDE THE EFFECT OF THE LEGAL WARRANTY PROVIDED FOR BY ARTICLE 1716 OF THE CIVIL CODE OF QUÉBEC AND THAT THE BUYER IS PURCHASING THE PURCHASED ASSETS AT ITS OWN RISK FROM THE SELLER WHO IS NOT A PROFESSIONAL SELLER WITHIN THE MEANING OF ARTICLE 1733 OF THE CIVIL CODE OF QUÉBEC, AND ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, REGARDING MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY FOR DEVELOPMENT, TITLE, DESCRIPTION, USE OR ZONING, ENVIRONMENTAL CONDITION, EXISTENCE OF LATENT DEFECTS, QUALITY, QUANTITY, ANY NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR REGARDING THE SCOPE, VALIDITY OR ENFORCEABILITY OF ANY TRANSFERRED INTELLECTUAL PROPERTY, ACQUIRED COMPANY INTELLECTUAL PROPERTY OR LICENSED INTELLECTUAL PROPERTY RIGHTS, OR ANY OTHER THING

AFFECTING THE ACQUIRED BUSINESS, ANY OF THE PURCHASED ASSETS OR THE ASSUMED LIABILITIES, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAW IN ANY JURISDICTION, WHICH THE BUYER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE BUYER.

- (b) The Buyer acknowledges and agrees that: (i) the representations and warranties of the Seller set forth in Article 4 will merge on, and shall not survive, the Closing; and (ii) the Seller will not have or be subject to any liability or indemnification obligation to the Buyer or any other Person resulting from (nor will the Buyer or any other Person have any claim with respect to) the distribution to the Buyer, the Buyer's use of, or reliance on, any information, documents, projections, forecasts or other material made available to the Buyer in certain "data rooms," confidential information memoranda or management presentations in expectation of, or in connection with, the transactions contemplated by this Agreement, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise. No representative of the Seller, whether in an individual, corporate or other capacity, will have or be subject to any such liability or indemnification obligations.
- (c) The remedies expressly set forth in this Agreement are the Buyer's sole and exclusive remedies relating to this Agreement, the Closing Documents, the transactions contemplated hereby and thereby, the Acquired Business, the Purchased Assets, the Assumed Liabilities and all related operations of the Seller or either of them.
- (d) This Section 5.8 will not merge on Closing and is deemed incorporated by reference in all Closing Documents.
- (e) The Buyer acknowledges and agrees that the enforceability of this Agreement against the Seller is subject to entry of the Approval and Vesting Order.

## **ARTICLE 6 CONDITIONS**

### **6.1 Conditions for the Benefit of the Buyer and the Seller**

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

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets, the assumption of the Assumed Liabilities or any of the other transactions pursuant to this Agreement shall be in effect; and



- (b) *Court Orders* – the Approval and Vesting Order and the Assignment Order shall have been issued and entered and such orders shall not have been reversed, modified, amended or stayed.

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

## **6.2 Conditions for the Benefit of the Buyer**

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

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

## **6.3 Conditions for the Benefit of the Seller**

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

- (a) *Performance of Covenants* – the covenants contained in this Agreement to be performed by the Buyer at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Buyer contained in Article 5 shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date (except for

representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date); and

- (c) *Officer's Certificate* – the Seller shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.3(a) (*Performance of Covenants*) and 6.3(b) (*Truth of Representations and Warranties*) signed for and on behalf of the Buyer without personal liability by an executive officer of the Buyer, in form and substance satisfactory to the Seller acting in a commercially reasonable manner.

## **ARTICLE 7**

### **ADDITIONAL AGREEMENTS OF THE PARTIES**

#### **7.1 Access to Information**

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

#### **7.2 Conduct of Business Until Closing Time**

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

- (a) (i) operate the Acquired Business in all material respects substantially as operated as of the date hereof; (ii) use commercially reasonable efforts to preserve the Purchased Assets; (iii) use commercially reasonable efforts to preserve its business organization, including the services of its officers and employees, and its business

relationships and goodwill with customers, suppliers and others having business dealings with it; (iv) pay and discharge the debts authorized by the CCAA Court in accordance with the DIP Facility; and (v) use commercially reasonable efforts to maintain in full force and effect all material insurance policies and binders relating to the Acquired Business; and

- (b) not, without the prior written consent of the Buyer (the granting of such consent to be in the Buyer's sole discretion): (i) transfer, lease, license, sell, abandon, create any Encumbrance (other than Permitted Encumbrances and Encumbrances associated with or permitted by the DIP Facility) on or otherwise dispose of any of the Purchased Assets (except in the ordinary course of business, in all material respects consistent with past practice); (ii) materially increase the compensation or benefits of any Employee, except for increases in all material respects consistent with past practice or in accordance with employment Contracts, Employee Plan or Applicable Law; (iii) establish, adopt, enter into, amend or terminate any Employee Plan or any plan, agreement or other arrangement that would be an Employee Plan if it were in existence as of the date of this Agreement; (iv) (A) materially amend, terminate or assign any Personal Property Lease, Real Property Lease or other Material Contract, (B) enter into any lease, Contract, license or other commitment related to the Acquired Business that would constitute a Personal Property Lease, Real Property Lease or other Material Contract; (v) enter into any Contract which materially restricts the ability of the Acquired Business to engage in any business in any geographic area or channel of distribution; (vi) acquire any material businesses or assets outside of the ordinary course of business in all material respects; or (vii) agree or make a commitment, whether in writing or otherwise, to do any of the foregoing.

### **7.3 No Broker**

Neither Party shall be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the other Party.

### **7.4 Covenants Relating to this Agreement**

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

negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and

- (ii) not take any action, or refrain from taking any action, and use commercially reasonable efforts to not permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.
- (b) The Seller and the Buyer agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions as may be reasonably required to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

#### **7.5 Release; Acknowledgements; Indemnity**

- (a) Except as otherwise contained herein, effective as of the Closing, the Buyer hereby releases and forever discharges the Seller and its respective affiliates, and the Seller's and its affiliates' respective successors and assigns, and all officers, directors, managers, trustees, partners, members, shareholders, employees and agents of each of them, from any and all actual or potential Claims which such Person had, has or may have in the future to the extent relating to the Acquired Business, Purchased Assets, the Assumed Liabilities, the Excluded Assets or the Excluded Liabilities.
- (b) The Buyer shall use its commercially reasonable efforts to assist the Seller and shall co-operate with the Seller, as reasonably requested, to obtain from third parties, effective as of the Closing Time, a full release of the Seller's obligations under the Assumed Contracts, the Permitted Encumbrances, the Personal Property Leases and the Real Property Leases in respect of obligations of the Buyer under the same arising after Closing.
- (c) The Buyer hereby agrees to indemnify the Seller, the Monitor, their respective affiliates and their respective present or former trustees, officers, directors, managers, employees, agents, partners, members and shareholders, and saves each of them fully harmless from and against, and will reimburse or compensate each of them on demand for, all losses and Claims to the extent caused by a breach by the Buyer of this Agreement.

#### **7.6 Tax Matters**

The Buyer will be responsible for all sales Taxes payable as a result of the transfer of the Purchased Assets to the Purchaser. If under applicable law the Seller is required to collect and remit such sales Taxes, the Buyer will pay an amount equal to such sales Taxes to the Seller on Closing. Otherwise, the Buyer shall pay such sales Taxes to the applicable taxation authorities promptly after Closing.

## 7.7 Employee Matters

- (a) The Seller shall be responsible for making all payroll payments to and in respect of the Employees up to and including March 17, 2023 or such earlier date as the Buyer and the Seller may agree in writing. The Buyer shall reimburse the Seller for the amount of the payroll payments attributable to and in respect of the Assumed Employees for the periods after Closing.
- (b) Prior to the date of this Agreement, the Seller delivered Schedule 7.7 which sets out all Employees (without reference to names), together with, their age, positions and wages/salary, incentive compensation, service date, material benefits and vacation entitlement and accrual.
- (c) No later than two (2) Business Days following the date on which the Approval and Vesting Order is granted, conditional on Closing and with effect as of the Closing Time, the Buyer shall in a form agreed by the Seller, acting reasonably, offer employment to the Employees listed in Schedule 7.7.
- (d) The Employees who accept the Buyer's offer of employment, shall hereinafter be collectively referred to as the "**Assumed Employees**".
- (e) The Buyer shall be responsible for all liabilities and obligations with respect to the Assumed Employees arising after the Closing, including, but not limited to, any required notice of termination, termination or severance pay required under Applicable Law or under any Contract, employment insurance, workplace safety and insurance/workers' compensation, pension plan, salary or wages, vacation pay, overtime pay, payroll or employer health Taxes, commissions, bonuses or vacation entitlements and accruals. The Buyer shall also assume and be responsible for any vacation pay with respect to the Assumed Employees, whether accruing or arising prior to or following the Closing. Notwithstanding the foregoing, the Buyer's obligations in respect of any such matters relating to the period prior to Closing shall be limited to assuming the Accrued Liabilities.
- (f) After the date hereof, the Seller and the Buyer shall cooperate promptly and in good faith in preparing the transition of the Assumed Employees as applicable from coverage under the Employee Plans to coverage under the Buyer Employee Plans effective as of the Closing Date. On and after the Closing Date, the Buyer shall be responsible for and make all required contributions and payments in relation to the Assumed Employees that are transitioned to coverage under the Buyer Employee Plans.

## 7.8 Certain Payments or Instruments Received from Third Persons

To the extent that, after the Closing Date: (a) the Buyer or any of its affiliates receives any payment or instrument that is for the account of the Seller according to the terms of any Closing Document or relates to any Retained Business, Excluded Asset or Excluded Liability, the Buyer shall, and shall cause its affiliates to, promptly deliver such amount or instrument to the Seller; or (b) the Seller or any of its controlled affiliates receives any payment or instrument that is for the account of the Buyer according to the terms of any Closing Document or that relates to the

Acquired Business, Purchased Assets or Assumed Liabilities, the Seller shall, and shall cause their controlled affiliates to, promptly deliver such amount or instrument to the Buyer. All amounts due and payable under this Section 7.8 shall be due and payable by the applicable Party in immediately available funds, by wire transfer to the account designated in writing by the relevant Party. Notwithstanding the foregoing, each Party hereby undertakes to, as reasonably requested and at the other's expense, direct or forward all bills, invoices or like instruments to the appropriate Party.

### **7.9 Intellectual Property Matters**

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

### **7.10 Change Name**

Immediately following the Closing, the Seller shall amend its articles to change its name to such name that does not include "Titus" and which is not, in the judgment of the Buyer acting reasonably, confusingly similar to the legal name or business names of The Titus Company, and neither the Seller nor its affiliates shall thereafter use such name or other names acquired by Buyer hereunder or names confusingly similar thereto.

### **7.11 Notice of Certain Events**

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

### **7.12 Risk of Loss**

In the event 10% or more of the Purchased Assets are damaged or destroyed or appropriated, expropriated or seized by any Person during the period between the date of this Agreement and the Closing Date, the Buyer shall have the right (but not the obligation) to terminate this Agreement, without liability to the Buyer, and the Buyer shall receive a full refund of the Deposit. In the event that some of the Purchased Assets but less than 10% of the Purchased Assets are damaged or destroyed or appropriated, expropriated or seized by any Person during the period between the date of this Agreement and the Closing Date, the Buyer may either (i) terminate this Agreement, without liability to the Buyer, and the Buyer shall receive a full refund of the Deposit

or (ii) complete the transactions contemplated by this Agreement with a reduction in the Purchase Price as is reasonable in the circumstances.

### **7.13 Cooperation**

Seller, on the one hand, and Buyer, on the other hand, shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any tax returns or in connection with any audit or other proceeding in respect of Taxes after the Closing.

## **ARTICLE 8 COURT ORDERS**

### **8.1 Court Orders**

- (a) The Seller shall serve and file a motion for the issuance of the Approval and Vesting Order and, if applicable, the Assignment Order, by March 17, 2023.
- (b) The Buyer shall cooperate with the Seller and the Monitor acting reasonably, as may be necessary, including by providing such information and taking such actions as may be reasonably requested, in obtaining the Approval and Vesting Order and the Assignment Order.
- (c) As soon as practicable but in any event no later than three (3) Business Days after the issuance of the Approval and Vesting Order, the Sellers shall serve and file a motion for the issuance of the Recognition Order and thereafter shall take all commercially reasonable steps to obtain the Recognition Order.
- (d) Notice of the motions seeking the issuance of the Approval and Vesting Order and the Recognition Order shall be served by the Seller on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, the Amended and Restated Initial Order, the U.S. Bankruptcy Code, the U.S. Bankruptcy Court and any other Person determined necessary by the Seller or the Buyer.
- (e) Notwithstanding any other provision herein, it is expressly acknowledged and agreed that in the event that the Approval and Vesting Order has not been issued and entered by the CCAA Court by April 30, 2023 or such later date agreed to in writing by the Buyer and the Seller, in consultation with the Monitor, either the Buyer or the Seller may terminate this Agreement.

### **8.2 CCAA Process**

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

## ARTICLE 9 TERMINATION

### 9.1 Termination

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

- (a) by mutual written consent of the Buyer and the Seller (with the consent of the Monitor) or on further order of the CCAA Court;
- (b) by the Seller (with the consent of the Monitor) or the Buyer if Closing has not occurred on or before April 30, 2023 or such later date agreed to in writing by both the Buyer and the Seller (with the consent of the Monitor) (the “**Sunset Date**”); provided, that the terminating Party is not in breach of any representation, warranty, covenant or other agreement in this Agreement to cause the conditions in Article 6 to be satisfied;
- (c) by the Buyer pursuant to Section 7.12;
- (d) by the Buyer or the Seller pursuant to Section 8.1(e);
- (e) by the Buyer or the Seller upon the dismissal or conversion of the CCAA Proceedings;
- (f) by the Buyer or the Seller upon permanent denial of the Approval and Vesting Order;
- (g) by the Buyer or the Seller if a court of competent jurisdiction or other Governmental Authority has issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of Closing and such order or action has become Final (provided the same was not initiated by the Buyer or the Seller);
- (h) by the Buyer or the Seller, if required under any Order of a court of competent jurisdiction including the CCAA Court;
- (i) by the Seller (with the consent of the Monitor), if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Sunset Date and such violation or breach has not been waived by the Seller or cured within ten (10) Business Days after written notice thereof from the Seller, unless the Seller is in material breach of its obligations under this Agreement; or
- (j) by the Buyer, if there has been a material violation or breach by the Seller of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.2, as applicable, by the Sunset Date and such violation or breach has not been waived by the Buyer or cured within ten (10) Business Days after written notice thereof from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement.



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

## **9.2 Effect of Termination**

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

## **ARTICLE 10 CLOSING**

### **10.1 Location and Time of the Closing**

The Closing shall take place at the Closing Time on the Closing Date at the offices of Osler, Hoskin & Harcourt LLP located at Suite 2100, 1000 De La Gauchetière Street West, Montréal, Québec, or at such other location as may be agreed upon by the Parties. The Closing shall, unless otherwise agreed between the Parties, be conducted virtually.

### **10.2 Seller's Deliveries at Closing**

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

- (a) a copy of each of the Approval and Vesting Order and the Assignment Order;
- (b) the General Assignments and Bills of Sale for the Purchased Assets duly executed by the Seller;
- (c) the Lease Assignment and Assumption Agreements for the Personal Property Leases and Real Property Leases duly executed by the Seller;
- (d) the Contracts Assignment and Assumption Agreements for the Assumed Contracts duly executed by the Seller;
- (e) customary release and discharge letters addressed to the Buyer and the Seller from each holder of a security interest in the Purchased Assets confirming that they no longer hold a security interest in any of the Purchased Assets;
- (f) all documents of title and instruments of conveyance (duly executed by the applicable Seller) necessary to transfer record and/or beneficial ownership to the Buyer of all vehicles owned by the Seller which are included in the Purchased Assets;
- (g) the IP Assignment and Assumption Agreements duly executed by the Seller;

- (h) a copy of any Assignment Order obtained by the Seller pursuant to this Agreement;
- (i) an executed copy of the Monitor's Certificate;
- (j) the certificates contemplated by Section 6.2(c); and
- (k) all other documents required to be delivered by the Seller on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Buyer in good faith.

### **10.3 Buyer's Deliveries at Closing**

At Closing, the Buyer shall deliver to the Seller:

- (a) the Purchase Price;
- (b) any sales or transfer Taxes required by applicable law to be paid on Closing by the Buyer to the Seller pursuant to Section 7.6 hereof;
- (c) the General Assignments and Bills of Sale for the Purchased Assets duly executed by the Buyer;
- (d) the Lease Assignment and Assumption Agreements for the Personal Property Leases and Real Property Leases duly executed by the Buyer;
- (e) the Contracts Assignment and Assumption Agreements for the Assumed Contracts duly executed by the Buyer;
- (f) the IP Assignment and Assumption Agreements duly executed by the Buyer;
- (g) the certificate contemplated by Section 6.3(c); and
- (h) all other documents required to be delivered by the Buyer on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Seller in good faith.

### **10.4 Possession of Assets**

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

### **10.5 Monitor**

The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from the Parties that all conditions to Closing have been satisfied or waived and upon receiving the cash portion of the Purchase Price and any sales or transfer Taxes confirmed

in writing by the Parties (on which the Monitor shall be entitled to rely without independent investigation) to be payable on Closing by the Buyer to the Seller pursuant to Section 7.6 hereof, and the Monitor will have no liability to any Party or any other Person as a result of filing the Monitor's Certificate or otherwise in connection with this Agreement or the transactions contemplated hereunder (whether based on contract, tort or any other theory).

#### **10.6 Simultaneous Transactions**

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

#### **10.7 Purchase Price Held in Trust by Monitor**

The Deposit and the cash portion of the Purchase Price paid by the Buyer to the Monitor at the Closing Time in accordance with Section 3.3(a)(ii) shall be held in trust by the Monitor's legal counsel and shall not be disbursed, distributed or paid to or for the benefit of any person or entity until the Recognition Order has been entered and has become final and non-appealable with no appeal or other challenge thereto pending.

#### **10.8 Use of Xebec Names**

The Buyer acknowledges and agrees that it is not purchasing or acquiring any right, title or interest in any trade-marks, logos, service marks, brand names, domain names or trade, corporate or business names containing or employing the name "Xebec" or any variation thereof, or any trade-marks, logos, service marks, brand names, domain names or trade, corporate or business names confusingly or misleadingly similar to "Xebec" (collectively, the "**Xebec Marks**"). The Buyer shall not use the name "Xebec" or refer to the Acquired Business under a name that is the same as, or confusingly or misleadingly similar to any of the Xebec Marks. To the extent that any of the Xebec Marks are used in the conduct of the Acquired Business on any materials constituting the Purchased Assets, including any stationery, signage, invoices, receipts, forms, packaging, advertising, promotional materials, product, training and service literature and materials, software or like materials or appear on the Inventory of the Acquired Business at the Closing Date, the Buyer shall, and shall cause its affiliates to, cease to use, remove, strike over or otherwise obliterate all the Xebec Marks from all such materials no later than the date that is 30 days from the Closing Date.

### **ARTICLE 11 GENERAL MATTERS**

#### **11.1 Confidentiality**

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

#### **11.2 Public Notices**

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

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

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

### **11.3 Injunctive Relief**

- (a) The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek specific performance, injunctive and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such specific performance, injunctive or other equitable relief, this being in addition to any other remedy to which the Parties may be entitled at law or in equity.
- (b) Each Party hereby agrees not to raise any objections to the availability of the equitable remedies provided for herein and the Parties further agree that by seeking

the remedies provided for in this Section 11.3, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement.

- (c) Notwithstanding anything herein to the contrary herein, under no circumstances shall a Party be permitted or entitled to receive both monetary damages and specific performance and election to pursue one shall be deemed to be an irrevocable waiver of the other.

#### **11.4 Survival**

None of the representations, warranties, covenants (except the covenants in Article 2, Article 3, Article 11 and Sections 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, 8.1(c), 8.1(d), 10.7, 11.1 and 11.5 to the extent they are to be performed after the Closing) of any Party set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive the Closing.

#### **11.5 Expenses**

Except as otherwise specifically provided herein, each Party shall be responsible for the expenses (including fees and expenses of legal advisors, accountants and other professional advisors) incurred by such Party (and not for any expenses incurred by the other Party), in connection with the negotiation and settlement of this Agreement, and the completion of the transactions contemplated hereby.

#### **11.6 Non-Recourse**

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

#### **11.7 Assignment; Binding Effect**

No Party may assign its right or benefits under this Agreement without the consent of the other Party, except that without such consent any Party may, upon prior notice to the other Party: (a) assign this Agreement, or any or all of its rights and obligations hereunder, to one or more of its affiliates; or (b) the Buyer may direct that title to all or some of the Purchased Assets be transferred to, and the corresponding Assumed Liabilities be assumed by, one or more of its affiliates; provided, that no such assignment or direction shall relieve such assigning Party of any of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Except as provided in Section 7.5 or 11.6, nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

#### **11.8 Notices**

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

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

FAD Pennsylvania Inc.  
550 Albion Ave.  
Schaumburg, IL 60193  
USA

Attention: Brad Taylor  
Telephone: 847 678 8338 ext. 1003  
Email: [brad.taylor@fluidairedynamics.com](mailto:brad.taylor@fluidairedynamics.com)

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

Meltzer, Purtill & Stelle LLC  
1515 Woodfield Road, Suite 250  
Schaumburg, IL 60173  
USA

Attention: Roger T. Stelle  
Telephone: 847 330 2401  
Email: [rstelle@mpslaw.com](mailto:rstelle@mpslaw.com)

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

The Titus Company  
c/o Xebec Adsorption Inc.  
730 Industriel Boulevard  
Blainville, Québec  
J7C 3V4

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

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

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

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

and the Monitor:

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

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

and counsel to the Monitor:

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

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

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

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

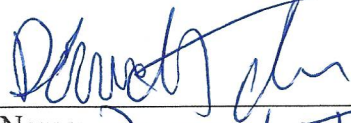
## **11.9 Counterparts; Facsimile Signatures**

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

*[Signature pages follow]*

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


**FAD PENNSYLVANIA INC.**

By:   
Name: Derrick Taylor  
Title: President



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

**THE TITUS COMPANY**

By: 

\_\_\_\_\_  
Name: Jim Vounassis  
Title: CEO & President

**SCHEDULE 1.1(I)**  
**FORM OF APPROVAL AND VESTING ORDER**

**Please see attached.**

**SUPERIOR COURT  
(Commercial Division)**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March 16, 2023

---

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

---

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

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

and  
**DELOITTE RESTRUCTURING INC.**  
Monitor

and

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**FAD PENNSYLVANIA INC.**  
Impleaded Party (Buyer)

---

**APPROVAL VESTING AND ASSIGNMENT ORDER IN RESPECT OF THE ASSETS  
OF THE TITUS COMPANY**

---

- [1] **CONSIDERING** the *Application for the Issuance of an Approval, Vesting and Assignment Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Seventh Report of the Monitor dated ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **GIVEN** the provisions of the CCAA:
- [5] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Asset Purchase Agreement dated March 11, 2023 (the “**Purchase Agreement**”) between **The Titus Company** (the “**Seller**”), and **FAD Pennsylvania Inc.**, as buyer, (the “**Buyer**”), a copy of which was filed under seal as **Exhibit P-5A** to the Application, and vesting in the Buyer the Purchased Assets.

**THE COURT HEREBY:**

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

**DEFINITIONS**

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

**SERVICE**

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

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

**TRANSACTION APPROVAL**

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

**EXECUTION OF DOCUMENTATION**

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

**AUTHORIZATION**

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

**VESTING OF PURCHASED ASSETS**

- [13] **ORDERS AND DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Buyer, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges or security evidenced by registration, publication or filing pursuant to any applicable legislation providing for a security interest in personal or movable property, and those Claims listed on

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**Schedule “B”** hereto (all of which are collectively referred to as the **"Encumbrances"**) which term shall not include the permitted encumbrances, easements and restrictive covenants listed in **Schedule “C”**.

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

**CANCELLATION OF SECURITY REGISTRATIONS**

- [19] **ORDERS** that upon the issuance of the Monitor’s Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets from any registration filed against the Petitioners, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

**ASSIGNMENT OF CONTRACTS**

- [20] **ORDERS** and **DECLARES** that upon the issuance of the Monitor’s Closing Certificate, the rights and obligations of the Seller under the agreements listed in **Schedule “D”** hereto, as they may have been amended or restated from time to

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time (the "**Assumed Contract(s)**"), are automatically and irrevocably assigned to the Buyer without any further consents or approvals of this Court.

- [21] **ORDERS** that all Cure Costs in relation to the Assumed Contracts, which are set out in Schedule D, shall be remedied by the Buyer no later than thirty (30) days following issuance of the Monitor's Closing Certificate.
- [22] **ORDERS** that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.
- [23] **ORDERS** that the Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the Buyer in accordance with their terms for the benefit of the Buyer.
- [24] **ORDERS** and **DIRECTS** the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts, if any.
- [25] **AUTHORIZES** the Petitioners, the Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts to the Buyer in accordance with this Order.

### **PROTECTION OF PERSONAL INFORMATION**

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

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

**VALIDITY OF THE TRANSACTION**

[28] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act.*, RSC 1985, c B-3 BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

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

**THE MONITOR**

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

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

[31] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in

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possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

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

### **SEALING**

- [33] **ORDERS** that Exhibit P-5A to the Application shall be filed under seal and kept confidential until further order of this Court.

### **GENERAL**

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

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[39] **THE WHOLE** without costs.

---

**Christian Immer, JCS**

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

Hearing date: **March 16, 2023**

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**SCHEDULE A  
CERTIFICATE OF THE MONITOR**

**CANADA**

**PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Commercial Division)

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

No.: 500-11-061483-224

---

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

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

Debtor/Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

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## CERTIFICATE OF THE MONITOR

---

### RECITALS:

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

**WHEREAS** on March [16], 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") authorizing and approving, *inter alia*, the execution of a Asset Purchase Agreement dated March [9], 2023 by and among **The Titus Company** (the "**Seller**") and **FAD Pennsylvania Inc.** as buyer (the "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

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

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

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

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

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

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\*\*\*\*\*

**SCHEDULE B**  
**ENCUMBRANCES TO BE VESTED**

## SCHEDULE C

### PERMITTED ENCUMBRANCES

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

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**SCHEDULE D**

**ASSUMED CONTRACTS**



**SCHEDULE 1.1(HH)**  
**EMPLOYEE PLANS**

- Xebec Adsorption USA, Inc. 401(K) Plan Highlights (see attached).
- Xebec Adsorption USA, Inc. Employee Benefits Program Guide (see attached).
- Employee Assistance Program (EAP) with Metropolitan Life Insurance Company Flyer (see attached).

**SCHEDULE 2.1(E)**  
**VEHICLES**

<b>Name</b>	<b>VIN/SN</b>	<b>License Plate</b>	<b>Type</b>	<b>Current Meter</b>
2006 Ford F350	1FDWF34579EA32889	YFC-9028	Truck	296010
#11 - 2016 Ford Transit MR	1FTYE2CM8GKA04049	YMZ-5393	Van	212934
#12 - 2006 Ford F150 (Shop Truck )	1FTPF12V06NB22414	ZDY-2818	Truck	53480
#15 - 2021 Ford Transit LR	1FTYE1Y8XMKA71155	ZDE-9877	Van	31521
#16 - 2016 Ford Transit MR	1FTYE2CM8GKA31123	YYV-3478	Van	206272
#17 - 2016 Ford Transit LR	1FTYE1ZM1GKA51912	ZJL-6730	Van	225711
#18 - 2018 Ford Transit LR	1FTYE1ZM5JKA30035	ZLH-4445	Van	134700

**SCHEDULE 2.1(F)**  
**PERSONAL PROPERTY LEASES**

Vehicle Lease

<b>Name</b>	<b>VIN/SN</b>	<b>License Plate</b>	<b>Type</b>	<b>Current Meter</b>
#19 - 2019 Ford Transit MR	1FTYR2CM6KKA87848	ZVD-4351	Van	85246

Other Leases

- Rental Agreement dated August 12, 2020, between Pure Water Technology of Central PA, Inc. and The Titus Company.
- Lease Agreement dated December 11, 2018, between Stratix Systems, Inc. and The Titus Company.

**SCHEDULE 2.1(G)**  
**REAL PROPERTY LEASES**

- Lease dated June 19, 2017, between Titus Properties, LLC and The Titus Company in respect of premises located at 36 Mountain View Road, Morgantown, PA 17543, USA.

**SCHEDULE 2.1(H)**  
**ASSUMED CONTRACTS**

- Indemnity Agreement for Negotiable Instruments, Cash and/or Other Valuable Goods dated November 14, 2022, between CareersUSA and The Titus Company.
- Personnel Services Agreement dated November 15, 2022, between CareersUSA and The Titus Company.
- Customer Service Agreement dated August 23, 2022, between Republic Services and The Titus Company.
- Janitorial Services Agreement dated August 22, 2022, between J&M Janitorial Services, Inc. and The Titus Company

**SCHEDULE 2.1(J)**  
**INTELLECTUAL PROPERTY**

*[REDACTED]*

**SCHEDULE 2.1(q)**

**LOANS**

***[REDACTED]***

**SCHEDULE 2.3(B)**  
**TRADE PAYABLES**

*[REDACTED]*



**SCHEDULE 2.3(G)**  
**PERMITTED ENCUMBRANCES**

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

**SCHEDULE 7.7**

**EMPLOYEES**

***[REDACTED]***

**EXHIBIT P-5A**  
**Copy of the Fluid-Aire APA**  
**(confidential and under seal)**

**EXHIBIT P-6**

**Redacted copy of the Total Energy APA**

**ASSET PURCHASE AGREEMENT**

**XBC FLOW SERVICES – WISCONSIN INC.**

**as Seller**

**- and -**

**TOTAL ENERGY SYSTEMS, LLC**

**as Buyer**

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## ASSET PURCHASE AGREEMENT

**THIS AGREEMENT** is made as of March 11, 2023 (the “**Effective Date**”)

### **BETWEEN:**

**XBC FLOW SERVICES – WISCONSIN INC.**, a corporation governed by the laws of Wisconsin (“**Seller**”)

- and -

**TOTAL ENERGY SYSTEMS, LLC**, a limited liability company governed by the laws of Wisconsin, and its assigns (the “**Buyer**”)

### **RECITALS:**

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

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

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Agreement,

- (a) “**Accounts Receivable**” means accounts receivable, bills receivable, trade accounts, book debts and insurance claims relating to the Acquired Business, recorded as receivables in the books and records of the Sellers relating to the Acquired Business or the Purchased Assets, and other amounts due or deemed to be due to the Sellers relating to the Acquired Business including refunds and rebates receivable relating to the Acquired Business or the Purchased Assets, excluding any Intercompany Accounts Receivable.
- (b) “**Acquired Business**” means the sale, service and rental of industrial compressors constituting the business operations of Seller at its Butler, Wisconsin and Green Bay, Wisconsin facilities.
- (c) “**affiliate**” of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, in each case, whether directly or indirectly through one or more intermediaries, and “control” and any derivation thereof means the control by one Person of another Person in accordance with the following: a Person (“A”) controls another Person (“B”) where A has the power to determine the management and policies of B by contract or status (for example, the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B; and, for certainty and without limitation, if A owns shares to which are attached more than 50% of the votes permitted to be cast in the election of directors (or other Persons performing a similar role) of B, then A controls B for this purpose.
- (d) “**Agreement**” means this Asset Purchase Agreement, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Asset Purchase Agreement in its entirety, and unless otherwise indicated, references to Articles and Sections are to Articles and Sections in this Asset Purchase Agreement.
- (e) “**Allocation Statement**” has the meaning given to such term in Section 3.2.
- (f) “**Amended and Restated Initial Order**” has the meaning given to such term in Recital E.
- (g) “**Applicable Law**” means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including without limitation the common law), statute, ordinance, rule, regulation, restriction, standard, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Governmental Authorizations, or any other

legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Seller, the Buyer, the Acquired Business, or any of the Purchased Assets or the Assumed Liabilities.

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

bankers' acceptance, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents of, owned or held by or for the account of the Seller (but specifically excluding any cash payable by the Buyer to any Seller pursuant to this Agreement).

- (o) “**CCAA**” means the *Companies' Creditors Arrangement Act* (Canada).
- (p) “**CCAA Court**” means the Superior Court of Québec (Commercial Division) in the District of Montréal.
- (q) “**CCAA Proceedings**” means the proceedings commenced under the CCAA by the Seller pursuant to the Initial Order (Court File No. 500-11-061483-224).
- (r) “**Claims**” includes all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.
- (s) “**Closing**” means the completion of the sale and purchase of the Purchased Assets pursuant to this Agreement at the Closing Time, and all other transactions contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Assets.
- (t) “**Closing Date**” means a date no later than five (5) Business Days after the conditions set forth in Article 6 have been satisfied (or such other date agreed to by the Parties in writing), other than the conditions set forth in Article 6 that by their terms are to be satisfied or waived at the Closing; provided that, the Closing Date shall be no later than the Sunset Date.
- (u) “**Closing Documents**” means all contracts, agreements and instruments required by this Agreement to be delivered by or on behalf of a Party at or before the Closing.
- (v) “**Closing Time**” means 0:01 a.m. (Montréal time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.
- (w) “**Confidential Information**” means non-public, confidential, personal or proprietary information which is furnished to the Buyer by the Seller or any of the Seller's representatives or the Monitor, including, without limitation, information about identifiable individuals, any information relating to the Seller and their affiliates, or any customer or supplier of the Seller, but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Buyer or its representatives in breach of this Agreement or that is

received by the Buyer from an independent third party that, to the knowledge of the Buyer, after good faith inquiry, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of Personal Information) or that is independently developed by the Buyer's employees or representatives without access or reference to any Confidential Information.

- (x) “**Contracts**” means contracts, licenses, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which any of the Seller is a party or by which any of the Seller are bound or under which any of the Seller has, or will have, any right or any liability or contingent right or liability (in each case, whether written or oral, express or implied) relating to the Acquired Business or the Purchased Assets and includes quotations, orders, proposals or tenders which remain open for acceptance and warranties and guarantees, but excluding the Real Property Lease.
- (y) “**Cure Costs**” means all amounts necessary to cure any monetary defaults as a condition to assuming the Assumed Contracts and Real Property Lease.
- (z) “**Deposit**” means the amount of \$12,000.00 delivered by the Buyer to the Monitor in accordance with the SISP one Business Day following the execution of this Agreement.
- (aa) “**DIP Facility**” means the senior secured superpriority debtor-in-possession credit agreement among Xebec (as borrower), certain subsidiaries and affiliates of Xebec (as guarantors) and National Bank of Canada and Export Development Canada (as pari passu lenders) dated as of October 20, 2022, and as may be amended, restated, supplemented and/or modified from time to time.
- (bb) “**EDC Credit Agreement**” means the credit facility agreement dated as of July 16, 2021, among Xebec Holding USA Inc. (as borrower), Xebec (as guarantor) and Export Development Canada, as lender, as renewed, replaced, amended, substituted or restated from time to time.
- (cc) “**Employee Plans**” means the Plans that are for the benefit of Employees (or any spouses, dependents, survivors or beneficiaries of such Employees) and (i) maintained, sponsored or funded by the Seller, or (ii) under which the Seller has, or will have, any liability.
- (dd) “**Employees**” means any and all: (i) employees of the Seller who are actively at work (including full-time, part-time or temporary employees); and (ii) employees of the Seller who are on statutory or approved leaves of absence (including maternity leave, parental leave, short-term or long-term disability leave, workers' compensation and other statutory leaves).
- (ee) “**Encumbrance**” means any security interest, lien (statutory or otherwise), prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, liability, mortgage, right-of-way, servitude, easement, lease, restriction, development or similar agreement, title defect, option or adverse claim or encumbrance of any

nature or kind including any and all CCAA Court ordered charges granted in the CCAA Proceedings.

- (ff) “**Environment**” means the environment or natural environment as defined in any Environmental Laws and includes air, surface water, ground water, land surface, soil and subsurface strata.
- (gg) “**Environmental Approvals**” means permits, certificates, licences, authorizations, consents, agreements, instructions, directions, registrations or approvals required by a Governmental Authority pursuant to an Environmental Law relating to the Acquired Business or the Purchased Assets.
- (hh) “**Environmental Law**” means Applicable Laws relating to the protection of human health and the Environment, and includes Applicable Laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, Release, remediation, management and disposal of Hazardous Substances.
- (ii) “**Excluded Assets**” has the meaning given to such term in Section 2.2.
- (jj) “**Excluded Contracts**” has the meaning given to such term in Section 2.2(c).
- (kk) “**Excluded Liabilities**” has the meaning given to such term in Section 2.4.
- (ll) “**Filing Date**” means September 29, 2022.
- (mm) “**Final**” with respect to any order of any court of competent jurisdiction, means that such order shall not have been stayed, appealed, varied (except with the consent of the Buyer and the Seller, each acting in a commercially reasonable manner) or vacated, and all time periods within which such order could at law be appealed shall have expired.
- (nn) “**Financial Advisor**” means National Bank Financial Inc. in its capacity as financial advisor of the Seller in connection with the SISP and not in its personal capacity.
- (oo) “**Governmental Authority**” means any applicable transnational, federal, provincial, municipal, state, local, national or other government, regulatory authority, governmental department, agency, commission, board, tribunal, bureau, ministry, court, system operator, judicial body, arbitral body or other law, rule or regulation-making entity, or any entity, officer, inspector, investigator or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case:
  - (i) having jurisdiction over the Seller, the Buyer, the Acquired Business, the Purchased Assets or the Assumed Liabilities on behalf of any country, province, state, locality, or other geographical or political subdivision thereof; or
  - (ii) exercising or entitled to exercise any administrative, judicial, legislative, regulatory or taxing authority or power.

- (pp) “**Governmental Authorizations**” means authorizations, approvals (including the Environmental Approvals), plans, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued to or required by the Seller relating to the Acquired Business or any of the Purchased Assets by or from any Governmental Authority.
- (qq) “**Hazardous Substances**” means pollutants, contaminants, wastes of any nature, hazardous substances, hazardous materials, toxic substances, prohibited substances, dangerous substances or dangerous goods regulated by or under Environmental Laws.
- (rr) “**IFRS**” means the International Financial Reporting Standards, namely the standards, interpretations and the framework for the preparation and presentation of financial statements (in the absence of a standard or an interpretation) adopted by the International Accounting Standards Board (IASB), consistently applied.
- (ss) “**including**”, “**include**” and “**includes**” shall be interpreted on an inclusive basis and shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.
- (tt) “**Initial Order**” means the Initial Order granted by the CCAA Court on September 29, 2022, pursuant to which Xebec and certain of its affiliates and subsidiaries were granted protection from their creditors under the CCAA (as amended, restated, supplemented and/or modified from time to time).
- (uu) “**Insolvency Proceedings**” means any action, application, petition, suit or other proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect, for the relief from or otherwise affecting creditors of the Seller, including without limitation under the *Bankruptcy and Insolvency Act* (Canada) (including the filing of a notice of intention to make a proposal), CCAA (including the CCAA Proceedings), the *Winding-Up and Restructuring Act* (Canada), the *Canada Business Corporations Act* or the U.S. Bankruptcy Code by, against or in respect of any of the Seller.
- (vv) “**Intellectual Property**” means any and all intellectual property or similar proprietary rights used or held by the Seller for use in or relating to the Acquired Business, including all patents, patent applications, trademarks, industrial designs, trade names, service marks (and all goodwill associated with any of the foregoing), copyrights, technology, software, data and database rights, trade secrets, proprietary information, domain names, know-how and processes and other intellectual property, whether registered or not, throughout the world.
- (ww) “**Intercompany Accounts Receivable**” has the meaning given to such term in Section 2.2(m).
- (xx) “**Investment Canada Act**” means the *Investment Canada Act* (Canada).

- (yy) “**IT Assets**” has the meaning given to such term in Section 2.1(j).
- (zz) “**Key Employee Retention Plan**” means the key employee retention plan approved by the CCAA Court on October 20, 2022, as amended from time to time.
- (aaa) “**Landlords**” means, collectively, the landlords under the Real Property Leases.
- (bbb) “**Lease Assignment and Assumption Agreement**” means the lease assignment and assumption agreement for the Real Property Lease, in a form reasonably satisfactory to each of the Seller and the Buyer.
- (ccc) “**Material Adverse Effect**” means any change, event, occurrence or circumstance, individually or in the aggregate that: (i) has, or would reasonably be expected to have, a material adverse effect on the operations, results of operations or condition (financial or otherwise) of the Acquired Business, (ii) materially and adversely impairs the Purchased Assets or the Acquired Business or materially and adversely increases the Assumed Liabilities, each taken as a whole, or (iii) materially and adversely impedes the consummation of the transactions contemplated by this Agreement, but excluding, in the case of each of clauses (i), (ii) and (iii) any such change, event, occurrence or circumstance that results from or arises out of (A) changes in general economic conditions, (B) changes affecting the industries and markets in which the Acquired Business operates (except to the extent that such changes have a materially disproportionate effect on the Purchased Assets, the Assumed Liabilities or the Acquired Business, in each case, taken as a whole, relative to other comparable companies and entities operating in the industries in which Xebec operates), (C) changes in macroeconomic factors, interest rates, currency exchange rates or general financial or credit market conditions, (D) acts of God, war, terrorism, civil unrest or hostilities, (E) the COVID-19 pandemic or other epidemic or pandemic outbreaks including any continuation thereof, (F) any change in law or its interpretation, administration or application or non-application by any Governmental Authority or in generally acceptable accounting principles, (G) any failure to meet any internal or publicly disclosed projections, forecasts, estimates or budgets of, or guidance relating to, revenue, cash flow, earnings or other financial metrics for any period, (H) any action taken (or omitted to be taken) by the Seller that is permitted under this Agreement or consented to by the Buyer, (I) any announcement of the transactions contemplated by this Agreement, (J) any change or development in respect of any Excluded Asset, Excluded Liability or any matter disclosed pursuant to the terms of this Agreement, or (K) the pendency of the CCAA Proceedings and any action approved by, or motion made before, the CCAA Courts.
- (ddd) “**Material Contracts**” means, collectively:
  - (i) any Contract that is reasonably likely to involve payment to or by the Seller in excess of \$25,000.00 in any fiscal year; and
  - (ii) any Contract, which if terminated, would have a Material Adverse Effect.



- (eee) “**Monitor**” means Deloitte Restructuring Inc., in its capacity as CCAA Court-appointed monitor of the Seller pursuant to the Initial Order and not in its personal capacity.
- (fff) “**Monitor’s Certificate**” means the certificate filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Seller and the Buyer that all conditions to Closing have been satisfied or waived by the applicable Parties and that the cash portion of the Purchase Price and all applicable sales and transfer taxes payable by the Buyer to the Seller have been received by the Monitor.
- (ggg) “**NBC Credit Agreement**” means the term loan credit agreement dated as of February 23, 2021, as amended by a consent and first amending agreement executed as of January 26, 2022, a second amending agreement dated June 30, 2022, and a forbearance agreement dated July 7, 2022, as amended on September 28, 2022, October 20, 2022 and November 28, 2022, between Xebec (as borrower), certain subsidiaries and affiliates of Xebec (as guarantors) and National Bank of Canada (as lender).
- (hhh) “**NDA**” means the confidentiality agreement between the Buyer and Xebec dated November 4, 2022.
- (iii) “**Order**” means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.
- (jjj) “**Parties**” means the Seller and the Buyer collectively, and “**Party**” means either the Seller, or the Buyer, as the context requires.
- (kkk) “**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity, however designated or constituted.
- (lll) “**Personal Information**” means information about an identifiable individual in the possession or under the control of the Seller.
- (mmm) “**Plan**” means any plan, arrangement or agreement that provides any employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, change of control, pension, supplemental pension, retirement, stock option, stock purchase, stock appreciation, share unit, phantom stock, deferred compensation, health, welfare, medical, dental, disability, life insurance and any similar plans, arrangements or agreements.
- (nnn) “**Post-Closing Tax Period**” has the meaning given to such term in Section 7.7(b).
- (ooo) “**Pre-Closing Tax Period**” has the meaning given to such term in Section 7.7(b).

- (ppp) “**Premises**” means, collectively, the lands and premises which are leased to the Seller pursuant to the Real Property Leases.
- (qqq) “**Purchase Price**” has the meaning given to such term in Section 3.1.
- (rrr) “**Purchased Assets**” has the meaning given to such term in Section 2.1.
- (sss) “**Real Property Lease**” has the meaning given to such term in Section 2.1(g).
- (ttt) “**Release**” has the meaning prescribed in any Environmental Law and includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction.
- (uuu) “**Restricted Rights**” has the meaning given to such term in Section 2.5.
- (vvv) “**Retained Employees**” has the meaning given to such term in Section 7.8(c).
- (www) “**Seller Parties**” has the meaning given to such term in Section 7.6(c).
- (xxx) “**Seller**” has the meaning given to such term in the preamble to this Agreement.
- (yyy) “**SISP**” means the Sale and Investment Solicitation Process approved by the SISP Order (as amended, restated, supplemented and/or modified from time to time).
- (zzz) “**SISP Milestones**” means the milestones set forth in the DIP Facility.
- (aaaa) “**SISP Order**” means the Order granted by the CCAA Court on September 29, 2022 (as amended, restated, supplemented and/or modified from time to time), which, among other things, approved the SISP.
- (bbbb) “**Sunset Date**” has the meaning given to such term in Section 9.1(b).
- (cccc) “**Tax**” and “**Taxes**” includes:
  - (i) Taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Governmental Authority, including all interest, penalties, fines, additions to Tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security Taxes, all surtaxes, all customs duties and import and export Taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and other government pension plan premiums or contributions; and

- (ii) any liability in respect of any items described in clause (i) payable by reason of contract, assumption, transferee liability, operation of law or otherwise.
- (dddd) **“U.S. Bankruptcy Code”** means title 11 of the United States Code, 11 U.S.C. §§ 101 et seq.
- (eeee) **“U.S. Bankruptcy Court”** means the United States Bankruptcy Court for the District of Delaware.
- (ffff) **“U.S. Proceedings”** has the meaning given to such term in Recital B.
- (gggg) **“U.S. Sale Order”** means an order of the Bankruptcy Court in form and substance acceptable to the Seller, the Buyer and the Monitor, each acting in a commercially reasonable manner, approving this Agreement and all of the terms and conditions hereof with respect to Seller’s property within the territorial jurisdiction of the U.S. and approving and authorizing the Seller to consummate the transactions contemplated by this Agreement.
- (hhhh) **“Xebec Group”** has the meaning given to such term in Recital A.

## 1.2 Statutes

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

## 1.3 Headings and Table of Contents

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

## 1.4 Gender and Number

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

## 1.5 Currency

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

## 1.6 Invalidity of Provisions

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

in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

### **1.7 Knowledge**

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

### **1.8 Entire Agreement**

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

### **1.9 Waiver, Amendment**

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

### **1.10 Governing Law; Jurisdiction and Venue**

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

**1.11 [Intentionally omitted.]**

(a) [Intentionally omitted]

(b) [Intentionally omitted]

**1.12 Schedules**

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

<u>Schedule</u>	<u>Description</u>
Schedule 1.1(h)	Form of Approval and Vesting Order
Schedule 2.1(a)	Accounts Receivable
Schedule 2.1(c)	Inventory
Schedule 2.1(d)	Fixed Assets and Equipment
Schedule 2.1(e)	Vehicles
Schedule 2.1(h)	Assumed Contracts
Schedule 2.1(j)	IT Assets

**ARTICLE 2  
PURCHASE AND SALE**

**2.1 Agreement to Purchase and Sell Purchased Assets**

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

- (a) *Accounts Receivable* – the Accounts Receivable and the benefit of all security (including cash deposits), guarantees and other collateral held by the Seller relating to the Acquired Business, as identified on Schedule 2.1(a), to be updated by the Seller the day prior to the Closing Date;
- (b) *Prepaid Expenses* – all prepaid expenses, including *ad valorem* Taxes, of the Seller relating to the Acquired Business or the Purchased Assets, and all deposits of the Seller with any supplier, public utility, lessor under any Real Property Lease, or Governmental Authority;
- (c) *Inventory* – all items that are owned by the Seller for sale, license, rental, lease or other distribution in the ordinary course of business, or are being produced for sale,

or are to be consumed, directly or indirectly, in the production of goods or services to be available for sale, of every kind and nature and wheresoever situated relating to the Acquired Business including inventories of raw materials, spare parts, work in progress, finished goods and by-products, operating supplies and packaging materials, as identified on Schedule 2.1(c), to be updated by the Seller the day prior to the Closing Date;

- (d) *Fixed Assets and Equipment* – all machinery and equipment, including, but not limited to, those identified on Schedule 2.1(d), furnishings, furniture, parts, dies, molds, tooling, tools, computer hardware, supplies, accessories, office equipment and other tangible personal and moveable property (other than inventory) owned by the Seller for use in or relating to the Acquired Business, whether located on the Seller’s premises or elsewhere, and all rights of the Seller under warranties, indemnities, licenses, and all similar rights of the Seller against third Persons with respect to the equipment, fixed assets and tangible assets referenced herein;
- (e) *Vehicles* – all motor vehicles, including all trucks, vans, cars and forklifts owned by the Seller for use in or relating to the Acquired Business, including, but not limited to, those identified on Schedule 2.1(e), and all rights of the Seller under warranties, indemnities, licenses, and all similar rights of the Seller against third Persons with respect to the motor vehicles referenced herein;
- (f) *[Intentionally omitted.]*
- (g) *Real Property Lease* – that certain Absolutely Net Lease dated June 15, 2009 between The Wisconsin Compressed Air Corporation (“**WCAC**”) and Lafayette Building LLC (“**Lafayette**”), as amended from time to time, as assigned to the Seller under that certain Assignment and Assumption of Lease dated September 1, 2021 among the Seller, WCAC, and Lafayette, including all purchase options, prepaid rents, security deposits, rights to appurtenances and improvements, licenses and permits relating thereto and all leasehold improvements thereon (collectively, the “**Real Property Lease**”);
- (h) *Assumed Contracts* – all Contracts identified on Schedule 2.1(h), together with any Contracts that are entered into by the Seller in the ordinary course of business from the date of this Agreement to the Closing Date (collectively, the “**Assumed Contracts**”);
- (i) *Intellectual Property* – all Intellectual Property and rights in Intellectual Property owned by the Seller and that is used or held for use in or otherwise relate to the Acquired Business, including:
  - (i) all trade-marks, trade names, business names, websites and domain names (specifically including xbcflowwisconsin.com), certification marks, service marks, and other source indicators, and the goodwill of any business symbolized thereby, patents, copyrights, code, applications, systems, databases, data, website content, know-how, formulae, processes, inventions, technical expertise, research data, trade secrets, industrial designs and other similar property or proprietary rights; and

- (ii) all registrations and applications for registration thereof;
- (j) *Information Technology Systems* – all software (including source code and object code form), computer hardware, licenses, and documentation therefor and rights therein owned by the Seller used in the Acquired Business, including, but not limited to, those identified on Schedule 2.1(j), and any other information technology systems owned by the Seller and used in the Acquired Business, including all electronic data processing systems, program specifications, source codes, object code, input data, report layouts, formats, algorithms, record file layouts, diagrams, functional specifications, narrative descriptions, flow charts, operating manuals, training manuals and other related material (collectively, the “**IT Assets**”);
- (k) *Goodwill* – the goodwill of the Acquired Business and relating to the Purchased Assets, and information and documents of the Seller relevant thereto, including lists of customers and suppliers, credit information, telephone and facsimile numbers, research materials, research and development files, Confidential Information and the exclusive right of the Buyer to represent itself as carrying on the Acquired Business in succession to the Seller;
- (l) *Employee Records* – personnel and employment records relating to the Retained Employees;
- (m) *Business Records* – all business and financial records (including the Seller’s QuickBooks accounting records) and files of the Acquired Business, relating to the Acquired Business, the general ledger and accounting records relating to the Acquired Business, marketing materials, market research, all customer lists and lists of suppliers, information relating to any Tax imposed on the Purchased Assets, all operating manuals, plans and specifications and all of the right, interest and benefit, if any, thereunder and to and in the domain names, telephone numbers and facsimile numbers used by the Seller in the conduct of the Acquired Business, and all records, files and information necessary for the Buyer to conduct or pursue the rights described in Section 2.1(p); provided, however, that the Seller may retain copies of all books and records included in the Purchased Assets to the extent necessary or useful for the administration of the CCAA Proceedings or any Insolvency Proceedings in respect of the Seller or the filing of any tax return or compliance with any Applicable Law or the terms of this Agreement or related to the Excluded Assets;
- (n) [Intentionally omitted.]
- (o) [Intentionally omitted.]
- (p) *Actions, etc.* – any claims, refunds, causes of action, rights of recovery, rights of set-off, subrogation and rights of recoupment of the Seller related to the Acquired Business or any of the Purchased Assets or any of the Assumed Liabilities, and the interest of the Seller in any litigation and in the proceeds of any judgment, order or decree issued or made in respect thereof in respect of occurrences, events, accidents

or losses suffered prior to the Closing Time (but excluding any of the foregoing in respect of any of the Excluded Assets or Excluded Liabilities); and

- (q) *Loans* – any loans or debts due prior to the Closing Time from any Person to the Seller (excluding, for greater certainty, any Intercompany Accounts Receivable and any other amounts owed by any member of the Xebec Group).

## 2.2 Excluded Assets

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

- (a) *Cash and Cash Equivalents* – all Cash and Cash Equivalents;
- (b) *Corporate Records* – original Tax records and books and records pertaining thereto, minute books, share ledgers, organizational documents, corporate seals, taxpayer and other identification numbers and other documents, in each case, relating to the organization, maintenance and existence of the Seller as a Person; provided that the Buyer may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Acquired Business after Closing, including the filing of any Tax return to the extent permitted under Applicable Law;
- (c) *Excluded Contracts* – all Contracts of the Seller that are not an Assumed Contract (collectively, the “**Excluded Contracts**”);
- (d) [Intentionally omitted];
- (e) *Collateral* – all letters of credit, cash or cash equivalents of the Seller granted by the Seller as collateral to secure outstanding letters of credit in respect of any Excluded Liability or Excluded Asset;
- (f) *Rights under Agreements* – all of the Seller’s rights under this Agreement; the NDA; any confidentiality, non-disclosure or similar agreements entered into in connection with the CCAA Proceedings or the SISF; the DIP Facility, the EDC Credit Agreement and the NBC Credit Agreement; the Excluded Contracts; the Closing Documents and the transactions contemplated by hereby and thereby;
- (g) *Director and Officer Insurance Policies* – all rights of the Seller and the directors and officers of the Seller under any director and officer insurance policies including any proceeds received or receivable by such Persons thereunder;
- (h) *Licenses and Registrations* – extra-provincial, sales, excise or other Permits, licenses or registrations issued to or held by the Seller, whether relating to the Acquired Business or otherwise to the extent not transferable;
- (i) *Tax Refunds* – the benefit of the Seller to any refundable Taxes payable or paid by the Seller, net of any amounts withheld by any Governmental Authority, having jurisdiction over the assessment, determination, collection, or other imposition of



any Tax, and the benefit of the Seller to any claim or right of the Seller to any refund, rebate, or credit of Taxes;

- (j) *Avoidance Claims* – all rights and Claims against any Person for any liability of any kind based on or arising out of the occurrence of any fraudulent conveyance, settlement, reviewable transaction, transfer at undervalue, fraudulent preference or similar claim;
- (k) *Plan Assets* – all trust funds or other entities holding assets (or, in the case of a dedicated bank account held by the Seller, the assets of such account) related to any Employee Plan;
- (l) *Ordinary Course Assets* – any asset of the Seller that would otherwise constitute a Purchased Asset but for the fact that it is conveyed, leased or otherwise disposed of in the ordinary course of business in compliance with Section 7.2 or as obsolete during the period beginning on the date of this Agreement and ending on the Closing Date; and
- (m) *Intercompany Accounts Receivable* – any debts due or accruing due prior to the Closing Time to the Seller from any shareholder, director, or affiliate of the Seller (the “**Intercompany Accounts Receivable**”).

### 2.3 Assumption of Liabilities

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

- (a) *Obligations under Assumed Contracts and Real Property Lease, etc.* – (i) all liabilities and obligations arising under the Assumed Contracts and the Real Property Lease to the extent first arising on or after the Closing Time, and (ii) all Cure Costs identified on Schedule 2.1(h) as associated with an Assumed Contract;
- (b) [Intentionally omitted];
- (c) [Intentionally omitted];
- (d) [Intentionally omitted];
- (e) *Employee Matters* – all liabilities and obligations (i) of or expressly assumed by the Buyer pursuant to Section 7.8; (ii) relating to the Buyer’s employment or termination of employment of any Retained Employees, to the extent arising on or after the Closing Date of such Employees; (iii) relating to the Buyer’s offer of employment to any Employee pursuant to the terms of Section 7.8; and (iv) the failure of the Buyer to satisfy its obligations under Section 7.8 with respect to any Employee;

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

## 2.4 Excluded Liabilities

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

- (a) *General* – except as expressly including in Assumed Liabilities, all liabilities to the extent arising out of the operation of the Acquired Business or the Purchased Assets for periods prior to the Closing Time (including, for the avoidance of doubt, breaches of contract, infringement, violations of law, tortious conduct, Tax liabilities, indebtedness for borrowed money and intercompany liabilities);
- (b) *Contract and Real Property Lease Liabilities* – all liabilities of the Seller under the Assumed Contracts and the Real Property Lease, incurred prior to the Closing Time, other than identified Cure Costs;
- (c) *Excluded Assets* – all liabilities and obligations relating to the Excluded Assets (including any Excluded Contracts, this Agreement and the DIP Facility);
- (d) *Employee Matters* –
  - (i) any liabilities or other obligations arising under, relating to or with respect to any Employee Plan; and
  - (ii) except as included in the Assumed Liabilities, all liabilities related to the Employees of the Seller;

- (e) *Trade Debt* – all trade payables relating to the Acquired Business;
- (f) *Intercompany Accounts Payable* – any debts due or accruing prior to the Closing Time from the Seller to any shareholder, director, officer or affiliate of the Seller;
- (g) *Intellectual Property Claims* – any claims against the Seller for infringement, misappropriation or other violation of any Intellectual Property of any third Person relating to any period prior to the Closing Time;
- (h) *Pre-Filing Debt* – all liabilities, obligations and related guarantees relating to the EDC Credit Agreement and the NBC Credit Agreement;
- (i) *Taxes* – all liabilities for Taxes of the Seller; and
- (j) *Other* – Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Time, including without limitation liabilities relating to any breach of law and product liability claims or any Claim made in objection to the entry of the U.S. Sale Order.

## 2.5 Assignment of Purchased Assets

- (a) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Purchased Asset or any right thereunder if an attempted assignment or transfer (i) without the consent of a third Person, would constitute a breach or in any way adversely affect the rights of the Buyer thereunder or (ii) is not permitted or enforceable under Applicable Law (collectively, “**Restricted Rights**”), unless the assignment is subject to an Assignment Order. The Seller shall use commercially reasonable efforts to take all such action, and do or cause to be done all such things as are reasonably necessary or proper (provided that the Seller shall not be required to incur any costs or expenses in relation thereto unless the Buyer agrees in advance to reimburse the Seller for any such costs and expenses), following the Closing Time, in order that the obligations of the Seller under such Restricted Rights may be performed in such manner that the value of such Restricted Rights is preserved and enures to the benefit of the Buyer, and that any amounts due and payable, or which become due and payable, in and under the Restricted Rights are received by the Buyer and the liabilities are satisfied by the Buyer. Subject to payment of all liabilities in respect thereof by the Buyer, the Seller shall reasonably promptly pay to the Buyer all amounts collected by or paid to the Seller in respect of all such Restricted Rights. Subject to Section 7.2, the Seller shall not, without the prior written consent of the Buyer, agree to any modification of any Restricted Rights.
- (b) If a consent to transfer the Restricted Rights to the Buyer is not obtained by the Closing Time or such assignment is not attainable, the Seller and the Buyer will cooperate and use their respective commercially reasonable efforts, from and after the Closing Time, to implement a mutually agreeable arrangement pursuant to which the Buyer will obtain the benefits, and assume the liabilities and obligations, related to such Restricted Rights in accordance with this Agreement; provided, however, that the Buyer acknowledges and agrees that nothing in this Section 2.5

shall operate to prohibit or diminish in any way the right of the Seller to dissolve, windup or otherwise cease operations as it may determine in its sole discretion, or require the Seller to take any illegal action or commit fraud on any Person.

- (c) Notwithstanding the foregoing: (i) nothing in this Section 2.5 shall require the Seller to renew any Restricted Rights once they have expired, (ii) any efforts required of the Seller pursuant to this Section 2.5 shall (A) be subject to receipt of adequate compensation in respect of all direct incremental costs and expenses incurred in respect of or related to such arrangement, (B) be strictly on an interim basis and in no event required to continue for more than 90 days following Closing, and (C) to the extent not prohibited, be of an administrative nature only, without any substantive function. The Buyer shall reimburse the Seller for any direct incremental cost incurred and indemnify and hold the Seller harmless from and against all Claims, incurred or asserted, as a result of any actions taken pursuant to this Section 2.5, except for Claims, costs and expenses incurred in obtaining entry of the U.S. Sale Order.
- (d) For the avoidance of doubt, the Parties acknowledge that the fact that any Purchased Asset constitutes a Restricted Right shall not (i) constitute a breach of any covenant hereunder, (ii) entitle Buyer to terminate this Agreement or (iii) result in any reduction of the Purchase Price payable hereunder. Any non-Restricted Right assigned pursuant to the terms of this Section 2.5 shall, when assigned, constitute an Assumed Contract hereunder from and after such date.
- (e) Subject to the terms and conditions of this Agreement, the Seller hereby agrees to assign to the Buyer on the Closing Date, effective as of the Closing Time, all of the Seller's rights, benefits and interests in, to and under the Assumed Contracts and Real Property Lease, in accordance with either this Agreement or an Assignment Order. The Seller shall use its commercially reasonable efforts to obtain any necessary consents or approvals in order to assign the Assumed Contracts and Real Property Lease. The Seller will use its commercially reasonable efforts to take such other actions necessary to cause the Assumed Contracts and Real Property Leases to be assigned by the Seller to the Buyer as of the Closing Time at the expense of the Buyer. The Buyer will use its commercially reasonable efforts to assist the Seller in obtaining any such consent.

### **ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS**

#### **3.1 Purchase Price**

The purchase price payable to the Seller for the Purchased Assets (the "**Purchase Price**"), exclusive of all applicable sales and transfer taxes, shall be the total of:

- (a) the amount of \$121,000.00 in cash, *plus*
- (b) the sum of eighty percent (80%) of the Accounts Receivable as of the Closing Date, *plus*

- (c) the sum of eighty percent (80%) of the Inventory as of the Closing Date, *plus*
- (d) the amount of the Assumed Liabilities.

### **3.2 Purchase Price Allocation**

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

### **3.3 Payment of Purchase Price and Treatment of Deposit**

- (a) The Purchase Price will be satisfied as follows:
  - (i) the portion of the Purchase Price equal to the amount of the Deposit that is being held by the Monitor in a non-interest-bearing trust account in accordance with the SISP;
  - (ii) the balance of the Purchase Price will be satisfied by the payment of such amount by wire transfer of immediately available funds at the Closing Time from the Buyer to an account of the Monitor specified in writing by the Seller not later than the Closing Date; and
  - (iii) as to the dollar value of the Assumed Liabilities, by the Buyer assuming the Assumed Liabilities.
- (b) The Deposit paid to the Monitor by the Buyer will be:
  - (i) credited to the Seller, as applicable, at the Closing Time in accordance with Section 3.3(a)(i), if the sale and purchase of the Purchased Assets provided for herein is completed in accordance with the terms and conditions hereof;
  - (ii) forfeited to the Seller if the Closing does not occur by reason that this Agreement is terminated by the Seller pursuant to Section 9.1(i) in order to compensate the Seller for expenses incurred in connection with the transactions contemplated in this Agreement and the delay caused to the Seller’s efforts to sell the Purchased Assets. The entitlement of the Seller to the Deposit in such circumstances shall not limit the Seller’s right to exercise any other rights which the Seller may have against the Buyer;
  - (iii) returned to the Buyer (A) if the Closing does not occur and the conditions in 3.3(b)(ii) are not met, or (B) post-Closing if the Seller fails to obtain the U.S. Sale Order by June 30, 2023. In either case, the Buyer shall have no further recourse against the Seller.

### **3.4 Treatment of Proceeds Following Closing**

- (a) The Deposit and the cash portion of the Purchase Price paid by the Buyer to the Monitor at the Closing Time in accordance with Section 3.3(a)(ii) shall be held by the Monitor pending entry of the U.S. Sale Order and shall not be released until such order has entered. Notwithstanding anything to the contrary in this Agreement, the Seller shall defend all objections to entry of the U.S. Sale Order and the Parties shall work together in good faith to address any objections and to obtain entry of the U.S. Sale Order. In no event shall the Buyer be required to make payment in excess of the Purchase Price.
- (b) In the event the U.S. Sale Order is not entered within 60 days after the date of this Agreement, subject to extension agreed to in writing by the Buyer, Seller and Monitor, the Buyer, Seller and Monitor shall enter into good faith discussions regarding the treatment of the proceeds from the Purchase Price.
- (c) The terms of this Section 3.4 and Seller's post-closing obligations to seek and deliver the U.S. Sale Order shall survive Closing.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES BY THE SELLER**

The Seller represents and warrants to the Buyer as follows, and acknowledge that the Buyer is relying upon the following representations and warranties in connection with its purchase of the Purchased Assets:

### **4.1 Corporate Existence**

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

### **4.2 Due Authorization and Enforceability of Obligations**

Subject to the issuance of the Approval and Vesting Order and, if applicable, the issuance of the U.S. Sale Order:

- (a) The Seller has all necessary corporate power, authority and capacity to:
  - (i) enter into and deliver this Agreement and the Closing Documents;
  - (ii) carry out its obligations under this Agreement and the Closing Documents; and
  - (iii) own or lease and to operate and use the Purchased Assets and carry on the Acquired Business as now conducted by the Seller;
- (b) the execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of the Seller; and

- (c) assuming the accuracy of the representations and warranties of the Buyer in Article 5, this Agreement does and the Closing Documents when executed by the Seller will constitute valid and binding obligations of the Seller enforceable against it in accordance with its terms.

#### **4.3 Residence of the Seller**

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

#### **4.4 Taxes**

[Intentionally omitted.]

#### **4.5 No Other Representations, Warranties or Covenants**

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

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER**

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

#### **5.1 Corporate Existence**

The Buyer is a limited liability company duly formed, validly existing and in good standing under the laws of Wisconsin.

#### **5.2 Residence of the Buyer**

The Buyer is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

#### **5.3 Financial Ability**

As of the date hereof, subject to applicable borrowing conditions, the Buyer has undrawn committed revolving credit facilities sufficient to allow it to pay the Purchase Price, and all other

costs and expenses in connection with the consummation of the transactions contemplated by this Agreement. Within three (3) business days of the date of this Agreement, upon the request of the Seller, Buyer will provide a Statement of Liquidity from its lender confirming available funding for this transaction. The Statement of Liquidity shall confirm that there are no conditions precedent to the obligations of lender to provide the financing contemplated under a particular letter of credit. There are no contractual contingencies or other provisions under any agreement (including any side letters) relating to the transactions contemplated by this Agreement to which the Buyer or any of its affiliates is a party that would permit the lender to reduce the total amount of the financing contemplated below the amount required to enable Buyer to have sufficient funds available to pay the Purchase Price. Notwithstanding anything to the contrary contained herein, the Buyer's obligations to consummate the transactions contemplated by this Agreement are not conditioned or contingent in any way upon the receipt of financing from any person or the availability of funds to the Buyer.

#### **5.4 Absence of Conflicts**

The Buyer is not a party to, bound or affected by or subject to (and the assets of the Buyer are not affected by): (a) any charter or by-law provision; (b) any Applicable Law or governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority; or (c) any agreement or other document, in each case, that would be violated, breached by, or under which any default would occur or with notice or the passage of time would, be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except in the case of (b) and (c) for any violations, breaches or defaults or any Applicable Law or any governmental authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority, that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

#### **5.5 Due Authorization and Enforceability of Obligations**

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

#### **5.6 Approvals and Consents**

Except for (a) the issuance of the Approval and Vesting Order, (b) the Assignment Order, (c) the U.S. Sale Order and (d) any consent that may be required in connection with the assignment of a Purchased Asset, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Buyer, and each of the agreements to be executed



and delivered by the Buyer hereunder or the purchase of any of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices of any Governmental Authority, court or Person that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

**5.7 [Intentionally omitted.]**

**5.8 Litigation**

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

- (a) prevent the Buyer from paying the Purchase Price to the Seller;
- (b) enjoin, restrict or prohibit the transfer of all or any part of the Purchased Assets as contemplated by this Agreement; or
- (c) prevent the Buyer from or delay the Buyer in fulfilling any of its obligations set out in this Agreement or arising from this Agreement.

**5.9 Personal Information**

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

**5.10 As Is, Where Is**

- (a) The Buyer acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Acquired Business, the Purchased Assets (including the state of title thereto and/or the state of any Encumbrances), the Assumed Liabilities and all related operations of the Seller, and, based solely thereon, has determined to proceed with the transactions contemplated by this Agreement. The Buyer has relied solely on the results of its own independent investigation and verification, and the representations and warranties of the Seller expressly and specifically set forth in Article 4, and the Buyer understands, acknowledges and agrees that all other representations, warranties and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Seller or the Acquired Business, or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Seller. Except for the representations and warranties of the Seller expressly and specifically set forth in Article 4, none of the Seller makes or provides any warranty or representation, express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples or condition of the Purchased Assets, or any part thereof. THE BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE SELLER EXPRESSLY AND SPECIFICALLY SET FORTH IN ARTICLE 4: (A) THE BUYER IS ACQUIRING THE PURCHASED ASSETS

ON AN "AS IS, WHERE IS" BASIS; AND (B) NONE OF THE SELLER, NOR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF THE SELLER, WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY OR THE MONITOR) IS MAKING, AND THE BUYER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE SELLER, THE BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES, THE EXCLUDED ASSETS, THE EXCLUDED LIABILITIES, THIS AGREEMENT OR THE TRANSACTIONS, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE BUYER OR ANY OF ITS RESPECTIVE REPRESENTATIVES, INCLUDING WITH RESPECT TO, THE REAL PROPERTY LEASE AND THE STATUS OF ANY OF THE REAL PROPERTY LEASE, THE RENTABLE AREA OF THE PREMISES, THE EXISTENCE OF ANY DEFAULT ON THE PART OF THE SELLER OR LANDLORDS, THE USE PERMITTED AT ANY OF THE PREMISES, THE EXISTENCE OF ANY ENCUMBRANCE AFFECTING THE PURCHASED ASSETS, OR THE SELLER'S LEASEHOLD INTEREST THEREIN; AND WITHOUT LIMITING THE FOREGOING, ANY AND ALL CONDITIONS OR WARRANTIES EXPRESSED OR IMPLIED PURSUANT TO THE SALE OF GOODS ACT (ONTARIO), THE INTERNATIONAL CONVENTION ON CONTRACTS FOR THE SALE OF GOODS (GENEVA CONVENTION) AND ANY OTHER APPLICABLE SALE OF GOODS LEGISLATION, WILL NOT APPLY AND ARE HEREBY WAIVED BY THE SELLER AND THE PARTIES AGREE TO EXCLUDE THE EFFECT OF THE LEGAL WARRANTY PROVIDED FOR BY ARTICLE 1716 OF THE CIVIL CODE OF QUÉBEC AND THAT THE BUYER IS PURCHASING THE PURCHASED ASSETS AT ITS OWN RISK FROM THE SELLER WHO IS NOT A PROFESSIONAL SELLER WITHIN THE MEANING OF ARTICLE 1733 OF THE CIVIL CODE OF QUÉBEC, AND ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, REGARDING MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY FOR DEVELOPMENT, TITLE, DESCRIPTION, USE OR ZONING, ENVIRONMENTAL CONDITION, EXISTENCE OF LATENT DEFECTS, QUALITY, QUANTITY, ANY NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR REGARDING THE SCOPE, VALIDITY OR ENFORCEABILITY OF ANY TRANSFERRED INTELLECTUAL PROPERTY, ACQUIRED COMPANY INTELLECTUAL PROPERTY OR LICENSED INTELLECTUAL PROPERTY RIGHTS, OR ANY OTHER THING AFFECTING THE ACQUIRED BUSINESS, ANY OF THE PURCHASED ASSETS OR THE ASSUMED LIABILITIES, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAW IN ANY JURISDICTION, WHICH THE BUYER CONFIRMS DO NOT APPLY TO THIS

AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE BUYER.

- (b) The Buyer acknowledges and agrees that: (i) the representations and warranties of the Seller set forth in Article 4 will merge on, and shall not survive, the Closing; and (ii) the Seller will not have or be subject to any liability or indemnification obligation to the Buyer or any other Person resulting from (nor will the Buyer or any other Person have any claim with respect to) the distribution to the Buyer, the Buyer's use of, or reliance on, any information, documents, projections, forecasts or other material made available to the Buyer in certain "data rooms," confidential information memoranda or management presentations in expectation of, or in connection with, the transactions contemplated by this Agreement, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise. None of the representatives of the Seller, whether in an individual, corporate or other capacity, will have or be subject to any such liability or indemnification obligations.
- (c) The remedies expressly set forth in this Agreement are the Buyer's sole and exclusive remedies relating to this Agreement, the Closing Documents, the transactions contemplated hereby and thereby, the Acquired Business, the Purchased Assets, the Assumed Liabilities and all related operations of the Seller or either of them.
- (d) This Section 5.10 will not merge on Closing and is deemed incorporated by reference in all Closing Documents.
- (e) The Buyer acknowledges and agrees that the enforceability of this Agreement against the Seller is subject to entry of the Approval and Vesting Order.

## **ARTICLE 6 CONDITIONS**

### **6.1 Conditions for the Benefit of the Buyer and the Seller**

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

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets or any of the other transactions pursuant to this Agreement shall be in effect;
- (b) *Court Orders* – the Approval and Vesting Order and, where required, the Assignment Order shall have been issued and entered and such orders shall not have been reversed, modified, amended or stayed; and
- (c) *U.S. Sale Order* – No later than one (1) Business Day after the entry of the Approval and Vesting Order, the Seller shall file a motion with the U.S. Bankruptcy Court to

approve the transactions contemplated by the Agreement and to obtain the U.S. Sale Order.

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

## **6.2 Conditions for the Benefit of the Buyer**

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

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

## **6.3 Conditions for the Benefit of the Seller**

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

- (a) *Performance of Covenants* – the covenants contained in this Agreement to be performed by the Buyer at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Buyer contained in Article 5 shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date (except for

representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date); and

- (c) *Officer's Certificate* – the Seller shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.3(a) (*Performance of Covenants*) and 6.3(b) (*Truth of Representations and Warranties*) signed for and on behalf of the Buyer without personal liability by an executive officer of the Buyer, in form and substance satisfactory to the Seller, each acting in a commercially reasonable manner.

## **ARTICLE 7 ADDITIONAL AGREEMENTS OF THE PARTIES**

### **7.1 Access to Information**

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

### **7.2 Conduct of Business Until Closing Time**

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

- (a) (i) operate the Acquired Business only in the ordinary course of business in all material respects consistent with past practice; (ii) use commercially reasonable efforts to preserve the Purchased Assets; (iii) use commercially reasonable efforts to preserve its business organization, including the services of its officers and

employees, and its business relationships and goodwill with customers, suppliers and others having business dealings with it; (iv) pay and discharge the debts authorized by the CCAA Court in accordance with the DIP Facility; and (v) use commercially reasonable efforts to maintain in full force and effect all material insurance policies and binders relating to the Acquired Business; and

- (b) not, without the prior written consent of the Buyer (the granting of such consent to be in the Buyer's sole discretion): (i) transfer, lease, license, sell, abandon, create any Encumbrance (other than Encumbrances associated with or permitted by the DIP Facility) on or otherwise dispose of any of the Purchased Assets (except in the ordinary course of business, in all material respects consistent with past practice); (ii) materially increase the compensation or benefits of any Employee, except for increases in all material respects consistent with past practice or in accordance with employment Contracts, Employee Plan or Applicable Law; (iii) establish, adopt, enter into, amend or terminate any Employee Plan or any plan, agreement or other arrangement that would be an Employee Plan if it were in existence as of the date of this Agreement; (iv) (A) materially amend, terminate or assign any Real Property Lease or other Material Contract, (B) enter into any lease, Contract, license or other commitment related to the Acquired Business that would constitute a Material Contract; (v) enter into any Contract which materially restricts the ability of the Acquired Business to engage in any business in any geographic area or channel of distribution; (vi) acquire any material businesses or assets outside of the ordinary course of business in all material respects; or (vii) agree or make a commitment, whether in writing or otherwise, to do any of the foregoing.

### **7.3 Approvals and Consents.**

- (a) [Intentionally omitted.]
- (b) [Intentionally omitted.]
- (c) [Intentionally omitted.]
- (d) The Seller and the Buyer will promptly inform the other of any material communication received by such Party from any Governmental Authority or proposed to be made to any Governmental Authority, and shall provide the other Party and its counsel an opportunity to attend and participate in any meetings of a substantive nature with a Governmental Authority.
- (e) Each of the Seller and the Buyer will make and use best efforts to obtain any approval of any Governmental Authority required to consummate the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, the Buyer and the Seller shall each (i) use its respective best efforts to comply as expeditiously as possible with all requests of any Governmental Authority for additional information and documents; (ii) not enter into agreement with any Governmental Authority not to consummate the transactions contemplated by this Agreement, except, in each case, with the prior consent of the other Parties hereto; and (iii) cooperate with the other Parties hereto and use best efforts to avoid, contest and resist any action, including legislative, administrative or judicial action, and to

have vacated, lifted, reversed or overturned any order (whether temporary, preliminary or permanent) that delays, restricts, prevents or prohibits the consummation of the transactions contemplated by this Agreement.

- (f) The obligations of the Buyer pursuant to this Section 7.3 will include committing to any and all undertakings, divestitures, licenses or hold separate or similar arrangements with respect to the Purchased Assets, to any and all arrangements for the conduct of any business and/or terminating any and all existing relationships and contractual rights and obligations with respect to the Purchased Assets, and any and all undertakings, divestitures, licences or hold separate or similar arrangements with respect to the business of the Buyer or any of its affiliates which may be required on or before the Sunset Date, without any reduction of the Purchase Price.
- (g) [Intentionally omitted.]
- (h) As soon as reasonably possible following the date hereof, the Seller and the Buyer, in cooperation with the Monitor, shall:
  - (i) make all such filings and seek all such consents, approvals, permits and authorizations with any other Governmental Authorities whose consent is required for consummation of the transactions contemplated by this Agreement, and the Buyer will request any expedited processing available;
  - (ii) use their reasonable best efforts to obtain the issuance of the Approval and Vesting Order on or before the relevant SISP Milestones; and
  - (iii) use their reasonable best efforts to obtain the issuance of the U.S. Sale Order.
- (i) The Seller shall use their commercially reasonable efforts to obtain all consents, approvals and Governmental Authorizations with respect to, and provide any notices under, any Permits or Contracts required in connection with the completion of the transactions contemplated by this Agreement at or before the Closing Time on terms acceptable to the Buyer, acting reasonably. The Buyer shall use its commercially reasonable efforts to cooperate with the Seller in connection with the foregoing.

#### **7.4 No Broker**

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

#### **7.5 Covenants Relating to this Agreement**

- (a) Each of the Parties shall perform, and shall cause their affiliates to perform, all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties and the Monitor in connection therewith, and,

subject to the directions of any applicable courts to the Seller, use commercially reasonable efforts to do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable and in any event prior to the Sunset Date, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, each Party shall and, where appropriate, shall cause each of its affiliates to:

- (i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and
  - (ii) not take any action, or refrain from taking any action, and use commercially reasonable efforts to not permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.
- (b) The Buyer hereby agrees, and hereby agrees to cause its representatives to, keep the Seller informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by the Seller or the Monitor, as to the Buyer's progress in terms of the satisfaction of the conditions precedent contained herein.
  - (c) The Seller and the Buyer agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions as may be reasonably required to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

## **7.6 Release; Acknowledgements; Indemnity**

- (a) Except as otherwise contained herein, effective as of the Closing, the Buyer hereby releases and forever discharges each of the Seller and its respective affiliates, and their respective successors and assigns, and all officers, directors, partners, members, shareholders, employees and agents of each of them, from any and all actual or potential Claims which such Person had, has or may have in the future to the extent relating to the Purchased Assets, the Assumed Liabilities, the Excluded Assets or the Excluded Liabilities.
- (b) The Buyer shall use its reasonable efforts to assist the Seller and shall co-operate with the Seller, as reasonably requested, to obtain from third parties, effective as of the Closing Time, a full release of the Seller's obligations under the Assumed Contracts and the Real Property Lease, and shall provide such financial and other information and enter into such assumption agreements as such third parties may



reasonably require, in form and substance acceptable to each of the parties thereto acting reasonably and without delay.

- (c) The Buyer hereby agrees to indemnify the Seller, the Monitor, their respective affiliates and their respective present or former trustees, officers, directors, employees, agents and shareholders (the “**Seller Parties**”), and saves each of them fully harmless from and against, all losses and Claims arising from, in connection with or related in any manner whatsoever to:
  - (i) the Buyer’s failure to pay when due, and perform and discharge, the Assumed Liabilities; and
  - (ii) the Buyer’s access in accordance with Section 7.1.

## 7.7 Tax Matters

- (a) For purposes of any income Tax return related to the transactions contemplated in this Agreement, the Buyer and the Seller agree to report the transactions contemplated in this Agreement in a manner consistent with the Allocation Statement, and the Buyer and the Seller shall not voluntarily take any action inconsistent therewith in any such Tax return, refund claim, litigation or otherwise, unless required by applicable Tax laws. The Buyer and the Seller shall each be responsible for the preparation of their own statements required to be filed under the *Income Tax Act* (Canada), if any, and other similar forms in accordance with applicable Tax laws.
- (b) All real property Taxes, personal property Taxes and similar *ad valorem* obligations levied with respect to the Purchased Assets for a taxable period which includes (but does not end on) the Closing Date shall be apportioned between the Seller and the Buyer based on the number of days of such taxable period up to and including the Closing Date (such portion of such taxable period, the “**Pre-Closing Tax Period**”) and the number of days of such taxable period after the Closing Date (such portion of such taxable period, the “**Post-Closing Tax Period**”). Except as otherwise provided herein, the Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and the Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period.
- (c) In respect of the purchase and sale of the Purchased Assets under this Agreement,
  - (i) the Seller shall pay all sales taxes, if any, to the appropriate Governmental Authority, and
  - (ii) the Buyer shall pay direct to the appropriate Governmental Authority all transfer Taxes, registration charges and transfer fees payable by it and, upon the reasonable request of the Seller, the Buyer shall furnish proof of such payment, and the Buyer shall otherwise be liable for and shall pay to the Seller an amount equal to any such Tax payable by the Buyer and collectible by the Seller. The Buyer shall deliver to Seller any purchase exemption certificates being relied on by the Buyer in accordance with and in the form and manner as required under Applicable Laws governing provincial transfer Taxes.

## 7.8 Employee Matters

- (a) No more than five (5) days after the date of this Agreement, the Seller will deliver a schedule of all Employees, together with, their positions and wages/salary, incentive compensation, service date, material benefits and vacation entitlement and accrual. Such schedule will be updated immediately prior to the Closing Time as reasonably requested by the Buyer.
- (b) No later than two (2) Business Days following the date on which the Approval and Vesting Order is granted, contingent on Closing, the Buyer shall issue offers of employment to all of the Employees, effective as of the day immediately after the Closing Date, on terms and conditions, including compensation, benefits, hours of work and duties, that are substantially similar and no less favorable in the aggregate to those terms and conditions of employment currently available to each such Employee immediately prior to the Closing Date and shall not be conditioned upon such Employees satisfactorily completing a background investigation, drug test or other employment screening processes. Buyer agrees that it will assume all accrued vacation and paid time off obligations owed to each Employee that accept offers of employment from the Buyer (collectively, the “**Retained Employees**” and each a “**Retained Employee**”). Buyer shall notify the Seller of the acceptance and rejections of its offers of continued employment that have been received from each of the Employees. At Closing the Seller shall terminate all employees of the Seller effective as of the Closing Date.
- (c) The Seller will cooperate with the Buyer in giving notice to the Employees prior to the Closing Date concerning such matters referred to in this Section 7.8 as are reasonable under the circumstances.
- (d) The Buyer shall be responsible for all liabilities and obligations with respect to the Retained Employees arising after the Closing Date.
- (e) [Intentionally omitted].
- (f) The Buyer shall be responsible for any and all Claims incurred by the Retained Employees (and their respective eligible spouses, beneficiaries and dependants) after the Closing Date. For these purposes, “Incurred” means, in relation to Claims under the applicable Plans, the date on which the event giving rise to such claim occurred and, in particular: (i) with respect to a death or dismemberment claim, shall be the date of the death or dismemberment; (ii) with respect to short-term or long-term disability claims, shall be the date that the period of short-term or long-term disability commenced; (iii) with respect to an extended health care claim, including, without limitation, dental and medical treatments, shall be the date of the treatment; and (iv) with respect to a prescription drug or vision care claim, the date that the prescription was filled.
- (g) After the date hereof, the Seller and the Buyer shall cooperate promptly and in good faith in transitioning the Retained Employees to Buyer’s Plans effective as of the Closing Date. After the Closing Date, the Buyer shall be responsible for and make all required contributions and payments in relation to the Retained Employees.

- (h) The Buyer shall recognize the service date of each such Retained Employee for purposes of eligibility, level of benefits and vesting, but not for purposes of benefit accrual. With respect to each Retained Employee (and their eligible dependents, as applicable), the Buyer shall use reasonable efforts to cause its Plans (i) to waive any eligibility periods, evidence of insurability or pre-existing condition limitations and (ii) to honor any deductibles, co-payments, co-insurance or out-of-pocket expenses paid or incurred by such Employees, including with respect to their dependents, under comparable Plans.

## **7.9 Certain Payments or Instruments Received from Third Persons**

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

## **7.10 Intellectual Property Matters**

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

## **7.11 Notice of Certain Events**

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

7.12 [Intentionally omitted.]

**ARTICLE 8  
COURT ORDERS**

**8.1 Court Orders**

- (a) The Seller shall serve and file a motion for the issuance of the Approval and Vesting Order and, if applicable, the Assignment Order, by March 10, 2023.
- (b) The Buyer shall cooperate with the Seller and the Monitor acting reasonably, as may be necessary, including by providing such information and taking such actions as may be reasonably requested, in obtaining the Approval and Vesting Order and any Assignment Order.
- (c) Notice of the motion seeking the issuance of the Approval and Vesting Order shall be served by the Seller on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, the Amended and Restated Initial Order, and any other Person determined necessary by the Seller or the Buyer.
- (d) Notwithstanding any other provision herein, it is expressly acknowledged and agreed that in the event that the Approval and Vesting Order has not been issued and entered by the CCAA Court by March 17, 2023 or such later date agreed to in writing by the Buyer and the Seller, in consultation with the Monitor, in consultation with the Monitor, the Seller may terminate this Agreement.

**8.2 CCAA Process**

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

**ARTICLE 9  
TERMINATION**

**9.1 Termination**

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

- (a) by mutual written consent of the Buyer and the Seller (with the consent of the Monitor) or on further order of the CCAA Court;
- (b) by the Seller (with the consent of the Monitor) if Closing has not occurred on or before March 24, 2023 or such later date agreed to in writing by both the Buyer and the Seller (with the consent of the Monitor) (the "**Sunset Date**"); provided, that the Seller is not in breach of any representation, warranty, covenant or other agreement in this Agreement to cause the conditions in Article 6 to be satisfied;

- (c) by the Seller pursuant to Section 8.1(d);
- (d) by the Buyer or the Seller upon the dismissal or conversion of the CCAA Proceedings;
- (e) by the Buyer or the Seller upon permanent denial of the Approval and Vesting Order;
- (f) [Intentionally omitted];
- (g) by the Buyer or the Seller if a court of competent jurisdiction or other Governmental Authority has issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of Closing and such order or action has become Final (provided the same was not initiated by the Buyer or the Seller);
- (h) by the Seller, if required under any Order of a court of competent jurisdiction including the CCAA Court;
- (i) by the Seller (with the consent of the Monitor), if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Sunset Date and such violation or breach has not been waived by the Seller or cured within fifteen (15) Business Days after written notice thereof from the Seller, unless the Seller is in material breach of their obligations under this Agreement; or
- (j) by the Buyer, if there has been a material violation or breach by either of the Seller of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.2, as applicable, by the Sunset Date and such violation or breach has not been waived by the Buyer or cured within ten (10) Business Days after written notice thereof from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement.

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

## **9.2 Effect of Termination**

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

## **ARTICLE 10 CLOSING**

### **10.1 Location and Time of the Closing**

The Closing shall take place at the Closing Time on the Closing Date at the offices of Osler, Hoskin & Harcourt LLP located at Suite 2100, 1000 De La Gauchetière Street West, Montréal, Québec, or at such other location as may be agreed upon by the Parties. The Closing shall, unless otherwise agreed between the Parties, be conducted virtually.

### **10.2 Seller's Deliveries at Closing**

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

- (a) a copy of Approval and Vesting Order;
- (b) the Lease Assignment and Assumption Agreement for the Real Property Lease duly executed by the Seller;
- (c) assignment of any existing realty Tax appeals and any other documents required to permit the Buyer to continue such appeals and to receive payments resulting therefrom;
- (d) all documents of title and instruments of conveyance (duly executed by the Seller) necessary to transfer record and/or beneficial ownership to the Buyer of all vehicles owned by the Seller which are included in the Purchased Assets;
- (e) copies of any Assignment Order(s) obtained by the Seller pursuant to this Agreement;
- (f) an executed copy of the Monitor's Certificate;
- (g) the certificates contemplated by Section 6.2(c);
- (h) the bill of sale for the Purchased Assets, in a form reasonably satisfactory to the Buyer; and
- (i) all other documents required to be delivered by the Seller on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Buyer in good faith.

### **10.3 Buyer's Deliveries at Closing**

At Closing, the Buyer shall deliver to the Seller:

- (a) the Purchase Price;
- (b) any transfer Taxes payable on Closing by the Buyer to the Seller pursuant to Section 7.7(c) hereof;

- (c) the certificate contemplated by Section 6.3(c);
- (d) the Lease Assignment and Assumption Agreement for the Real Property Lease duly executed by the Buyer; and
- (e) all other documents required to be delivered by the Buyer on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Seller in good faith.

#### **10.4 Possession of Assets**

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

#### **10.5 Monitor**

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

#### **10.6 Simultaneous Transactions**

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

### **ARTICLE 11 GENERAL MATTERS**

#### **11.1 Confidentiality**

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

#### **11.2 Public Notices**

No press release or other announcement concerning the transactions contemplated by this Agreement shall be made by the Seller, on the one hand, or by the Buyer, on the other hand, without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or

delayed); provided, however, that subject to the last sentence of this Section 11.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings and the U.S. Proceedings) or by any stock exchange on which any of the securities of such Party or any of its affiliates are listed, or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by the Seller with the CCAA Court, the U.S. Bankruptcy Court and posted on SEDAR or such other website as may be required pursuant to Applicable Law or the rules of any relevant stock exchange; and (ii) the transactions contemplated in this Agreement may be disclosed by the Seller to the CCAA Court and the U.S. Bankruptcy Court, subject to redacting confidential or sensitive information as permitted by Applicable Law. The Parties further agree that:

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

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

### **11.3 Injunctive Relief**

- (a) The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek specific performance, injunctive and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such specific performance, injunctive or other equitable relief, this being in addition to any other remedy to which the Parties may be entitled at law or in equity.
- (b) Each Party hereby agrees not to raise any objections to the availability of the equitable remedies provided for herein and the Parties further agree that by seeking the remedies provided for in this Section 11.3, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement.



- (c) Notwithstanding anything herein to the contrary herein, under no circumstances shall a Party be permitted or entitled to receive both monetary damages and specific performance and election to pursue one shall be deemed to be an irrevocable waiver of the other.

#### **11.4 Survival**

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

#### **11.5 Expenses**

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

#### **11.6 Non-Recourse**

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

#### **11.7 Assignment; Binding Effect**

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

#### **11.8 Notices**

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as a “**Notice**”) shall be in writing and shall be sufficiently

given if delivered (whether in person, by courier service or other personal method of delivery), or if transferred by facsimile or email:

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

Total Energy Systems, LLC

Attention: Chris Stiles  
Telephone: 920-425-3311  
Email: [cstiles@totalenergysystems.com](mailto:cstiles@totalenergysystems.com)

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

Godfrey & Kahn, S.C.  
100 West Lawrence Street  
Appleton, Wisconsin 54911

Attention: Carla Andres  
Telephone: 920-831-6362  
Email: [candres@gklaw.com](mailto:candres@gklaw.com)

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

Xebec Adsorption Inc.  
730 Industriel Boulevard  
Blainville, Québec  
J7C 3V4

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

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

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

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

and the Monitor:

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

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

and counsel to the Monitor:

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

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

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

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

## **11.9 Counterparts; Facsimile Signatures**

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

## **11.10 Language**

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

*[Signature pages follow]*

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

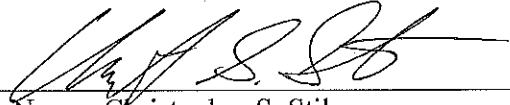
**XBC FLOW SERVICES – WISCONSIN  
INC.**

By: 

\_\_\_\_\_  
Name: Jim Vounassis  
Title: CEO & President

**TOTAL ENERGY SYSTEMS, LLC**

By:

A handwritten signature in black ink, appearing to read 'C. S. Stiles', written over a horizontal line.

Name: Christopher S. Stiles

Title: Managing Member

**SCHEDULE 1.1(h)**  
**FORM OF APPROVAL AND VESTING ORDER**

See attached.

**SUPERIOR COURT  
(Commercial Division)**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March 16, 2023

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**BEFORE THE HONOURABLE [CHRISTIAN IMMER], J.S.C.**

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

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

and  
**DELOITTE RESTRUCTURING INC.**  
Monitor

and

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**Total Energy Systems, LLC**  
Impleaded Party (Buyer)

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**APPROVAL VESTING AND ASSIGNMENT ORDER IN RESPECT OF THE ASSETS  
OF XBC FLOW SERVICES – WISCONSIN INC.**

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- [1] **CONSIDERING** the *Application for the Issuance of an Approval, Vesting and Assignment Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Seventh Report of the Monitor dated ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **GIVEN** the provisions of the CCAA:
- [5] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Asset Purchase Agreement dated March [9], 2023 (the “**Purchase Agreement**”) between **XBC Flow Services – Wisconsin Inc.** (the “**Seller**”), and **Total Energy Systems, LLC**, as buyer, (the “**Buyer**”), a copy of which was filed under seal as **Exhibit P-●** to the Application, and vesting in the Buyer the Purchased Assets.

**THE COURT HEREBY:**

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

**DEFINITIONS**

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

**SERVICE**

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

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

**TRANSACTION APPROVAL**

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

**EXECUTION OF DOCUMENTATION**

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

**AUTHORIZATION**

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

**VESTING OF PURCHASED ASSETS**

- [13] **ORDERS AND DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Buyer, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges or security evidenced by registration, publication or filing pursuant to any applicable legislation providing for a security interest in personal or movable property, and those Claims listed on

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**Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**")/

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

#### **CANCELLATION OF SECURITY REGISTRATIONS**

- [19] **ORDERS** that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets from any registration filed against the Petitioners, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

#### **ASSIGNMENT OF CONTRACTS**

- [20] **ORDERS** and **DECLARES** that upon the issuance of the Monitor's Closing Certificate, the rights and obligations of the Seller under the agreements listed in **Schedule "C"** hereto, as they may have been amended or restated from time to time (the "**Assumed Contract(s)**"), are automatically and irrevocably assigned to the Buyer without any further consents or approvals of this Court.

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- [21] **ORDERS** that all Cure Costs in relation to the Assumed Contracts, which are set out in Schedule C, shall be remedied by the Buyer no later than thirty (30) days following issuance of the Monitor's Closing Certificate.
- [22] **ORDERS** that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.
- [23] **ORDERS** that the Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the Buyer in accordance with their terms for the benefit of the Buyer.
- [24] **ORDERS** and **DIRECTS** the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts, if any.
- [25] **AUTHORIZES** the Petitioners, the Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts to the Buyer in accordance with this Order.

#### **PROTECTION OF PERSONAL INFORMATION**

- [26] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the "**Applicable Privacy Laws**"), the Petitioners and the Monitor are authorized to disclose and transfer to the Buyer the personal information in the custody or control of the Petitioners set out in the Purchase Agreement (the "**Disclosed Information**"). The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Petitioners.
- [27] **ORDERS** that the Buyer shall:
- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;
  - (b) use and disclose the Disclosed Information for the purposes for which the Disclosed Information was collected by the Petitioners and as may otherwise be permitted by Applicable Privacy Laws; and

- (c) give effect to any withdrawals of consent of the individuals to whom the Disclosed Information relates.

**VALIDITY OF THE TRANSACTION**

[28] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act.*, RSC 1985, c B-3 BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

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

**THE MONITOR**

- [29] **DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.
- [30] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.
- [31] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

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

**SEALING**

- [33] **ORDERS** that Exhibit P-● to the Application shall be filed under seal and kept confidential until further order of this Court.

**GENERAL**

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

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[39] **THE WHOLE** without costs.

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**Christian Immer, JCS**

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

Hearing date: **March 16, 2023**

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**SCHEDULE A  
CERTIFICATE OF THE MONITOR**

**CANADA**

**PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Commercial Division)

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

No.: 500-11-061483-224

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

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

Debtor/Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

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## CERTIFICATE OF THE MONITOR

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### RECITALS:

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

**WHEREAS** on March [16], 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") authorizing and approving, *inter alia*, the execution of a Asset Purchase Agreement dated March [9], 2023 by and among **XBC Flow Services - Wisconsin** (the "**Seller**") and **Total Energy Systems, LLC** as buyer (the "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

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

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

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

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

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

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\*\*\*\*\*

**SCHEDULE B**

**ENCUMBRANCES TO BE VESTED**

**SCHEDULE C**

**ASSUMED CONTRACTS**

1. AT&T Contract(s) including the landline telephone number and employee cell phones.
2. All open Purchase Orders as of the Effective Date excluding, for greater certainty, any intercompany Purchase Orders.

**SCHEDULE 2.1(a)**  
**ACCOUNTS RECEIVABLE**

See attached.

**[REDACTED]**

**SCHEDULE 2.1(c)**  
**INVENTORY**

See attached.

XBC Flow Services - Wisconsin Inc. ("XBC")

Schedule 2.1(c) - Inventory

As at March 10, 2023

\$ USD

Air Dryer	39,397.20
Air End	4,600.00
Air Line	41,424.03
Air Receiver	6,747.86
Auto Drain	388.80
Compressed Air Equipment	2,706.60
Equipment	2,500.00
Lubricants	72,713.17
Machine	217,519.08
Service Parts	441,091.87
Truck Blower	2,176.54
<b>Total</b>	<b>831,265.15</b>

**SCHEDULE 2.1(d)**  
**FIXED ASSETS AND EQUIPMENT**

See attached.

**Computers & Computer Software**

Computer - Green Bay	350.33
Dell Computer System	1,890.00
B-Tek Software	250.33
Software Updates	999.83
B-Tek Service	375.33
<b>Computers &amp; Computer Software - Total</b>	<b><u>3,865.83</u></b>

**Furnitures & Fixtures**

Office Furniture	1,256.83
Office Furniture Ressources	3,060.00
<b>Furnitures &amp; Fixtures - Total</b>	<b><u>4,316.83</u></b>

**Leasehold Improvements**

Windows	1,440.33
Overhead Dock Door	1,530.17
Heaters	6,390.17
Warehouse Improvements	7,379.83
<b>Leasehold Improvements - Total</b>	<b><u>16,740.50</u></b>

**Machinery & Equipment**

Flow Meter	1,964.50
Rugged Roam Trailer	2,043.17
Trailer	2,160.50
Recovery Unit & Accessories	1,296.83
2 Flow Meters	393.17
Hydraulic Ram	393.17
Freon Removal & Installation	786.33
Pipe Threader & Stand	2,357.67
Trailer Hitch	393.17
Tiger Supplies Equipment	3,378.67
Uline Equipment (3/20)	5,264.50
Uline Equipment (4/20)	3,221.33
Uline Equipment (5/20)	1,492.67
2014 Atlas Copco XAS 185 JD	10,607.67
2014 Atlas Copco XAS 400 JD	10,607.67
<b>Machinery &amp; Equipment - Total</b>	<b><u>46,361.00</u></b>

**Office Equipment**

Copier	350.33
Office Equipment - Logic System	699.67
Copy Machine	350.33
B-Tek Equipment	875.33
<b>Office Equipment - Total</b>	<b><u>2,275.67</u></b>



XBC Flow Services - Wisconsin Inc. ("XBC")  
Schedule 2.1(d) - Fixed Assets  
As at March 01, 2023

Estimated NBV - USD

**Vehicles**

2002 Chevy Silverado	3,500.33
Nissan NV Cargo Van	3,500.33
2012 Chevy Silverado	TBD
2020 Chevy Silverado	31,022.83
2021 Chevy Silverado	39,246.17
	<hr/>
	<b>77,269.67</b>

**Fixed Assets - Total**

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**150,829.50**

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*The estimated net book value is based on listings provided by the finance team and taking into consideration 2 months of amortization to reflect value as of March 01, 2023.*

**SCHEDULE 2.1(e)**

**VEHICLES**

1. 2020 Chevy Silverado 3500 HD, VIN 1GC4YUE79LF297472
2. 2021 Chevy Silverado 3500 HD, VIN 1GC4YUE71MF256111
3. 2017 Nissan NV3500 van, VIN 1N6AFOLY1HN807918
4. 2012 Chevy Silverado, VIN 1N6AFOLY1HN807918

**SCHEDULE 2.1(h)**  
**ASSUMED CONTRACTS**

**[REDACTED]**

## **SCHEDULE 2.1(j)**

### **IT ASSETS**

Computer – Green Bay.

Dell Computer System.

Computer Service.

B-Tek Software.

Software Updates.

B-Tek Service.

B-Tek Equipment

Copy Machine

Copier

Office Equipment – Logic System

**EXHIBIT P-6A**  
**Copy of the Total Energy APA**  
**(confidential and under seal)**

**EXHIBIT P-7**  
**Amended and Restated List of Participants in the KERPs**  
**(confidential and under seal)**

**EXHIBIT P-8**

**Draft EnergyLink Approval, Vesting and  
Assignment Order**

**SUPERIOR COURT  
(Commercial Division)**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March 16, 2023

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

---

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

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

and  
**DELOITTE RESTRUCTURING INC.**  
Monitor

and

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**ENERGYLINK U.S. INC.**  
Impleaded Party (Buyer)

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**APPROVAL VESTING AND ASSIGNMENT ORDER IN RESPECT OF THE ASSETS  
OF XEBEC SYSTEMS, USA LLC**

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- [1] **CONSIDERING** the *Application for the Issuance of an Approval, Vesting and Assignment Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Seventh Report of the Monitor dated ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **GIVEN** the provisions of the CCAA:
- [5] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Asset Purchase Agreement dated March 14, 2023 (the “**Purchase Agreement**”) between **Xebec Systems USA LLC** (the “**Seller**”), and **EnergyLink U.S. Inc.**, as buyer, (the “**Buyer**”), a copy of which was filed under seal as **Exhibit P-9A** to the Application, and vesting in the Buyer the Purchased Assets.

**THE COURT HEREBY:**

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

**DEFINITIONS**

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

**SERVICE**

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

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

**TRANSACTION APPROVAL**

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

**EXECUTION OF DOCUMENTATION**

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

**AUTHORIZATION**

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

**VESTING OF PURCHASED ASSETS**

- [13] **ORDERS AND DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Buyer, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges or security evidenced by registration, publication or filing pursuant to any applicable legislation providing for a security interest in personal or movable property, and those Claims listed on

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**Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**").

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

#### **CANCELLATION OF SECURITY REGISTRATIONS**

- [19] **ORDERS** that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets from any registration filed against the Petitioners, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

#### **ASSIGNMENT OF CONTRACTS**

- [20] **ORDERS** and **DECLARES** that upon the issuance of the Monitor's Closing Certificate, the rights and obligations of the Seller under the agreements listed in **Schedule "C"** hereto, as they may have been amended or restated from time to time (the "**Assumed Contract(s)**"), are automatically and irrevocably assigned to the Buyer without any further consents or approvals of this Court.

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- [21] **ORDERS** that all Cure Costs in relation to the Assumed Contracts, which are set out in Schedule C, shall be remedied by the Buyer no later than thirty (30) days following issuance of the Monitor's Closing Certificate.
- [22] **ORDERS** that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.
- [23] **ORDERS** that the Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the Buyer in accordance with their terms for the benefit of the Buyer.
- [24] **ORDERS** and **DIRECTS** the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts, if any.
- [25] **AUTHORIZES** the Petitioners, the Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts to the Buyer in accordance with this Order.

**PROTECTION OF PERSONAL INFORMATION**

- [26] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the "**Applicable Privacy Laws**"), the Petitioners and the Monitor are authorized to disclose and transfer to the Buyer the personal information in the custody or control of the Petitioners set out in the Purchase Agreement (the "**Disclosed Information**"). The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Petitioners.
- [27] **ORDERS** that the Buyer shall:
- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;
  - (b) use and disclose the Disclosed Information for the purposes for which the Disclosed Information was collected by the Petitioners and as may otherwise be permitted by Applicable Privacy Laws; and

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- (c) give effect to any withdrawals of consent of the individuals to whom the Disclosed Information relates.

**VALIDITY OF THE TRANSACTION**

[28] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act.*, RSC 1985, c B-3 BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

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

**THE MONITOR**

- [29] **DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.
- [30] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.
- [31] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

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

**SEALING**

- [33] **ORDERS** that Exhibit P-9A to the Application shall be filed under seal and kept confidential until further order of this Court.

**GENERAL**

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

Draft

[39] **THE WHOLE** without costs.

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**Christian Immer, JCS**

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

Hearing date: **March 16, 2023**

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**SCHEDULE A**  
**CERTIFICATE OF THE MONITOR**

**CANADA**

**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Commercial Division)

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

No.: 500-11-061483-224

---

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

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

Debtor/Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

Draft



**CERTIFICATE OF THE MONITOR**

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**RECITALS:**

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

**WHEREAS** on March [16], 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") authorizing and approving, *inter alia*, the execution of a Asset Purchase Agreement dated March 14, 2023 by and among **Xebec Systems USA LLC** (the "**Seller**") and **EnergyLink U.S. Inc.** as buyer (the "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

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

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

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

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

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

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**SCHEDULE B**

**ENCUMBRANCES TO BE VESTED**

Draft

**SCHEDULE C**

**ASSUMED CONTRACTS**

<b>Ref.</b>	<b>Type</b>	<b>Description</b>	<b>Cure Costs</b>	<b>Trade Payables</b>
<i>In USD</i>				
Rent- 9461 Willow Ct.	Supplier	Real Property Lease Agreement dated November 1, 2015 by and between UE Compression LLC and UEC, LLC relating to that certain real property located in Adams County Colorado, together with the building having a street address of 9461 Willow Ct. Henderson, Colorado 80640	0	0
Rent – 3205 Hesper Rd (Billings MT)	Supplier	Real Property Lease Agreement dated April 1, 2019 by and between Russ C. Clark and UEC Billings, MT relating to that certain real property located in Billings, Mt Yellowstone County, referred to as Unit B 3205 Hesper Rd. Billings, MT 59102	0	0
Rent – 953 Foster Rd (Casper, WY)	Supplier	Real Property Lease Agreement dated March 15, 2022 by and between CIC, LLC and UEC, LLC relating to the real property situated at 953 Foster Road, Casper WY 82601 encompassing approximately 3200 square feet	0	0
Cisco Systems Capital	Supplier	Equipment Lease Agreement by and between UEC, LLC and Cisco Capital Corporation relating to that certain quote dated June 18, 2020	0	0

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<p>SCS Carbon Removal, LLC (Summit)</p>	<p>Client</p>	<p>Gas Agreements by and between SCS Carbon Removal, LLC and Xebec Systems USA LLC, dated March 25, 2022, as modified on April 15, 2022 and April, 22, 2022, as the case may be, and by and between SCS Carbon Removal, LLC and UEC, LLC, dated November 19, 2021</p> <p>Contract #: No. NY01-2003548654-V12 Type: Gas Agreements</p>	<p>*Subject to agreement between Buyer and SCS</p>	
<p>Frank Lill &amp; Son Inc.</p>	<p>Client</p>	<p>Purchase Agreement dated June 15, 2020 and amended on June 23, 2020, by and between UEC, LLC and Frank Lill &amp; Son, Inc. relating to various engineering, material, equipment and labour</p> <p>Contract #: SW-119214-006 Type: Gas Agreements</p>	<p>0</p>	<p>0</p>
<p>Gilbane Alberici Construcciones Mexico</p>	<p>Client</p>	<p>Purchase Agreement dated September 2, 2021 by and between UEC, LLC and Gilbane Alberici Construcciones Mexico, S. de R.L. de C.V. relating to the KGM Expansion of the Clients Brewery in Obregon, Mexico</p> <p>Contract #: V08940.200-0024 Type: Gas Agreements</p>	<p>0</p>	<p>0</p>
<p>PDC Energy</p>	<p>Client</p>	<p>Purchase Orders December 8, 2022 and February 2, 2023, by and between UEC, LLC and PDC Energy relating to Instrument Air Skid Packages</p> <p>Contract #: DJ20220673 and DJ20230534 Type: Doghouses</p>	<p>0</p>	<p>0</p>

Draft

Evraz	Client	Purchase Order dated July 30, 2021 and revised on January 21, 2022 by and between UEC, LLC (d.b.a. UE Compression) and Palmer NA LLC (d.b.a. Evraz Palmer North America) relating to the SC-10 UEC Air Compressor Package  Contract #: PO 4000223 Type: Air Compressors agreement	0	0
Clean Harbors Environmental	Client	Purchase Order dated August 23, 2022 by and between UEC, LLC and Clean Harbors Environmental Services relating to various items including Electra Saver G2 Oil Flooded Rotaries, Nitrogen Generators, Externally Heated Reg Dryers and Air Aftercoolers  Contract #: PO 1311245 Type: Air Compressors agreement	0	0
Andeavor Logistics (Marathon)	Client	Purchase Order dated December 5, 2022 and modified on December 8, 2022 by and between UEC, LLC and Andeavor Field Services LLC relating to an Instrument Air Package (air compressor package with 5,000 Gal Dry Receiver)  Contract #: PO 4500354087 Type: Air Compressors agreement	0	0
Anadarko	Client	Purchase Order relating to that certain Master Service Agreement dated February 7, 2012 by and between UE Compression, LLC and Anadarko Petroleum Corporation relating to the utilization, preparation, provision, sale or lease of various goods provided by UE Compression, LLC  Contract #: PO 4501060505 Type: Air Compressors agreement	0	0

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Verdad Resources	Client	Purchase Order dated September 15, 2022 by and between UEC, LLC and Verdad Resources relating to ten packages containing one Gardner Denver reciprocating air compressor mounted on Dry Tank, one NANO Heatless Regenerative Dryer and Filters, and Trico Fluid Storage Container for condensate collection  Contract #: PO 22-0003-3-UEC Type: Doghouses	0	0
Siemens Energy - Passaic Valley Sewerage Commission- US 1541	Client	Purchase Order dated June 14, 2019 with added line items 10 & 11 pertaining to storage, following various Change Orders and as amended on June 27, 2022, by and between UEC, LLC and Siemens Energy, Inc.  Contract #: PO 4500809299 (Added Lines 10 & 11)  Type: Gas Compressors	0	0
Southern California Gas	Client	Purchase Order dated July 12, 2022 by and between UEC, LLC and Southern California Gas relating to Rogers Machinery/Kobelco KNWA0-C/H 75 HP units  Contract #: PO 4400169424  Type: Air Compressors agreement	0	0

Draft

## **EXHIBIT P-8A**

**Comparison between the EnergyLink Approval,  
Vesting and Assignment Order and the model  
approval and vesting order published by the  
Barreau de Montréal**



SUPERIOR COURT  
(Commercial Division)

CANADA PROVINCE OF QUÉBEC DISTRICT OF MONTRÉAL

No. : 500-11-061483-224

DATE: ~~●~~

~~PRESIDING~~ March 16, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

~~●~~  
~~Debtor~~

~~—~~  
~~-and-~~

~~●~~  
~~THE LAND REGISTRAR FOR THE LAND REGISTRY~~

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

~~OFFICE FOR THE REGISTRATION DIVISION OF (Québec)/~~

Draft

XBC FLOW SERVICES – WISCONSIN  
INC. CALIFORNIA COMPRESSION, LLC  
XEBEC SYSTEMS USA, LLC

Debtors / Petitioners

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

~~— Mis-en-Cause~~

~~-~~

~~and-~~

~~— [Petitioner]<sup>4</sup>~~

~~-and-~~

~~•  
— [Receiver/Trustee/  
DELOITTE RESTRUCTURING INC.  
Monitor]~~

and

~~<sup>4</sup>— Under section 243(1) of the BIA, the sale of assets of an insolvent debtor by the receiver may be ordered at the request of the secured creditor. In such a case, the secured creditor would be the petitioner.~~

ENERGYLINK U.S. INC.  
Impleaded Party (Buyer)

**APPROVAL ~~AND VESTING~~ AND ASSIGNMENT ORDER<sup>2-3</sup> IN RESPECT OF THE  
ASSETS OF XEBEC SYSTEMS, USA LLC**

[1] ~~ON READING~~ **CONSIDERING** the ~~[Debtor/Petitioner/Receiver/Trustee/Monitor]'s Motion Application for the Issuance of an Approval and Vesting and Assignment Order (the "Motion"), the affidavit~~ **Application**) pursuant to the Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended ("CCAA") and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof, ~~as well as;~~

[2] **CONSIDERING** the Seventh Report of the ~~[Receiver/Trustee/Monitor]~~ dated ~~(the "Report")~~ **●**, 2023;

~~[2] SEEING the service of the Motion<sup>4</sup>;~~

[3] ~~SEEING~~ **CONSIDERING** the submissions of ~~[Debtor/Receiver/Trustee/Monitor]'s attorneys and~~ counsel;

[4] **GIVEN** the ~~submissions~~ provisions of ~~●~~ the CCAA:

[5] ~~[4] SEEING~~ **CONSIDERING** that it is appropriate to issue an order approving the sale transaction(s) (the "Transaction") contemplated by the agreement entitled Asset Purchase Agreement dated March 14, 2023 (the "Purchase Agreement") ~~by and between [Debtor/Receiver/Trustee/Monitor]~~ Xebec Systems USA LLC (the "Vendor"), ~~as vendor~~ "Seller"), and EnergyLink U.S. Inc., as buyer, (the "Purchaser" "Buyer"), ~~as purchaser,~~ a copy of which was filed under seal as Exhibit RP-9A to the Motion Application, and vesting in the

<sup>2</sup> A blacklined version must to be included with the Motion

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

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

Draft

~~Purchaser~~Buyer the ~~assets described in the Purchase Agreement (the "Purchased Assets")~~<sup>5</sup>.

~~WHEREFORE~~ THE COURT HEREBY:

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

DEFINITIONS

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

SERVICE

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

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

SALE TRANSACTION APPROVAL

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

EXECUTION OF DOCUMENTATION

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

AUTHORIZATION

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

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

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

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

~~[11] B~~ **ORDERS** and **DECLARES** that upon the issuance of a ~~[Receiver/Trustee/Monitor]'s~~ certificate substantially in the form appended as Schedule "A" hereto (the **"Certificate"**), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the **"Encumbrances"-"Claims"**), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges, or security ~~interests or charges~~ evidenced by registration, publication or filing pursuant to ~~the Civil Code of Québec, the [Province(s)] Personal Property Security Act, or any other~~ applicable legislation providing for a security interest in personal or movable property, ~~excluding however, the permitted encumbrances, easements and restrictive covenants~~ and those Claims listed on

**Schedule "B"** hereto (all of which are collectively referred to as the "Permitted Encumbrances") ~~and, for~~.

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

[14] For greater certainty, **ORDERS** that all of the Encumbrances, affecting or relating to the Purchased Assets, ~~other than the Permitted Encumbrances,~~ be ~~expunged~~cancelled and discharged as against the Purchased Assets, in each case effective as of the ~~applicable time and date~~issuance of the Monitor's Certificate.

~~[12] **ORDERS and DECLARES** that upon the issuance of the Certificate, the rights and obligations of the Vendor under the Agreements listed on **Schedule "C"** hereto (the "**Assigned Agreements**") are assigned to the Purchaser [and **ORDERS that all monetary defaults of the Debtor in relation to the Assigned Agreements – other than those arising by reason only of the insolvency of the Debtor, the commencement of proceedings under the [BIA/CCAA] or the failure to perform non-monetary obligations – shall be remedied on or before** ].~~

~~[13] **DECLARES** that upon issuance of the Certificate, the Transaction shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*. [This paragraph is only required when the sale is done by a Receiver]~~

~~[14] **ORDERS and DIRECTS** the [Vendor/Receiver/Trustee/Monitor] to serve a copy of this Order to every party to the Assigned Agreements.~~

~~[15] **ORDERS and DIRECTS** the [Receiver/Trustee/Monitor] to file with the Court a copy of the Certificate, forthwith after issuance thereof.~~

\*\*\*\*\*

**CANCELLATION OF SECURITY REGISTRATIONS**<sup>789</sup>

**For Quebec Property:**

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

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

~~[17] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to **[reduce the scope of]** or~~

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

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

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

~~[strike] the registrations number [provide details of security/encumbrances to be discharged] in connection with the Purchased Asset in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations.~~

**For Ontario Property:**

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

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

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

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

**For British Columbia Property:**

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

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

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

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

~~[22] **[NTD: For Movable Assets]: ORDERS** that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change~~

~~statements in the British Columbia Personal Property Security Registry (the "BC PPR") as may be necessary, from any registration filed against the Vendors in the BC PPR, provided that the Vendors shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendors shall be authorized to take any further steps by way of further application to this Court.~~

**For New Brunswick Property:**

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

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

\*\*\*\*\*

**NET PROCEEDS**

~~[25] **ORDERS** that the net proceeds<sup>10</sup> from the sale of the Purchased Assets (the "**Net Proceeds**") shall be remitted to the **[Receiver/Trustee/Monitor]** and shall be distributed in accordance with applicable legislation.~~

[15] ~~[26]~~ **ORDERS** that for the purposes of determining the nature and priority of ~~the Encumbrances~~Claims, the ~~Net Proceeds~~net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that ~~upon payment~~from and after the delivery of the ~~Purchase Price (as defined in the Purchase Agreement)~~ by the Purchaser, ~~all Encumbrances except for the Permitted~~Monitor's Certificate all Claims and Encumbrances shall attach to the ~~Net Proceeds~~net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

[16] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Purchase Agreement and shall have no liability with respect to the delivery of the Monitor's Certificate.

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



- [17] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.
- [18] **ORDERS AND DIRECTS** the Monitor to serve on the service list in the within CCAA proceedings, post on the Monitor's website and file with the Court a copy of the Monitor's Certificate, as soon as practicable after the issuance thereof.

### **CANCELLATION OF SECURITY REGISTRATIONS**

- [19] **ORDERS** that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets from any registration filed against the Petitioners, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

### **ASSIGNMENT OF CONTRACTS**

- [20] **ORDERS** and **DECLARES** that upon the issuance of the Monitor's Closing Certificate, the rights and obligations of the Seller under the agreements listed in **Schedule "C"** hereto, as they may have been amended or restated from time to time (the "**Assumed Contract(s)**"), are automatically and irrevocably assigned to the Buyer without any further consents or approvals of this Court.
- [21] **ORDERS** that all Cure Costs in relation to the Assumed Contracts, which are set out in Schedule C, shall be remedied by the Buyer no later than thirty (30) days following issuance of the Monitor's Closing Certificate.
- [22] **ORDERS** that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.
- [23] **ORDERS** that the Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the Buyer in accordance with their terms for the benefit of the Buyer.
- [24] **ORDERS** and **DIRECTS** the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts, if any.
- [25] **AUTHORIZES** the Petitioners, the Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts to the Buyer in accordance with this Order.

### **PROTECTION OF PERSONAL INFORMATION**

[26] ~~[27]~~ **ORDERS** that, pursuant to sub-section 7(3)(c) of the ~~Canada~~ *Personal Information Protection and Electronic Documents Act, SC 2000, c 5* or any similar provision of any applicable provincial legislation (collectively, the ~~Receiver is~~ **"Applicable Privacy Laws"**), the Petitioners and the Monitor are authorized and ~~permitted~~ to disclose and transfer to the ~~Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including~~ Buyer the personal information ~~of those employees listed on Schedule "•" to~~ in the custody or control of the Petitioners set out in the Purchase Agreement (the "Disclosed Information"). The ~~Purchaser~~ Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~<sup>44</sup>. ~~[NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause];~~ Petitioners.

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

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

## **VALIDITY OF THE TRANSACTION**

[28] **ORDERS** that notwithstanding:

- (a) ~~(i)~~ the pendency of these proceedings;
- (b) ~~(ii)~~ any petition for a ~~receiving~~ bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("BIA", RSC 1985, c B-3) and any order issued pursuant to any such petition; or
- (c) ~~(iii)~~ the provisions of any federal or provincial legislation;

the vesting of ~~the~~ Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement and the assignment of the Assumed Contracts authorized by this Order, and the payments, distributions and disbursements made pursuant to or in connection with this Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the

<sup>44</sup> ~~\_. This paragraph may not be necessary depending on the nature of the Purchased Assets.~~

BIA or any other applicable federal or provincial legislation, as against the ~~Vendor~~ Petitioners, the ~~Purchaser~~ [Buyer], or the ~~Receiver/Trustee~~ Monitor], nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

## LIMITATION OF LIABILITY

### THE MONITOR

- [29] ~~DECLARES that, subject to other orders of this Court, nothing herein contained shall require the [Receiver/Trustee/Monitor] to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The [Receiver/Trustee/Monitor] shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the [BIA/CCAA];~~ DECLARES that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.
- [30] **DECLARES** that no action lies against the ~~[Receiver/Trustee/Monitor]~~ by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the ~~[Receiver/Trustee/Monitor]~~ or belonging to the same group as the ~~Receiver~~ Monitor shall benefit from the protection arising under the present paragraph.;

## GENERAL

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

~~[31] ORDERS AND DECLARES that the Transaction is exempt from the application of the Bulk Sales Act (Ontario). [NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause] [Ontario — Adapt for other common law Provinces where applicable]~~

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

~~[33] — ORDERS AND DECLARES that no provision of this Order is intended to appoint the Monitor as an officer, director or employee of any of the Petitioners, de facto or otherwise, or to create a fiduciary duty to any party, including any creditor or shareholder of the Petitioners. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Petitioners and any distribution made to the creditors of the Petitioners will be deemed to have been made by the Petitioners.~~

## SEALING

Draft

[32] **ORDERS** that ~~the Purchase Agreement be~~ Exhibit P-9A to the Application shall be filed under seal and kept confidential ~~and under seal until the earlier of a) the closing of the Transaction; or b)~~ further order of this Court.

**GENERAL**

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

[34] **DECLARES** that the ~~[Vendor/Receiver/Trustee/Monitor]~~ shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the ~~[Vendor/Receiver/Trustee/Monitor]~~ shall be the foreign representative of the Debtor. ~~All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the [Vendor/Receiver/Trustee/Monitor] as may be deemed necessary or appropriate for that purpose;~~ Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other and the Buyer.

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

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
**J.S.C.**

Attorneys for

Draft

500-11-061483-224

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Christian Immer, JCS

MTRE. SANDRA ABITAN MTRE. JULIEN M  
ORISSETTE MTRE. ILIA KRAVTSOV MTRE.  
SOPHIE COURVILLE (OSLER HOSKIN &  
HARCOURT LLP)  
Attorneys for the Petitioners

Hearing date: **March 16,**

**2023**

SCHEDULE "A"

DRAFT CERTIFICATE  
OF THE [RECEIVER/  
TRUSTEE/MONITOR]

CANADA

PROVINCE OF  
QUEBEC QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR  
COURT

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File:

(Sitting as a court designated  
pursuant to the *Bankruptcy*

*and Insolvency Act, RSC*  
1985, c B-3)

No.: 500-11- 061483-224

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

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

Debtor ~~and~~ [Petitioner] ~~and~~ • [Receiver/Trustee]/Petitioners

Draft

- 2 -

-and-

DELOITTE RESTRUCTURING INC.

Monitor}

**CERTIFICATE OF THE  
[RECEIVER/TRUSTEE/MONITOR]**

**RECITALS:**

**WHEREAS** on September 29, 2022, the Superior Court of Quebec (the "Court") issued a order (the "Order") pursuant to the (the "Act") in respect of (the "Petitioners"); ~~[NTD: refer to BIA notice of intention/proposal if applicable]~~

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

**WHEREAS** on March [16], 2023, the Court issued an Order (the "Approval, Vesting and Assignment Order") ~~thereby, inter alia,~~ authorizing and approving, inter alia, the execution ~~by the Petitioner of an agreement entitled Agreement (the "of a Asset Purchase Agreement")~~ dated March 14, 2023 by and ~~between, as vendor~~ among Xebec Systems USA LLC (the "VendorSeller") and EnergyLink U.S. Inc. as ~~purchaser~~ buyer (the "Purchaser" "Buyer"), a copy of which was filed in the Court record (the "Purchase Agreement"), and into all the transactions contemplated therein (the "Transaction") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the [Receiver/Trustees/Monitor].

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

**THE [RECEIVER/TRUSTEES/MONITOR] CERTIFIES [ THAT IT HAS BEEN ADVISED BY THE VENDORSELLER AND THE PURCHASERBUYER AS TO] THE FOLLOWING:**

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

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

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

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

\*\*\*\*\*

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SCHEDULE "B"

PERMITTED

ENCUMBRANCES TO BE VESTED

Draft

**SCHEDULE "C"**

**ASSUMED CONTRACTS**

**ASSIGNED AGREEMENTS**

<u>Ref.</u>	<u>Type</u>	<u>Description</u>	<u>Cure Costs</u>	<u>Trade Payables</u>
<u>In USD</u>				
<u>Rent- 9461 Willow Ct.</u>	<u>Supplier</u>	<u>Real Property Lease Agreement dated November 1, 2015 by and between UE Compression LLC and UEC, LLC relating to that certain real property located in Adams County Colorado, together with the building having a street address of 9461 Willow Ct. Henderson, Colorado 80640</u>	<u>0</u>	<u>0</u>
<u>Rent – 3205 Hesper Rd (Billings MT)</u>	<u>Supplier</u>	<u>Real Property Lease Agreement dated April 1, 2019 by and between Russ C. Clark and UEC Billings, MT relating to that certain real property located in Billings, Mt Yellowstone County, referred to as Unit B 3205 Hesper Rd. Billings, MT 59102</u>	<u>0</u>	<u>0</u>
<u>Rent – 953 Foster Rd (Casper, WY)</u>	<u>Supplier</u>	<u>Real Property Lease Agreement dated March 15, 2022 by and between CIC, LLC and UEC, LLC relating to the real property situated at 953 Foster Road, Casper WY 82601 encompassing approximately 3200 square feet</u>	<u>0</u>	<u>0</u>
<u>Cisco Systems Capital</u>	<u>Supplier</u>	<u>Equipment Lease Agreement by and between UEC, LLC and Cisco Capital Corporation relating to that certain quote dated June 18, 2020</u>	<u>0</u>	<u>0</u>
		<u>Gas Agreements by and between SCS Carbon Removal, LLC and</u>		

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<u>SCS Carbon Removal, LLC (Summit)</u>	<u>Client</u>	<u>Xebec Systems USA LLC, dated March 25, 2022, as modified on April 15, 2022 and April, 22, 2022, as the case may be, and by and between SCS Carbon Removal, LLC and UEC, LLC, dated November 19, 2021</u>  <u>Contract #: No. NY01-2003548654-V12 Type: Gas Agreements</u>	<u>*Subject to agreement between Buyer and SCS</u>	
<u>Frank Lill &amp; Son Inc.</u>	<u>Client</u>	<u>Purchase Agreement dated June 15, 2020 and amended on June 23, 2020, by and between UEC, LLC and Frank Lill &amp; Son, Inc. relating to various engineering, material, equipment and labour</u>  <u>Contract #:</u> <u>SW-119214-006 Type: Gas Agreements</u>	<u>0</u>	<u>0</u>
<u>Gilbane Alberici Construcciones Mexico</u>	<u>Client</u>	<u>Purchase Agreement dated September 2, 2021 by and between UEC, LLC and Gilbane Alberici Construcciones Mexico, S. de R.L. de C.V. relating to the KGM Expansion of the Clients Brewery in Obregon, Mexico</u>  <u>Contract #: V08940.200-0024 Type: Gas Agreements</u>	<u>0</u>	<u>0</u>
<u>PDC Energy</u>	<u>Client</u>	<u>Purchase Orders December 8, 2022 and February 2, 2023, by and between UEC, LLC and PDC Energy relating to Instrument Air Skid Packages</u>  <u>Contract #: DJ20220673 and DJ20230534 Type: Doghouses</u>	<u>0</u>	<u>0</u>
<u>Evraz</u>	<u>Client</u>	<u>Purchase Order dated July 30, 2021 and revised on January 21, 2022 by and between UEC, LLC (d.b.a. UE Compression) and Palmer NA LLC (d.b.a. Evraz Palmer North America) relating to the SC-10 UEC Air Compressor Package</u>  <u>Contract #: PO 4000223</u> <u>Type: Air Compressors agreement</u>	<u>0</u>	<u>0</u>
		<u>Purchase Order dated August 23, 2022 by and between UEC, LLC and Clean Harbors Environmental</u>		

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<u>Clean Harbors Environmental</u>	<u>Client</u>	<p><u>Services relating to various items including Electra Saver G2 Oil Flooded Rotaries, Nitrogen Generators, Externally Heated Reg Dryers and Air Aftercoolers</u></p> <p><u>Contract #: PO 1311245</u> <u>Type: Air Compressors agreement</u></p>	<u>0</u>	<u>0</u>
<u>Andeavor Logistics (Marathon)</u>	<u>Client</u>	<p><u>Purchase Order dated December 5, 2022 and modified on December 8, 2022 by and between UEC, LLC and Andeavor Field Services LLC relating to an Instrument Air Package (air compressor package with 5,000 Gal Dry Receiver)</u></p> <p><u>Contract #: PO 4500354087</u> <u>Type: Air Compressors agreement</u></p>	<u>0</u>	<u>0</u>
<u>Anadarko</u>	<u>Client</u>	<p><u>Purchase Order relating to that certain Master Service Agreement dated February 7, 2012 by and between UE Compression, LLC and Anadarko Petroleum Corporation relating to the utilization, preparation, provision, sale or lease of various goods provided by UE Compression, LLC</u></p> <p><u>Contract #: PO 4501060505</u> <u>Type: Air Compressors agreement</u></p>	<u>0</u>	<u>0</u>
<u>Verdad Resources</u>	<u>Client</u>	<p><u>Purchase Order dated September 15, 2022 by and between UEC, LLC and Verdad Resources relating to ten packages containing one Gardner Denver reciprocating air compressor mounted on Dry Tank, one NANO Heatless Regenerative Dryer and Filters, and Trico Fluid Storage Container for condensate collection</u></p> <p><u>Contract #: PO 22-0003-3-UEC</u> <u>Type: Doghouses</u></p>	<u>0</u>	<u>0</u>
<u>Siemens Energy Passaic Valley Sewerage</u>	<u>Client</u>	<p><u>Purchase Order dated June 14, 2019 with added line items 10 &amp; 11 pertaining to storage, following various Change Orders and as amended on June 27, 2022, by and between UEC, LLC and Siemens Energy, Inc.</u></p> <p><u>Contract #: PO 4500809299 (Added</u></p>	<u>0</u>	<u>0</u>

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<u>Commission</u> <u>US 1541</u>		<u>Lines 10 &amp;11)</u> <u>Type: Gas Compressors</u>		
<u>Southern</u> <u>California Gas</u>	<u>Client</u>	<u>Purchase Order dated July 12, 2022</u> <u>by and between UEC, LLC and</u> <u>Southern California Gas relating to</u> <u>Rogers Machinery/Kobelco KNWA0-</u> <u>C/H 75 HP units Contract #: PO</u> <u>4400169424 Type: Air Compressors</u> <u>agreement</u>	<u>0</u>	<u>0</u>

**EXHIBIT P-9**

**Redacted Copy of the EnergyLink APA**

**ASSET PURCHASE AGREEMENT**

**XEBEC SYSTEMS USA LLC**

**as Seller**

**- and -**

**ENERGYLINK US INC.**

**as Buyer**

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## ASSET PURCHASE AGREEMENT

**THIS AGREEMENT** is made as of March 14, 2023

### **BETWEEN:**

**XEBEC SYSTEMS USA LLC** a corporation governed by the laws of Delaware (the “**Seller**”)

- and -

**ENERGYLINK US INC.** a corporation governed by the laws of Delaware (the “**Buyer**”)

### **RECITALS:**

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

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

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions

In this Agreement,

- (a) “**Accounts Receivable**” means accounts receivable, bills receivable, trade accounts, book debts and insurance claims relating to the Acquired Business, including any disputed receivables, recorded as receivables in the books and records of the Seller relating to the Acquired Business or the Purchased Assets, and other amounts due or deemed to be due to the Seller relating to the Acquired Business including refunds and rebates receivable relating to the Acquired Business or the Purchased Assets and including all interest accrued on such items, excluding any Intercompany Accounts Receivable.
- (b) “**Accrued Liabilities**” means liabilities relating to the Acquired Business incurred as of the Closing Time but which are not yet due and payable as of the Closing Time (excluding reserves and contingent amounts) to the extent they are Assumed Liabilities (for example, accounts payable).
- (c) “**Acquired Business**” means the business conducted or provided by the Seller in the year immediately prior to the date of this Agreement.
- (d) “**affiliate**” of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, in each case, whether directly or indirectly through one or more intermediaries, and “control” and any derivation thereof means the control by one Person of another Person in accordance with the following: a Person (“A”) controls another Person (“B”) where A has the power to determine the management and policies of B by contract or status (for example, the status of A being the general partner of B) or by virtue of beneficial ownership of a majority of the voting interests in B; and, for certainty and without limitation, if A owns shares to which are attached more than 50% of the votes permitted to be cast in the election of directors (or other Persons performing a similar role) of B, then A controls B for this purpose.
- (e) “**Agreement**” means this Asset Purchase Agreement, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Asset Purchase Agreement in its entirety, and unless otherwise indicated, references to Articles and Sections are to Articles and Sections in this Asset Purchase Agreement.
- (f) “**Air Products Assets**” means (i) all work in process, raw materials, inventory, parts, components and accessories; (ii) all prepaid amounts including deposits; and (iii) accounts receivable, if any, relating to, or in respect of, the Air Products Contract.

- (g) **“Air Products Contract”** means, collectively, Revision 1 to Purchase Order No. 4505509509, by and between the Seller and Air Products and Chemicals, Inc., dated as of October 1, 2021, Revision 4 to Purchase Order No. 4505509509, by and between the Seller and Air Products, LLC, dated as of March 9, 2022, and Revision 5 to Purchase Order No. 4505509509, by and between the Seller and Air Products, LLC, dated as of December 7, 2022.
- (h) **“Allocation Statement”** has the meaning given to such term in Section 3.2.
- (i) **“Amended and Restated Initial Order”** has the meaning given to such term in Recital E.
- (j) **“Applicable Law”** means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including without limitation the common law), statute, ordinance, rule, regulation, restriction, standard, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Governmental Authorizations, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Seller, the Buyer, the Acquired Business, or any of the Purchased Assets or the Assumed Liabilities.
- (k) **“Approval and Vesting Order”** means an order granted by the CCAA Court, in substantially the form attached as Schedule 1.1(k) (with only such changes as the Buyer and the Seller approve in their reasonable discretion, but in all cases in form and substance acceptable to the Monitor), and served on those Persons identified by the Seller and the Buyer, which will, among other things:
  - (i) authorize and approve this Agreement and the execution and delivery thereof by the Seller;
  - (ii) authorize and direct the Seller to complete the transactions contemplated by this Agreement; and
  - (iii) provide for the vesting of title to the Purchased Assets in and to the Buyer in accordance with the terms and conditions of this Agreement, free and clear of any and all claims against the Purchased Assets of every nature or kind whatsoever and howsoever arising, including all Encumbrances, upon the delivery of the Monitor’s Certificate to the Buyer indicating that the conditions precedent to the consummation of the transactions contemplated by this Agreement have been satisfied or waived (where permissible).
- (l) **“Assignment Order”** means an order or orders of the CCAA Court pursuant to applicable provisions of the CCAA, in form and substance acceptable to the Seller, the Buyer, and the Monitor, each acting in a commercially reasonable manner, authorizing and approving the assignment to the Buyer of any Assumed Contract or Real Property Lease for which a required consent has not been obtained and preventing any counterparty to the Assumed Contract or Real Property Lease from exercising any right or remedy under the Assumed Contract or Real Property Lease

by reason of any default(s) arising from the CCAA Proceedings, the insolvency of the Seller, the assignment of the Assumed Contract or Real Property Lease, or the failure of the Seller to perform a non-monetary obligation under the Assumed Contract or Real Property Lease.

- (m) “**Assumed Contracts**” has the meaning given to such term in Section 2.1(h).
- (n) “**Assumed Employee Plans**” has the meaning given to such term in Section 7.8(e).
- (o) “**Assumed Employees**” has the meaning given to such term in Section 7.8(c).
- (p) “**Assumed Liabilities**” has the meaning given to such term in Section 2.3.
- (q) “**Brightmark Assets**” means (i) all work in process, raw materials, inventory, parts, components and accessories; (ii) all prepaid amounts including deposits; and (iii) accounts receivable, if any, relating to, or in respect of, the Brightmark Contract.
- (r) “**Brightmark Contract**” means that certain Master Agreement for Purchase of Machinery and Equipment with Installation issued by Brightmark RNG Origination LLC to Xebec Adsorption Inc., together with all related Task Orders (defined therein).
- (s) “**Business Day**” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Montréal, Québec, Calgary, Alberta or Denver, Colorado are open for commercial banking business during normal banking hours.
- (t) “**Buyer**” has the meaning given to such term in the preamble to this Agreement.
- (u) “**Buyer Employee Plans**” means the Plans maintained, funded or otherwise contributed to, or required to be maintained, funded or contributed to, by or on behalf of the Buyer.
- (v) “**Cash and Cash Equivalents**” means cash, bank balances, moneys in possession of banks and other depositories, term or time deposits, marketable securities, bankers’ acceptance, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents of, owned or held by or for the account of the Seller (but specifically excluding any cash payable by the Buyer to any Seller pursuant to this Agreement).
- (w) “**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada).
- (x) “**CCAA Court**” means the Superior Court of Québec (Commercial Division) in the District of Montréal.
- (y) “**CCAA Proceedings**” means the proceedings commenced under the CCAA by the Xebec Group pursuant to the Initial Order (Court File No. 500-11-061483-224).
- (z) “**Claims**” includes all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions,

information or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

- (aa) **“Closing”** means the completion of the sale and purchase of the Purchased Assets pursuant to this Agreement at the Closing Time, and all other transactions contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Assets.
- (bb) **“Closing Date”** means a date no later than five (5) Business Days after the conditions set forth in Article 6 have been satisfied (or such other date agreed to by the Parties in writing), other than the conditions set forth in Article 6 that by their terms are to be satisfied or waived at the Closing; provided that, the Closing Date shall be no later than the Sunset Date.
- (cc) **“Closing Documents”** means all contracts, agreements and instruments required by this Agreement to be delivered by or on behalf of a Party at or before the Closing.
- (dd) **“Closing Time”** means 0:01 a.m. (Montréal time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.
- (ee) **“Confidential Information”** means non-public, confidential, personal or proprietary information which is furnished to the Buyer by the Seller or any of the Seller’s representatives or the Monitor, including, without limitation, information about identifiable individuals, any information relating to the Seller and its affiliates, or any customer or supplier of the Seller, but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Buyer or its representatives in breach of this Agreement or that is received by the Buyer from an independent third party that, to the knowledge of the Buyer, after good faith inquiry, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of Personal Information) or that is independently developed by the Buyer’s employees or representatives without access or reference to any Confidential Information.
- (ff) **“Contracts”** means contracts, licenses, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which the Seller is a party or by which the Seller is bound or under which the Seller has, or will have, any right or any liability or contingent right or liability (in each case, whether written or oral, express or implied) relating to the Acquired Business or the Purchased Assets and includes quotations, orders, proposals or tenders which remain open for acceptance and warranties and guarantees, but excluding the Real Property Leases.

- (gg) “**Cure Costs**” means all amounts necessary to cure any monetary defaults as a condition to assuming the Assumed Contracts and the Real Property Leases.
- (hh) “**Deposit**” means the amount of US \$300,000 delivered by the Buyer to the Monitor within one Business Day of the date of this Agreement, to be held by the Monitor in a non-interest-bearing trust account in accordance with the SISP.
- (ii) “**DIP Facility**” means (i) the senior secured superpriority debtor-in-possession credit agreement among Xebec (as borrower), certain subsidiaries and affiliates of Xebec (as guarantors) and National Bank of Canada and Export Development Canada (as pari passu lenders) dated as of October 20, 2022, and as may be amended, restated, supplemented and/or modified from time to time and (ii) any additional senior secured superpriority debtor in-possession credit facility that may be authorized by the Court as may be amended, restated, supplemented and/or modified from time to time.
- (jj) “**EDC Credit Agreement**” means the credit facility agreement dated as of July 16, 2021, among Xebec Holding USA Inc. (as borrower), Xebec (as guarantor) and Export Development Canada, as lender, as renewed, replaced, amended, substituted or restated from time to time.
- (kk) “**Employee Plans**” means the Plans that are: (i) for the benefit of Employees (or any spouses, dependents, survivors or beneficiaries of such Employees); (ii) maintained, sponsored or funded by a Seller; or (iii) under which a Seller has, or will have, any liability, each such Plan being listed on Schedule 1.1(kk).
- (ll) “**Employees**” means, in respect of the Acquired Business and Purchased Assets, any and all: (i) Employees of the Seller who are actively at work (including full-time, part-time or temporary employees); and (ii) Employees of the Seller who are on statutory or approved leaves of absence (including maternity leave, parental leave, short-term or long-term disability leave, workers’ compensation and other statutory leaves).
- (mm) “**Employees of the Seller**” means all current or former officers, employees, individual consultants and service providers of the Seller or any predecessors of the Seller.
- (nn) “**Encumbrance**” means any security interest, lien (whether contractual, statutory or otherwise), prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, liability, mortgage, trust (including any deemed or constructive trust), right-of-way, servitude, easement, lease, restriction, development or similar agreement, title defect, option or adverse claim or encumbrance of any nature or kind including any and all CCAA Court ordered charges granted in the CCAA Proceedings and any liens, claims or encumbrances of any kind granted pursuant to orders entered in the U.S. Proceedings.
- (oo) “**Environment**” means the environment or natural environment as defined in any Environmental Laws and includes the atmosphere, air, surface water, ground water, land surface, soil, plants, animals and subsurface strata.



- (pp) “**Environmental Approvals**” means permits, certificates, licences, authorizations, consents, agreements, instructions, directions, registrations or approvals required by a Governmental Authority pursuant to an Environmental Law relating to the Acquired Business or the Purchased Assets.
- (qq) “**Environmental Law**” means Applicable Laws relating to the protection of human health and the Environment, including remediation of the Environment, and includes Applicable Laws relating to the storage, generation, use, handling, manufacture, processing, transportation, treatment, Release, remediation, management and disposal of Hazardous Substances.
- (rr) “**Excluded Assets**” has the meaning given to such term in Section 2.2.
- (ss) “**Excluded Contracts**” has the meaning given to such term in Section 2.2(c).
- (tt) “**Excluded Intellectual Property**” has the meaning given to such term in Section 2.2(m).
- (uu) “**Excluded Liabilities**” has the meaning given to such term in Section 2.4.
- (vv) “**Filing Date**” means September 29, 2022.
- (ww) “**Final**” with respect to any order of any court of competent jurisdiction, means that such order shall not have been stayed, appealed, varied (except with the consent of the Buyer and the Seller, each acting in a commercially reasonable manner) or vacated, and all time periods within which such order could at law be appealed shall have expired.
- (xx) “**Financial Advisor**” means National Bank Financial Inc. in its capacity as financial advisor of the Seller in connection with the SISP and not in its personal capacity.
- (yy) “**Governmental Authority**” means any applicable transnational, federal, provincial, municipal, state, local, national or other government, regulatory authority, governmental department, agency, commission, board, tribunal, bureau, ministry, court, system operator, judicial body, arbitral body or other law, rule or regulation-making entity, or any entity, officer, inspector, investigator or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case:
  - (i) having jurisdiction over a Seller, the Buyer, the Acquired Business, the Purchased Assets or the Assumed Liabilities on behalf of any country, province, state, locality, or other geographical or political subdivision thereof; or
  - (ii) exercising or entitled to exercise any administrative, judicial, legislative, regulatory or taxing authority or power.
- (zz) “**Governmental Authorizations**” means authorizations, approvals (including the Environmental Approvals), plans, franchises, orders, certificates, consents,

directives, notices, licenses, permits, variances, registrations or other rights issued to or required by the Seller relating to the Acquired Business or any of the Purchased Assets by or from any Governmental Authority.

- (aaa) “**Hazardous Substances**” means pollutants, contaminants, wastes of any nature, hazardous substances, hazardous materials, toxic substances, prohibited substances, dangerous substances or dangerous goods regulated by or under Environmental Laws.
- (bbb) “**including**”, “**include**” and “**includes**” shall be interpreted on an inclusive basis and shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.
- (ccc) “**Initial Order**” means the Initial Order granted by the CCAA Court on September 29, 2022, pursuant to which Xebec and certain of its affiliates and subsidiaries were granted protection from their creditors under the CCAA (as amended, restated, supplemented and/or modified from time to time).
- (ddd) “**Insolvency Proceedings**” means any action, application, petition, suit or other proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect, for the relief from or otherwise affecting creditors of the Seller, including without limitation under the *Bankruptcy and Insolvency Act* (Canada) (including the filing of a notice of intention to make a proposal), CCAA (including the CCAA Proceedings), the *Winding-Up and Restructuring Act* (Canada), the *Canada Business Corporations Act* or the U.S. Bankruptcy Code by, against or in respect of the Seller.
- (eee) “**Intellectual Property**” means any and all intellectual property or similar proprietary rights used or held by the Seller, including all patents, patent applications, trademarks, industrial designs, trade names, service marks (and all goodwill associated with any of the foregoing), copyrights, technology, software, data and database rights, trade secrets, proprietary information, domain names, know-how and processes and other intellectual property, whether registered or not, throughout the world, including those listed on Schedule 1.1(eee).
- (fff) “**Intercompany Accounts Receivable**” has the meaning given to such term in Section 2.2(1).
- (ggg) “**Inventory**” has the meaning given to such term in Section 2.1(c).
- (hhh) “**Investment Canada Act**” means the *Investment Canada Act* (Canada).
- (iii) “**IT Assets**” has the meaning given to such term in Section 2.1(i).
- (jjj) “**Landlords**” means, collectively, the landlords under the Real Property Leases.

- (kkk) “**Letters of Credit**” means letters of credit, letters of guarantee, deposits and/or security deposits provided by or on behalf of the Seller in respect of any of the Purchased Assets listed on Schedule 1.1(kkk).
- (lll) “**Matching Security**” has the meaning given to such term in Section 2.6.
- (mmm) “**Material Adverse Effect**” means any change, event, fact, occurrence, condition or circumstance, individually or in the aggregate that: (i) has, or would reasonably be expected to have, a material adverse effect on the operations, results of operations or condition (financial or otherwise) of the Acquired Business, (ii) materially and adversely impairs the Purchased Assets or the Acquired Business or materially and adversely increases the Assumed Liabilities, each taken as a whole, or (iii) materially and adversely impedes the consummation of the transactions contemplated by this Agreement, but excluding, in the case of each of clauses (i), (ii) and (iii) any such change, event, occurrence or circumstance that results from or arises out of (A) changes in general economic conditions, (B) changes affecting the industries and markets in which the Acquired Business operates (except to the extent that such changes have a materially disproportionate effect on the Purchased Assets, the Assumed Liabilities or the Acquired Business, in each case, taken as a whole, relative to other comparable companies and entities operating in the industries in which the Seller operates), (C) changes in macroeconomic factors, interest rates, currency exchange rates or general financial or credit market conditions (except to the extent that such changes have a materially disproportionate effect on the Purchased Assets, the Assumed Liabilities or the Acquired Business, in each case, taken as a whole, relative to other comparable companies and entities operating in the industries in which the Seller operates), (D) acts of God, war, terrorism, civil unrest or hostilities, (E) the COVID-19 pandemic or other epidemic or pandemic outbreaks including any continuation thereof, (F) any change in law or its interpretation, administration or application or non-application by any Governmental Authority or in generally acceptable accounting principles, (G) any failure to meet any internal or publicly disclosed projections, forecasts, estimates or budgets of, or guidance relating to, revenue, cash flow, earnings or other financial metrics for any period, (H) any action taken (or omitted to be taken) by any Seller that is permitted under this Agreement or consented to in writing by the Buyer, (I) any announcement of the transactions contemplated by this Agreement, (J) any change or development in respect of any Excluded Asset, Excluded Liability or any matter disclosed pursuant to the terms of this Agreement, or (K) the pendency of the CCAA Proceedings and any action approved by, or motion made before, the CCAA Courts.
- (nnn) “**Material Contracts**” means, collectively:
- (i) any Contract that is reasonably likely to involve payment to or by a Seller in excess of US\$100,000 in any fiscal year; and
  - (ii) any Contract, which if terminated, would have a Material Adverse Effect.

- (ooo) “**Monitor**” means Deloitte Restructuring Inc., in its capacity as CCAA Court-appointed monitor of the Seller pursuant to the Initial Order and not in its personal capacity.
- (ppp) “**Monitor’s Certificate**” means the certificate filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Seller and the Buyer that all conditions to Closing have been satisfied or waived by the applicable Parties and that the cash portion of the Purchase Price and all applicable sales and transfer Taxes payable by the Buyer to the Seller have been received by the Monitor.
- (qqq) “**NBC Credit Agreement**” means the term loan credit agreement dated as of February 23, 2021, as amended by a consent and first amending agreement executed as of January 26, 2022, a second amending agreement dated June 30, 2022, and a forbearance agreement dated July 7, 2022, as amended on September 28, 2022, October 20, 2022 and November 28, 2022, between Xebec (as borrower), certain subsidiaries and affiliates of Xebec (as guarantors) and National Bank of Canada (as lender).
- (rrr) “**NDA**” means the confidentiality agreement between the Buyer and Xebec dated November 3, 2022.
- (sss) “**Order**” means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.
- (ttt) “**Parties**” means the Seller and the Buyer collectively, and “**Party**” means either the Seller or the Buyer, as the context requires.
- (uuu) “**Permits**” means the material Governmental Authorizations of the Seller required for the operation of the Acquired Business, including those listed on Schedule 1.1(uuu).
- (vvv) “**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity, however designated or constituted.
- (www) “**Personal Information**” means information about an identifiable individual in the possession or under the control of the Seller.
- (xxx) “**Personal Property Leases**” has the meaning given to such term in Section 2.1(f).
- (yyy) “**Plan**” means any plan, arrangement or agreement that provides any employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, change of control, pension, supplemental pension, retirement, stock option, stock purchase, stock appreciation, share unit, phantom stock, deferred compensation, sick leave, vacation, severance, cafeteria plan, flexible spending

arrangement and/or health, welfare, medical, dental, disability, life insurance, and any similar plans, arrangements or agreements.

- (zzz) “**Post-Closing Tax Period**” has the meaning given to such term in Section 7.7(b).
- (aaaa) “**Pre-Closing Tax Period**” has the meaning given to such term in Section 7.7(b).
- (bbbb) “**Premises**” means, collectively, the lands and premises which are leased to a Seller pursuant to the Real Property Leases.
- (cccc) “**Purchase Price**” has the meaning given to such term in Section 3.1.
- (dddd) “**Purchased Assets**” has the meaning given to such term in Section 2.1.
- (eeee) “**Real Property Leases**” has the meaning given to such term in Section 2.1(g).
- (ffff) “**Release**” has the meaning prescribed in any Environmental Law and includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, disposal, dumping, deposit, spraying, burial, abandonment, incineration, seepage, placement or introduction.
- (gggg) “**Restricted Rights**” has the meaning given to such term in Section 2.5(a).
- (hhhh) “**Retained Business**” means any and all businesses conducted by the Seller as of the Closing, other than the Acquired Business.
- (iiii) “**Seller**” has the meaning given to such term in the preamble to this Agreement.
- (jjjj) “**Seller Parties**” has the meaning given to such term in Section 7.6(b).
- (kkkk) “**Seller Subsidiaries**” means, collectively, each Person that is controlled by the Seller (for the purposes of this definition, “control”, as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement, or otherwise).
- (llll) “**SISP**” means the Sale and Investment Solicitation Process approved by the SISP Order (as amended, restated, supplemented and/or modified from time to time).
- (mmmm) “**SISP Milestones**” means the milestones set forth in the DIP Facility.
- (nnnn) “**SISP Order**” means the Order granted by the CCAA Court on September 29, 2022 (as amended, restated, supplemented and/or modified from time to time), which, among other things, approved the SISP.
- (oooo) “**Sunset Date**” has the meaning given to such term in Section 9.1(b).
- (pppp) “**Tax**” and “**Taxes**” includes:

- (i) taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and other government pension plan premiums or contributions; and
- (ii) any liability in respect of any items described in clause (i) payable by reason of contract, assumption, transferee liability, operation of law or otherwise.

(qqqq) **“Trade Debt”** has the meaning given to such term in Section 2.3(b).

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

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

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

(uuuu) **“U.S. Cure Notice”** means a notice sent by Seller’s counsel to all counter parties under the Assumed Contracts giving notice of the monetary obligations required under such contract to effectuate a cure under Section 365 of the U.S. Bankruptcy Code. **“U.S. Proceedings”** has the meaning given to such term in Recital B.

(vvvv) **“U.S. Sale Order”** means an order, once final and non-appealable, entered by the U.S. Bankruptcy Court in the U.S. Proceedings under Sections 363 and 365 of the U.S. Bankruptcy Code approving the transactions contemplated herein that include reasonable and customary protections to Buyer, including under Section 363(f), (m) and (n) of the U.S. Bankruptcy Code, and is otherwise reasonably acceptable to the Buyer and the Seller.

(wwww) **“Western Assets”** means (i) all work in process, raw materials, inventory, parts, components and accessories; (ii) all prepaid amounts including deposits; and (iii) accounts receivable, if any, relating to, or in respect of, the Western Contract.

(xxxx) **“Western Contract”** means, collectively, the Purchase Order No. 4500137131, by and between the Seller and WGR Operating, LP, dated as of June 30, 2022, the Purchase Order No. 4500137466, by and between the Seller and WGR Operating, LP, dated as of July 10, 2022, and the Purchase Order No. 4500137467, by and between the Seller and WGR Operating, LP, dated as of July 10, 2022.

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

## **1.2 Statutes**

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

## **1.3 Headings and Table of Contents**

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

## **1.4 Gender and Number**

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

## **1.5 Currency**

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

## **1.6 Invalidity of Provisions**

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

## **1.7 Knowledge**

Where any representation or warranty, or other provision, contained in this Agreement is expressly qualified by reference to, or otherwise refers to, the knowledge of: (a) the Seller, it will be deemed to refer to the actual knowledge of Xebec’s directors and officers after due inquiry of Xebec’s current employees whose employment responsibilities relate to the matters that are the subject of the representations and warranties; and (b) the Buyer, it will be deemed to refer to the actual knowledge of the Buyer’s directors and officers after due inquiry of the Buyer’s current employees whose employment responsibilities relate to the matters that are the subject of the representations and warranties, in each case, without personal liability on the part of any of them.

## **1.8 Entire Agreement**

This Agreement, the schedules to this Agreement, the NDA and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions

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

### **1.9 Waiver, Amendment**

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

### **1.10 Governing Law; Jurisdiction and Venue**

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

### **1.11 Schedules**

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

<b><u>Schedule</u></b>	<b><u>Description</u></b>
Schedule 1.1(k)	Form of Approval and Vesting Order
Schedule 1.1(kk)	Employee Plans
Schedule 1.1(eee)	Intellectual Property
Schedule 1.1(kkk)	Letters of Credit
Schedule 1.1(uuu)	Permits
Schedule 2.1(b)	Prepaid Expenses
Schedule 2.1(f)	Personal Property Leases
Schedule 2.1(g)	Real Property Leases
Schedule 2.1(h)	Assumed Contracts



Schedule 2.2(c)	Excluded Contracts
Schedule 2.3(b)	Trade Debt
Schedule 7.14	Inventory

## ARTICLE 2 PURCHASE AND SALE

### 2.1 Agreement to Purchase and Sell Purchased Assets

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

- (a) *Accounts Receivable* – the Accounts Receivable and the benefit of all security (including cash deposits), guarantees and other collateral held by the Seller relating to the Acquired Business;
- (b) *Prepaid Expenses* – all prepaid expenses, rents, workers' compensation prepayments, prepaid insurance, *ad valorem* Taxes and property Taxes of the Seller relating to the Acquired Business or the Purchased Assets, and all deposits of the Seller with any supplier, public utility, lessor under any Personal Property Lease or Real Property Lease, or Governmental Authority, which shall include all other prepaid expenses, rents and deposits of the Seller set out and describe in Schedule 2.1(b);
- (c) *Inventory* – all tangible personal property and other items that are owned by the Seller for use in the conduct of the Acquired Business or sale, license, rental, lease or other distribution in the ordinary course of business, or are being produced for sale, or are to be consumed, directly or indirectly, in the production of goods or services to be available for sale, of every kind and nature and wheresoever situated relating to the Acquired Business including inventories of raw materials, spare parts, work in progress, finished goods and by-products, operating supplies, packaging materials and accessories and all parts and components in storage at Seller's premises relating to the air and gas businesses of the Seller, including parts and components stored at the Seller's vendors' shops or warehouses, and in transit (including in each case those in possession of suppliers, customers and other third parties) (collectively, the "**Inventory**");
- (d) *Fixed Assets and Equipment* – all machinery, technology and communications hardware and infrastructure, equipment, cranes, furnishings, furniture, parts, dies, molds, tooling, tools, computer hardware, supplies, accessories, office equipment and other tangible personal and moveable property (other than the Inventory) owned by the Seller for use in or relating to the Acquired Business, whether located

on the Seller's premises or elsewhere, and all rights of the Seller under warranties, indemnities, licenses, and all similar rights of the Seller against third Persons with respect to the equipment, fixed assets and tangible assets referenced herein;

- (e) *Vehicles* – all motor vehicles, including all trucks, vans, trailers, tractors, cars and forklifts owned by the Seller for use in or relating to the Acquired Business, and all rights of the Seller under warranties, indemnities, licenses, and all similar rights of the Seller against third Persons with respect to the motor vehicles referenced herein;
- (f) *Personal Property Leases* – all leases of personal or moveable property of the Seller that relate to the Acquired Business listed on Schedule 2.1(f), including all benefits, rights and options of the Seller pursuant to such leases and all leasehold improvements forming part thereof (collectively, the “**Personal Property Leases**”);
- (g) *Real Property Leases* – the leases and other agreements to occupy the Premises entered into by, or assigned in favour of the Seller and listed in Schedule 2.1(g), including all purchase options, prepaid rents, security deposits, rights to appurtenances and improvements, licenses and permits relating thereto and all leasehold improvements thereon (collectively, the “**Real Property Leases**”). If the Premises comprise more than one leased location, the Real Property Leases related to any one leased location are referred to as a “**Real Property Lease**”;
- (h) *Assumed Contracts* – all Contracts to which the Seller is a party and listed in Schedule 2.1(h), an updated version of such Schedule to be delivered by the Seller one (1) Business Day prior to the Closing Date, including without limitation all deposits previously paid to all UEC suppliers, the Personal Property Leases and Real Property Leases, together with any Contracts that are entered into by the Seller in the ordinary course of business from the date of this Agreement to the Closing Date (but excluding any Excluded Contracts) (collectively, the “**Assumed Contracts**”), and any and all claims, defenses, set-offs, recoupment and other rights arising under such Assumed Contracts, other than avoidance actions (as described in Section 2.2(i) below);
- (i) *Intellectual Property* – all Intellectual Property and rights in Intellectual Property owned by the Seller and that is used or held for use in or otherwise relate to the Acquired Business, including the following, but not including any Excluded Intellectual Property:
  - (i) all trade-marks, trade names, business names, websites and domain names, certification marks, service marks, and other source indicators, and the goodwill of any business symbolized thereby, patents, copyrights, code, applications, systems, databases, data, website content, know-how, formulae, processes, inventions, technical expertise, research data, trade secrets, industrial designs and other similar property or proprietary rights;
  - (ii) all registrations and applications for registration thereof;

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

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

## 2.2 Excluded Assets

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

- (a) *Cash and Cash Equivalents* – all Cash and Cash Equivalents;
- (b) *Corporate Records* – original Tax records and books and records pertaining thereto, minute books, share ledgers, organizational documents, corporate seals, taxpayer and other identification numbers and other documents, in each case, relating to the organization, maintenance and existence of each Seller as a Person; provided that the Buyer may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the

carrying on of the Acquired Business after Closing, including the filing of any Tax return to the extent permitted under Applicable Law;

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

- (l) *Intercompany Accounts Receivable* – any debts due or accruing due prior to the Closing Time to the Seller from any shareholder, director or affiliate of the Seller, including any Seller Subsidiary (the “**Intercompany Accounts Receivable**”);
- (m) *Excluded Intellectual Property* – all Intellectual Property exclusively relating to or in used in connection with any Excluded Assets, the Biostream assets and all Xebec Marks (the “**Excluded Intellectual Property**”); excluding, however, any Intellectual Property that comprises IT Assets which is not related exclusively to, or used exclusively in connection with, the Biostream assets or the Brightmark Assets, which shall be included in the Purchased Assets;
- (n) *Brightmark Assets* – any Brightmark Assets;
- (o) *Western Assets* – any Western Assets; and
- (p) *Air Products Assets* – any Air Products Assets.

### **2.3 Assumption of Liabilities**

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

- (a) *Obligations under Contracts and Real Property Leases, etc.* – (i) all liabilities and obligations arising under the Assumed Contracts, Personal Property Leases and Real Property Leases, to the extent first arising on or after the Closing Time, in each case, which are assigned to the Buyer hereunder and (ii) all Cure Costs;
- (b) *Trade Debt* – all post-Filing Date trade payables, including amounts necessary to cure defaults under the Assumed Contracts that are not Cure Costs, relating to the Acquired Business incurred prior to the Closing Time, as applicable, as listed on Schedule 2.3(b) (“**Trade Debt**”), an updated version of such Schedule to be delivered by the Seller one (1) Business Day prior to the Closing Date (excluding, for the avoidance of doubt, all pre-Filing Date trade payables), and any post-Filing Date trade payables relating to the Acquired Business incurred following the date such Schedule is delivered;
- (c) *Acquired Business and Purchased Assets* – all other liabilities and obligations relating to the Purchased Assets and the operation of the Acquired Business to the extent such liabilities and obligations consist of liabilities and obligations that arise in respect of and relate to the period on and after the Closing Time;
- (d) *Warranties* – all liabilities arising after the Closing Time out of or relating to services, products, or product or service warranties of the Seller or any predecessors or affiliates of the Seller sold or distributed prior to or after the Closing Time;

- (e) *Employee Matters* – all liabilities and obligations: (i) of or expressly assumed by the Buyer pursuant to Section 7.8; (ii) relating to the Buyer’s employment or termination of employment (whether or not arising under or in respect of any Buyer Employee Plan) of any Assumed Employees, to the extent arising on or after the Closing Date of such Employees; (iii) relating to the Buyer’s offer of employment or notice of continued employment to any Employee pursuant to the terms of Section 7.8; (iv) the failure of the Buyer to satisfy its obligations under Section 7.8 with respect to any Employee; (v) under any Buyer Employee Plan arising on or after the Closing Date; (vi) relating to or arising from or in connection with any Assumed Employee Plan or other Employee Plan transferred (or the liabilities of which are transferred) to the Buyer pursuant to this Agreement or by operation of Applicable Law, to the extent arising on or after the Closing Date; and (vii) related to the Assumed Employees which arise out of or result from any termination of employment, layoff, or the closing or relocation of worksites or the like of such Employees by the Buyer on or after the Closing Date;
- (f) *Environmental* – any liabilities to the extent arising out of or relating to the Acquired Business’ or the Purchased Assets’ non-compliance with Environmental Law or a Release to the Environment, and in either case, whether in respect of any facts, conditions or circumstances existing or occurring after the Closing Time;
- (g) *Taxes* – real property, personal property, and similar *ad valorem* obligations, in each case, relating to the Purchased Assets for a Tax period (or the portion thereof) beginning on or after the Closing Date, excluding, for the avoidance of doubt, any amounts described in this paragraph that are (i) income Tax or similar liabilities of the Seller for any Tax period, (ii) any Tax or similar liability related to the Excluded Assets; and
- (h) *Other Taxes* – all liabilities for (i) Canadian federal and provincial source deductions or withholding Taxes in respect of Employees of a Seller which are not yet due and payable or which arise after Closing; and (ii) any Tax that the Buyer is required to bear pursuant to Section 7.7;

## 2.4 Excluded Liabilities

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

- (a) *General* – except as expressly included in Assumed Liabilities, all liabilities to the extent arising out of the operation of the Acquired Business or the Purchased Assets

for periods prior to the Closing Time (including, for the avoidance of doubt, breaches of contract, infringement, violations of law, tortious conduct, Tax liabilities, indebtedness for borrowed money (except as expressly included in Assumed Liabilities) and intercompany liabilities);

- (b) *Contract and Real Property Leases Liabilities* – all liabilities of the Seller under the Assumed Contracts, Personal Property Leases and Real Property Leases, excluding the Cure Costs or other liabilities which, in each case, are Assumed Liabilities, incurred prior to the Closing Time, other than such liabilities as are assumed under Section 2.3(b) hereof;
- (c) *Excluded Assets* – all liabilities and obligations relating to the Excluded Assets (including any Excluded Contracts, this Agreement and the DIP Facility);
- (d) *Employee Matters* –
  - (i) any liabilities or other obligations arising under, relating to or with respect to any Employee Plan, save and except for liabilities and obligations under the Assumed Employee Plans accruing or arising after the Closing Date;
  - (ii) any liabilities or other obligations arising out of any non-Assumed Employee including, but not limited to, liabilities or obligations arising from the termination of employment, wages or other compensation (including vacation pay, bonus accrual, and other wage liability), and any claims arising out of employment with Seller; and
  - (iii) except as included in the Assumed Liabilities, all other liabilities related to the Employees of the Seller including, without limitation, all liabilities and obligations arising out of Seller's employment and/or termination of the employees;
- (e) *Trade Debt* – all pre-Filing Date trade payables relating to the Acquired Business or the Purchased Assets;
- (f) *Intercompany Accounts Payable* – any debts due or accruing due prior to the Closing Time from the Seller to any shareholder, director, officer (except amounts owing to any officer for service to the Acquired Business as an employee) or affiliate of the Seller;
- (g) *Intellectual Property Claims* – any claims against the Seller for infringement, misappropriation or other violation of any Intellectual Property of any third Person relating to any period prior to or following the Closing Time;
- (h) *Pre-Filing Debt* – all liabilities, obligations and related guarantees relating to the EDC Credit Agreement and the NBC Credit Agreement;
- (i) *Taxes* – all liabilities for Taxes of the Seller other than those Taxes specifically included in Section 2.3(g) herein; and



- (j) *Other* – Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Time, including without limitation liabilities relating to any breach of law and product liability claims, except, in each case, as specifically defined in Section 2.3 as an Assumed Liability.

## 2.5 Assignment in CCAA Court

- (a) Notwithstanding anything in this Agreement to the contrary and subject to Section 2.5(g), this Agreement shall not constitute an agreement to assign or transfer any Purchased Asset or any right thereunder if an attempted assignment or transfer (i) without the consent of a third Person, would constitute a breach or in any way adversely affect the rights of the Buyer thereunder or (ii) is not permitted or enforceable under Applicable Law, including the Permits listed on Schedule 1.1(kk) (collectively, “**Restricted Rights**”), unless the assignment is subject to the Assignment Order. The Seller shall use commercially reasonable efforts to take all such action, and do or cause to be done all such things as are reasonably necessary or proper (provided that the Seller shall not be required to incur any costs or expenses in relation thereto unless the Buyer agrees in advance to reimburse the Seller for any such costs and expenses), following the Closing Time, in order that the obligations of the Seller under such Restricted Rights may be performed in such manner that the value of such Restricted Rights is preserved and enures to the benefit of the Buyer, and that any amounts due and payable, or which become due and payable, in and under the Restricted Rights are received by the Buyer and the liabilities are satisfied by the Buyer. Subject to payment of all liabilities in respect thereof by the Buyer, the Seller shall reasonably promptly pay to the Buyer all amounts collected by or paid to the Seller in respect of all such Restricted Rights. Subject to Section 7.2, the Seller shall not, without the prior written consent of the Buyer, agree to any modification of any Restricted Rights.
- (b) If a consent to transfer the Restricted Rights to the Buyer is not obtained by the Closing Time or such assignment is not attainable, the Seller shall hold the rights, entitlements, benefits, remedies, duties and obligations under such Restricted Rights in trust for the exclusive benefit of the Buyer as bare trustee and agent; provided, however, that the Buyer acknowledges and agrees that nothing in this Section 2.5 shall operate to require any Seller to take any illegal action or commit fraud on any Person.
- (c) Notwithstanding the foregoing: (i) nothing in this Section 2.5 shall require any Seller to renew any Restricted Rights once they have expired, (ii) any efforts required of the Seller pursuant to this Section 2.5 shall (A) be subject to receipt of adequate compensation in respect of all direct incremental costs and expenses incurred in respect of or related to such arrangement, (B) be strictly on an interim basis, and (C) to the extent not prohibited, be of an administrative nature only, without any substantive function. The Buyer shall reimburse the relevant Seller for any direct incremental cost incurred and indemnify and hold each Seller harmless from and against all Claims, incurred or asserted, as a result of any actions taken pursuant to this Section 2.5.

- (d) The Seller shall maintain its existence, and shall continue to be licensed, registered or otherwise qualified and authorized to conduct its affairs and carry on business as is necessary to fulfill its obligations as set out in this Section 2.5 until the earlier of the expiry or assignment of the last Restricted Right; provided, however, that the Seller's obligations under this Section 2.5 shall expire and terminate and cease to be in effect on the date that is 30 days following Closing and shall make best efforts to extend that period to 45 days, at which time all Restricted Rights for which consent is required for the assignment of such Restricted Right which has not been obtained by such date shall be deemed, at Buyer's sole discretion, to be an Excluded Contract under this Agreement, without any adjustment of any kind whatsoever to the Purchase Price.
- (e) For the avoidance of doubt, the Parties acknowledge that the fact that any Purchased Asset constitutes a Restricted Right shall not (i) constitute a breach of any covenant hereunder, (ii) entitle Buyer to terminate this Agreement or (iii) result in any reduction of the Purchase Price payable hereunder. Any non-Restricted Right assigned pursuant to the terms of this Section 2.5 shall, when assigned, constitute an Assumed Contract hereunder from and after such date.
- (f) Subject to the terms and conditions of this Agreement, the Seller hereby agree to assign to the Buyer on the Closing Date, effective as of the Closing Time, all of the Seller's rights, benefits and interests in, to and under the Assumed Contracts and Real Property Leases, in accordance with either this Agreement or an Assignment Order. The Seller shall use its diligent efforts to obtain any necessary consents or approvals in order to assign the Assumed Contracts and Real Property Leases. The Seller will use its diligent efforts to take such other actions necessary to cause the Assumed Contracts and Real Property Leases to be assigned by the Seller to the Buyer as of the Closing Time at the expense of the Buyer, subject to Buyer's prior reasonable approval of such expense. The Buyer will use its diligent efforts to assist the Seller in obtaining any such consent.
- (g) Nothing contained in this Section 2.5 shall derogate from, or otherwise relieve the Seller of, the Seller's obligations to obtain the U.S. Sale Order.

## 2.6 Letters of Credit

On the Closing Date, the Buyer shall issue replacement letters of credit and/or security deposits for the Letters of Credit and shall use its best efforts to cause the Letters of Credit to be released and returned to the Seller without any further drawings thereunder, as soon as reasonably practicable but in no event later than ten (10) days after the Closing Date. Provided that to the extent that the Buyer is unable to cause all of the Letters of Credit to be released and returned to the Seller, without any further drawings thereunder, in lieu of issuing the replacement letters of credit and/or security deposits referred to above, the Buyer shall cause matching, unconditional and irrevocable letters of credit and/or security deposits in favour of the Seller to be provided to the Seller on the Closing Date (collectively, the "**Matching Security**") which Matching Security may be drawn upon by the Seller if and to the extent that the Seller's Letters of Credit are drawn upon from time to time and the Buyer shall reimburse the Seller for any direct incremental cost incurred and indemnify and hold the Seller harmless from and against all Claims, incurred or asserted, as a result of any Letters of Credit which are not so released and returned to the Seller.

### **ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS**

#### **3.1 Purchase Price**

The purchase price payable to the Seller for the Purchased Assets (the “**Purchase Price**”), exclusive of all applicable sales and transfer taxes, shall be the total of:

- (a) the amount of US \$3,000,000 in cash, plus
- (b) the amount of the Accrued Liabilities.

#### **3.2 Purchase Price Allocation**

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

#### **3.3 Payment of Purchase Price and Treatment of Deposit**

- (a) The Purchase Price will be satisfied as follows:
  - (i) as to the amount of the Deposit, by crediting and set-off of the Deposit against the amount of the Purchase Price by an amount equal to the Deposit;
  - (ii) the balance of the Purchase Price will be paid by wire transfer of immediately available funds at the Closing Time from the Buyer to an account of the Monitor, which account shall be specified in writing not less than two (2) Business Days prior to the Closing Date; and
  - (iii) as to the dollar value of the Accrued Liabilities, by the Buyer assuming the Accrued Liabilities.
- (b) The Deposit paid to the Monitor by the Buyer will be:
  - (i) credited to the Seller, as applicable, at the Closing Time in accordance with Section 3.3(a)(i), if the Closing is completed in accordance with the terms and conditions hereof;
  - (ii) forfeited to the Seller if the Closing does not occur by reason that this Agreement is terminated by the Seller pursuant to Section 9.1(h) in order to compensate the Seller for expenses incurred in connection with the transactions contemplated in this Agreement and the delay caused to the Seller’s efforts to sell the Purchased Assets. The entitlement of the Seller to

the Deposit in such circumstances shall not limit the Seller's right to exercise any other rights which the Seller may have against the Buyer; and

- (iii) returned to the Buyer if the Closing does not occur and the conditions in 3.3(b)(ii) are not met and shall not limit the Buyer's right to exercise any other rights which the Buyer may have against the Seller.

### **3.4 Treatment of Proceeds Following Closing**

- (a) The amount of proceeds from the Purchase Price shall be held by the Monitor pending entry of the U.S. Sale Order and shall not be released until such order has entered.
- (b) Upon the entry of the U.S. Sale Order, the proceeds may be released pursuant to an order of the CCAA Court, net of and subject to the following offsets or reimbursements, as the case may be, which shall be remitted to the Buyer by the Monitor:
  - (i) The Buyer shall be reimbursed from the proceeds for any Cure Costs and Trade Debts owed on account of the Assumed Contracts, the Assumed Real Property Leases, and the Assumed Personal Property Leases that are in excess of 110%, in the aggregate, of the sum of those amounts disclosed by Seller to Buyer and stated in Schedules 2.1(h) and 2.3(b) which, for certainty, shall not include any pre-Filing Date or post-Filing Date Cure Costs and Trade Debts owed to vendors and suppliers in connection with contracts with SCS Carbon Removal, LLC.
  - (ii) The Buyer shall be reimbursed from the proceeds for the monetary amount secured by any lien, claim or encumbrance, other than a Permitted Encumbrance, that is not discharged from the Purchased Assets pursuant to the U.S. Sale Order.
- (c) In the event the U.S. Sale Order is not entered within 60 days after the date of this Agreement, subject to extension agreed to in writing by the Buyer, Seller and Monitor, the following process shall be used to resolve any dispute among and between them:
  - (i) first, the Buyer, the Seller and the Monitor shall agree to attempt to negotiate a resolution, in good faith regarding curative steps, where applicable, that shall be taken by the Seller to resubmit a motion to approve the contemplated transaction with the U.S. Bankruptcy Court. If no curative options exist, the Parties shall negotiate in good faith a resolution regarding the treatment of the proceeds; and
  - (ii) if, after 45 days from the date of U.S. Bankruptcy Court's order denying approval of the transactions contemplated by this Agreement, the Buyer, the Seller and the Monitor cannot reach a mutually agreeable resolution as to the return of the proceeds to the Buyer, and no reasonable alternative for obtaining the U.S. Sale Order exists, and the Parties have not mutually

agreed to extend the negotiations period, then each of the Seller and the Buyer may exercise their respective rights, remedies, claims, and causes of action available under Applicable Law.

- (d) The terms of this Section 3.4 and Seller's post-closing obligations to seek and deliver the U.S. Sale Order shall survive Closing.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES BY THE SELLER**

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

##### **4.1 Corporate Existence**

The Seller is a limited liability company duly formed and validly existing under the laws of Delaware.

##### **4.2 Absence of Conflicts**

The Seller is not a party to, bound or affected by or subject to (and the assets of the Seller are not affected by): (a) any charter or by-law provision; (b) any Applicable Law or Governmental Authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority; or (c) any agreement or other document, in each case, that is material to the Acquired Business and would be violated, breached by, or under which any default would occur or with notice or the passage of time would, be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except for any violations, breaches or defaults or any Applicable Law or any Governmental Authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority, that would not have a Material Adverse Effect or materially delay or impair the ability of the Seller to consummate the transactions hereunder.

##### **4.3 Due Authorization and Enforceability of Obligations**

Subject to the issuance of the Approval and Vesting Order:

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

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

#### **4.4 Residence of the Seller**

The Seller is a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

#### **4.5 Taxes**

None of the Purchased Assets are “taxable Canadian property” for purposes of the *Income Tax Act* (Canada).

#### **4.6 Approvals and Consents**

Except for (a) the issuance of the Approval and Vesting Order, (b) any Assignment Order, and (c) any consent that may be required in connection with the assignment of a Purchased Asset, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Seller, and each of the agreements to be executed and delivered by the Seller hereunder or the sale of any of the Purchased Assets hereunder except for any authorizations, consents, approvals, filing or notices of any Governmental Authority, court or Person that would not have a material effect on or materially delay or impair the ability of the Seller to consummate the transaction hereunder. Buyer understands that the U.S. Sale Order will be entered subsequent to Closing, and that any approvals and consents required under such order are not waived by the parties and will be delivered in accordance with the terms hereof.

#### **4.7 Premises**

There are no violations of any Real Property Leases on the part of the Seller or any affiliate of the Seller or, to the Seller’s knowledge, on the part of any other party to any such Real Property Lease.

#### **4.8 Litigation**

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

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

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

#### **4.9 Cure Costs and Trade Debts on Assumed Contracts**

The Cure Costs and Trade Debt due and owing as set forth in the updated Schedules 2.1(h) and 2.3(b), respectively, are true and correct and represent all arrearages outstanding thereunder as of one Business Day prior to the Closing Date. Notwithstanding any other provision to the contrary herein, Buyer's only recourse in respect of a breach of this representation shall be as provided for in Section 3.4.

#### **4.10 No Other Representations, Warranties or Covenants**

Unless and solely to the extent expressly set forth in this Agreement, no representation, warranty or covenant is expressed or implied by the Seller, including any warranties as to title, Encumbrance, description, merchantability or fitness for a particular purpose, environmental compliance, condition, quantity or quality, or in respect of any other matter or thing whatsoever concerning the Acquired Business, the Purchased Assets, the Assumed Liabilities or the right of the Seller to sell or assign the same, as applicable. The disclaimer in this Section 4.10 is made notwithstanding the delivery or disclosure to the Buyer or its directors, officers, employees, agents or representatives of any documentation or other information (including any financial projections, estimates, budgets, offering memoranda, management presentations, due diligence materials or other supplemental data not included in this Agreement). Without limiting the generality of the foregoing, any and all conditions, warranties or representations, express or implied, pursuant to Applicable Law (including under Article 1716 of the *Civil Code of Québec*, the *Sale of Goods Act* (Ontario), the *International Convention on Contracts for the Sale of Goods* (Geneva Convention) and any other applicable sale of goods legislation) do not apply hereto and are hereby expressly waived by the Buyer.

### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER**

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

#### **5.1 Corporate Existence**

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

#### **5.2 Residence of the Buyer**

The Buyer is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

#### **5.3 Financial Ability**

The Buyer has or will have sufficient funds available at Closing to allow it to pay the Purchase Price, and all other costs and expenses in connection with the consummation of the transactions contemplated by this Agreement, including all Trade Debt. Notwithstanding anything

to the contrary contained herein, the Buyer's obligations to consummate the transactions contemplated by this Agreement are not conditioned or contingent in any way upon the receipt of financing from any person or the availability of funds to the Buyer.

#### **5.4 Absence of Conflicts**

The Buyer is not a party to, bound or affected by or subject to (and the assets of the Buyer are not affected by): (a) any charter or by-law provision; (b) any Applicable Law or Governmental Authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority; or (c) any agreement or other document, in each case, that would be violated, breached by, or under which any default would occur or with notice or the passage of time would, be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement, except in the case of (b) and (c) for any violations, breaches or defaults or any Applicable Law or any Governmental Authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued, granted or given by or from any Governmental Authority, that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder.

#### **5.5 Due Authorization and Enforceability of Obligations**

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

#### **5.6 Approvals and Consents**

Except for (a) the issuance of the Approval and Vesting Order, (b) the Assignment Order, (c) issuance of the US Sale Order, and (d) any consent that may be required in connection with the assignment of a Purchased Asset, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Buyer, and each of the agreements to be executed and delivered by the Buyer hereunder or the purchase of any of the Purchased Assets hereunder, except for any authorizations, consents, approvals, filings or notices of any Governmental Authority, court or Person that would not have a material effect on or materially delay or impair the ability of the Buyer to consummate the transactions hereunder. Seller understands that the U.S. Sale Order will be entered subsequent to Closing, and that any approvals and consents required under such order are not waived by the parties and will be delivered in accordance with the terms hereof.



## 5.7 Litigation

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

- (d) prevent the Buyer from paying the Purchase Price to the Seller;
- (e) enjoin, restrict or prohibit the transfer of all or any part of the Purchased Assets as contemplated by this Agreement; or
- (f) prevent the Buyer from or delay the Buyer in fulfilling any of its obligations set out in this Agreement or arising from this Agreement.

## 5.8 Personal Information

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

## 5.9 As Is, Where Is

- (a) The Buyer acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Acquired Business, the Purchased Assets (including the state of title thereto and/or the state of any Encumbrances), the Assumed Liabilities and all related operations of the Seller, and, based solely thereon, has determined to proceed with the transactions contemplated by this Agreement. The Buyer has relied solely on the results of its own independent investigation and verification, and the representations and warranties of the Seller expressly and specifically set forth in this Agreement, and the Buyer understands, acknowledges and agrees that all other representations, warranties and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Seller or the Acquired Business, or the quality, quantity or condition of the Purchased Assets) are specifically disclaimed by the Seller. Except for the representations and warranties of the Seller expressly and specifically set forth in Article 4, the Seller does not make or provide any warranty or representation, express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples or condition of the Purchased Assets, or any part thereof. THE BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE SELLER EXPRESSLY AND SPECIFICALLY SET FORTH IN ARTICLE 4: (A) THE BUYER IS ACQUIRING THE PURCHASED ASSETS ON AN "AS IS, WHERE IS" BASIS; AND (B) NEITHER THE SELLER, NOR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF THE SELLER, WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY OR THE MONITOR) IS MAKING, AND THE BUYER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO

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

- (b) The Buyer acknowledges and agrees that: (i) the representations and warranties of the Seller set forth in Article 4 will merge on, and shall not survive, the date of the U.S. Bankruptcy Court's entry of the U.S. Sale Order; and (ii) the Seller will not have or be subject to any liability or indemnification obligation to the Buyer or any other Person resulting from (nor will the Buyer or any other Person have any claim

with respect to) the distribution to the Buyer, the Buyer's use of, or reliance on, any information, documents, projections, forecasts or other material made available to the Buyer in certain "data rooms," confidential information memoranda or management presentations in expectation of, or in connection with, the transactions contemplated by this Agreement, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise. None of the representatives of the Seller, whether in an individual, corporate or other capacity, will have or be subject to any such liability or indemnification obligations.

- (c) The Seller acknowledges and agrees that the representations and warranties of the Buyer set forth in Article 5 will merge on, and shall not survive, the date of the U.S. Bankruptcy Court's entry of the U.S. Sale Order.
- (d) The remedies expressly set forth in this Agreement are the Parties' sole and exclusive remedies relating to this Agreement, the Closing Documents, the transactions contemplated hereby and thereby, the Acquired Business, the Purchased Assets, the Assumed Liabilities and all related operations of the Seller.
- (e) This Section 5.9 will not merge on Closing and is deemed incorporated by reference in all Closing Documents.
- (f) The Buyer acknowledges and agrees that the enforceability of this Agreement against the Seller is subject to entry of the Approval and Vesting Order.

## **ARTICLE 6 CONDITIONS**

### **6.1 Conditions for the Benefit of the Buyer and the Seller**

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

- (a) *No Law* – no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets or any of the other transactions pursuant to this Agreement shall be in effect;
- (b) *Absence of Claims* – there shall be no material claim (whether absolute, accrued, asserted or unasserted, contingent or otherwise), litigation, arbitration, expert or other dispute pending by any Governmental Authority that would reasonably be expected to prevent the consummation of the transactions pursuant to this Agreement or, if the transactions pursuant to this Agreement are consummated, would reasonably be expected to have a Material Adverse Effect;
- (c) *Court Orders* – the Approval and Vesting Order and, where required, the Assignment Order shall have been issued and entered and such orders shall not have been reversed, modified, amended or stayed; and

- (d) *Post-Closing Orders* – The U.S. Sale Order shall have been entered within 60 days after the date hereof.

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

## **6.2 Conditions for the Benefit of the Buyer**

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

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

## **6.3 Conditions for the Benefit of the Seller**

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

- (a) *Compliance with Covenants* – there shall have been no breach or non-compliance with any of the covenants, agreements and conditions under this Agreement by the Buyer resulting in a Material Adverse Effect;

- (b) *Truth of Representations and Warranties* – the representations and warranties of the Buyer contained in Article 5 shall be true and correct on and as of the Closing Date, as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date), except where the failure to be so true and correct would not, individually or in the aggregate, have a Material Adverse Effect; and
- (c) *Officer's Certificate* – the Seller shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.3(a) (*Performance of Covenants*) and 6.3(b) (*Truth of Representations and Warranties*) signed for and on behalf of the Buyer without personal liability by an executive officer of the Buyer, in form and substance satisfactory to the Seller, acting in a commercially reasonable manner.

## **ARTICLE 7 ADDITIONAL AGREEMENTS OF THE PARTIES**

### **7.1 Access to Information**

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

### **7.2 Conduct of Business Until Closing Time**

Except: (1) as contemplated or permitted by this Agreement; (2) as contemplated by the budget delivered in accordance with the DIP Facility; (3) as necessary in connection with the CCAA Proceedings; (4) as otherwise provided in the Initial Order and any other court orders, prior to the Closing Time; (5) as required by Applicable Law, to the extent reasonably practicable having regard to the CCAA Proceedings (provided that the Seller shall (a) not, without the prior written consent of the Buyer (not to be unreasonably withheld, conditioned or delayed), seek any order of the CCAA Court requiring the Seller to refrain from taking any action described in this Section

7.2, or to compel the Seller to take any action outside those described in this Section 7.2, and (b) use its commercially reasonable efforts to oppose any motion or other request seeking such an order); or (6) as consented to by the Buyer, such consent not to be unreasonably withheld, conditioned or delayed, the Seller shall:

- (a) (i) operate the Acquired Business only in the ordinary course of business in all material respects substantially as operated as of the date of this Agreement and without incurring any material additional cost of operation without the express prior written approval of the Buyer; (ii) use commercially reasonable efforts to preserve the Purchased Assets, including operating, maintaining and repairing the tangible Purchased Assets in accordance with the practice as at the date of this Agreement; (iii) use commercially reasonable efforts to preserve its business organization, including the services of its officers and employees, and its business relationships and goodwill with customers, suppliers, landlords, licensors, licensees and others having business dealings with it; (iv) pay and discharge the debts authorized by the CCAA Court in accordance with the DIP Facility; (v) use commercially reasonable efforts to maintain in full force and effect all material insurance policies and binders relating to the Acquired Business; and (vi) seek to collect the receivables of the Acquired Business in the same manner as collected since the date of this Agreement; and
- (b) not, without the prior written consent of the Buyer (the granting of such consent to be in the Buyer's sole discretion): (i) transfer, lease, license, sell, abandon, create any Encumbrance (other than Encumbrances associated with or permitted by the DIP Facility) on or otherwise dispose of any of the Purchased Assets (except in the ordinary course of business, in all material respects consistent with past practice); (ii) materially increase the compensation or benefits of any Employee, except for increases in all material respects consistent with past practice or in accordance with employment Contracts, Employee Plan or Applicable Law; (iii) establish, adopt, enter into, amend or terminate any Employee Plan or any plan, agreement or other arrangement that would be an Employee Plan if it were in existence as of the date of this Agreement; (iv) (A) materially amend, terminate or waive, relinquish or assign any Personal Property Lease, Real Property Lease or other Material Contract, (B) enter into any lease, Contract, license or other commitment related to the Acquired Business that would constitute a Personal Property Lease, Real Property Lease or other Material Contract; (v) enter into any Contract which materially restricts the ability of the Acquired Business to engage in any business in any geographic area or channel of distribution; (vi) acquire any material businesses or assets outside of the ordinary course of business in all material respects; (vii) waive, release or settle any material Claims held by it related to the Acquired Business that are included in the Purchased Assets; (viii) incur any indebtedness in respect of the Acquired Business other than Trade Debt incurred in the ordinary course of business and any Intercompany Indebtedness; or (x) agree or make a commitment, whether in writing or otherwise, to do any of the foregoing.

### **7.3 Approvals and Consents**

- (a) Within ten (10) Business Days of the date of this Agreement, to the extent mutually determined to be required, the Seller and the Buyer shall make all filings and

submissions necessary under any applicable competition, merger, antitrust, or other similar law, and the Buyer will request any expedited processing available.

- (b) The Seller, on the one hand, and the Buyer, on the other hand, will provide to the other Party copies of all submissions and filings provided to a Governmental Authority pursuant to any applicable antitrust or foreign investment regulation, and will provide reasonable opportunity to comment on such filings and submissions prior to submitting same to the Governmental Authority; notwithstanding the foregoing, submissions, filings or other written communications to a Governmental Authority may be redacted as necessary before sharing with the other Party to address reasonable solicitor-client, attorney-client or other privilege or confidentiality concerns, provided that external legal counsel to the Buyer and the Seller shall receive non-redacted versions of drafts or final submissions, filings or other written communications to the Governmental Authority on the basis that the redacted information will not be shared with their respective clients.
- (c) The Seller and the Buyer will promptly inform the other of any material communication received by such Party from any Governmental Authority or proposed to be made to any Governmental Authority, and shall provide the other Party and its counsel an opportunity to attend and participate in any meetings of a substantive nature with a Governmental Authority, with respect to any applicable antitrust or foreign investment regulation.
- (d) The Seller and the Buyer will make and use best efforts to obtain approval of any Governmental Authority required to consummate the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, the Buyer and the Seller shall each (i) use its respective best efforts to comply as expeditiously as possible with all requests of any Governmental Authority for additional information and documents, including, without limitation, information or documents requested under applicable antitrust regulation; (ii) not (A) extend any waiting period under applicable antitrust or foreign investment regulation; or (B) enter into agreement with any Governmental Authority not to consummate the transactions contemplated by this Agreement, except, in each case, with the prior consent of the other Parties hereto; and (iii) cooperate with the other Parties hereto and use best efforts to avoid, contest and resist any action, including legislative, administrative or judicial action, and to have vacated, lifted, reversed or overturned any order (whether temporary, preliminary or permanent) that delays, restricts, prevents or prohibits the consummation of the transactions contemplated by this Agreement.
- (e) As soon as reasonably possible following the date hereof, the Seller and the Buyer, in cooperation with the Monitor, shall:
  - (i) make all such filings and seek all such consents, approvals, permits and authorizations with any other Governmental Authorities whose consent is required for consummation of the transactions contemplated by this Agreement, and the Buyer will request any expedited processing available; and

- (ii) use their reasonable best efforts to obtain the issuance of the Approval and Vesting Order on or before the relevant SISP Milestones.
- (f) The Seller shall use its commercially reasonable efforts to obtain all consents, approvals and Governmental Authorizations with respect to, and provide any notices under, any Permits or Contracts required in connection with the completion of the transactions contemplated by this Agreement at or before the Closing Time on terms acceptable to the Buyer, acting reasonably. The Buyer shall use its commercially reasonable efforts to cooperate with the Seller in connection with the foregoing.

#### **7.4 No Broker**

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

#### **7.5 Covenants Relating to this Agreement**

- (a) Each of the Parties shall perform, and shall cause their affiliates to perform, all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties and the Monitor in connection therewith, and, subject to the directions of any applicable courts to the Seller, use commercially reasonable efforts to do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable and in any event prior to the Sunset Date, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, each Party shall and, where appropriate, shall cause each of its affiliates to:
  - (i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and
  - (ii) not take any action, or refrain from taking any action, and use commercially reasonable efforts to not permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.
- (b) The Parties hereby agree, and hereby agree to cause their respective representatives to, keep the other Parties informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as



reasonably requested by the other Parties or the Monitor, as to such Party's progress in terms of the satisfaction of the conditions precedent contained herein.

- (c) The Seller and the Buyer agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions as may be reasonably required to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

## 7.6 Release; Acknowledgements; Indemnity

- (a) Except as otherwise contained herein, effective as of the U.S. Bankruptcy Court's entry of the U.S. Sale Order, the Buyer hereby releases and forever discharges the Seller and its respective affiliates, and their respective successors and assigns, and all officers, directors, partners, members, shareholders, employees and agents of each of them, from any and all actual or potential Claims which such Person had, has or may have in the future to the extent relating to the Purchased Assets and the Assumed Liabilities.
- (b) The Buyer hereby agrees to indemnify the Seller, the Monitor, their respective affiliates and their respective present or former trustees, officers, directors, employees, agents and shareholders (the "**Seller Parties**"), and saves each of them fully harmless from and against, and will reimburse or compensate each of them on demand for, all losses and Claims arising from, in connection with or related in any manner whatsoever to:
  - (i) the Buyer's failure to pay when due, and perform and discharge, the Assumed Liabilities; and
  - (ii) the Buyer's access in accordance with Section 7.1.

## 7.7 Tax Matters

- (a) For purposes of any income Tax return related to the transactions contemplated in this Agreement, the Buyer and the Seller agree to report the transactions contemplated in this Agreement in a manner consistent with the Allocation Statement, and the Buyer and the Seller shall not voluntarily take any action inconsistent therewith in any such Tax return, refund claim, litigation or otherwise, unless required by applicable Tax laws. The Buyer and the Seller shall each be responsible for the preparation of their own statements and other similar forms in accordance with applicable Tax laws.
- (b) All real property Taxes, personal property Taxes and similar *ad valorem* obligations levied with respect to the Purchased Assets for a taxable period which includes (but does not end on) the Closing Date shall be calculated by the Buyer and apportioned between the Seller and the Buyer based on the number of days of such taxable period up to and including the Closing Date (such portion of such taxable period, the "**Pre-Closing Tax Period**") and the number of days of such taxable period after the Closing Date (such portion of such taxable period, the "**Post-Closing Tax Period**"). Except as otherwise provided herein, the Seller shall be liable for the

proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period and the Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period and the Seller shall pay to the Buyer, as a dollar-for-dollar adjustment to the Purchase Price, the proportionate amount of such Taxes as are attributable to the Pre-Closing Tax Period no later than ten (10) days prior to the date such Taxes would become due and payable by the Buyer.

- (c) In respect of the purchase and sale of the Purchased Assets under this Agreement, to the extent permitted by Applicable Law, the Buyer shall pay to the appropriate Governmental Authority all sales and transfer Taxes, registration charges and transfer fees payable by it and, upon the reasonable request of the Seller, the Buyer shall furnish proof of such payment, and the Buyer shall otherwise be liable for and shall pay to the Seller an amount equal to any such Tax payable by the Buyer and collectible by the Seller under tax legislation applicable to the purchase and sale of the Purchased Assets. The Buyer shall deliver to Seller any purchase exemption certificates being relied on by the Buyer in accordance with and in the form and manner as required under Applicable Laws governing transfer Taxes.

## **7.8 Employee Matters**

- (a) No more than five (5) days after the date of this Agreement, Seller will deliver a schedule of all Employees (without reference to names) associated with the Purchased Assets, together with, their positions and wages/salary, incentive compensation, service date, material benefits and vacation entitlement and accrual. Such schedule will be updated immediately prior to the Closing Time as reasonably requested by the Buyer. Within two (2) days after receipt of the schedule of Employees from Seller, Buyer will indicate the employees it will continue with to undertake the volume of work available for Buyer which may not include all the employees on Seller's schedule. Notwithstanding the foregoing, Buyer shall provide an offer of continued employment to no less than 80% of the Employees listed on the schedule of Employees.
- (b) No later than two (2) Business Days following the date on which the Approval and Vesting Order is granted, conditional on Closing and with effect as of the Closing Time, the Buyer shall in compliance with Applicable Law, provide notice, in form and substance satisfactory to the Seller, acting reasonably, of continuing employment to the Employees on terms and conditions, including compensation, benefits, hours of work and duties, that are substantially similar and no less favourable in the aggregate to those terms and conditions of employment currently available to each such Employee immediately prior to the Closing Date. For purposes of this Agreement, to the extent certain terms and conditions of employment are required to be maintained under any Assumed Employee Plans in order to avoid Seller incurring severance or other employment termination obligations, such terms and conditions shall be deemed to be required by Applicable Law. Employees' employment with the Buyer after the Closing Date, shall not include a probationary period and shall not be conditioned upon such Employees satisfactorily completing a background investigation, drug test or other employment screening processes. Buyer shall notify the Seller of the acceptance

and rejections of its offers of continued employment that have been received from each of the Employees.

- (c) The Employees whose employment is transferred to the Buyer by operation of law and other Employees who accept the Buyer's offer of continued employment, shall hereinafter be collectively referred to as the "**Assumed Employees**". The Buyer shall recognize service of the Assumed Employees with the Seller. The Seller will cooperate with the Buyer in giving notice to the Employees of the Seller concerning such matters referred to in this Section 7.8 as are reasonable under the circumstances.
- (d) The Buyer shall assume and be responsible for all liabilities and obligations with respect to the Assumed Employees accruing or arising after the Closing Date, including, but not limited to, any required notice of termination, termination or severance pay required under Applicable Law, employment insurance, workplace safety and insurance/workers' compensation, salary or wages, vacation pay, overtime pay, payroll or employer health Taxes, commissions earned pursuant to any Contract, bonuses earned pursuant to any Contract or vacation entitlements and accruals. The Buyer shall also assume and be responsible for any vacation pay, bonus accrual or wage liability with respect to the Assumed Employees accruing or arising after the Closing Date. For certainty, the Seller shall remain liable for all liabilities and obligations with respect to the Assumed Employees accruing or arising before the Closing Date, including, but not limited to, payment of all employment insurance, workplace safety and insurance/workers' compensation, salary or wages, vacation pay, overtime pay, payroll or employer health Taxes, commissions earned pursuant to any Contract, bonuses earned pursuant to any Contract or vacation entitlements and accruals.
- (e) The Buyer may, at its sole discretion provide written notice to the Seller at least one (1) Business Day prior to the Closing Date that the Buyer wishes to assume one or more Employee Plans (to the extent transferable) (the "**Assumed Employee Plans**"), and, effective as of the Closing Date, the applicable Seller(s) shall assign to the Buyer, and the Buyer assumes, the Assumed Employee Plans, except as set forth in Sections 2.3(e) and 2.4(d), and all agreements and policies forming part of or relating to any Assumed Employee Plan and all of the Seller's rights, obligations and liabilities under and in relation to the Assumed Employee Plans and all agreements and policies forming part of or relating to any Assumed Employee Plan and the Seller and the Buyer agree to co-operate to take all reasonable steps to effect such assignment.
- (f) The Buyer shall be responsible for any and all Claims Incurred by the Assumed Employees (and their respective eligible spouses, beneficiaries and dependents) on and after the Closing Date. For these purposes, "Incurred" means, in relation to Claims under Employee Plans or Buyer Employee Plans, the date on which the event giving rise to such claim occurred and, in particular: (i) with respect to a death or dismemberment claim, shall be the date of the death or dismemberment; (ii) with respect to a short-term or long-term disability Claim, shall be the date that the period of short-term or long-term disability commenced; (iii) with respect to an extended health care claim, including, without limitation, dental and medical

treatments, shall be the date of the treatment; and (iv) with respect to a prescription drug or vision care claim, the date that the prescription was filled.

- (g) After the date hereof, the Seller and the Buyer shall cooperate promptly and in good faith in preparing the transition of the Assumed Employees as applicable from coverage under the Employee Plans to coverage under the Buyer Employee Plans effective as of the Closing Date. On and after the Closing Date, the Buyer shall be responsible for and make all required contributions and payments in relation to the Assumed Employees that are transitioned to coverage under the Buyer Employee Plans. If, at the Closing Date, the transition of any Assumed Employees to coverage under any Buyer Employee Plan has not been completed, the Buyer shall be responsible for all liabilities and obligations under any Employee Plan in respect of any such Assumed Employees until the Assumed Employees have been transitioned to coverage under the applicable Buyer Employee Plan.
- (h) For purposes of the Buyer Employee Plans in which any Assumed Employees participate, the Buyer shall recognize the service date of each such Employee, to the same extent that service credit would be given under the analogous Employee Plan, for purposes of eligibility, level of benefits and vesting, but not for purposes of benefit accrual. With respect to each Assumed Employee (and their eligible dependents, as applicable), the Buyer shall use best efforts to cause such Buyer Employee Plans to (i) waive any eligibility periods, evidence of insurability or pre-existing condition limitations and (ii) honor any deductibles, co-payments, co-insurance or out-of-pocket expenses paid or incurred by such Employees, including with respect to their dependents, under comparable Employee Plans.

## **7.9 Certain Payments or Instruments Received from Third Persons**

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

## **7.10 Intellectual Property Matters**

The Seller shall cooperate with and assist the Buyer, and the Buyer's expense, with the registration of the assignment of any registrable rights relating to Intellectual Property forming part of the Purchased Assets, which, for certainty, will not include any Excluded Intellectual Property.

### **7.11 Notice of Certain Events**

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

### **7.12 Risk of Loss**

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

### **7.13 Use of Xebec Name**

The Buyer acknowledges and agrees that it is not purchasing or acquiring any right, title or interest in any trade-marks, logos, service marks, brand names, domain names or trade, corporate or business names containing or employing the name "Xebec" or any variation thereof, or any trade-marks, logos, service marks, brand names, domain names or trade, corporate or business names confusingly or misleadingly similar to "Xebec" (collectively, the "**Xebec Marks**"). The Buyer shall not use the name "Xebec" or refer to the Acquired Business under a name that is the same as, or confusingly or misleadingly similar to any of the Xebec Marks. To the extent that any of the Xebec Marks are used in the conduct of the Acquired Business on any materials constituting the Purchased Assets, including any stationery, signage, invoices, receipts, forms, packaging, advertising, promotional materials, product, training and service literature and materials, software or like materials or appear on the Inventory of the Acquired Business at the Closing Date, the Buyer shall, and shall cause its affiliates to, cease to use, remove, strike over or otherwise obliterate all the Xebec Marks from all such materials as soon as reasonably practicable following and, in any event, no later than the date that is 15 days from the Closing Date.

### **7.14 Inventory**

Buyer has received a list of all inventory, prepared by the Seller to the best of its knowledge, in Seller's possession as of the date of this Agreement, as listed in Schedule 7.14.

## **ARTICLE 8 COURT ORDERS**

### **8.1 Court Orders**

#### **(a) From the CCAA Court.**

- (i) The Seller shall serve and file a motion for the issuance of the Approval and Vesting Order and, if applicable, the Assignment Order, by March 15, 2023.
- (ii) The Buyer shall cooperate with the Seller and the Monitor acting reasonably, as may be necessary, including by providing such information and taking such actions as may be reasonably requested, in obtaining the Approval and Vesting Order and any Assignment Order.
- (iii) Notice of the motion seeking the issuance of the Approval and Vesting Order shall be served by the Seller on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, the Amended and Restated Initial Order and any other Person determined necessary by the Seller or the Buyer.
- (iv) Notwithstanding any other provision herein, it is expressly acknowledged and agreed that in the event that the Approval and Vesting Order has not been issued and entered by the CCAA Court by March 16, 2023 or such later date agreed to in writing by the Buyer and the Seller, in consultation with the Monitor, the Seller may terminate this Agreement.

#### **(b) From the U.S. Bankruptcy Court.**

- (i) The Seller shall file a Motion for an Order: (1) Recognizing and Enforcing CCAA Vesting Order; (2) Approving Sale of Certain of Debtors' Assets Free and Clear of all Liens, Claims and Encumbrances Under 11 U.S.C. § 363(f); (3) Approving Assumption and Assignment of Assumed Contracts; and (4) Granting Related Relief (the "**363 Motion to Approve**"), together with all attachments thereto and forms required under governing Bankruptcy law, which shall include approval of the transactions contemplated hereunder, together with all attachments thereto and forms required under the U.S. Bankruptcy Code; and
- (ii) The Seller shall circulate the U.S. Cure Notice to all counterparties of proposed Assumed Executory Contracts and Unexpired Leases at least 21 days prior to the date of the hearing in the U.S. Bankruptcy Court to approve the U.S. Sale Order.

### **8.2 CCAA and U.S. Bankruptcy Court Process**

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

## **ARTICLE 9 TERMINATION**

### **9.1 Termination**

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

- (a) by mutual written consent of the Buyer and the Seller (with the consent of the Monitor) or on further order of the CCAA Court;
- (b) by the Seller (with the consent of the Monitor) if Closing has not occurred on or before March 31, 2023 or such later date agreed to in writing by both the Buyer and the Seller (with the consent of the Monitor) (the “**Sunset Date**”); provided, that the Seller is not in breach of any representation, warranty, covenant or other agreement in this Agreement to cause the conditions in Article 6 to be satisfied;
- (c) by the Seller pursuant to Section 8.1(a)(iv);
- (d) by the Buyer or the Seller upon the dismissal or conversion of the CCAA Proceedings;
- (e) by the Buyer or the Seller upon permanent denial of the Approval and Vesting Order;
- (f) by the Buyer or the Seller if a court of competent jurisdiction or other Governmental Authority has issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of Closing and such order or action has become Final (provided the same was not initiated by the Buyer or the Seller);
- (g) by the Seller, if required under any Order of a court of competent jurisdiction including the CCAA Court;
- (h) by the Seller (with the consent of the Monitor), if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Sunset Date and such violation or breach has not been waived by the Seller or cured within ten (10) Business Days after written notice thereof from the Seller, unless the Seller is in material breach of their obligations under this Agreement; or
- (i) by the Buyer, if there has been a material violation or breach by the Seller of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.2, as applicable, by the Sunset Date

and such violation or breach has not been waived by the Buyer or cured within ten (10) Business Days after written notice thereof from the Buyer, unless the Buyer is in material breach of its obligations under this Agreement.

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

## **9.2 Effect of Termination**

In the event of termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that (a) this Section 9.2 and Sections 1.10, 3.3(b), 11.1, 11.2, 11.3, 11.5, 11.6, 11.7 and 11.8 shall survive, (b) the confidentiality, non-use and non-disclosure obligations under the NDA shall survive in accordance with the terms of the NDA, and (b) no termination of this Agreement shall relieve any Party of any liability for any wilful breach by it of this Agreement.

## **ARTICLE 10 CLOSING**

### **10.1 Location and Time of the Closing**

The Closing shall take place at the Closing Time on the Closing Date at the offices of Osler, Hoskin & Harcourt LLP located at Suite 2100, 1000 De La Gauchetière Street West, Montréal, Québec, or at such other location as may be agreed upon by the Parties. The Closing shall, unless otherwise agreed between the Parties, be conducted virtually and electronically.

### **10.2 Seller's Deliveries at Closing**

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

- (a) a copy of the Approval and Vesting Order;
- (b) assignment of any existing realty Tax appeals and any other documents required to permit the Buyer to continue such appeals and to receive payments resulting therefrom;
- (c) all documents of title and instruments of conveyance (duly executed by the Seller) necessary to transfer record and/or beneficial ownership to the Buyer of all vehicles owned by the Seller which are included in the Purchased Assets;
- (d) copies of any Assignment Order obtained by the Seller pursuant to this Agreement;
- (e) an executed copy of the Monitor's Certificate;
- (f) the certificates contemplated by Section 6.2(d);
- (g) any certificates, elections or other documents required to be delivered pursuant to Section 7.7; and



- (h) all other documents required to be delivered by the Seller on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Buyer in good faith.

### **10.3 Buyer's Deliveries at Closing**

At Closing, the Buyer shall deliver to the Seller:

- (a) the Purchase Price;
- (b) any sales or transfer Taxes payable on Closing by the Buyer to the Seller pursuant to Section 7.7(c) hereof;
- (c) the certificate contemplated by Section 6.3(c);
- (d) any certificates, elections or other documents required to be delivered pursuant to Section 7.7; and
- (e) all other documents required to be delivered by the Buyer on or prior to the Closing Date pursuant to this Agreement or Applicable Law or as reasonably requested by the Seller in good faith.

### **10.4 Possession of Assets**

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

### **10.5 Monitor**

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

### **10.6 Simultaneous Transactions**

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

## **ARTICLE 11 GENERAL MATTERS**

### **11.1 Confidentiality**

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

### **11.2 Public Notices**

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

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

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

### **11.3 Injunctive Relief**

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

#### **11.4 Survival**

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

#### **11.5 Expenses**

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

#### **11.6 Non-Recourse**

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

#### **11.7 Assignment; Binding Effect**

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

## 11.8 Notices

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

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

EnergyLink US Inc.  
c/o EnergyLink Corporation  
Suite 1900, 700 4th Avenue SW, Calgary, Alberta  
T2P 3J4

Attention: Harry Wong  
Telephone: 403-671-9339  
Email: [harry.wong@energylinkcorp.com](mailto:harry.wong@energylinkcorp.com)

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

Stikeman Elliott LLP  
4300 Bankers Hall West  
888 – 3<sup>rd</sup> Street SW, Calgary, Alberta  
T2P 5C5

Attention: Craig Story  
Telephone: 403-266-9098  
Email: [cstory@stikeman.com](mailto:cstory@stikeman.com)

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

Xebec Adsorption Inc.  
730 Industriel Boulevard  
Blainville, Québec  
J7C 3V4

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

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

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

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

and the Monitor:

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

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

and counsel to the Monitor:

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

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

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

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

## **11.9 Counterparts; Facsimile Signatures**

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

#### **11.10 Language**

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

*[Signature pages follow]*


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

**XEBEC SYSTEMS USA LLC**

By: 

\_\_\_\_\_  
Name: Jim Vounassis  
Title: CEO & President

**ENERGYLINK US INC.**

By:  Digitally signed by  
Harold (Harry) Wong  
Date: 2023.03.14  
21:30:51 -06'00'

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Name: Harry Wong  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE 1.1(H)**  
**FORM OF APPROVAL AND VESTING ORDER**

**SUPERIOR COURT  
(Commercial Division)**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March 16, 2023

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

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

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

and  
**DELOITTE RESTRUCTURING INC.**  
Monitor

and

Draft

**ENERGYLINK U.S. INC.**  
Impleaded Party (Buyer)

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**APPROVAL VESTING AND ASSIGNMENT ORDER IN RESPECT OF THE ASSETS  
OF XEBEC SYSTEMS, USA LLC**

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- [1] **CONSIDERING** the *Application for the Issuance of an Approval, Vesting and Assignment Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Seventh Report of the Monitor dated ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **GIVEN** the provisions of the CCAA:
- [5] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Asset Purchase Agreement dated March 14, 2023 (the “**Purchase Agreement**”) between **Xebec Systems USA LLC** (the “**Seller**”), and **EnergyLink U.S. Inc.**, as buyer, (the “**Buyer**”), a copy of which was filed under seal as **Exhibit P-9A** to the Application, and vesting in the Buyer the Purchased Assets.

**THE COURT HEREBY:**

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

**DEFINITIONS**

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

**SERVICE**

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

Draft

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

**TRANSACTION APPROVAL**

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

**EXECUTION OF DOCUMENTATION**

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

**AUTHORIZATION**

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

**VESTING OF PURCHASED ASSETS**

- [13] **ORDERS AND DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Buyer, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges or security evidenced by registration, publication or filing pursuant to any applicable legislation providing for a security interest in personal or movable property, and those Claims listed on

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**Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**").

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

#### **CANCELLATION OF SECURITY REGISTRATIONS**

- [19] **ORDERS** that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets from any registration filed against the Petitioners, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

#### **ASSIGNMENT OF CONTRACTS**

- [20] **ORDERS** and **DECLARES** that upon the issuance of the Monitor's Closing Certificate, the rights and obligations of the Seller under the agreements listed in **Schedule "C"** hereto, as they may have been amended or restated from time to time (the "**Assumed Contract(s)**"), are automatically and irrevocably assigned to the Buyer without any further consents or approvals of this Court.

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- [21] **ORDERS** that all Cure Costs in relation to the Assumed Contracts, which are set out in Schedule C, shall be remedied by the Buyer no later than thirty (30) days following issuance of the Monitor's Closing Certificate.
- [22] **ORDERS** that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.
- [23] **ORDERS** that the Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the Buyer in accordance with their terms for the benefit of the Buyer.
- [24] **ORDERS** and **DIRECTS** the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts, if any.
- [25] **AUTHORIZES** the Petitioners, the Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts to the Buyer in accordance with this Order.

**PROTECTION OF PERSONAL INFORMATION**

- [26] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the "**Applicable Privacy Laws**"), the Petitioners and the Monitor are authorized to disclose and transfer to the Buyer the personal information in the custody or control of the Petitioners set out in the Purchase Agreement (the "**Disclosed Information**"). The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Petitioners.
- [27] **ORDERS** that the Buyer shall:
- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;
  - (b) use and disclose the Disclosed Information for the purposes for which the Disclosed Information was collected by the Petitioners and as may otherwise be permitted by Applicable Privacy Laws; and

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- (c) give effect to any withdrawals of consent of the individuals to whom the Disclosed Information relates.

**VALIDITY OF THE TRANSACTION**

[28] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act.*, RSC 1985, c B-3 BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

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

**THE MONITOR**

- [29] **DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.
- [30] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.
- [31] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

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

**SEALING**

- [33] **ORDERS** that Exhibit P-9A to the Application shall be filed under seal and kept confidential until further order of this Court.

**GENERAL**

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

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[39] **THE WHOLE** without costs.

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**Christian Immer, JCS**

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

Hearing date: **March 16, 2023**

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**SCHEDULE A  
CERTIFICATE OF THE MONITOR**

**CANADA**

**PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Commercial Division)

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

No.: 500-11-061483-224

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

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

Debtor/Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

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## CERTIFICATE OF THE MONITOR

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### RECITALS:

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

**WHEREAS** on March [16], 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") authorizing and approving, *inter alia*, the execution of a Asset Purchase Agreement dated March 14, 2023 by and among **Xebec Systems USA LLC** (the "**Seller**") and **EnergyLink U.S. Inc.** as buyer (the "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

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

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

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

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

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**SCHEDULE B**

**ENCUMBRANCES TO BE VESTED**

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**SCHEDULE C**

**ASSUMED CONTRACTS**

<b>Ref.</b>	<b>Type</b>	<b>Description</b>	<b>Cure Costs</b>	<b>Trade Payables</b>
<i>In USD</i>				
Rent- 9461 Willow Ct.	Supplier	Real Property Lease Agreement dated November 1, 2015 by and between UE Compression LLC and UEC, LLC relating to that certain real property located in Adams County Colorado, together with the building having a street address of 9461 Willow Ct. Henderson, Colorado 80640	0	0
Rent – 3205 Hesper Rd (Billings MT)	Supplier	Real Property Lease Agreement dated April 1, 2019 by and between Russ C. Clark and UEC Billings, MT relating to that certain real property located in Billings, Mt Yellowstone County, referred to as Unit B 3205 Hesper Rd. Billings, MT 59102	0	0
Rent – 953 Foster Rd (Casper, WY)	Supplier	Real Property Lease Agreement dated March 15, 2022 by and between CIC, LLC and UEC, LLC relating to the real property situated at 953 Foster Road, Casper WY 82601 encompassing approximately 3200 square feet	0	0
Cisco Systems Capital	Supplier	Equipment Lease Agreement by and between UEC, LLC and Cisco Capital Corporation relating to that certain quote dated June 18, 2020	0	0

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<p>SCS Carbon Removal, LLC (Summit)</p>	<p>Client</p>	<p>Gas Agreements by and between SCS Carbon Removal, LLC and Xebec Systems USA LLC, dated March 25, 2022, as modified on April 15, 2022 and April, 22, 2022, as the case may be, and by and between SCS Carbon Removal, LLC and UEC, LLC, dated November 19, 2021</p> <p>Contract #: No. NY01-2003548654-V12 Type: Gas Agreements</p>	<p>*Subject to agreement between Buyer and SCS</p>	
<p>Frank Lill &amp; Son Inc.</p>	<p>Client</p>	<p>Purchase Agreement dated June 15, 2020 and amended on June 23, 2020, by and between UEC, LLC and Frank Lill &amp; Son, Inc. relating to various engineering, material, equipment and labour</p> <p>Contract #: SW-119214-006 Type: Gas Agreements</p>	<p>0</p>	<p>0</p>
<p>Gilbane Alberici Construcciones Mexico</p>	<p>Client</p>	<p>Purchase Agreement dated September 2, 2021 by and between UEC, LLC and Gilbane Alberici Construcciones Mexico, S. de R.L. de C.V. relating to the KGM Expansion of the Clients Brewery in Obregon, Mexico</p> <p>Contract #: V08940.200-0024 Type: Gas Agreements</p>	<p>0</p>	<p>0</p>
<p>PDC Energy</p>	<p>Client</p>	<p>Purchase Orders December 8, 2022 and February 2, 2023, by and between UEC, LLC and PDC Energy relating to Instrument Air Skid Packages</p> <p>Contract #: DJ20220673 and DJ20230534 Type: Doghouses</p>	<p>0</p>	<p>0</p>

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**SCHEDULE C**

**ASSUMED CONTRACTS**

<b>Ref.</b>	<b>Type</b>	<b>Description</b>	<b>Cure Costs</b>	<b>Trade Payables</b>
<i>In USD</i>				
Rent- 9461 Willow Ct.	Supplier	Real Property Lease Agreement dated November 1, 2015 by and between UE Compression LLC and UEC, LLC relating to that certain real property located in Adams County Colorado, together with the building having a street address of 9461 Willow Ct. Henderson, Colorado 80640	0	0
Rent – 3205 Hesper Rd (Billings MT)	Supplier	Real Property Lease Agreement dated April 1, 2019 by and between Russ C. Clark and UEC Billings, MT relating to that certain real property located in Billings, Mt Yellowstone County, referred to as Unit B 3205 Hesper Rd. Billings, MT 59102	0	0
Rent – 953 Foster Rd (Casper, WY)	Supplier	Real Property Lease Agreement dated March 15, 2022 by and between CIC, LLC and UEC, LLC relating to the real property situated at 953 Foster Road, Casper WY 82601 encompassing approximately 3200 square feet	0	0
Cisco Systems Capital	Supplier	Equipment Lease Agreement by and between UEC, LLC and Cisco Capital Corporation relating to that certain quote dated June 18, 2020	0	0

Draft

<p>SCS Carbon Removal, LLC (Summit)</p>	<p>Client</p>	<p>Gas Agreements by and between SCS Carbon Removal, LLC and Xebec Systems USA LLC, dated March 25, 2022, as modified on April 15, 2022 and April, 22, 2022, as the case may be, and by and between SCS Carbon Removal, LLC and UEC, LLC, dated November 19, 2021</p> <p>Contract #: No. NY01-2003548654-V12 Type: Gas Agreements</p>	<p>*Subject to agreement between Buyer and SCS</p>	
<p>Frank Lill &amp; Son Inc.</p>	<p>Client</p>	<p>Purchase Agreement dated June 15, 2020 and amended on June 23, 2020, by and between UEC, LLC and Frank Lill &amp; Son, Inc. relating to various engineering, material, equipment and labour</p> <p>Contract #: SW-119214-006 Type: Gas Agreements</p>	<p>0</p>	<p>0</p>
<p>Gilbane Alberici Construcciones Mexico</p>	<p>Client</p>	<p>Purchase Agreement dated September 2, 2021 by and between UEC, LLC and Gilbane Alberici Construcciones Mexico, S. de R.L. de C.V. relating to the KGM Expansion of the Clients Brewery in Obregon, Mexico</p> <p>Contract #: V08940.200-0024 Type: Gas Agreements</p>	<p>0</p>	<p>0</p>
<p>PDC Energy</p>	<p>Client</p>	<p>Purchase Orders December 8, 2022 and February 2, 2023, by and between UEC, LLC and PDC Energy relating to Instrument Air Skid Packages</p> <p>Contract #: DJ20220673 and DJ20230534 Type: Doghouses</p>	<p>0</p>	<p>0</p>

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Evraz	Client	Purchase Order dated July 30, 2021 and revised on January 21, 2022 by and between UEC, LLC (d.b.a. UE Compression) and Palmer NA LLC (d.b.a. Evraz Palmer North America) relating to the SC-10 UEC Air Compressor Package  Contract #: PO 4000223 Type: Air Compressors agreement	0	0
Clean Harbors Environmental	Client	Purchase Order dated August 23, 2022 by and between UEC, LLC and Clean Harbors Environmental Services relating to various items including Electra Saver G2 Oil Flooded Rotaries, Nitrogen Generators, Externally Heated Reg Dryers and Air Aftercoolers  Contract #: PO 1311245 Type: Air Compressors agreement	0	0
Andeavor Logistics (Marathon)	Client	Purchase Order dated December 5, 2022 and modified on December 8, 2022 by and between UEC, LLC and Andeavor Field Services LLC relating to an Instrument Air Package (air compressor package with 5,000 Gal Dry Receiver)  Contract #: PO 4500354087 Type: Air Compressors agreement	0	0
Anadarko	Client	Purchase Order relating to that certain Master Service Agreement dated February 7, 2012 by and between UE Compression, LLC and Anadarko Petroleum Corporation relating to the utilization, preparation, provision, sale or lease of various goods provided by UE Compression, LLC  Contract #: PO 4501060505 Type: Air Compressors agreement	0	0

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Verdad Resources	Client	Purchase Order dated September 15, 2022 by and between UEC, LLC and Verdad Resources relating to ten packages containing one Gardner Denver reciprocating air compressor mounted on Dry Tank, one NANO Heatless Regenerative Dryer and Filters, and Trico Fluid Storage Container for condensate collection  Contract #: PO 22-0003-3-UEC Type: Doghouses	0	0
Siemens Energy - Passaic Valley Sewerage Commission- US 1541	Client	Purchase Order dated June 14, 2019 with added line items 10 & 11 pertaining to storage, following various Change Orders and as amended on June 27, 2022, by and between UEC, LLC and Siemens Energy, Inc.  Contract #: PO 4500809299 (Added Lines 10 & 11)  Type: Gas Compressors	0	0
Southern California Gas	Client	Purchase Order dated July 12, 2022 by and between UEC, LLC and Southern California Gas relating to Rogers Machinery/Kobelco KNWA0-C/H 75 HP units  Contract #: PO 4400169424  Type: Air Compressors agreement	0	0

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**SCHEDULE 1.1(JJ)**  
**EMPLOYEE PLANS**

1. 401(k) plan
2. Xebec Adsorption USA Employee Benefit Program

**SCHEDULE 1.1(FFF)  
INTELLECTUAL PROPERTY**

1. UEC SOLIDWORKS PDM Vault and all data on the UEC shared computer network files
2. UEC IT Architecture Processes and Procedures
3. UEC Epicor P21 Data, Processes and Procedures
4. UEC Power BI Data and Reporting
5. UEC Microsoft Cloud Data including email and SharePoint Data
6. UEC Engineering standards and procedures
7. UEC Fabrication standards and procedures
8. UEC Quality standards and procedures
9. UEC Engineering Excel design spreadsheets
10. UEC Application sizing and cost estimate Excel spreadsheets
11. UEC Standard Air Instrument Compressor “Dog House” engineering design drawings and bill of materials along with UEC fabrication processes
12. UEC Standard Allen Bradley PLC Program files
13. UEC Project History Files, Photos and Drawings
14. UEC Brand Standards, Logos and Marks, Copyrights
15. UEC Registered Trademark and trade name UECcompression
16. UEC Website, Domain Name and Social Media sites

**SCHEDULE 1.1(LLI)  
LETTERS OF CREDIT**

1. Keybank National Association irrevocable standby letter of credit No. S326950 in favour of Siemens Energy, Inc.

**SCHEDULE 1.1(YYY)**  
**PERMITS**

1. The American Society of Mechanical Engineers Certificate of Authorization. Certificate No. 28692 dated November 6, 2022 and expiring November 6, 2025.
2. The National Board of Boiler & Pressure Vessel Inspectors Certificate of Authorization. Certificate No. 4445 dated November 8, 2022 and expiring November 6, 2025.
3. Colorado Air Pollution Control Division Construction Permit. Permit No. 12AD1387 issued March 22, 2021.
4. Colorado Air Pollution Control Division Construction Permit. Permit No. 12AD1388 issued March 22, 2021.

**SCHEDULE 2.1(B)**  
**PREPAID EXPENSES**

**[REDACTED]**

**SCHEDULE 2.1(F)**  
**PERSONAL PROPERTY LEASES**

None.



**SCHEDULE 2.1(G)**  
**REAL PROPERTY LEASES**

1. The Land and Building Lease Agreement between UE Compression LLC and Merrit Professional Properties, LLC dated November 1, 2015, as amended by a First Amendment to Land and Building Lease Agreement dated April 1, 2020.
2. Lease Agreement Renewal dated April 1, 2019 between Russ C. Clark and UEC Billings, MT.
3. Lease Agreement dated March 15, 2022 between CIC, LLC (dba Casper Industrial Center) and UEC, LLC.

**SCHEDULE 2.1(H)**  
**ASSUMED CONTRACTS**

<b>Xebec System USA LLC ("UEC")</b>					
<b>Assumed Contracts - Potential Cure Costs</b>					
<b>As of March 14, 2023</b>					
	<b>Type</b>	<b>Master Contract #</b>	<b>Contract type</b>	<b>Cure Costs</b>	<b>Trade Payables</b>
<i>In USD</i>					
Rent - 9461 Willow Ct	Supplier		Real Property Lease Agreements	0	0
Rent - 3205 Hesper Rd (Billings MT)	Supplier		Real Property Lease Agreements	0	0
Rent - 953 Foster Rd (Casper, WY)	Supplier		Real Property Lease Agreements	0	0
Cisco Systems Capital	Supplier		Other Agreements	0	0
SCS Carbon Removal, LLC (Summit)	Client	No. NY01-2003548654-V12	Gas Agreements	*subject to agreement between Buyer and SCS	
Frank Lill & Son Inc.	Client	SW-119214-006	Gas Agreements	0	0
Gilbane Alberici Construcciones Mexico	Client	V08940.200-0024	Gas Agreements	0	0
PDC Energy	Client	DJ20220673 & DJ20230534	Doghouses	0	0
Evraz	Client	PO 4000223	Air Compressors Agreements	0	0
Clean Harbors Environmental	Client	PO 1311245	Air Compressors Agreements	0	0
Andeavor Logistics (Marathon)	Client	PO 4500354087	Air Compressors Agreements	0	0
Anadarko	Client	PO 4501060505	Doghouses	0	0
Verdad Resources	Client	PO 22-0003-3 UEC	Doghouses	0	0
Siemens Energy - Passaic Valley Sewerage Commission-US 1541	Client	PO 4500809299 (Added Lines 10 &11)	Gas Compressors	0	0
Southern California Gas	Client	PO 4400169424	Air Compressors Agreements	0	0

**SCHEDULE 2.2(C)**  
**EXCLUDED CONTRACTS**

Xebec System USA LLC ("UEC") Excluded Contracts As of March 14, 2023			
	Type	Contract #	Contract type
Gardner Denver	Supplier		Distributor Agreement
Gardner Denver	Supplier		Sales Representative Agreement
Kraton Polymers US LLC	Client	4500293501	Gas Agreements
ENGIE Development LLC	Client	01900003	Gas Agreements
Northern Natural Gas	Client	79363887	Gas Agreements
Northern Natural Gas	Client	79364374	Gas Agreements
Northern Natural Gas	Client	79376588 (Paulina)	Gas Agreements
Energy Link Industrial Services	Client	C53517	Gas Agreements
WGR Operating, LP	Client	4500137131	Gas Agreements
WGR Operating, LP	Client	4500137466	Gas Agreements
WGR Operating, LP	Client	4500137467	Gas Agreements
DCP Operating Company, LP	Client	PO 0000658997	Air Compressors agreement
ZAP Engineering & Construction Services (NEC-LNG Terminal)	Client	PO 21209-5321-109	Air Compressors agreement
Colorado Springs Utilities	Client	PO 202117356	Air Compressors agreement
Matrix PDM Engineering	Client	PO 56071145020	Air Compressors agreement
Sterling Energy Hemberger	Client	PO 2022-6017	Air Compressors agreement
ZAP Engineering & Construction Services (MPLX - Van Hook Compressor)	Client	PO 21196-5321-101	Air Compressors agreement
Toyal America, Inc	Client	PO APO-030507-2019	Gas Compressors
Air Products and Chemicals	Client	4505509509	Gas Agreements
Ariel Corporation	Supplier	Memorandum of Understanding dated February 27, 2023	MOU
Ariel Corporation	Supplier	Packager Agreement dated June 1, 2021 and all purchaser orders issued thereunder relating to the Purchased Assets	Distributor Agreements

**SCHEDULE 2.3(B)**  
**TRADE DEBT**

**[REDACTED]**

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**SCHEDULE  
7.14  
INVENTORY**

**[REDACTED]**

**EXHIBIT P-9A**

**Copy of the EnergyLink APA  
(confidential and under seal)**



No: 500-11-061483-224

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**SUPERIOR COURT  
(Commercial Division)**

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

**DISTRICT OF MONTRÉAL**

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

**FORMERXBC INC. & AL**

Debtors / Petitioners

and.

**DELOITTE RESTRUCTURING INC.**

Monitor

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**AMENDED APPLICATION FOR THE ISSUANCE  
OF A FOURTH AMENDED AND RESTATED  
INITIAL ORDER, APPROVAL AND VESTING  
ORDERS, A WEPP ORDER AND ANCILLARY  
RELIEF, AFFIDAVIT, NOTICE OF  
PRESENTATION, AMENDED LIST OF EXHIBITS,  
EXHIBITS P-1 to P-9 (Sections 11, 11.2 and 36 of  
the *Companies' Creditors Arrangement Act*,  
RSC 1985, c C-36; ; s. 5(5) of the *Wage Earner  
Protection Program Act*, S.C. 2005, c. 47 and s.  
3.2 of the *Wage Earner Protection Program  
Regulations*, SOR/2008-222)**

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**ORIGINAL**

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**Osler, Hoskin & Harcourt LLP**

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