

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

**SUPERIOR COURT**  
Commercial Division

N<sup>o</sup>: 500-11-065700-250

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

**ENERKEM INC.**

**ENERKEM ALBERTA BIOFUELS G.P. INC.**

**ENERKEM LIMITED (UK)**

**ENERKEM CORPORATION (DELAWARE)**

**ENERKEM SPAIN HOLDINGS, SOCIEDAD  
LIMITADA (SPAIN)**

**9390-1783 QUÉBEC INC.**

**Applicants**

-and-

**ENERKEM ALBERTA BIOFUELS L.P.**

**Mise-en-cause**

-and-

**DELOITTE RESTRUCTURING INC.**

**Monitor**

**AMENDED APPLICATION FOR THE ISSUANCE OF  
AN APPROVAL AND REVERSE VESTING ORDER**  
**(Sections 9, 10, 11, 11.02(2), 11.03 and 36 of the *Companies' Creditors Arrangement*  
*Act*)**

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TO THE HONOURABLE JUSTICE CÉLINE LEGENDRE J.S.C. OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE APPLICANTS RESPECTFULLY SUBMIT THE FOLLOWING:

1. **ORDERS SOUGHT**

1. The Applicants, which are comprised of Enerkem Inc. ("**Enerkem Canada**"), Enerkem Alberta Biofuels G.P., Inc. ("**EAB GP**"), Enerkem Limited ("**Enerkem UK**"), Enerkem Corporation ("**Enerkem Delaware**"), Enerkem Spain Holdings, Sociedad Limitada ("**Enerkem Spain**") and 9390-1783 Québec Inc. (together with Enerkem Canada, EAB GP, Enerkem UK, Enerkem Delaware and Enerkem Spain, the "**Applicants**"), hereby submit the present *Amended Application for the Issuance of an Approval and Reverse Vesting Order* (the "**Application**"), by which the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended, (the "**CCAA**"), seek, from the Superior Court of Québec (Commercial Division) (the "**Court**"), the issuance of (i) an approval and reverse vesting order (the "**Approval and Reverse Vesting Order**"), substantially in the form of the draft Approval and Reverse Vesting Order communicated herewith as **Exhibit R-1**, (ii) an order, in French, for the cancellation of security registrations (the "**Ordonnance d'annulation et de radiation**"), substantially in the form of the draft Ordonnance d'annulation et de radiation communicated herewith as **Exhibit R-2**, and (iii) an Order extending the Stay Period, expanding the powers of the Monitor and releasing, terminating and discharging certain CCAA Charges, substantially in the form of the draft extension order communicated herewith as **Exhibit R-3** providing for, *inter alia*, the following relief:
  - (a) Approval of a Subscription Agreement. The approval, *nunc pro tunc*, of the execution by Enerkem Canada of the Subscription Agreement dated as of July 22, 2025 (the "**Subscription Agreement**"), entered into with Repsol Quimica, S.A. ("**Repsol**"), Monarch Alternative Capital LP ("**Monarch**") and ESC Sustainable Solutions Fund, L.P. ("**Eyre Street Capital**", and together with Repsol and Monarch, the "**Investors**"), and the approval of the transactions contemplated under the Subscription Agreement, including the Reorganization (as defined below) described therein (collectively, the "**Transactions**"). A copy of the Subscription Agreement is communicated herewith as **Exhibit R-4**;
  - (b) Vesting of the Excluded Assets, Excluded Contracts and Excluded Liabilities. The transfer and vesting of all Excluded Liabilities (other than the Excluded Secured Notes Claims), and Excluded Contracts (as these terms are defined in the Subscription Agreement) in a "residual" corporation to be incorporated ("**ResidualCo 1**") and the transfer and vesting of all Excluded Assets (other than the equity interests in ResidualCo 2 held by ResidualCo 1) and the Excluded Secured Notes Claims (as these terms are defined in the Subscription Agreement) in a second "residual" corporation to be incorporated ("**ResidualCo 2**", and together with ResidualCo 1, the "**ResidualCos**"), and the release of Enerkem Canada and the "**Retained Entities**"<sup>1</sup>, from any and all obligations in relation to the Excluded Contracts, the Excluded Liabilities, and the Excluded Assets;

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<sup>1</sup> The "**Retained Entities**" is defined in the Subscription Agreement to include Enerkem UK, Enerkem Delaware and Enerkem Spain. The "**Excluded Entities**" is defined in the Subscription Agreement to include EAB GP and EAB LP (defined below). 9390-1783 Québec Inc., an Applicant entity, is a dormant entity that was dissolved as of July 16, 2025, along with certain other dormant non-Applicant Entities.

- (c) Releases. The granting of certain releases in favour of Enerkem Canada, the Retained Entities, and the Investors, as well as a release in favour of Enerkem Canada's and the Retained Entities' present and former directors and officers ("**D&Os**"), as discussed further below;
  - (d) Retained Contracts. All Retained Contracts to remain in full force and effect, and no counterparty to any such Retained Contract may accelerate, terminate or otherwise repudiate its obligations thereunder, or exercise any right or remedy or make any demand under or in respect of such Retained Contracts and no automatic termination will have any validity or effect, by reason of: (i) any circumstance that existed or event that occurred on or prior to the Closing Date that would have entitled such counterparty to enforce those rights or remedies; (ii) the insolvency of any Applicant or the fact that relief in respect of the Enerkem Entities was granted under the CCAA; (iii) any releases, discharges, cancellations, transactions or other steps taken or effected pursuant to the Subscription Agreement, the Transactions, the provisions of the Approval and Reverse Vesting Order or any other Order of the Court in these CCAA proceedings; or (iv) any change of control arising from the implementation of the Transactions, the Reorganization, or any anti-assignment or similar provision restricting assignment or requiring any consent to an assignment or change of control in a Retained Contract;
  - (e) Stay Extension. An extension of the Stay Period (as defined below) until November 14, 2025;
  - (f) Additional Monitor's Powers: An expansion of the powers of the Monitor upon closing of the Transactions;
  - (f.1) WEPPA Relief. A declaration from the Court that for the purpose of the *Wage Earner Protection Program Act*, SC 2005, c 47, s. 1 (the "**WEPPA**"), ResidualCo 1 is the employer of the Non-Continuing Employees following the transfer of Excluded Liabilities to ResidualCo 1, and shall be considered as the former employer of all previously terminated Employees and Non-Continuing Employees, which pursuant to section 5(5) of WEPPA, meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the "**WEPP Regulations**");
  - (g) Discharge & Termination: The discharge, termination and release of certain CCAA charges; and
  - (h) Redaction of Confidential Information. The redacting of Confidential Information (as defined below) contained in exhibits previously filed in support of the Initial Application.
2. As previously outlined in the *Application for the Issuance of an Initial Order, an Amended and Restated Initial Order and an Order Approving a Sale and Investment Solicitation Process* dated May 11, 2025 (the "**Initial Application**"), the Enerkem Group (as defined below) engaged with the Investors and reached an agreement on the principal terms of a comprehensive credit bid restructuring transaction to be implemented pursuant to proceedings under the CCAA (the "**Restructuring Transaction**"), as outlined in the Binding Term Sheet for Restructuring Transaction dated May 10, 2025 (the "**Restructuring Term Sheet**", Exhibit R-4 to the Initial Application).

3. The Restructuring Term Sheet provided for, among other things, the conduct of the SISP (as defined below) in these CCAA proceedings in parallel with the negotiation of the Subscription Agreement in order to determine if there was a superior third-party transaction, however, and as is discussed in more details below, no such transaction emerged from the SISP. As such, the parties have moved forward with finalizing the definitive documentation for the Restructuring Transaction, with the Investors agreeing to acquire all of the equity interests of Enerkem Canada pursuant to the Subscription Agreement.
4. The execution of the Subscription Agreement follows an extensive and robust SISP, which was conducted by the Enerkem Group and the Monitor, as well as extensive negotiations with the Investors, both prior to and after the commencement of the CCAA proceedings. In this regard, the Transactions contemplated under the Subscription Agreement represent the best available outcome for the Applicants and their stakeholders in the circumstances, as it will allow for the preservation and maintenance of the Applicants' business, their remaining employees, and their operations on a going concern basis.
5. The "reverse vesting structure" of the Transactions is essential to allowing the Applicants, whose operations consist of converting heterogeneous waste and biomass materials into a diverse range of clean fuels and circular chemicals, using proprietary patented technology, to maintain their existing intellectual property, licenses, permits, certifications, regulatory approvals and other requirements essential to their operations, as well as preserving the Applicants' tax attributes which would be otherwise adversely impacted through an asset purchase structure.
6. The Applicants understand that Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as monitor of the Applicants (in such capacity, the "**Monitor**"), will be filing a Third Report in advance of the hearing on the present Application (the "**Third Report**") setting out its observations and conclusions in respect of the relief being sought by this Application, and confirming its support for the granting of such relief by the Court.
7. Unless indicated otherwise, (i) all references to currency in this Application are in Canadian dollars, and (ii) all capitalized terms used but not otherwise defined have the meaning ascribed to them in the Subscription Agreement.

## **2. PROCEDURAL BACKGROUND**

8. On May 11, 2025, the Applicants filed the Initial Application and commenced the present proceedings under the CCAA.
9. On May 12, 2025, the Honourable Céline Legendre, J.S.C. granted the initial relief requested in the Initial Application and issued, pursuant to the CCAA, the following orders:
  - (a) an Initial Order (the "**Initial Order**"), which provided for, *inter alia*, the following relief:
    - (i) a stay of proceedings (the "**Stay of Proceedings**") for an initial period of ten (10) days in accordance with the CCAA (the "**Stay Period**") in favour of the Applicants and the Mise-en-cause, Enerkem Alberta Biofuels L.P. ("**EAB LP**" and together with EAB GP, "**EAB**") (EAB together with the Applicants, the "**Enerkem Group**"), their

respective assets, undertakings and properties (collectively, the “**Property**”) and the **D&Os**;

- (ii) the appointment of Deloitte as the Monitor of the Applicants;
  - (iii) the approval of an Interim Financing Term Sheet dated May 10, 2025 (the “**Interim Financing Term Sheet**”) entered into between, among others, Enerkem Canada and Repsol (in such capacity, the “**Interim Lender**”), and the authorization for Enerkem Canada to borrow thereunder an amount of up to \$12.5 million, to be secured by a Court-ordered super-priority charge against the property of the Enerkem Group in an initial amount of up to \$15 million (the “**Interim Lender’s Charge**”);
  - (iv) the approval of a Court-ordered super-priority charge against the Property in an initial amount of up to \$200,000 (the “**Administration Charge**”) to secure the Applicants’ obligations towards the undersigned counsel, as legal advisors to the Applicants, Deloitte, as Monitor to the Applicants, Deloitte’s legal advisors, and the advisors to the Ad Hoc Committee (as defined below) (collectively, the “**Professionals**”), for work performed and to be performed in connection with these CCAA proceedings;
  - (v) the approval of a Court-ordered super-priority charge in an initial amount of up to \$1,400,000 (the “**D&O Charge**”) to secure the Applicants’ indemnification obligations towards their respective D&Os in connection with potential liabilities that could arise as and following the issuance of the Initial Order (as applicable), to the extent that such potential liabilities are not covered by existing insurance policies;
  - (vi) the approval of a Key Employee Retention Plan (“**KERP**”) to provide retention incentives to be paid to certain key employees and executives that were considered to be essential to the success of the Enerkem Group’s restructuring efforts, and the establishment of a Court-ordered charge against the Property in an amount of \$850,000 to secure the Enerkem Group’s remaining obligations under the KERP; and
  - (vii) the granting of a sealing order in respect of certain confidential exhibits communicated as part of the Initial Application.
- (b) a Sale and Investment Solicitation Process Order (the “**SISP Order**”), which provided for, *inter alia* the authorization for the Applicants to conduct and implement a sale and investment solicitation process (the “**SISP**”) in accordance with the procedures set out in the annex appended to the draft SISP Order (the “**SISP Procedures**”).
10. On May 22, 2025, the Applicants attended the “*comeback hearing*” on their Initial Application, following which the Honourable Céline Legendre, J.S.C. granted the balance of the relief sought by the Applicants in the Initial Application, and issued an Amended and Restated Initial Order, which provided for, *inter alia*, the following relief:

- (a) an extension of the Stay Period until August 22, 2025;
- (b) an increase to the Administration Charge to a total amount of up to \$1 million for work performed and to be performed by the Professionals in connection with these CCAA proceedings; and
- (c) an increase to the D&O Charge to a total amount of up to \$2 million.

### **3. THE APPLICANTS' SOLICITATION AND RESTRUCTURING EFFORTS**

- 11. For an extended period of time, all with the support and cooperation of the Investors, as the holders of the Senior Secured Convertible Notes issued by Enerkem Canada, significant efforts have been undertaken to seek to implement solutions to the various financial and operational challenges facing the Enerkem Group.
- 12. As part of these efforts, in February 2024, the Enerkem Group and the Investors entered into a transaction that, among other things, provided for incremental liquidity through the issuance of the Superpriority Bridge Notes and also provided a framework for a potential out-of-court restructuring. However, and despite extensive efforts, the Enerkem Group was ultimately not able to implement a comprehensive out-of-court restructuring solution.
- 13. Accordingly, and prior to these CCAA proceedings, the Enerkem Group engaged with a committee comprised of each of the Investors (the "**Ad Hoc Committee**") and reached an agreement on the principal terms of the comprehensive Restructuring Transaction to be implemented pursuant to proceedings under the CCAA, should no superior transaction emerge through the SISP. On May 10, 2025, the Enerkem Group and the Investors entered into the Restructuring Term Sheet in connection with the Restructuring Transaction. The next day, the Applicants filed the Initial Application to commence these CCAA proceedings and obtained the Initial Order.
- 14. Pursuant to the Restructuring Term Sheet, and in order to ensure that the best potential transaction was identified, the Enerkem Group, with the assistance of the Monitor, launched the SISP, as described below.

#### **3.1 The SISP<sup>2</sup>**

- 15. On May 12, 2025, this Court issued the SISP Order, which, among other things, authorized the Enerkem Group and the Monitor, to pursue the SISP in accordance with the SISP Procedures approved by the Court.
- 16. The Restructuring Term Sheet provided for the Enerkem Group to advance the SISP in parallel with the Restructuring Transaction in order to determine if there existed a superior third-party transaction that provided for the repayment in full in cash of all DIP Facility Claims and all Secured Notes Claims or was otherwise acceptable to the Ad Hoc Committee (a "**Superior Transaction**").
- 17. To that end, the SISP was designed to be broad, transparent and flexible and was intended to solicit interest in, and opportunities for, a wide range of potential transactions, including a sale in respect of the Enerkem Group's businesses and/or

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<sup>2</sup> Capitalized terms used in this section and not otherwise defined herein shall have the meaning ascribed to them in the SISP Order and the SISP Procedures.

assets, through one or more transactions, and/or an investment, recapitalization, refinancing or other form of reorganization transaction(s).

18. In conjunction with advancing the SISP, the Enerkem Group also proceeded to negotiate and advance definitive documentation for the Restructuring Transaction so that the parties could proceed efficiently to implement the Restructuring Transaction if the SISP did not identify a Superior Transaction.
19. The SISP Procedures, as approved by the Court, provided for the following SISP milestones:

<b><u>Event</u></b>	<b><u>Date</u></b>
<b>PHASE 1</b>	
<b>1. <u>Solicitation Letter</u></b> Monitor to distribute Solicitation Letter to potentially interested parties	Starting May 12, 2025
<b>2. <u>CIM and VDR</u></b> Enerkem Group to prepare and have the CIM and VDR available for parties having executed the NDA (Potential Transaction Parties)	By no later than May 14, 2025
<b>3. <u>Phase 1 Qualified Bidders &amp; Bid Deadline</u></b> Phase 1 Bid Deadline (for delivery of non-binding LOIs by Phase 1 Qualified Bidders in accordance with the requirement of paragraph 16 of the SISP Procedures)	By no later than June 19, 2025 at 5:00 pm (ET)
If applicable, termination of SISP if none of the non-binding LOIs by Phase 1 Qualified Bidders provide for a Superior Transaction.	
<b>4. <u>Phase 1 Satisfactory Bid</u></b> Monitor to notify each Phase 1 Qualified Bidder in writing as to whether its bid constituted a Phase 1 Satisfactory Bid	By no later than June 26, 2025
<b>PHASE 2</b>	
<b>5. <u>Phase 2 Bid Deadline &amp; Qualified Bidders</u></b> Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the requirement of paragraph 25 of the SISP Procedures)	By no later than August 1 <sup>st</sup> , 2025 at 5 pm (ET)
If applicable, termination of SISP if none of the Binding Offers by Phase 2 Qualified Bidders provide for a Superior Transaction.	
<b>6. <u>Selection of final Successful Bid(s)</u></b> Deadline for selection of final Successful Bid(s)	By no later than August 8, 2025



<b><u>Event</u></b>	<b><u>Date</u></b>
<b>7. <u>Definitive Documentation</u></b> Completion of definitive documentation in respect of Successful Bid(s)	By no later than August 15, 2025
<b>8. <u>Approval Application - Successful Bid(s)</u></b> Filing of Approval Application in respect of Successful Bid(s)	By no later than August 22, 2025
<b>9. <u>Closing - Successful Bid(s)</u></b> Anticipated deadline for closing of Successful Bid(s)	By no later than August 29, 2025
<b>10. <u>Outside Date – Closing</u></b> Outside Date by which the Successful Bid must close	By no later than September 5, 2025

20. Following the issuance of the SISP Order, the Monitor launched the SISP in accordance with the SISP Procedures.
21. The SISP was intended to solicit interest in executable transaction alternatives that would constitute a Superior Transaction, including a sale in respect of the Enerkem Group's businesses through one or multiple transactions and/or an investment, recapitalization, refinancing or other form of reorganization of transaction(s).
22. The SISP also involved the solicitation of liquidation proposals for the assets of EAB (the "**EAB Assets**"). The EAB Assets, which constitute priority collateral of Fiera Private Debt Fund IV LP ("**Fiera**"), as agent for the EAB Lenders under the EAB Loan Agreement, are not part of the Transactions as a result of EAB LP and EAB GP being Excluded Entities (subject to the Investors' reservation of rights with respect to whether the cash and receivables at EAB (including tax refunds), are the assets and property of EAB or Enerkem Canada).

**(i) THE SISP**

23. Following the issuance of the SISP Order on May 12, 2025, Phase 1 of the SISP was launched, and the Monitor identified and sent a Solicitation Letter to approximately 182 potentially interested parties to solicit their interest in submitting an offer as part of the SISP, of which (i) 147 were financial investors, and (ii) 35 were strategic investors.
24. Eleven (11) of the potentially interested parties contacted by the Monitor executed a non-disclosure agreement. These parties were then provided a copy of the CIM, and seven (7) of the parties were ultimately given access to the VDR containing confidential information relating to the Applicants and their businesses.
25. On the Phase 1 Bid Deadline of June 19, 2025, *no* non-binding LOIs were submitted by interested parties to the Monitor in respect of Enerkem Canada or its assets.
26. Accordingly, because no Phase 1 Satisfactory Bid was submitted and selected, and in accordance with the terms of the SISP Procedures, the SISP was terminated and the

Energkem Group agreed to implement the Restructuring Transaction with the Investors in accordance with and subject to the terms of the Restructuring Term Sheet.

**(ii) THE EAB SISP**

27. The SISP included the following efforts with respect to the EAB Assets:
  - (a) Seventeen (17) potential bidders were contacted directly by the Monitor;
  - (b) Thirteen (13) interested potential bidders executed an NDA and were granted access to a virtual data room;
  - (c) Various potential bidders visited the EAB site located in Edmonton; and
  - (d) Multiple proposals were received prior to the Phase 1 Bid Deadline.
28. The proposals received by the Monitor in regard of the EAB Assets are all for the dismantlement of the EAB site and the liquidation of related EAB Assets.
29. The Monitor, in collaboration with Energkem Canada, and with the support of Fiera, is in the process of reviewing the proposals received for the dismantlement and liquidation of such EAB Assets.

**3.2 Restructuring Transaction**

30. As further detailed in the Initial Application, on May 10, 2025, the Energkem Group and the Investors entered into the Restructuring Term Sheet, which sets out the principal terms of the Restructuring Transaction.
31. At a high level, the Restructuring Transaction contemplates the acquisition by the Investors of the shares of Energkem Canada pursuant to a credit bid reverse vesting transaction. The Restructuring Transaction, among other things, provides for the following benefits to the Energkem Group:
  - (a) A significant deleveraging of Energkem Canada's balance sheet through a credit bid of the Senior Secured Convertible Notes and the Superpriority Bridge Notes, as well as the transfer and vesting out of other debt claims, in each case facilitated by the implementation of the Restructuring Transaction via a reverse vesting transaction;
  - (b) A significant reduction in funded indebtedness;
  - (c) The provision of up to \$25 million of committed financing made available by the members of the Ad Hoc Committee on the basis of 40% of principal amount to be funded by Repsol, 30% of principal amount to be funded by Eyre Street Capital, and 30% of principal amount to be funded by Monarch (inclusive of the Interim Financing to fund these CCAA proceedings);
  - (d) An enhanced positioning of Energkem Canada to execute the Ecoplanta Contracts with respect to the Ecoplanta Plant, which will be finalized and executed and come into effect in connection with the closing of the Transactions pursuant to the Subscription Agreement. As described in the

Initial Application, the Ecoplanta Plant will use Enerkem Canada's proprietary patented technology, and represents a key project for the Enerkem Group; and

- (e) Better positioning of Enerkem Canada to explore additional business opportunities and achieve future success and growth.

32. In particular, the Restructuring Term Sheet provides for the following key terms:

- (a) Implementation of the Restructuring Transaction through a reverse vesting transaction by way of a Subscription Agreement under which, among other things, Excluded Assets and all obligations and liabilities of the Enerkem Group other than certain specific Assumed Liabilities will be transferred and vested out of the Enerkem Group to the ResidualCos, the existing equity of Enerkem Canada will be cancelled for no consideration, and new equity of Enerkem Canada will be issued to the Investors in consideration for the Transaction Consideration, consisting of, among other things, the credit-bid of the Secured Notes Claims;
- (b) Receipt of the Interim Financing in an aggregate principal amount of up to \$12.5 million, which will be converted to Exit Loans on the Effective Date of the Restructuring Transaction. Repsol, as the Interim Lender, funds 100% of the principal amount of the Interim Financing until the Effective Date of the Restructuring Transaction, at which time Eyre Street Capital and Monarch shall fund to Repsol their respective shares thereof;
- (c) Entry into the Exit Facility upon the Effective Date of the Restructuring Transaction, comprised of Exit Loans consisting of:
  - (i) all outstanding DIP Facility Claims, which shall be converted into and exchanged for Exit Loans on a dollar-for-dollar basis;
  - (ii) new money Exit Loans in a principal amount equal to \$25 million less the amount of DIP Facility Claims; and
- (d) All of the individuals employed by Enerkem Canada shall remain with Enerkem Canada in connection with the completion of the Restructuring Transaction, except for such employees as may be identified by the Investors in consultation with Enerkem Canada prior to the Effective Date.

33. As previously noted, after the termination of the SISP, Enerkem Canada, the Retained Entities and the Investors worked to finalize the Subscription Agreement. The Subscription Agreement was ultimately finalized and executed on July 22, 2025.

34. Below is a summary description of the terms and conditions of the Subscription Agreement, and of the Transactions contemplated thereunder.

#### **4. DESCRIPTION OF THE SUBSCRIPTION AGREEMENT AND OF THE TRANSACTIONS**

##### **4.1 Overview of Terms and Conditions**

35. The Subscription Agreement, and the Transactions contemplated therein, provide for, *inter alia*, the following material terms and conditions:

Key Terms	Subscription Agreement
Investors	Investors collectively means (i) Repsol Quimica, S.A., (ii) certain funds managed by Monarch Alternative Capital LP that hold Secured Notes, and (iii) ESC Sustainable Solutions Fund, L.P.
Subscribed Shares	<p>The Subscription Agreement provides for, among other things:</p> <p>(i) the issuance by Enkern Canada of 20,000,200,000,000 New Class A Common Shares to the Investors, in accordance with the Closing Sequence, in consideration for the full and final settlement and exchange of the Secured Notes Claims (other than the Excluded Secured Notes Claims and the Secured Note Forgiven Interest).</p>
Consideration	<p>The credit bid by the Investors of \$175M of the principal amount of the Secured Notes.</p> <p>Under the Subscription Agreement, \$175M of principal amount of Secured Notes Claims will be credit bid by the Investors in consideration for the Subscribed Shares, with any Secured Notes Claims in excess of this amount constituting Excluded Secured Notes Claims and Secured Notes Forgiven Interest, as applicable. Excluded Secured Notes Claims will be transferred to ResidualCo 2, and Secured Notes Forgiven Interest shall be deemed to be settled for no consideration.</p>
Assumed Liabilities and Excluded Liabilities	<p>Enkern Canada and the Retained Entities, from and after the Closing Date, shall only be bound by the Assumed Liabilities, comprised of:</p> <p>(i) the Retained Pre-Filing Trade Amounts, meaning those accrued and unpaid amounts owing by Enkern Canada to third parties for leased or financed equipment and for goods and services provided to Enkern Canada by third parties Related to the Retained Business relating to the period prior to May 12, 2025, that are unpaid as of the Closing, and in each case that are expressly agreed to in writing by the Investors (such amount not to exceed a maximum amount to be agreed by the Investors);</p> <p>(ii) the Assumed Retained Contracts Amounts, meaning those Liabilities of Enkern Canada and the Retained Entities under Retained Contracts specifically and expressly designated by the Investors, in consultation with Enkern Canada and the Monitor, as Assumed Liabilities in Schedule K to the Subscription Agreement;</p> <p>(iii) The Cure Costs, meaning any monetary defaults under Retained Contracts in respect of which consent for assignment is required and where consent has not been obtained, as set forth in Schedule M to the Subscription Agreement (as such schedule may be</p>

Key Terms	Subscription Agreement
	<p>amended in connection with any amendments made to Schedule L (Retained Contracts));</p> <p>(iv) the Post-Filing Trade Amounts, meaning accrued and unpaid amounts owing by Enkern Canada to third parties for leased or financed equipment and for goods and services provided to Enkern Canada by third parties Related to the Retained Business relating to the period from and including May 12, 2025, that are unpaid as of the Closing, up to an aggregate maximum amount to be agreed to by the Parties, in consultation with the Monitor, and with the individual amounts to be agreed to by the Parties, in consultation with the Monitor; and</p> <p>(v) all obligations and Liabilities of Enkern Canada and the Retained Entities to Retained Employees.</p> <p>The Subscription Agreement provides that Excluded Liabilities will be vested out of Enkern Canada and the Retained Entities pursuant to the Approval and Reverse Vesting Order.</p> <p>Pursuant to the Subscription Agreement, Excluded Liabilities means all direct and indirect Claims against and Liabilities of Enkern Canada and the Retained Entities as of immediately prior to the commencement of the implementation of the Closing Sequence, including:</p> <p>(i) all of Enkern Canada's and each of the Retained Entities' respective Liabilities that may pertain, directly or indirectly, to each of the Excluded Entities and their respective assets, contracts or businesses, (including, for certainty, all Liabilities related to EAB GP and/or EAB LP);</p> <p>(ii) any Liability under any legal proceedings (including arbitration) against the Enkern Entities or any of them;</p> <p>(iii) all Liabilities relating to the EAB Loan;</p> <p>(iv) all Liabilities relating to the Unsecured Bridge Notes;</p> <p>(v) all Liabilities related to Varennes Cellulosic Ethanol L.P. except for certain Assumed Liabilities under Retained Contracts;</p> <p>(vi) all pre-filing Claims against any of the Enkern Group, including any amounts owing (directly or indirectly) in respect of Taxes;</p> <p>(vii) any and all Claims relating to any change of control provision that may arise in connection with the change of control contemplated by the Transactions and to which Enkern Canada or any Retained Entity may be bound as of immediately prior to the implementation of</p>

Key Terms	Subscription Agreement
	<p>the transactions contemplated under Section 7.2(d) of the Subscription Agreement;</p> <p>(viii) all Liabilities of Enkern Canada and the Retained Entities under Retained Contracts other than the Assumed Retained Contracts Amounts;</p> <p>(ix) all Claims relating to or under the Excluded Contracts and Excluded Assets;</p> <p>(x) any Liabilities of Enkern Canada or any of the Retained Entities (direct or indirect) in respect of Employees whose employment with any of the Enkern Group is or was terminated before Closing; and</p> <p>(xi) the non-exhaustive list of those certain additional Liabilities set forth in Schedule F (as such schedule may be amended, supplemented or restated by the Investors from time to time prior to the Closing Date);</p> <p>provided that Excluded Liabilities shall not include the Assumed Liabilities, the DIP Facility Claims or the Secured Notes Claims (other than the Excluded Secured Notes Claims); and for greater certainty, all direct and indirect Liabilities of, or Claims against, the Excluded Entities shall be indirectly assumed by ResidualCo 2 through the transfer of the equity of the Excluded Entities to ResidualCo 2.</p>
Retained Employees and Non-Continuing Employees	<p>Following the Closing Date, except in respect of change of control payments for senior management, which amounts shall be waived or are Excluded Liabilities, the Investors agree that Enkern Canada and the Retained Entities will continue to employ the Retained Employees, in each case on substantially the same terms and conditions as they currently enjoy as at the date of the Subscription Agreement.</p> <p>Non-Continuing Employees shall either be terminated prior to the Closing Date or the employment of such Non-Continuing Employees shall be transferred to ResidualCo 1 concurrently with the transactions in the Closing Sequence prescribed in Section 7.2(d) of the Subscription Agreement and deemed terminated by ResidualCo 1 immediately upon such transfer. All outstanding Liabilities of Enkern Canada to Non-Continuing Employees, including for termination pay, severance pay, pay in lieu of notice and any other obligations (other than Liabilities for any accrued and unpaid base salary and vacation for services rendered up to their respective termination dates, which shall in each case be paid by Enkern Canada to such Non-Continuing Employees), shall constitute Excluded Liabilities and will be transferred to, and assumed by, and be the sole responsibility of ResidualCo 1.</p>
Retained Assets and Excluded Assets	<p>On the Closing Date, Enkern Canada and the Retained Entities shall each retain, free and clear of any and all Encumbrances (other than Permitted Encumbrances) all of the assets that each</p>

Key Terms	Subscription Agreement
	<p>owns on the date of the Subscription Agreement and any assets acquired by it up to and including Closing.</p> <p>The Retained Assets include, without limitation, the Owned Real Property, Retained Contracts, Permits and Licenses, Enerkem Owned IP, Licensed IP and Books and Records, and any and all rights, title and interest that any of the Excluded Entities may have in any Enerkem Owned IP and/or Licensed IP that are assumed by Enerkem Canada.</p> <p>The Subscription Agreement provides that the Excluded Assets will consist of:</p> <ul style="list-style-type: none"> <li>(i) all rights, covenants, obligations and benefits in favour of the ResidualCos under the Subscription Agreement that survive Closing;</li> <li>(ii) the equity interests in each of the Excluded Entities and ResidualCos as well as their respective assets; and</li> <li>(iii) those additional assets listed in Schedule D of the Subscription Agreement (as such schedule may be amended, supplemented or restated by the Investors from time to time prior to the Closing Date).</li> </ul>
Encumbrances to be Discharged	<p>All Encumbrances to Be Discharged shall be Discharged as against the Retained Assets pursuant to the Approval and Reverse Vesting Order.</p> <p>Encumbrances to Be Discharged means all Encumbrances on Enerkem Canada and the Retained Assets (including, for certainty, the Retained Entities and the Retained Assets of the Retained Entities), including the Encumbrances listed in Schedule C of the Subscription Agreement (as such schedule may be amended, supplemented or restated by the Investors from time to time prior to the hearing of the application for the Approval and Reverse Vesting Order (or such other date agreed to by the Investors and Enerkem Canada)), the CCAA Charges, the Interim Lender Charge, and any other charge granted by the CCAA Court in the CCAA proceedings, excluding only the Permitted Encumbrances.</p>
Retained Contracts and Excluded Contracts	<p>The Retained Contracts will consist of those Contracts listed in Schedule L.</p> <p>All Contracts that are not Retained Contracts, including those Contracts listed in Schedule E, are Excluded Contracts.</p> <p>Pursuant to Section 3.2 of the Subscription Agreement, Schedule L (Retained Contracts) and Schedule E (Excluded Contracts) shall be finalized by the Investors, in consultation with Enerkem Canada and the Monitor, within 90 days after the Closing Date, effective <i>nunc pro tunc</i> as of the Closing. At any time from the date of the Subscription Agreement up to (a) the Closing Date, Contracts may be added to Schedule E (Excluded Contracts) and removed from Schedule L (Retained Contracts) by the Investors, in consultation with the Company and the Monitor, and any such item upon its</p>

Key Terms	Subscription Agreement
	<p>addition or removal from the applicable schedule, shall automatically become an Excluded Contract, and (b) 90 days after the Closing Date, Contracts may be removed from Schedule E (Excluded Contracts) and added to Schedule L (Retained Contracts) by the Investors, in consultation with the Company and the Monitor, and any such item upon its addition or removal from the applicable schedule, shall automatically become a Retained Contract, effective <i>nunc pro tunc</i> as of the Closing, provided that (i) the Credit Bid shall not in any way be reduced as a consequence thereof; (ii) for greater certainty, any Cure Costs relating to any such added Retained Contract that requires consent for assignment and for which such consent is not obtained shall be paid by the Company directly to the counterparty to the applicable Retained Contract; and (iii) notwithstanding anything to the contrary set forth in section 3.2 of the Subscription Agreement, the Technology License Agreement dated December 23, 2020 (as amended), Corporate Services Agreement dated January 1, 2021 (as amended) and Secondment Agreement (Biorefinery) dated December 23, 2020 (as amended), each between the Company and Varennes Cellulosic Ethanol LP, shall always be considered Retained Contracts and shall not be removed from Schedule L (Retained Contracts) or added to Schedule E (Excluded Contracts) by the Investors.</p>
<p>Secured Notes Claims and Excluded Secured Notes Claims</p>	<p>Secured Notes Claims will consist of (i) the aggregate of all outstanding obligations owing with respect to the Senior Secured Superpriority Notes issued pursuant to the Amended and Restated NPA (the “<b>Superpriority Notes</b>”), including all outstanding principal, unpaid interest, fees, expenses, premiums, costs or other amounts; and (ii) the aggregate of all outstanding obligations owing with respect to the \$95,000,000 Senior Secured Convertible CAD Notes due March 31, 2026, and the US\$48,019,200 Senior Secured Convertible USD Notes due March 31, 2026, in each case issued pursuant to the Amended and Restated NPA (the “<b>Original Notes</b>”), including all outstanding principal, unpaid interest, fees, expenses, premiums, costs or other amounts.</p> <p>Excluded Secured Notes Claims means the principal amount of the Secured Notes Claims above \$175 million, as further described in the Subscription Agreement.</p>
<p>Transfer and Vesting of Excluded Liabilities, Excluded Contracts, and Excluded Assets to ResidualCo 1 and ResidualCo 2.</p>	<p>Any and all rights, title and interest that any of the Excluded Entities may have in any Enerkem Owned IP and/or Licensed IP will be transferred and vested in Enerkem Canada, (1) first, as repayment (or the partial repayment) (to the extent of the fair market value of the transferred Enerkem Owned IP and/or Licensed IP) of any intercompany indebtedness owing by such Excluded Entities to the Company, as applicable, and (2) second, to the extent that the value of any such transferred Enerkem Owned IP and/or Licensed IP exceeds the amount of intercompany indebtedness owing by such Excluded Entities to the Company pursuant to (1) above, as a return of capital, and deemed to form part of the Retained Assets.</p>



Key Terms	Subscription Agreement
	<p>All Excluded Contracts and Excluded Liabilities (other than the Excluded Secured Notes Claims) will be transferred and vested in ResidualCo 1.</p> <p>All Excluded Assets (other than the equity interests in ResidualCo2 held by ResidualCo1) and Excluded Secured Notes Claims will be transferred and vested in ResidualCo 2.</p> <p>As consideration for the transfer of the Excluded Assets (other than the equity interests in the ResidualCos), ResidualCo 2 shall assume a principal amount of the Excluded Secured Notes Claims equal to the fair market value of the Excluded Assets (other than the equity interests in the ResidualCos), and any remaining Excluded Secured Notes Claims shall be assumed by ResidualCo 2 for no consideration.</p> <p>As consideration for the transfer of the Excluded Contracts, ResidualCo 1 shall assume an amount of the Excluded Liabilities equal to the fair market value of the Excluded Contracts, and any remaining Excluded Liabilities shall be assumed by ResidualCo 1 for no consideration.</p> <p>Neither the Investors, Enerkem Canada nor the Retained Entities shall assume or have any Excluded Liabilities (including any Liabilities related to the Excluded Contracts or the Excluded Secured Notes Claims) or any liability in respect of the Secured Notes Claims.</p>
Administrative Expense Reserve	<p>The Parties shall work on an agreed framework and budget for the wind-down of the CCAA proceedings and the ResidualCos.</p> <p>On the Closing Date, an amount equal to the Administrative Expense Reserve (such amount to be agreed to by the Investors, Enerkem Canada and the Monitor) shall be retained and held by the Monitor for the benefit of persons entitled to be paid the Administrative Expense Costs for so long as may be reasonably required to wind down and/or dissolve and/or bankrupt the ResidualCos and the Excluded Entities, as applicable.</p> <p>Administrative Expense Costs means:</p> <ul style="list-style-type: none"> <li>(i) the reasonable and documented fees and costs of the Monitor, its professional advisors and the legal advisors to the Excluded Entities, in each case for services performed after the Closing Date and relating to the CCAA proceedings or the Subscription Agreement, including, in each case subject to the review and prior approval of the Chief Executive Officer of Enerkem Canada, costs required to wind down and/or dissolve and/or bankrupt the ResidualCos and the Excluded Entities (including the reasonable and documented fees and costs of the trustee in bankruptcy, to the extent applicable), and costs and expenses required to administer the Excluded Assets,</li> </ul>

Key Terms	Subscription Agreement
	<p>Excluded Contracts, Excluded Liabilities, the Excluded Entities and ResidualCos; and</p> <p>(ii) amounts owing in respect of obligations secured by the CCAA Charges that rank ahead of the Interim Lender Charge and are not paid or assumed on Closing, which shall be paid exclusively from the Administrative Expense Reserve.</p> <p>Any unused portion of the Administrative Expense Reserve after payment or reservation for all Administrative Expense Costs shall be transferred by the Monitor to Enerkem Canada upon the termination of the CCAA proceedings and the discharge of the Monitor.</p>
Cure Costs	<p>Enerkem Canada shall cure any Cure Costs in respect of the Retained Contracts that require consent for assignment and for which such consent has not been obtained.</p>
Investors' Closing Deliverables	<p>At or before the Closing (as applicable), the Investors shall deliver or cause to be delivered to Enerkem Canada, the following:</p> <p>(i) counterpart signatures from each Investor with respect to the Unanimous Shareholder Agreement;</p> <p>(ii) counterpart signatures from each Investor with respect to the Exit Loan Agreement;</p> <p>(iii) the amount of the Exit Loan to be funded by each Investor on Closing pursuant to the Exit Loan Agreement; and</p> <p>(iv) such other agreements, documents and instruments as may be reasonably required by Enerkem Canada to complete the Transactions provided for in the Subscription Agreement, all of which shall be in form and substance satisfactory to the parties, acting reasonably.</p>
Enerkem Canada's Closing Deliverables	<p>At or before the Closing (as applicable), Enerkem Canada shall deliver or cause to be delivered to the Investors, the following:</p> <p>(i) a certificate dated as of the Closing Date and executed by an executive officer of Enerkem Canada confirming and certifying that each the conditions in favour of the Investors pursuant to Section 8.2 of the Subscription Agreement has been satisfied;</p> <p>(ii) duly executed copies of the Ecoplanta Contracts;</p> <p>(iii) duly executed copies of indemnity agreements between Enerkem Canada and the current officers and directors of Enerkem Canada who are continuing to serve in such capacities from and after the Closing, each in form and substance satisfactory to the Investors and such persons, each acting reasonably;</p>

Key Terms	Subscription Agreement
	<ul style="list-style-type: none"> <li>(iv) counterpart signature from Enerkem Canada with respect to the Unanimous Shareholder Agreement;</li> <li>(v) counterpart signatures from Enerkem Canada with respect to the Exit Loan Agreement;</li> <li>(vi) evidence satisfactory to the Investors, acting reasonably, of the filing of the First Articles of Reorganization and the Second Articles of Reorganization;</li> <li>(vii) share certificates representing the Subscribed Shares (or other acceptable evidence of ownership of the Subscribed Shares); and</li> <li>(viii) payment of the reasonable fees and expenses of the Ad Hoc Committee Advisors.</li> </ul>
Mutual Conditions	<p>The respective obligations of each Investor and Enerkem Canada to consummate the Transactions are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the conditions listed below:</p> <ul style="list-style-type: none"> <li>(i) <u>No Violation of Orders or Law</u>: During the Interim Period, no Governmental Entity shall have enacted, issued or promulgated any final or non-appealable Order or Law which has: (i) the effect of making any of the Transactions illegal, or (ii) the effect of otherwise prohibiting, preventing or restraining the consummation of any of the Transactions.</li> <li>(ii) <u>CCAA Court Approval</u>: (i) The Approval and Reverse Vesting Order shall have been issued by the CCAA Court and become a Final Order; and (ii) the Initial Order, the SISP Order and the Approval and Reverse Vesting Order shall not have been vacated, set aside or stayed.</li> </ul>
Investors' Conditions	<p>The Investors are not obligated to complete the Transactions, unless each of the conditions listed in Section 8.2 of the Subscription Agreement have been satisfied or waived, which includes the conditions listed below:</p> <ul style="list-style-type: none"> <li>(i) <u>Material Adverse Effect</u>: After the date of the Subscription Agreement and before the Closing, there shall not have occurred any Material Adverse Effect that has not been cured.</li> <li>(ii) <u>Ecoplanta Contracts</u>: Enerkem Canada and Repsol shall have negotiated and executed (or caused to be executed) the Ecoplanta Contracts, which shall have been reviewed by Monarch and Eyre Street Capital, and the Ecoplanta Contracts shall be in full force and effect, automatically with no further notice, action, condition or otherwise of any party thereto or any other</li> </ul>

Key Terms	Subscription Agreement
	Person, concurrently with the Closing at the Closing Time.
Target Closing Date	July 31, 2025, or such other date as Enerkem Canada (with the consent of the Monitor) and the Investors may agree to in writing.
As is, where is	The Investors are acquiring the Subscribed Shares and the underlying Retained Assets and Retained Contracts on an “as is, where is” basis.

36. As reflected in the Subscription Agreement and the proposed Approval and Reverse Vesting Order, the Transactions contemplate the following steps to be implemented within the delays and sequence set out in the Subscription Agreement (collectively, the **“Reorganization”**):

Reorganization Steps Before the Closing Date

- (a) Step 1: Incorporation of ResidualCo 1 under the laws of Québec, without any shares issued at incorporation;
- (b) Step 2: Incorporation of ResidualCo 2 by ResidualCo 1 under the laws of Québec, and subscription by ResidualCo 1 of one (1) common share in the capital of ResidualCo 2;
- (c) Step 3: Filing by Enerkem Canada of Articles of Amendment to amend Enerkem Canada’s authorized and issued share capital to (i) delete all classes of preferred shares, and (ii) authorize an unlimited number of Class B Common Shares and an unlimited number of Class C Common Shares, each of which classes will be economically equivalent to the Class A Common Shares on a share-by-share basis;

Closing Sequence

- (d) Step 4: Assignment by the Excluded Entities to Enerkem Canada of any and all rights, title and interest that they may have in any Enerkem Owned IP and/or Licensed IP, (1) first, as repayment (or the partial repayment) (to the extent of the fair market value of the transferred Enerkem Owned IP and/or Licensed IP) of any intercompany indebtedness owing by such Excluded Entities to Enerkem Canada, as applicable, and (2) second, to the extent that the value of any such transferred Enerkem Owned IP and/or Licensed IP exceeds the amount of intercompany indebtedness owing by such Excluded Entities to Enerkem Canada pursuant to (1) above, as a return of capital;
- (e) Step 5: Assignment by Enerkem Canada and the Retained Entities, as applicable, of the Excluded Assets (other than the equity interests in the ResidualCos) and the Excluded Secured Notes Claims to ResidualCo 2, with ResidualCo 2 assuming the amount of the Excluded Secured Notes Claim equal to the fair market value of the Excluded Assets as consideration for the transfer of the Excluded Assets, and any remaining amount of the Excluded Secured Notes Claim for no consideration;
- (f) Step 6: Resignation of the directors of the ResidualCos;

- (g) Step 7: Assignment by Enerkem Canada and the Retained Entities, as applicable, of the Excluded Contracts and the Excluded Liabilities (other than the Excluded Secured Notes Claims) to ResidualCo 1, with ResidualCo 1 assuming the amount of the Excluded Liabilities equal to the fair market value of the Excluded Contracts as consideration for the transfer of the Excluded Contracts, and any remaining amount of Excluded Liabilities, and any Liabilities under the Excluded Contracts, for no consideration;
- (h) Step 8: Discharge of all Encumbrances to be Discharged and Enerkem Canada and the Retained Entities to retain the Retained Assets, as applicable, in each case free and clear of and from any and all Claims;
- (i) Step 9: Termination and cancellation for no consideration of all Existing Equity (other than the Existing Common Shares and the New Common Shares) as well as any agreement, Contract, plan, indenture, deed, certificate, subscription rights, conversion rights, pre-emptive rights, options (including stock option or share purchase or equivalent plans), or other documents or instruments governing and/or having been created or granted in connection with the share capital of Enerkem Canada;
- (j) Step 10: Forgiveness of all accrued and unpaid interest in respect of the Secured Notes Claims up to the Closing Date as well as interest that has been capitalized and added to the principal (collectively, the **"Secured Notes Forgiven Interest"**) for no consideration;
- (k) Step 11: Simultaneously the subscription, settlement and exchange (i) by Monarch of the US\$ principal amount of its Secured Notes Claim (other than the Excluded Secured Notes Claim and the Secured Notes Forgiven Interest) for 3,333,400,000,000 New Class A Common Shares; (ii) by Eyre Street Capital of the US\$ principal amount of its Secured Notes Claim (other than the Excluded Secured Notes Claim and the Secured Notes Forgiven Interest) for 3,333,400,000,000 New Common A Shares; and (iii) by Repsol of the US\$ principal amount of its Superpriority Notes Claim (other than the Excluded Senior Notes Claims and the Secured Notes Forgiven Interest) for the Repsol Superpriority Number of New Class A Common Shares;
- (l) Step 12: Subscription and settlement by Repsol of the CDN\$ principal amount of its Original Notes Claims (other than the Excluded Secured Notes Claim and the Secured Notes Forgiven Interest) for the Repsol Original Number of New Class A Common Shares;
- (m) Step 13: Filing of the Second Articles of Reorganization such that all Existing Common Shares and New Class A Common Shares shall be consolidated based a consolidation ratio of 200 million-to-one, with any fractional shares being deemed to be cancelled for no consideration;
- (n) Step 14: Exchange by Monarch of its New Class A Common Shares for New Class B Common Shares and exchange by Eyre Street Capital of its New Class A Common Shares for New Class C Common Shares, in each case on a one-for-one basis;
- (o) Step 15: The Administrative Expense Reserve is retained;

- (p) Step 16: The release of the Released Claims is effective;
  - (q) Step 17: The Unanimous Shareholder Agreement is entered into and effective; and
  - (r) Step 18: The Exit Loan Agreement is entered into and effective.
37. The Investors, with the prior consent of Enerkem Canada and the Monitor, may amend the structure of the Transactions, change the order of the Closing Sequence or amend the Closing Sequence (including, by adding or removing steps in the Closing Sequence), provided that such amendment or change to the Transactions and/or Closing Sequence does not materially alter or impact the Transactions or the consideration which Enerkem Canada and/or its applicable stakeholders will benefit from as part of the Transactions.

#### **4.2 The Exit Facility**

38. On the Closing Date, Enerkem Canada and the Investors shall enter into an Exit Loan Agreement, pursuant to which the Investors will provide for a new first lien secured loan facility in the aggregate principal amount of \$25 million, which shall consist of (a) all outstanding DIP Facility Claims, which shall be converted into and exchanged for Exit Loans on a dollar-for-dollar basis; and (b) new money Exit Loans in a principal amount equal to \$25 million less the aggregate amount of all outstanding DIP Facility Claims, to be made available by the Investors to the Company pursuant to the Exit Loan Agreement.
39. The Exit Loan Agreement will have a Maturity Date, of the earlier of (a) October 1, 2027 and (b) such date on which all Secured Obligations are repaid in full and all Commitments terminated, whether as a result of voluntary repayment, acceleration following an Event of Default or otherwise (as such terms are defined in the Exit Loan Agreement).

#### **4.3 The “Reverse Vesting” Structure**

40. The Transactions outlined in the Subscription Agreement are structured as a “*reverse vesting*” transaction and remain conditional on the issuance of an order substantially similar to the draft Approval and Reverse Vesting Order (Exhibit R-1).
41. In essence, instead of providing for a traditional asset sale transaction where all purchased assets are purchased and transferred to a purchaser on a “free and clear” basis, and all excluded assets, excluded contracts, non-continuing employees and excluded liabilities remain with the debtor company, the Transactions, due to the “reverse vesting” structure, will have the following effects, among others:
- (a) the Investors will subscribe for and own 20,000,200,000,000 New Class A Common Shares to be issued by Enerkem Canada (in consideration for the full and final settlement and exchange of the Secured Notes Claims (other than the Excluded Secured Notes Claims and Secured Notes Forgiven Interest) which pursuant to the Closing Sequence, will be transferred to ResidualCo 2 in the case of the Excluded Secured Notes Claims and deemed to be settled for no consideration in the case of the Secured Notes Forgiven Interest), which will then be consolidated and exchanged as part of the Closing Sequence, to result in the Investors holding all of the equity of the restructured Enerkem Canada;

- (b) Excluded Liabilities (other than the Excluded Secured Notes Claims) and Excluded Contracts will be assigned to ResidualCo 1, and the Excluded Assets (other than the equity interests in ResidualCo 2 held by ResidualCo 1) and the Excluded Secured Notes Claims will be assigned to ResidualCo 2 so as to allow the Investors to acquire Enerkem Canada and the Retained Entities on a “free and clear” basis; and
  - (c) Enerkem Canada and the Retained Entities will retain the Retained Assets and the Retained Employees.
- 42. The sector in which the Enerkem Group operates requires oversight from various governmental agencies, as well as various licences, permits, certifications, regulatory approvals without which it cannot properly operate.
- 43. The Enerkem Group currently maintains and benefits from multiple licences, permits, certifications and regulatory approvals in Quebec and Alberta, which are essential to its business operations in Canada.
- 44. As such, the “reverse vesting” structure will allow for the maintenance of these licences, permits, certifications and regulatory approvals already in place, as opposed to forcing the Enerkem Group and the Investors to seek the transfer (if possible) or expend significant resources to procure new licences, permits, certifications and regulatory approvals in the context of a traditional vesting structure, which process would be complex and uncertain, and would necessarily involve indeterminate risk, delays, and costs, all of which could jeopardize the Transactions.
- 45. The Enerkem Group also possesses significant intellectual property and allowing Enerkem Canada to maintain Owned IP and/or Licensed IP without requiring any additional steps or regulatory approvals is essential, since it will permit the Enerkem Group to close the Transactions in a timely and cost-efficient manner. As the Applicants are facing significant liquidity constraints, the delays, costs and uncertainty associated with re-recording and registering the Owned IP and/or Licensed IP is not a viable option.
- 46. Additionally, by virtue of the “reverse vesting structure”, significant tax losses incurred by Enerkem Canada and the Retained Entities as part of their normal course business operations will remain with such entities and may be utilized going forward. The preservation of tax losses represents a key benefit to Enerkem Canada, the Retained Entities and the Investors, which may not be preserved in an asset sale structure.
- 47. Given the above, the Applicants believe that the “reverse vesting structure” is appropriate and necessary in the circumstances.
- 4.4 The Grounds for Approval of the Subscription Agreement and of the Transactions**
- 48. Ultimately, no Superior Transaction was identified through the SISF. As such, the Transactions contemplated by the Subscription Agreement represent the best outcome for the Enerkem Group and its stakeholders in the circumstances.
- 49. The Transactions and the Subscription Agreement should be approved by the Court, notably for the following reasons:

- (a) the market has been thoroughly canvassed through a fulsome, fair and Court-approved SISP conducted within these CCAA proceedings, with the oversight of the Monitor, and the Transactions provided for in the Subscription Agreement representing the best available outcome in the circumstances;
  - (b) the Applicants understand that the Monitor's Third Report will state that, in the opinion of the Monitor, the Transactions will be more beneficial to the Applicants' creditors than a sale, liquidation or disposition in a bankruptcy context;
  - (c) the Transactions are being entered into with the Investors, who are existing lenders of the Enerkem Group and have developed valuable knowledge regarding the Enerkem Group's operations, suppliers and clients;
  - (d) the Transactions are beneficial to the Enerkem Group's stakeholders in that they provide for the continuation of a significant majority of the business of the Enerkem Group as a going concern and, in doing so, all or substantially all of current employees will be retained, the Enerkem Group's economic activities will be maintained and further developed, and certain suppliers and other stakeholders will benefit from the continuation of their business relationship with the Enerkem Group;
  - (e) the consideration to be received in connection with the Transactions is fair and reasonable in the circumstances, and is superior to any consideration offered in the context of the SISP; and
  - (f) the Investors, which are the Applicants' principal secured creditors, have been consulted throughout the CCAA proceedings, and engaged with in connection with the negotiation and execution of the Restructuring Term Sheet. As the SISP did not result in a Superior Transaction being identified, the Investors are credit bidding their secured debt pursuant to the Subscription Agreement the Transactions contemplated thereby.
50. The "reverse vesting" structure of the Transactions is warranted in the current circumstances given that:
- (a) the sector in which the Enerkem Group operates requires oversight from various governmental agencies and requires the maintenance of various licences, permits, certifications and regulatory approvals, without which it cannot properly operate;
  - (b) the "reverse vesting" structure of the Transactions will prevent delays and uncertainty in the transition of the Enerkem Group's business and instead allow for an efficient transition in an orderly manner, including with respect to maintaining the above licences, permits, certifications and regulatory approvals which are essential to the Enerkem Group's business;
  - (c) given the Enerkem Group's significant liquidity constraints, the delays, costs and uncertainty associated with transferring the above licences, permits, certifications and regulatory approvals, or otherwise seeking the issuance of new licences, permits, certifications and regulatory approvals, is not a viable option;



- (d) the “reverse vesting” structure does not put stakeholders, including creditors, contractual counterparties, and even shareholders in a worse position than they would have been under a traditional asset sale. Indeed, the SISP has demonstrated that the net realizable value of the business and assets of the Applicants does not exceed the amount of the Applicants’ secured debt such that there is no prospect of recovery for any of the Applicants’ other creditors, regardless of the structure employed;
  - (e) the Enerkem Group is party to a significant number of contracts that will be retained under the Subscription Agreement, with cure costs, if any, be paid pursuant to the terms of the Subscription Agreement and the proposed Approval and Reverse Vesting Order. To this end, the proposed “reverse vesting” structure will avoid potentially significant delays and costs associated with having to seek consent to assignment from contract counterparties or, if consents could not be obtained, orders assigning such contracts under section 11.3 of the CCAA, while also treating contract counterparties the same as they would be treated in an asset sale scenario;
  - (f) the “reverse vesting” structure will permit the maintenance of Enerkem Owned IP and Licensed IP, without requiring any additional steps or regulatory approvals to transfer them to the Investors; and finally,
  - (g) the significant tax losses incurred by the Applicants remain and may be available going forward, providing significant advantages to Enerkem Canada, the Retained Entities and the Investors.
51. As set out in the Subscription Agreement, the Investors agree that, if the Court does not grant the Approval and Reverse Vesting Order on or prior to July 31, 2025 (or such later date agreed to in writing by the Investors, in their sole discretion), the structure of the Transactions may, at the sole discretion of the Investors, be converted to contemplate an asset purchase agreement and approval and vesting Order.
52. If such conversion option is exercised by the Investors, in their sole discretion, the parties, in consultation with the Monitor, shall amend the structure of the Transactions accordingly, so long as the material terms contained in the Subscription Agreement are continued into the amended structure of the Transactions, provided that: (a) the transfer and assignment of the Material Permits, Licenses and Contracts, the Enerkem Owned IP and the Licensed IP effective as of the Closing shall be a condition to the implementation of the Transactions pursuant to such asset purchase agreement, and (b) the Investors and Enerkem Canada, in consultation with the Monitor, shall negotiate, in good faith, a reduction in the amount of the Retained Pre-Filing Trade Amounts and Liabilities in respect of Employees (other than Retained Employees) that form part of the Assumed Liabilities as reduced consideration under the Transactions to reflect any decrease in value arising from the adverse impact to the tax attributes that would be acquired pursuant to the amended structure of the Transaction and as a result of additional costs that may need to be incurred in connection with an asset purchase transaction structure. In addition, there would be additional time and professional and other costs that would need to be incurred by the Enerkem Group in order to complete an asset transaction, which would decrease overall value to stakeholders.
53. The Applicants understand that the Investors, who are the Enerkem Group’s principal secured creditors and have also provided for interim funding as pursuant to the DIP

Financing Term Sheet, support the implementation of the Transactions as set out in the Subscription Agreement. The Applicants also understand that the Monitor supports relief sought herein by the Applicants, including the proposed “reverse vesting” structure.

## **5. THE RELEASES**

54. As part of the Approval and Reverse Vesting Order sought by the Applicants, the Applicants are seeking approval of certain releases in favour of Enerkem Canada, the Retained Entities, and the Investors, as well as a release in favour of Enerkem Canada’s and the Retained Entities’ present and former D&Os.
55. In particular, the Approval and Reverse Vesting Order provides that as of the date of issuance of the Monitor’s Certificate and the time the releases of the Released Claims contemplated by the Subscription Agreement are deemed to be effective in accordance with the Closing Sequence:
- (a) the commencement of any Released Claim with respect to any indebtedness, liability, right, obligation or cause of action, whether statutory, contractual or otherwise, against Enerkem Canada and the Retained Entities in respect of the Excluded Assets, the Excluded Contracts and the Excluded Liabilities shall be permanently enjoined and barred, and Enerkem Canada and the Retained Entities shall be forever released and discharged from all Released Claims and Encumbrances relating to the Excluded Assets, Excluded Contracts and Excluded Liabilities, and any Person (other than Enerkem Canada and the Investors) shall be forever barred from initiating or pursuing any Released Claim against Enerkem Canada and the Retained Entities, the Investors, the Subscribed Shares or the Retained Assets in any manner whatsoever, in connection with the Excluded Assets, the Excluded Contracts, the Excluded Liabilities or in connection with any other Claims or Encumbrances discharged pursuant to the Approval and Reverse Vesting Order, save and except for Released Claims arising out of fraud, gross negligence or willful misconduct;
  - (b) the commencement of any Released Claims against each Investor, each predecessor of an Investor in respect of any of the Secured Notes Claims (including any transferor or assignor of any Secured Notes Claims to an Investor), each of their respective Affiliates, and each of their respective successors and assigns, and all current and former officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them (the “**Investor Released Parties**”) in connection with the Applicants, the ResidualCos, these proceedings, the Transactions, the Subscribed Shares and any steps, actions or transactions in connection with the foregoing, shall be permanently enjoined and barred as against the Investor Released Parties, and the Investor Released Parties shall be forever released and discharged from all such Released Claims and Encumbrances, and any Person shall be forever barred from initiating or pursuing any such Released Claim against the Investor Released Parties, save and except for Released Claims arising out of fraud, gross negligence or willful misconduct; and
  - (c) all present and former directors, officers and Retained Employees of Enerkem Canada and the Retained Entities (collectively, the “**D&O Released Parties**”) shall be deemed to be forever irrevocably released and discharged from any

and all D&O Released Claims (as defined in the Approval and Reverse Vesting Order), provided that (i) nothing shall release or bar any claim against the D&O Released Parties arising from fraud, gross negligence or willful misconduct, nor any claim against the D&O Released Parties that is not permitted to be released pursuant to section 5.1(2) of the CCAA, (ii) this release shall not apply to the Investors (any releases by the Investors in favour of any of the D&O Released Parties, as applicable, shall be governed by the Subscription Agreement), and (iii) nothing shall release any D&O Released Claims of Enkema Canada or the Retained Entities against any former directors or officers of Enkema Canada or the Retained Entities.

56. The proposed releases are rationally connected to the Applicants' restructuring and CCAA proceedings, particularly as:
- (a) the beneficiaries of the releases have been, and some of them will continue to remain instrumental to the implementation of the Transactions and, more generally, to the Applicants' restructuring efforts that will culminate in the implementation of the Transactions pursuant to the Subscription Agreement; and
  - (b) with respect to the D&O release, the proposed release will ultimately have the effect of diminishing claims as against the D&O Released Parties, which in turn will diminish any indemnification claims by the D&O Released Parties against the Applicants that may be secured by the D&O Charge, which ultimately benefits the Applicants and their stakeholders.
57. With respect to the D&O release, each of the D&O Released Parties, as beneficiaries of the releases, have participated, contributed and/or supported the Applicants' restructuring efforts both prior to and/or after the commencement of the CCAA proceedings, without any remuneration for several of them. More specifically:
- (a) over the course of the past year, including prior to the commencement of the CCAA proceedings, the D&O Released Parties have worked tirelessly with the Applicants and its principal stakeholders with a view to secure one or more restructuring transactions that would allow the maximization of creditor recovery, the pursuit of the Applicants' business and operations as a going concern and, ultimately, the preservation of jobs for a material portion of the Applicants' employees – a scenario which will occur, subject to this Court's approval of the Subscription Agreement and of the Transactions contemplated thereunder;
  - (b) the D&O Released Parties were instrumental in the Applicants' ongoing restructuring efforts, which include, *inter alia*:
    - (i) actions taken to significantly reduce operating costs;
    - (ii) steps to sell non-core assets in order to enhance liquidities;
    - (iii) negotiations with their senior secured lenders;
    - (iv) negotiation of interim financing to secure the necessary funding to pursue the CCAA proceedings and conduct the SISF;

- (v) negotiation of the Restructuring Term Sheet with the Ad Hoc Committee;
  - (vi) commencement and conduct of the CCAA proceedings;
  - (vii) conduct of the SISP; and
  - (viii) negotiation of the Subscription Agreement and, if approved, eventual implementation of the Transactions.
- (c) these restructuring efforts implemented with the participation, contribution and/or support of the Released Parties have ultimately and recently led to the execution of the Subscription Agreement;
- (d) now, with the execution of the Subscription Agreement and the implementation of the proposed Transactions, it is now expected that the Applicants will be in a position to pursue a substantial majority of their operations as a going concern, and all or substantially all of their current employees will be able to preserve their jobs, which, in and of itself, and irrespective of the expected recovery for the Applicants' creditors, constitutes a favourable outcome, in line with the objectives of the CCAA; and
- (e) the D&O Released Parties have clearly contributed time, energy and resources to achieve this outcome and such time, energy and resources will continue to be important to implementing the Transactions, to the extent that they are approved by this Court.
58. The Applicants submit that the proposed releases are fair and reasonable, appropriately tailored to the circumstances and are not overly broad and are in line with releases granted in the context of similar transactions.
59. In fact, the breadth and scope of the releases are limited to what is necessary, and the releases do not purport to release claims for (i) fraud, gross negligence or willful misconduct, or (ii) claims that cannot be released pursuant to section 5.1(2) of the CCAA.
60. For the reasons set out above, the Applicants respectfully submit that this Court should grant the releases as set out in the proposed Approval and Reverse Vesting Order.
- 6. THE EXTENSION OF THE STAY PERIOD AND ADDITIONAL POWERS REQUESTED FOR THE MONITOR**
61. The Applicants request an extension of the Stay Period until November 14, 2025.
62. It is respectfully submitted that the requested extension of the Stay Period is necessary to provide the Applicants with sufficient time and the requisite continued stability in order to, *inter alia*:
- (a) allow for the closing of the Transactions contemplated in the Subscription Agreement;
  - (b) allow for the Monitor to proceed with the liquidation of the Excluded Assets;
  - (c) allow for the Monitor to prepare for the bankruptcies of the ResidualCos; and

- (d) allow for the Monitor to apply to this Court for an order terminating these CCAA proceedings and discharging the Monitor once all steps relating to these CCAA proceedings will have been completed.
63. The Applicants have acted in good faith and with due diligence throughout these CCAA proceedings.
64. The Applicants are of the view that the requested extension of the Stay Period will not negatively impact any of their creditors, as the Applicants will close the Transactions in the best interest of their creditors and other stakeholders.
65. Additionally, in conjunction with the closing of the Transactions, subject to this Court's approval, all of the Applicants' current employees will continue to be employed by Enerkem Canada or the Retained Entities, as applicable, substantially on the same terms and conditions as they currently enjoy.
66. Given the foregoing, the Applicants and the Monitor agree that it is necessary to provide the Monitor with additional powers, as of the closing of the Transactions, to ensure that all of the remaining steps in the CCAA proceedings can be completed.
67. Accordingly, the Applicants are seeking an order, substantially in the form of the Proposed Extension Order authorizing the Monitor, without any obligation to do so, to *inter alia*:
- (a) control the receipt and disbursements of the Excluded Entities and the ResidualCos (collectively, the "**Residual Debtors**");
  - (b) open bank accounts for and on behalf of the Residual Debtors;
  - (c) implement necessary protective measures to preserve the Residual Debtors' remaining assets;
  - (d) control and carry out the Residual Debtors' business and activities;
  - (e) assign any of the Residual Debtors into bankruptcy and act as trustee thereto; and
  - (f) proceed with the sale, transfer, assignment, lease or other disposition of the Residual Debtors' remaining property outside the ordinary course of business, in whole or in part.
68. In the absence of employees, it is necessary that the Monitor be granted these powers as it will facilitate the orderly completion of the CCAA proceedings, including the assignment into bankruptcy of the Residual Debtors, the whole for the benefit of all of the Applicants' stakeholders.
69. The Applicants are also informed that the Monitor is of the view that the requested extension of the Stay Period and the expanded Monitor's powers are necessary and reasonable in the circumstances.

## **6.1 THE WEPPA RELIEF**

69.1 As previously discussed, all outstanding Liabilities of Enkern Canada to Non-Continuing Employees, including for termination pay, severance pay, pay in lieu of notice and any other obligations (other than Liabilities for any accrued and unpaid base salary and vacation for services rendered up to their respective termination dates, which shall in each case be paid by Enkern Canada to such Non-Continuing Employees), and any outstanding Liabilities to any previously terminated Employees constitute Excluded Liabilities. As part of the Reorganization steps to be implemented prior to the closing of the Subscription Agreement, the Applicants will transfer all Excluded Liabilities to ResidualCo 1. It is not currently contemplated that there would be any Non-Continuing Employees.

69.2 The Applicants are seeking a declaration that, pursuant to section 5(5) of the WEPPA and the Court's inherent jurisdiction, ResidualCo 1 is the former employer of the aforementioned employees, and meets the criteria established by section 3.2 of the WEPP Regulations.

69.3 Section 5(1) of the WEPPA provides as follows:

*5 (1) An individual is eligible to receive a payment if*

*(a) the individual's employment ended for a reason prescribed by regulation;*

*(b) one of the following applies:*

*(i) the former employer is bankrupt,*

*(ii) the former employer is subject to a receivership,*

*(iii) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the Bankruptcy and Insolvency Act and*

*(A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and*

*(B) a trustee is appointed, or*

*(iv) the former employer is the subject of proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act and a court determines under subsection (5) that the criteria prescribed by regulation are met; and*

*(c) the individual is owed eligible wages by the former employer.*

69.4 Section 5(5) of the WEPPA provides that "[o]n application by any person, a court may, in proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act, determine that the former employee meets the criteria prescribed by regulation." Section 3.2 of the WEPP Regulations provides that "[f]or the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations."

- 69.5 The WEPPA and WEPP Regulations do not account for the particularities of “reverse vesting” structures and the former employees of a debtor company having emerged further to a “reverse vesting” transaction would not be eligible for the WEPP based on the express terms of the WEPPA.
- 69.6 Although employments have already been terminated and no employment contract is transferred and vested into the ResidualCos, the outstanding liabilities of Enerkem Canada to previously terminated Employees and Non-Continuing Employees (if any) are transferred and vested into ResidualCo 1.
- 69.7 In light of the foregoing, it is respectfully submitted that it is appropriate at this time for this Court to declare that upon transfer of the Excluded Liabilities, including all outstanding Liabilities of Enerkem Canada to previously terminated Employees and Non-Continuing Employees, ResidualCo 1 meets the criteria established by section 3.2 of the WEPP Regulations, as such declaration would help alleviate the impact of the CCAA Proceedings on the Applicants’ eligible former employees by providing them with the relief described in the WEPPA.

**7. DISCHARGE, TERMINATION AND RELEASE OF CERTAIN CCAA CHARGES**

70. In the context of the present Application, the Applicants are seeking the discharge, termination and release of the Interim Lender’s Charge, the Directors and Officers Charge and the KERP Charge effective upon issuance of the Monitor’s Certificate.
71. Indeed, upon closing of the Transactions, all amounts owing under the Interim Financing Term Sheet will be converted into and exchanged for Exit Loans as part of the Transactions. Consequently, the Interim Lender’s Charge will become moot.
72. Additionally, as part of the Transactions, the Applicants’ current employees will continue to be employed by Enerkem Canada or the Retained Entities, as applicable, substantially on the same terms and conditions as they currently enjoy. Consequently, the Residual Debtors will no longer have any employees or directors or officers such that the D&O Charge will become moot.
73. Furthermore, upon closing of the Transactions, all amounts owing pursuant to the KERP and secured by the KERP Charge will have been paid. Consequently, the KERP Charge will become moot.
74. Consequently, the Applicants are seeking the discharge, termination and release of the Interim Lender’s Charge, the D&O Charge and the KERP Charge.
75. The Applicants are also informed that the Monitor is supportive of the proposed discharge, termination and release of the Interim Lender’s Charge, the D&O Charge and the KERP Charge.

**8. THE REDACTING OF CONFIDENTIAL INFORMATION CONTAINED IN FILED EXHIBITS**

76. During the course of the Initial Hearing, the Applicants filed Exhibit R-7, which was the Amended and Restated Note Purchase Agreement dated February 16, 2024 (the “**Amended and Restated Note Purchase Agreement**”), which contained certain highly sensitive and personal information which should not have been made available to the public (the “**Confidential Information**”), and accordingly, the Applicants now

seek permission from this Court to redact certain limited sections of this exhibit (and withdraw the non-redacted version of this Exhibit R-7).<sup>3</sup>

77. More specifically, certain limited information should be redacted (as reflected in the new Exhibit R-7, filed as **Exhibit R-5** hereto), since it exposes proprietary commercially sensitive and confidential information, the disclosure of which will be detrimental to the Enkern Group, as it emerges from these CCAA proceedings. Moreover, certain of the information is personal in nature, including as it relates to individual shareholders and employees.
78. The Applicants submit that this information should not have been disclosed, since it is highly prejudicial to the integrity of the business operations.
79. As such, the Applicants therefore request from this Court to allow the redacting of pages 173-178, 179-183, 184-188, 222, 223, 232, 296, 304, 315-316 and 317-358 of Exhibit R-5, to preserve the integrity of the Confidential Information.

## **9. CONCLUSIONS**

80. In light of the foregoing, the Applicants respectfully submit that the Approval and Reverse Vesting Order and the other requested relief should be granted by this Court.
81. The Applicants understand that the Monitor supports the reliefs sought in the present Application as will be more fully detailed in the Third Report that will be filed in support of this Application.

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

**GRANT** the Application.

**ISSUE** an order substantially in the form of the draft Approval and Reverse Vesting Order communicated in support of the Application as Exhibit R-1.

**ISSUE** an order substantially in the form of the draft *Ordonnance d'annulation et de radiation* communicated in support of the Application as Exhibit R-2.

**ISSUE** an order substantially in the form of the draft Order Extending the Stay Period, Expanding the Powers of the Monitor and Releasing, Terminating and Discharging Certain CCAA Charges communicated in support of the Application as Exhibit R-3.

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<sup>3</sup> Pages 173-178, 179-183, 184-188, 222, 223, 232, 296, 304, 315-316 and 317-358 of Exhibit R-5.



**WITHOUT COSTS**, save and except in case of contestation.

**MONTREAL**, July 25, 2025

A handwritten signature in cursive script that reads "Stikeman Elliott LLP". The signature is written in black ink and is positioned above a horizontal line.

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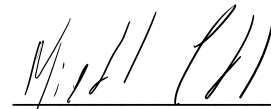
Montreal (Quebec) H3B 3V2

## SWORN STATEMENT

I, the undersigned, Michel Chornet, having my principal place of business at 1130 Sherbrooke Street West, Suite 600, in the city and district of Montréal, Province of Quebec, solemnly declare the following:

1. I am the Chief Executive Officer of Enerkem Inc.;
2. All the facts alleged in the *Amended Application for the Issuance of an Approval and Reverse Vesting Order* are, to the best of my knowledge, true.

## AND I HAVE SIGNED



Michel Chornet

Solemnly declared before me at  
Montreal, on the **25th** day of July, 2025



Commissioner for the taking of Oaths for  
the Province of Québec



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

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N° : 500-11-065700-250

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**CANADA**  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

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

**ENERKEM INC.**  
**ENERKEM ALBERTA BIOFUELS G.P. INC.**  
**ENERKEM LIMITED (UK)**  
**ENERKEM CORPORATION (DELAWARE)**  
**ENERKEM SPAIN HOLDINGS, SOCIEDAD LIMITADA (SPAIN)**  
**9390-1783 QUÉBEC INC.**

Applicants

-and-

**ENERKEM ALBERTA BIOFUELS L.P.**

Mise-en-cause

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

BS0350

File: 109513-1043

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**AMENDED APPLICATION FOR THE ISSUANCE OF AN  
APPROVAL AND REVERSE VESTING ORDER**  
**(Sections 9, 10, 11, 11.02(2), 11.03 and 36 of the *Companies'***  
***Creditors Arrangement Act*)**

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ORIGINAL

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