

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

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

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 22- 10934 (KBO)

Jointly Administered

**MOTION FOR ORDER (I) RECOGNIZING AND ENFORCING
CCAA VESTING ORDER; (II) APPROVING THE SALE OF CERTAIN OF
DEBTOR XEBEC SYSTEMS USA LLC’S ASSETS FREE AND CLEAR OF ANY
AND ALL LIENS, CLAIMS, AND ENCUMBRANCES; (III) APPROVING
ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS; AND
(IV) GRANTING RELATED RELIEF**

FormerXBC Inc. (f/k/a Xebec Adsorption Inc.), in its capacity as the authorized foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”) in a proceeding (the “**Canadian Proceeding**”) commenced under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and pending before the Superior Court of Québec, in the Province of Québec, District of Montréal (the “**Canadian Court**”), respectfully submits this Motion (this “**Motion**”) requesting the entry of an order substantially in the form attached hereto as Exhibit A (the “**Sale and Recognition Order**”): (i) recognizing and enforcing the Canadian Court’s order (the “**EnergyLink Vesting Order**”) authorizing Debtor Xebec Systems USA LLC (“**Xebec Systems**” or the “**Seller**”) to sell substantially all of its assets (the “**Purchased Assets**”) and to assume and assign certain of its

¹ The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: FormerXBC Inc. (f/k/a Xebec Adsorption Inc.) (0228), 11941666 Canada Inc. (f/k/a Xebec RNG Holdings Inc.) (N/A), Applied Compression Systems Ltd. (N/A), 1224933 Ontario Inc. (f/k/a Compressed Air International Inc.) (N/A), Xebec Holding USA Inc. (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), Xebec Adsorption USA, Inc. (0821), The Titus Company (9757), Nortekbelair Corporation (1897), XBC Flow Services – Wisconsin Inc. (7493), California Compression, LLC (4752), and Xebec Systems USA LLC (4156). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 730 Industriel Boulevard, Blainville, Quebec, J7C 3V4, Canada.

contracts (the “**Assigned Contracts**”) to EnergyLink US Inc. (“**EnergyLink**” or “**Buyer**”), pursuant to that certain Asset Purchase Agreement by and between Seller and Buyer, dated March 14, 2023 (the “**Purchase Agreement**”); (ii) approving the sale of the Purchased Assets free and clear of any and all liens, claims, and encumbrances (the “**EnergyLink Transaction**”); (iii) approving the assumption and assignment of the Assigned Contracts; and (iv) granting related relief.

In support of this Motion, the Foreign Representative refers the Court to: (a) the *Declaration of Dimitrios “Jim” Vounassis in Support of Motion for Recognition of Foreign Main Proceeding* [Docket No. 3] (the “**Vounassis First Day Declaration**”), filed on September 30, 2022; (b) the *Declaration of Dimitrios “Jim” Vounassis in Support of Foreign Representative’s Motions (I) Seeking Recognition and Enforcement of CCAA Vesting Orders; (II) Approving the Sales of Certain of the Debtors’ Assets 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* (the “**Vounassis Sale Declaration**,” or the “**Vounassis Sale Decl.**”), filed contemporaneously herewith; and (c) the *Declaration of Julien Morissette in Support of Foreign Representative’s Motions (I) Seeking Recognition and Enforcement of CCAA Vesting Orders; (II) Approving the Sales of Certain of the Debtors’ Assets 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* (the “**Morissette Sale Declaration**,” or the “**Morissette Sale Decl.**”), filed contemporaneously herewith. The Vounassis First Day Declaration, the Vounassis Sale Declaration, and the Morissette Sale Declaration each are incorporated herein by reference.

In further support of the relief requested herein, the Foreign Representative respectfully

represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012.

2. The Foreign Representative, in its capacity as authorized foreign representative, has properly commenced these chapter 15 cases pursuant to sections 1504, 1509, and 1515 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”).

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Foreign Representative consents to the entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. Venue is proper before the Court pursuant to 28 U.S.C. § 1410.

5. The statutory predicates for the relief requested herein are sections 105(a), 363, 365, 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”), and Local Rules 2002-1, 6004-1, and 9006-1.

BACKGROUND

6. The Debtors and certain non-U.S. based subsidiaries and affiliates of the Debtors (the “**Xebec Group**”) primarily supply a wide range of renewable and low-emission gas products and services globally through several channels, including direct sales, channel partners, project developers, and e-commerce. The Xebec Group portfolio includes proprietary technologies for

the on-site and distributed production of renewable and low-emission natural gas, oxygen and nitrogen, and proprietary technologies that transform raw gases into clean sources of renewable energy. The Xebec Group’s operations include manufacturing, research and development, service, and sales. The Xebec Group operates in North America, Europe, the Middle East, and Asia. A more detailed description of the Debtors and their businesses can be found in the Foreign Representative’s Motion for Recognition of Foreign Main Proceeding and Request for Certain Related Relief [Docket No. 7] (the “**Recognition Motion**”).

A. The Canadian Proceeding

7. On September 29, 2022, pursuant to an application made by the Debtors in the Canadian Proceeding, the Canadian Court entered: (a) the First Day Initial Order (the “**Initial CCAA Order**”); and (b) the Bidding Procedures Order (the “**CCAA Bidding Procedures Order**”).

8. Pursuant to the Initial CCAA Order, the Canadian Court, among other things: (a) ordered a broad stay of proceedings in respect of the Debtors and their directors and officers (the “**Canadian Stay**”);² (b) appointed Deloitte Restructuring Inc. (the “**Monitor**”) as monitor in the Canadian Proceeding; (c) declared that Québec is the “centre of main interest” of the Debtors, and, accordingly, authorized the Debtors to apply to any other court, tribunal, regulatory, administrative, or other body, wherever located, for orders to recognize and assist in carrying out the terms of the Initial CCAA Order and any subsequent orders rendered by the Canadian Court in the context of the Canadian Proceeding, including orders under chapter 15 of the Bankruptcy Code. (Morissette Sale Decl. ¶ 7; *see also* Initial CCAA Order at ¶¶ 16-20, 40-48, 65, 67.)

² On February 13, 2023, the Canadian Court entered an order extending the Canadian Stay until March 17, 2023, subject to further extension. (Morissette Sale Decl. ¶ 7.) By the Canadian Application (as defined below), the Debtors requested an extension of the stay to May 5, 2023. (*Id.*)

B. The Chapter 15 Cases

9. On September 30, 2022 (the “**Petition Date**”), the Foreign Representative commenced these chapter 15 cases by filing, among other things, verified chapter 15 petitions seeking recognition by the Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

10. On the Petition Date, the Court entered that certain *Order (A) Directing Joint Administration of Cases Under Chapter 15 of the Bankruptcy Code and (B) Authorizing the Filing of a Consolidated List Under Bankruptcy Rule 1007* [Docket No. 8].

11. On October 27, 2022, the Court entered that certain *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 36] (the “**Original Recognition Order**”). Pursuant to the Original Recognition Order, the Court recognized the Canadian Proceeding as a “foreign main proceeding” pursuant to chapter 15 of the Bankruptcy Code, recognized the Foreign Representative as the “foreign representative” in respect of the Canadian Proceeding, and recognized and granted comity to, and gave full force and effect in the United States to the Canadian Proceeding and the orders entered in the Canadian Proceeding, including enforcing the automatic stay in the United States.

C. Sale Process

12. Pursuant to the CCAA Bidding Procedures Order, the Canadian Court, among other things: (a) approved the Debtors’ proposed Sale and Investment Solicitation Process (the “**SISP**”); and (b) approved the engagement of National Bank Financial Inc. (the “**Financial Advisor**”) to serve as the Debtors’ financial advisor in the context of the sale process. (Morissette Sale Decl. ¶ 8.)

13. The Debtors, with the assistance of the Monitor and the Financial Advisor, and under the oversight of the Canadian Court, conducted a sale process in accordance with the SISP.

Similar to a traditional sale process in a case under section 363 of the Bankruptcy Code, the SISP established a clear and open process for the solicitation, receipt, and evaluation of bids on a timeline that provided parties with sufficient time and information to submit competitive bids. In addition to seeking bids to purchase substantially all of the Debtors' assets as a going concern, the SISP also authorized the Debtors to sell certain of their assets as part of separate one-off sale transactions. (Morissette Sale Decl. ¶ 9.)

14. At the commencement of the sale process, the Financial Advisor distributed teasers to 479 potential targets, including potential investors and strategic acquirers. A confidential virtual data room was made available to potential targets who executed non-disclosure agreements. Initially, 67 parties were deemed "Phase 1" qualified bidders, of which 32 submitted non-binding letters of intent. The Debtors, in consultation with the Monitor and the Financial Advisor, determined that 19 Phase 1 qualified bidders were "Phase 2" qualified bidders, and invited them to participate in Phase 2 of the SISP. (Morissette Sale Decl. ¶ 10.)

15. On or about January 16, 2023, certain Phase 2 qualified bidders submitted binding offers, which, after further negotiations between the relevant parties, resulted in three transactions, including the sale to Sullair (as defined below) (Morissette Sale Decl. ¶ 11), which this Court approved on February 16, 2023, pursuant to the Sullair Sale Order (as defined below).

16. Subsequently, in an effort to maximize the value of the Debtors' remaining assets and avoid a forced liquidation, the Financial Advisor approached parties that had previously expressed an interest in the remaining assets and gave them a deadline of February 27, 2023, to submit final offers for the remaining assets. A number of final offers were subsequently received, and the Debtors, the Financial Advisors, and the Monitor, together with their respective advisors, conducted numerous meetings with the potentially interested parties and further negotiated the

terms of proposed transactions. These arms'-length negotiations ultimately led to, among other transactions, the Debtors' agreement to enter into the EnergyLink Transaction. (Vounassis Sale Decl. ¶ 10, 12, 13; Morissette Sale Decl. ¶ 12.)

D. Previously Approved Sullair Sale

17. On February 16, 2023, the Court entered an order [Docket No. 102] (the "**Sullair Sale Order**"), which among other things: (a) recognized and enforced a February 13, 2023 CCAA vesting order that approved the sale of certain of the Debtors' assets located in California to Sullair, LLC ("**Sullair**"); (b) approved the sale of such assets to Sullair free and clear of all liens, claims, and encumbrances pursuant to section 363 of the Bankruptcy Code; (c) approved the assumption and assignment of certain executory contracts and unexpired leases to Sullair pursuant to section 365 of the Bankruptcy Code. The Foreign Representative provided notice of the motion seeking entry of the Sullair Sale Order in accordance with this Court's Order (A) Approving Noticing Procedures for Debtors' Motion for (I) Approval of the Sale of Debtors' Assets; and (II) Recognition and Enforcement of Canadian Court Order Approving the Sale; (B) Setting a Sale Hearing; and (C) Granting Related Relief [Docket No. 65] (the "**Noticing Procedures Order**").

18. At the hearing to consider approval of the Sullair Sale Order, the Court voiced concerns about certain of the noticing procedures approved in the Noticing Procedures Order and instructed the Foreign Representative to serve any future sale motions in accordance with Bankruptcy Rules 2002 and 6004 and related Local Rules. Accordingly, the Foreign Representative has provided 21 days' notice of this Motion to all required parties and has served cure notices on counterparties to executory contracts and unexpired leases that Seller desires to

assume and assign to Buyer as part of the Purchase Agreement.³

E. The EnergyLink Transaction

19. Xebec Systems 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. Xebec Systems also manufactures containerized biogas upgrading equipment under the supervision of other divisions of the Debtors. Xebec Systems also provides services as part of the Debtors' cleantech service network. Xebec Systems is a wholly owned subsidiary of Xebec Holding USA Inc., which is in turn a direct and wholly owned subsidiary of FormerXBC Inc. (f/k/a Xebec Adsorption Inc.). Xebec Systems currently employs approximately 56 employees. (Vounassis Sale Decl. ¶ 7.).

20. On March 14, 2023, the Debtors filed that certain 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 (the "**Canadian Application**") in the Canadian Proceeding. Pursuant to the Canadian Application, the Debtors seek, among other things, entry of a proposed EnergyLink Vesting Order approving the EnergyLink Transaction. (Morissette Sale Decl. ¶ 13.) A copy of the Canadian Application is attached hereto as **Exhibit**

B.⁴ The Proposed EnergyLink Vesting Order is attached as exhibit P-8 to the Canadian Application.⁵ A copy of the Purchase Agreement is attached hereto as **Exhibit C.**⁶

³ The Foreign Representative has followed the same noticing procedures for the other two sale motions filed contemporaneously with this Motion.

⁴ The voluminous exhibits to the Canadian Application are available upon request to counsel for the Foreign Representative.

⁵ If entered by the Canadian Court, the Foreign Representative will promptly file the Vesting Order with the Court.

⁶ The copy of the Purchase Agreement attached hereto as **Exhibit C** is the same partially redacted form as filed with the Canadian Court.

21. The Purchase Agreement is the product of agreement between Seller and Buyer reached through arms' length, good faith negotiations that included both parties to the transaction, the Financial Advisor, and the Monitor. Given the extensive SISP process undertaken in the Canadian Proceeding, and to avoid incurring unnecessary expenses of a longer process that is not likely to generate a higher and better offer for Seller's assets, the Debtors believe a private sale process is appropriate under the circumstances. (Vounassis Sale Decl. ¶ 15.)

22. The EnergyLink Transaction contemplates the sale of substantially all Seller's assets on an "as is, where is" basis and the assignment to EnergyLink of certain executory contracts and unexpired leases (the "**Assigned Contracts**"), free and clear of all liens, claims, encumbrances, and other interests. The Foreign Representative understands that EnergyLink intends on hiring no less than 80% of Seller's current employees. (Vounassis Sale Decl. ¶ 8, 9.)

23. The EnergyLink Transaction requires entry of the EnergyLink Vesting Order as a condition precedent to closing. Due to Seller's liquidity constraints, the parties have agreed to close the Total Energy Transaction within five business days of entry of the Total Energy Vesting Order. Notwithstanding that the Debtors anticipate closing the EnergyLink Transaction prior to a hearing on this Motion, after extensive negotiations, the parties have agreed, as reflected in the Purchase Agreement, that the Monitor will hold the proceeds from the sale in escrow pending entry of a Sale and Recognition Order. Accordingly, entry of the Sale and Recognition Order is a required post-closing deliverable that will enable the Monitor to release the proceeds from the sale from escrow. (Purchase Agreement § 3.4(a); Morissette Sale Decl. ¶ 16.)

24. The material terms and conditions of the Purchase Agreement are as follows:⁷

⁷ To the extent that there is any inconsistency between the terms of the Purchase Agreement and the summary of such terms in this Motion, the terms of the Purchase Agreement shall control. Capitalized terms used by not otherwise defined in this summary shall have the meanings ascribed to such terms in the purchase Agreement.

MATERIAL TERMS OF THE PURCHASE AGREEMENT	
Purchased Assets/Excluded Assets	<p><u>Purchased Assets:</u></p> <p>All of 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 Seller in connection with the Acquired Business, as applicable, including without limitation the following properties, assets and rights:</p> <p>(a) <i>Accounts Receivable</i> – the Accounts Receivable and the benefit of all security (including cash deposits), guarantees and other collateral held by Seller relating to the Acquired Business;</p> <p>(b) <i>Prepaid Expenses</i> – all prepaid expenses, rents, workers' compensation prepayments, prepaid insurance, <i>ad valorem</i> Taxes and property Taxes of Seller relating to the Acquired Business or the Purchased Assets, and all deposits of Seller with any supplier, public utility, lessor under any Personal Property Lease or Real Property Lease, or Governmental Authority;</p> <p>(c) <i>Inventory</i> – all tangible personal property and other items that are owned by 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;</p> <p>(d) <i>Fixed Assets and Equipment</i> – all machinery, technology and communications hardware and infrastructure, cranes 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 Seller for use in or relating to the Acquired Business, whether located on Seller’s premises or elsewhere, and all rights of Seller under warranties, indemnities, licenses, and all similar rights of Seller against third Persons with respect to such fixed assets and equipment;</p> <p>(e) <i>Vehicles</i> – all motor vehicles, including all trucks, vans, trailers, tractors, cars and forklifts owned by Seller for use in or relating to the Acquired Business, and all rights of Seller under warranties, indemnities, licenses, and all similar rights of Seller against third Persons with respect to the motor vehicles;</p> <p>(f) <i>Personal Property Leases</i> – all leases of personal or moveable property of Seller that relate to the Acquired Business listed on Schedule 1.1(f), including all benefits, rights and</p>

MATERIAL TERMS OF THE PURCHASE AGREEMENT

options of Seller pursuant to such leases and all leasehold improvements forming part thereof;

(g) *Real Property Leases* – the leases and other agreements to occupy the Premises entered into by, or assigned in favour of Seller and listed in Schedule **Error! Reference source not found.**, including all purchase options, prepaid rents, security deposits, rights to appurtenances and improvements, licenses and permits relating thereto and all leasehold improvements thereon;

(h) *Assumed Contracts* – all Contracts to which Seller is a party and listed in Schedule **Error! Reference source not found.**, 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 Seller in the ordinary course of business from the date of the Purchase Agreement to the Closing Date (but excluding any Excluded 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 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:

(j) *Information Technology Systems* – all software (including source code and object code form), computer hardware, licenses, and documentation therefor and rights therein owned by Seller used in the Acquired Business, and any other information technology systems owned by Seller and used in the Acquired Business;

(k) *Goodwill* – the goodwill and other intangible assets of the Acquired Business and relating to the Purchased Assets, and information and documents of Seller relevant thereto;

(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;

(n) *Permits* – the Permits, to the extent transferable to the Buyer or its permitted assignees;

(o) *Insurance* –

(i) the Contracts of insurance, insurance policies and insurance plans of 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 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 the Purchase Agreement and the Closing Date; and

(iii) the full benefit of 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 Seller related to the Acquired Business or any of the Purchased Assets or any of the Assumed Liabilities, and the interest of 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 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 Seller, the assets of such account) related to any Assumed Employee Plan.

(Purchase Agreement, § 2.1).

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,

MATERIAL TERMS OF THE PURCHASE AGREEMENT

relating to the organization, maintenance and existence of each Seller as a Person;

(c) *Excluded Contracts* – all Contracts of Seller that are not Assumed Contracts, including those set forth on Schedule **Error! Reference source not found.**(c);

(d) *Collateral* – all letters of credit, cash or cash equivalents of Seller granted by Seller as collateral to secure outstanding letters of credit in respect of any Excluded Liability or Excluded Asset;

(e) *Rights under Agreements* – all of Seller’s rights under the Purchase 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 by hereby and thereby;

(f) *Director and Officer Insurance Policies* – all rights of Seller and the directors and officers of 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 Seller, whether relating to the Acquired Business or otherwise to the extent not transferable;

(h) *Tax Refunds* – the benefit of 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 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 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 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

MATERIAL TERMS OF THE PURCHASE AGREEMENT	
	<p>of business in compliance with Section Error! Reference source not found. or was obsolete during the period beginning on the date of the Purchase Agreement and ending on the Closing Date;</p> <p>(l) <i>Intercompany Accounts Receivable</i> – any debts due or accruing due prior to the Closing Time to Seller from any shareholder, director or affiliate of Seller, including any Seller Subsidiary;</p> <p>(m) <i>Excluded Intellectual Property</i> – all Intellectual Property exclusively relating to or in used in connection with any Excluded Assets, the Biostream assets and all Xebec Marks; 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;</p> <p>(n) <i>Brightmark Assets</i> – any Brightmark Assets;</p> <p>(o) <i>Western Assets</i> – any Western Assets; and</p> <p>(p) <i>Air Products Assets</i> – any Air Products Assets.</p> <p>(Purchase Agreement, § 2.2).</p>
Purchase Price	<p>The purchase price payable to Seller for the Purchased Assets (the “Purchase Price”), exclusive of all applicable sales and transfer taxes, shall be the total of:</p> <p style="padding-left: 40px;">(a) the amount of US \$3,000,000 in cash, plus</p> <p style="padding-left: 40px;">(b) the amount of the Accrued Liabilities.</p> <p>(Purchase Agreement, § 3.1).</p>

MATERIAL TERMS OF THE PURCHASE AGREEMENT	
<p>Escrow of the Purchase Price</p>	<p>(a) The Purchase Price shall be held in the Escrow Account pending entry of the U.S. Sale Order and shall not be released to Seller or its bankruptcy estate until such order has entered.</p> <p>(b) Upon 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:</p> <p style="padding-left: 40px;">(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.</p> <p style="padding-left: 40px;">(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.</p> <p>(Purchase Agreement, § 3.4(a), (b)).</p>
<p>Sale to Insider Local Rule 6004-1(b)(iv)(A)</p>	<p>None.</p>
<p>Agreements With Management Local Rule 6004-1(b)(iv)(B)</p>	<p>None.</p>

MATERIAL TERMS OF THE PURCHASE AGREEMENT	
<p>Releases</p> <p>Local Rule 6004-1(b)(iv)(B)</p>	<p>(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 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.</p> <p>(b) The Buyer hereby agrees to indemnify Seller, the Monitor, their respective affiliates and their respective present or former trustees, officers, directors, employees, agents 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 arising from, in connection with or related in any manner whatsoever to:</p> <ul style="list-style-type: none"> (i) Buyer’s failure to pay when due, and perform and discharge, the Assumed Liabilities; and (ii) Buyer’s access in accordance with Section 7.1. <p>(Purchase Agreement, § 7.6).</p>
<p>Private Sale/No Competitive Bidding</p> <p>Local Rule 6004-1(b)(iv)(D)</p> <p>Local Rule 6004-1(b)(iv)(G)</p>	<p>The Foreign Representative seeks approval of a private sale, without an auction process. The Debtors previously conducted a competitive bidding process through the SISP, but did not receive any higher or better offers for Seller’s assets.</p>
<p>Closing and Other Deadlines</p> <p>Local rule 6004-1(b)(iv)(E)</p>	<p>Subject to entry of the EnergyLink Vesting Order, the Closing Date shall be no later than March 31, 2023 or such later date agreed to in writing by both Buyer and Seller (with the consent of the Monitor). (Purchase Agreement, §§ 1.1(bb), 9.1(b)).</p>
<p>Good Faith Deposit</p> <p>Local Rule 6004-1(b)(iv)(F)</p>	<p>Buyer paid a deposit of \$300,000 that is being held by the Monitor in a non-interest-bearing trust account in accordance with the SISP. (Purchase Agreement, §§ 1.1(hh); 3.3(b)).</p> <p>The Deposit will be credited against the Purchase Price paid at the Closing. (Purchase Agreement, § 3.3(b)(i)).</p>

MATERIAL TERMS OF THE PURCHASE AGREEMENT	
Interim Arrangements with Proposed Buyer Local Rule 6004-1(b)(iv)(G)	None.
Use of Proceeds Local Rule 6004-1(b)(iv)(H)	None.
Tax Exemption Local Rule 6004-1(b)(iv)(I)	None.
Record Retention Local Rule 6004-1(b)(iv)(J)	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 Seller or the filing of any Tax return or compliance with any Applicable Law or the terms of the Purchase Agreement or related to the Excluded Assets. (Purchase Agreement, § 2.1(m)).
Sale of Avoidance Actions Local Rule 6004-1(b)(iv)(K)	None.
Requested Findings as to Successor Liability Local Rule 6004-1(b)(iv)(L)	This Motion seeks entry of an order that contains findings of fact and conclusions of law that Buyer is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code and is not a successor to Seller.

MATERIAL TERMS OF THE PURCHASE AGREEMENT	
<p>Sale Free and Clear of Unexpired Leases</p> <p>Local Rule 6004-1(b)(iv)(M)</p>	<p>The Foreign Representative must file a sale motion seeking entry of an order from this Court that contains findings of fact and conclusions of law that “provide for the vesting of title to the Purchased Assets in and to the Buyer in accordance with the terms and conditions of the Purchase 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 the Purchase Agreement have been satisfied or waived (where permissible).” (Purchase Agreement, §§ 1.1(k)(iii); 8.1(b)(i)).</p>
<p>Credit Bid</p> <p>Local Rule 6004-1(b)(iv)(N)</p>	<p>None.</p>
<p>Relief from Bankruptcy Rule 6004(h)</p> <p>Local Rule 6004-1(b)(iv)(O)</p>	<p>The Foreign Representative believes that any Sale should be consummated as soon as practicable to preserve and maximize value.</p> <p>Accordingly, the Foreign Representative requests that any Sale Order approving the sale of the Assets and the assumption and assignment of the Assigned Contracts be effective immediately upon entry of such order and that the fourteen-day stay under Bankruptcy Rules 6004(h) and 6006(d) be waived.</p>

25. The Foreign Representative believes that the terms of the Purchase Agreement and EnergyLink Vesting Order are reasonable and fair under the circumstances, and that the EnergyLink Transaction provides the highest and best return for Seller’s assets. Further, the Foreign Representative believes that, because Seller lacks sufficient liquidity to continue operations in the ordinary course, the expedited closing proposed by the Purchase Agreement will benefit all stakeholders, as it will prevent a forced liquidation of Seller’s business. The Foreign Representative understands that the Monitor and the Debtors’ DIP Lenders are supportive of Seller’s entry into the EnergyLink Transaction. (Vounassis Sale Decl. ¶ 10, 11.)

26. A hearing on the Canadian Application is scheduled for March 16, 2023, at which

time the Debtors will request entry of the EnergyLink Vesting Order. (Morissette Sale Decl. ¶ 13.) In anticipation of the Canadian hearing, the Foreign Representative files this Motion to provide adequate notice of the EnergyLink Transaction to all parties in interest, to provide adequate notice of and opportunity to object to the assumption and assignment, and the proposed cure amounts of, the Assigned Contracts, and to facilitate the parties' ability to consummate the EnergyLink Transaction in accordance with the terms of the Purchase Agreement.

27. The Foreign Representative believes that consummating the EnergyLink Transaction in accordance with the deadlines set forth in the Purchase Agreement is critical to preserving the going-concern value of the Purchased Assets. Entry of the Sale and Recognition Order will facilitate the sale process and will allow release of the purchase price from escrow. In short, the EnergyLink Transaction is the best transaction for the Purchased Assets available to the Debtors under the circumstances, and ensures that Seller's business can continue as a going-concern, which will benefit a broad array of stakeholders, includes Seller's customers, employees, and suppliers. (Vounassis Sale Decl. ¶ 12.)

RELIEF REQUESTED

28. As set out above, the EnergyLink Transaction requires the Court's recognition and enforcement of the EnergyLink Vesting Order as a condition to the release of the purchase price from escrow. Accordingly, the Foreign Representative seeks entry of the Order, (i) recognizing and enforcing the EnergyLink Vesting Order; (ii) approving the proposed EnergyLink Transaction, including the assumption and assignment of the Assigned Agreements; and (iii) granting related relief.

BASIS FOR RELIEF

A. The Court Should Recognize and Enforce the EnergyLink Vesting Order and Authorize the Sale of the Purchased Assets Pursuant to Section 363 of the Bankruptcy Code

29. Upon a bankruptcy court’s granting recognition of a foreign representative and of a foreign proceeding as a foreign main proceeding, relief is available to the petitioner under section 1520 of the Bankruptcy Code. *See* 11 U.S.C. § 1520. Section 1520(a)(2) of the Bankruptcy Code provides, in relevant part, that, “[u]pon recognition of a foreign proceeding that is a foreign main proceeding . . . section[] 363 [of the Bankruptcy Code] appl[ies] to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the section[] would apply to property of an estate.” 11 U.S.C. § 1520(a)(2); *see also* 11 U.S.C. § 1521(a)(5) (providing that a U.S. bankruptcy court may “entrust[] the administration or realization of all or part of the debtor’s assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court.”).

30. In addition, section 1520(a)(3) of the Bankruptcy Code provides that, upon recognition of a foreign main proceeding, “unless the court orders otherwise, the foreign representative may operate the debtor’s business and may exercise the rights and powers of a trustee under and to the extent provided by section[] 363 [of the Bankruptcy Code].” 11 U.S.C. § 1520(a)(3); *see also In re Elpida Memory, Inc.*, No. 12-10947, 2012 WL 6090194, at *5 (Bankr. D. Del. Nov. 20, 2012) (holding that section 363 of the Bankruptcy Code applies to transfers of assets located within the United States outside of the ordinary course of business in connection with cases commenced under chapter 15 of the Bankruptcy Code).

31. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does

not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of a debtor's estate, courts have approved the authorization of a sale of a debtor's assets if such sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

32. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was provided to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, No. 00-4459, 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)).

33. Where a debtor demonstrates a valid business justification for a decision, it is presumed that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *In re Integrated Res., Inc.*, 147 B.R. at 656. A sound business purpose for the sale of a debtor's assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1063; *In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 (recognizing the paramount goal of any proposed sale of property of estate is to maximize value).

34. Pursuant to Bankruptcy Rule 6004(f)(1), sales of property may be by private sale or public auction. *See, e.g., In re 160 Royal Palm, LLC*, 600 B.R. 119, 127–28 (S.D. Fla., 2019) (“private sales are not unheard of in bankruptcy and in fact are expressly contemplated by the rules. *See* Fed. R. Bankr. P. 6004(f)(1).”); *see also* Bankruptcy Rule 6004(f)(1) (“All sales not in the ordinary course of business may be by private sale or by public auction.”)

35. Entering into the EnergyLink Transaction is a prudent exercise of the Debtors’ business judgment. *First*, the EnergyLink Transaction is the result of the Debtors’ thorough, transparent, and fair marketing and sale process – the Canadian Court-approved SISP, which included extensive stakeholder negotiations and engagement, and ultimately resulted in entry into the Purchase Agreement. Further, the EnergyLink Transaction provides a viable going-concern transaction available to the Debtors to maximize the value of Seller’s assets for the benefit of all stakeholders. Accordingly, the Foreign Representatives contends that the Debtors have a sound business reason justifying the sale of the Purchased Assets to EnergyLink pursuant to the Purchase Agreement. (Vounassis Sale Decl. ¶ 12.) As such, recognition of the EnergyLink Vesting Order is necessary and appropriate.

36. *Second*, the Purchase Agreement is the result of an extensive marketing process undertaken by the Debtors and their advisors and the product of arm’s-length, good-faith negotiations between the Debtors and EnergyLink. (Vounassis Sale Decl. ¶ 13, 14.) As discussed below, the Foreign Representative submits that EnergyLink is a “good faith” purchaser within the meaning of section 363(m) of the Bankruptcy Code. Moreover, considering that the SISP was crafted to ensure that the Purchased Assets were sold for the maximum potential price, the Foreign Representative submits that the EnergyLink Transaction has been proposed in good faith. (*Id.*)

37. *Third*, during the Canadian Proceeding, the Debtors have complied with all notice

and service requirements under the CCAA, including notice of the SISP and the EnergyLink Transaction. (Morissette Sale Decl. ¶ 14.) In addition, in accordance with the relevant Bankruptcy Rules and Local Rules, the Foreign Representative will provide notice of this Motion to, among others, (a) all creditors of the Debtors with a U.S. mailing address, (b) all counterparties to the Assigned Contracts, (c) all U.S. employees of the Debtors, (d) all relevant local, state, and federal taxing authorities and government agencies, (e) any party who has received notice by mail from the Foreign Representative of any previous filing in these chapter 15 cases; and (f) all parties to litigation in which any Debtor is a party and that is pending in the United States as of the date that these chapter 15 cases were filed. Therefore, this Motion will provide notice reasonably calculated, under the circumstances, to inform all interested parties of the pendency of this Motion, notice of the objection deadline, notice of proposed cure amounts, and notice of the hearing on this Motion. Accordingly, the Foreign Representative submits that notice of the EnergyLink Transaction and the hearing on approval thereof is sufficient and appropriate.

38. *Fourth*, the Purchase Agreement is fair, reasonable, and the result of an extensive marketing process and negotiations between the Debtors, the Monitor, and EnergyLink. Accordingly, the Foreign Representative believes it provides the highest and best value to the Debtors and their stakeholders for the Purchased Assets. The fairness and reasonableness of the consideration to be received by the Debtors from EnergyLink is validated by a “market test” through the robust court-approved SISP—a reliable means for establishing whether a purchase price is fair and reasonable. The Purchase Agreement presents the best opportunity to maximize the value of the Purchased Assets on a going concern basis. For all of the foregoing reasons, the Debtors have determined that the sale of the Purchased Assets pursuant to the Purchase Agreement is in the best interests of their estates, creditors, and other parties in interest, thereby satisfying the

sound business purpose test and section 1520 of the Bankruptcy Code.

39. *Fifth*, prior to entering into the Purchase Agreement and filing the Canadian Application, the Debtors have exhausted all reasonable options for attracting bids for the assets subject to the sale that are higher and better than EnergyLink's offer. More specifically, the Debtors and the Financial Advisor have been engaged in the SISP for nearly six months and were unable to attract any higher and better offers, whether through the sale of the Debtors' entire business as a going concern, or through the sale of only Xebec System's assets. (See Vounassis Sale Decl. ¶ 15; Morissette Sale Decl. ¶ 17.) Accordingly, approval of the private sale is also warranted because any additional marketing and sale process is unlikely to result in obtaining higher and better offers and likely would only result in additional expense and further deterioration to the Debtors' business. If the Debtors cannot consummate the EnergyLink Transaction, they will be forced to liquidate Xebec Services's assets. Therefore, given Xebec Services's financial circumstances, the proposed private sale is the only viable option. (See Vounassis Sale Decl. ¶ 15.)

40. Lastly, sections 1525 and 1527 of the Bankruptcy Code contemplate cooperation "to the maximum extent possible with the foreign court or a foreign representative," which includes, "coordination of the administration and supervision of the debtor's assets and affairs," and "approval or implementation of agreements concerning the coordination of proceedings." 11 U.S.C. §§ 1525, 1527. Here, the Canadian Court previously approved the SISP and the parties anticipate obtaining the EnergyLink Vesting Order prior to the hearing on this Motion. In the event that the Canadian Court enters the EnergyLink Vesting Order approving the EnergyLink Transaction, for the reasons stated above and in the interest of comity and cooperation with the Canadian Court, approval of the private sale and the EnergyLink Transaction would be

appropriate. Accordingly, the Foreign Representative respectfully requests that the Court recognize and give effect to the EnergyLink Vesting Order and approve the sale of the Purchased Assets.

B. The Court Should Authorize and Approve the Sale of the Purchased Assets “Free and Clear” Under Section 363(f) of the Bankruptcy Code

41. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another party’s interest in the property if: (a) applicable nonbankruptcy law permits such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is the subject of a bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. *See* 11 U.S.C. § 363(f); *see also In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

42. Section 363(f) of the Bankruptcy Code is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). The Foreign Representative submits that the sale of the Purchased Assets free and clear of all liens, claims, interests, and encumbrances will satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code.

43. More specifically, the Debtors have obtained the requisite consent from their prepetition secured lenders and the DIP Lenders to sell the Purchased Assets free and clear of their liens, claims, interests, or encumbrances. If the Canadian Court enters the EnergyLink Vesting

Order, due to the Debtor-sellers' liquidity constraints, the Debtors anticipate closing the EnergyLink Transaction prior to the hearing on this Motion. However, as noted below, the parties to the EnergyLink Transaction heavily negotiated this issue and agreed that the Monitor would maintain the sale proceeds from the EnergyLink Transaction in escrow pending approval of the Motion. (Morissette Sale Decl. ¶ 16.) Moreover, as noted above, in accordance with the service requirements of the CCAA, and the service of this Motion, the Debtors have provided notice of the proposed EnergyLink Transaction to all lienholders, in accordance with the service requirements of the CCAA and the applicable Bankruptcy Rules and Local Rules. (*See id.* ¶ 14.) Accordingly, the Foreign Representative requests that, unless a party asserting a prepetition lien, claim, or encumbrance on any of the Purchased Assets timely objects to this Motion, such party shall be deemed to have consented to the sale of the Purchased Assets. *See In the Matter of Tabone, Inc. (Hargrave v. Twp. of Pemberton)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to a sale motion, a creditor is deemed to consent to the relief requested therein).

44. Accordingly, the Foreign Representative submits that the sale of the Purchased Assets free and clear of all interests, as provided in the proposed EnergyLink Vesting Order and the proposed Sale and Recognition Order, satisfies the statutory prerequisites of section 363(f) of the Bankruptcy Code, and, therefore, the Court should authorize the sale of the Purchased Assets free and clear of any liens, claims, interests, and encumbrances, in accordance with section 363(f) of the Bankruptcy Code.

45. The Foreign Representative submits that pursuing a sale other than one free and clear of all liens, claims, encumbrances, and other interests would yield substantially less value for the Debtors and their creditors. (Vounassis Sale Decl. ¶ 16.) Therefore, a sale free and clear of all interests is in the best interests of the Debtors, their creditors, and other parties in interest.

C. The Court Should Afford EnergyLink All Protections Under Sections 363(m) and (n) of the Bankruptcy Code as a Good Faith Purchaser

46. The Foreign Representative also requests that the Court find that EnergyLink is entitled to the benefits and protections set forth in sections 363(m) and (n) of the Bankruptcy Code. Specifically, section 363(m) of the Bankruptcy Code provides, in pertinent part: “[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.” 11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code fosters the “policy of not only affording finality to the judgment of the [B]ankruptcy [C]ourt, but particularly to give finality to those orders and judgments upon which third parties rely.” *In re Abbotts Dairies*, 788 F.2d at 147; *see also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal.”).

47. While the Bankruptcy Code does not define “good faith,” the Third Circuit has held that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” *In re Abbotts Dairies*, 788 F.2d at 147 (to constitute lack of good faith, a party’s conduct in connection with the sale must usually amount to fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders); *see also In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995).

48. In other words, a party would have to show fraud or collusion between the Debtors and EnergyLink to demonstrate a lack of good faith. *See Kabro Assocs. of West Islip, LLC v.*

Colony Hill Assocs. (In re Colony Hill Assocs.), 111 F.3d 269, 276 (2d Cir. 1997) (“[t]ypically, the misconduct that would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”). Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, with a focus on the “integrity of [a bidder]’s conduct in the course of the sale proceedings.” *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1998 (7th Cir. 1978)).

49. The Foreign Representative submits that EnergyLink is a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code. Further, the Foreign Representative submits that the parties did not engage in any conduct that would cause or permit the EnergyLink Transaction to be avoided under section 363(n) of the Bankruptcy Code. The Debtors and EnergyLink have entered into the Purchase Agreement, and seek entry of the EnergyLink Vesting Order and the Sale and Recognition Order, without collusion, in good faith, and after extensive arm’s-length negotiations. There is no evidence of fraud or collusion in the terms of the Purchase Agreement. To the best of the Foreign Representative’s knowledge, information, and belief, no party has engaged in any conduct that would cause or permit the EnergyLink Transaction to be set aside under section 363(m) of the Bankruptcy Code. (*See Vounassis Sale Decl.* ¶¶ 13, 14, 17.)

50. Accordingly, the Foreign Representative submits that EnergyLink is a good faith purchaser under section 363(m) of the Bankruptcy Code and has not violated section 363(n) of the Bankruptcy Code.

D. Assumption and Assignment of Assigned Contracts Should Be Authorized

51. Section 1521(a)(7) of the Bankruptcy Code provides that the court may grant a foreign representative “any appropriate relief,” including “any relief that may be available to a

trustee,” where necessary to effectuate the purpose of chapter 15 and to protect the assets of the debtor or the interests of creditors. *See* 11 U.S.C. § 1521(a)(7). Pursuant to this authority, the Foreign Representative requests that the Court extend the protections afforded by Section 365 of the Bankruptcy Code to these chapter 15 cases. Application of section 365 of the Bankruptcy Code in these chapter 15 cases is necessary to ensure that the Debtors can assume and assign the Assigned Contracts to EnergyLink as contemplated in the Purchase Agreement and the EnergyLink Vesting Order. Absent the application of section 365 of the Bankruptcy Code, there is a risk that the counterparties to the Assigned Contracts may assert that they are not bound by the EnergyLink Vesting Order or may try to exercise contractual rights that may deprive EnergyLink of the benefits of performance under the Assigned Contracts.

52. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Courts employ the business judgment standard in determining whether to approve a debtor’s decision to assume or reject an executory contract or unexpired lease. *See, e.g., In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court”); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that a debtor’s decision to assume or reject executory contract is governed by business judgment standard and may only be overturned if decision is product of bad faith, whim, or caprice). The “business judgment” test in this context only requires that a debtor demonstrate that assumption or rejection of a [Contract or] Lease benefits the estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989).

53. Any assumption and assignment of the Assigned Contracts is an exercise of the

Debtors' sound business judgment because the transfer of such Assigned Contracts is necessary to the Debtors' ability to obtain the best value for the Purchased Assets. The Seller is selling substantially all of its assets and, accordingly, will have no use for the Assigned Contracts after the EnergyLink Transaction closes. If Seller is unable to assign the Assigned Contracts, the EnergyLink Transaction will be jeopardized, causing a disruption in the administration of the Canadian Proceeding and a significant loss of value to the Debtors and their stakeholders. (Vounassis Sale Decl. ¶ 18.)

54. In addition, the Debtors, the Monitor, and their respective advisors have carefully considered the economic terms of Assigned Contracts and determined that the assumption and assignment of Assigned Contracts would maximize the value of the Purchased Assets, which benefits all stakeholders. (Vounassis Sale Decl. ¶ 18.) Given that consummation of the EnergyLink Transaction is critical to the Debtors' efforts to maximize value, Seller's assumption and assignment of the Assigned Contracts is an exercise of sound business judgment and, therefore, should be approved.

55. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract or unexpired lease if "adequate assurance of future performance by the assignee of such contract or lease is provided." 11 U.S.C. § 365(f)(2). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *In re Fleming Cos.*, 499 F.3d 300 (3d Cir. 2007); *see also Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (citation omitted); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D.

Ill. 1985) (finding that, “[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance”). Among other things, adequate assurance may be provided by evidencing the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when the prospective assignee of a lease has financial resources and has expressed willingness to devote sufficient funding to the business to give it a strong likelihood of succeeding).

56. The Foreign Representative believes that Buyer is able to demonstrate adequate assurance of future performance to the counterparties of the Assigned Contracts. In the event that such counterparties object on adequate assurance of future performance grounds, the Foreign Representative will present facts at the hearing on this Motion to show the financial wherewithal, willingness, and ability of Buyer to perform under the Assigned Contracts.

57. Pursuant to the Purchase Agreement, Seller and Buyer are causing all outstanding monetary defaults under the Assigned Contracts to be cured. Each counterparty to the Assigned Contracts that Seller seeks to assume and assign to Buyer will be served with this Motion and the notice of assumption and assignment (the “**Assumption Notice**”), attached as **Exhibit D** hereto, which identifies the contracts and leases that Seller seeks to assume and assign to Buyer as well as the proposed cure amount necessary to cure defaults thereunder (if any) as required by section 365 of the Bankruptcy Code. Accordingly, each counterparty to the Assigned Contracts will be provided an opportunity to object to the proposed assumption and assignment and/or the cure amounts and be heard at the hearing on this Motion.

E. Waiver of Notice and Stay Under Bankruptcy Rules 6004 and 6006

58. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court

orders otherwise.” Fed. R. Bankr. P. 6004(h). Similarly, Bankruptcy Rule 6006(d) further provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

59. As described above, the relief sought by the Foreign Representative herein is time-sensitive and necessary for the Debtors to finalize the EnergyLink Transaction and release the purchase price from escrow. Accordingly, any delay in entry of the Sale and Recognition Order could jeopardize the EnergyLink Transaction to the detriment of the Debtors and their stakeholders. Therefore, the Foreign Representative respectfully requests that the Court waive the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d), as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

60. Notice of this Motion will be provided to the following parties or their counsel via U.S. Mail: (a) all creditors of the Debtors with a U.S. mailing address; (b) all counterparties to the Assigned Contracts; (c) all U.S. employees of the Debtors; (d) all relevant local, state, and federal taxing authorities and government agencies; (e) any party who has received notice by mail from the Foreign Representative of any previous filing in these chapter 15 cases; (f) all parties to litigation in which any Debtor is a party and that is pending in the United States as of the date that these chapter 15 cases were filed; (g) the Office of the United States Trustee for the District of Delaware; (h) the United States Attorney’s Office for the District of Delaware; (i) National Bank of Canada; (j) Export Development Canada; and (k) the Monitor. Notice of this Motion will also be provided, via email, to all parties who receive notices in these chapter 15 cases automatically via the Court’s CM/ECF system.

NO PRIOR REQUEST

61. Except as set forth herein, no previous request for the relief sought herein has been made by the Foreign Representative or the Debtors to this or any other court.

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CONCLUSION

WHEREFORE, the Foreign Representative respectfully requests that the Court grant the relief requested herein and such other and further relief as may be just and proper.

Dated: March 15, 2023
Wilmington, Delaware

BIELLI & KLAUDER, LLC

/s/ David M. Klauder

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Counsel for the Foreign Representative

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

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

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 22- 10934 (KBO)

Jointly Administered

**ORDER (I) RECOGNIZING AND ENFORCING THE CCAA VESTING ORDER;
(II) APPROVING THE SALE OF CERTAIN OF DEBTOR XEBEC SYSTEMS USA
LLC’S ASSETS 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**

Upon the motion (the “**Motion**”)² of FormerXBC Inc. (f/k/a Xebec Adsorption, Inc.), in its capacity as the duly-appointed foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”), for entry of an order pursuant to sections 105(a) 363, 365, 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and Local Rules 2002-1 and 9006-1, for entry of an order (this “**Order**”), (a) recognizing and enforcing that certain *Approval, Vesting and Assignment Order in Respect of the Assets of Xebec Systems USA LLC*, entered by the Canadian Court on March __, 2023 (the “**CCAA Vesting Order**”), attached hereto as **Exhibit A**; (b) approving, under section 363 of the Bankruptcy Code, the sale of Debtor Xebec Systems USA LLC’s rights, title, and interests in and to the Purchased Assets (as defined below) to EnergyLink U.S. Inc. (“**Purchaser**”), pursuant

¹ The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: FormerXBC Inc. (f/k/a Xebec Adsorption Inc.) (0228), 11941666 Canada Inc. (f/k/a Xebec RNG Holdings Inc.) (N/A), Applied Compression Systems Ltd. (N/A), 1224933 Ontario Inc. (f/k/a Compressed Air International Inc.) (N/A), Xebec Holding USA Inc. (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), Xebec Adsorption USA, Inc. (0821), The Titus Company (9757), Nortekbelair Corporation (1897), XBC Flow Services – Wisconsin Inc. (7493), California Compression, LLC (4752), and Xebec Systems USA LLC (4156). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 730 Industriel Boulevard, Blainville, Quebec, J7C 3V4, Canada.

² Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

to that certain Asset Purchase Agreement, dated March 14, 2023, by and between Debtor Xebec Systems USA, LLC (“**Seller**”) and Purchaser (collectively with all exhibits and schedules thereto, the “**Transaction Agreement**”), free and clear of any and all liens, claims, encumbrances, and other interests (other than the encumbrances listed on Schedule C of the CCAA Vesting Order (the “**Permitted Encumbrances**”)); (c) authorizing, under section 365 of the Bankruptcy Code, the assumption and assignment of the Assigned Contracts (as defined below) to Purchaser; and (d) granting such other relief as this Court deems just and proper, all as more fully set forth in the Motion; and upon consideration of the Vounassis First Day Declaration, the Vounassis Sale Declaration, and the Morissette Sale Declaration (collectively, the “**Company Declarations**”); and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and sections 109 and 1501 of the Bankruptcy Code; and venue being proper before this Court pursuant to 28 U.S.C. § 1410(1) and (3); and the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and that this Court may enter a final order consistent with Article III of the United States Constitution; and adequate and sufficient notice of the filing of the Motion having been given by the Foreign Representative; and it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and this Court having held a hearing (the “**Hearing**”) to consider the relief requested in the Motion; and there being no objections or other responses filed that have not been overruled, withdrawn, or otherwise resolved; and after due deliberation and sufficient cause appearing therefore, **IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact

constitute conclusions of law, and to the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court previously entered that certain *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 36] on October 27, 2022 (the “**Recognition Order**”), pursuant to which this Court found that the Debtors had satisfied the requirements of, among others, sections 101(23) and (24), 1502(4), 1504, 1507, 1509, 1510, 1515, 1517, 1520, 1521, and 1522 of the Bankruptcy Code. All such findings by this Court are hereby incorporated by reference herein and such Recognition Order shall continue in effect in all respects except to the extent this Order directly modifies or directly contradicts such Recognition Order.

C. On September 29, 2022, the Canadian Court entered that certain Bidding Procedures Order that, among other things: (i) authorized the Debtors to implement a sale and investment solicitation process (the “**SISP**”) in accordance with the terms thereof; and (ii) provided other relief as set forth therein.

D. On March ____, 2023, the Canadian Court entered the CCAA Vesting Order, approving, among other things, the Transaction Agreement, including the sale of the Seller’s rights, title, and interests in and to substantially all of the Seller’s assets (the “**Purchased Assets**”) to Purchaser, and the assumption and assignment by the Seller to Purchaser of those certain contracts listed in the Transaction Agreement (the “**Assigned Contracts**”).

E. Based on the affidavits of service filed with, and the representations made to, this Court: (i) notice of the Motion, the Hearing, and the CCAA Vesting Order was proper, timely, adequate, and sufficient under the circumstances of these chapter 15 cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code, the Bankruptcy

Rules, and the Local Rules; and (ii) no other or further notice of the Motion, the Hearing, the CCAA Vesting Order, or the entry of this Order is necessary or shall be required.

F. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

G. The relief granted herein is necessary and appropriate, is in the interest of the public, promotes international comity, is consistent with the public policies of the United States, is warranted pursuant to sections 105(a), 363(b), (f), (m) and (n), 365, 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

H. Based on information contained in the Motion, the Company Declarations, and the record made at the Hearing, the Debtors' advisors conducted the SISP to solicit interest in, among other of the Debtors' assets, the Purchased Assets in accordance with the terms of the SISP Orders, and such process was non-collusive, duly noticed, and provided a reasonable opportunity to make an offer to purchase the Purchased Assets. The Foreign Representative and the Monitor have recommended that the Debtors and the Seller sell the Purchased Assets and assign the Assigned Contracts to Purchaser in accordance with the terms and conditions set forth in the Transaction Agreement.

I. Based on information contained in the Motion, the Company Declarations, and the record made at the Hearing, the relief granted herein relates to assets and interests that, under the laws of the United States, should be administered in the Canadian Proceedings.

J. The Debtors' and the Seller's performance under the Transaction Agreement and related agreements: (i) constitute a sound and reasonable exercise of the Debtors' and the Seller's business judgment; (ii) provide value and are beneficial to the Debtors and the Seller, and are in

the best interests of the Debtors and the Seller, their estates and their creditors and stakeholders; and (iii) are reasonable and appropriate under the circumstances. The consideration provided by Purchaser for the Purchased Assets under the Transaction Agreement constitutes fair consideration and reasonably equivalent value for the Purchased Assets under the Bankruptcy Code and other laws of the United States, any state, territory, possession thereof, or the District of Columbia.

K. Purchaser is not, and shall not be deemed to be, a mere continuation, and is not holding itself out as a mere continuation, of any of the Debtors or the Seller and there is no continuity between Purchaser and any of the Debtors or the Seller. The transactions contemplated by the Transaction Agreement (collectively, the “**Transaction**”) does not amount to a consolidation, merger, or *de facto* merger of Purchaser and any of the Debtors or the Seller.

L. Time is of the essence in consummating the Transaction Agreement and the Transaction. To maximize the value of the Purchased Assets, it is essential that the Transaction occur and be recognized and enforced in the United States promptly and become effective. The Foreign Representative, on behalf of the Debtors, has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval of the Transaction as contemplated by the Transaction Agreement. Accordingly, there is cause to waive the stay that would otherwise be applicable under Bankruptcy Rules 6004(a) and 6004(h).

M. Based upon information contained in the Motion, the Company Declarations, the other pleadings filed in these chapter 15 cases, and the record made at the Hearing, the Transaction Agreement and each of the transactions contemplated therein were negotiated, proposed, and entered into by the Debtors, the Seller and Purchaser in good faith, without collusion, and from arm’s-length bargaining positions. Purchaser is a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded

thereby. Neither the Debtors, the Seller, the Foreign Representative, nor Purchaser has engaged in any conduct that would cause or permit the Transaction Agreement or the consummation of the Transaction to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Purchaser is not an “insider” of any of the Debtors or the Seller, as that term is defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, managers, or controlling stockholders exists between Purchaser and any of the Debtors or the Seller.

N. The Transaction Agreement was not entered into for the purpose of hindering, delaying, or defrauding any present or future creditors of the Debtors or the Seller.

O. The Foreign Representative, on behalf of itself and the Debtors and the Seller, may sell the Purchased Assets free and clear of any and all liens, claims (as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances, and other interests of any kind or nature whatsoever against the Debtors, the Seller or the Purchased Assets, other than the Permitted Encumbrances, because with respect to each creditor asserting any liens, claims, encumbrances, and other interests, one or more of the standards set forth in section 363(f)(1) through (5) of the Bankruptcy Code has been satisfied. Each creditor that did not object to the Motion is deemed to have consented to the sale of the Purchased Assets free and clear of any and all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances) pursuant to section 363(f)(2) of the Bankruptcy Code. All such liens, claims, encumbrances, and other interests, including Claims and Encumbrances (as defined in the CCAA Vesting Order), shall attach to the 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.

P. The total consideration to be provided under the Transaction Agreement reflects Purchaser's reliance on this Order to provide it, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, with title to and possession of the Purchased Assets free and clear of any and all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances.

Q. The sale of the Purchased Assets to Purchaser is a legal, valid, and effective sale of the Purchased Assets, and vests Purchaser with all rights, title, and interests of the Debtors and the Seller in and to the Purchased Assets, free and clear of any and all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances.

R. The Foreign Representative, the Debtors, the Seller, and the Monitor, as appropriate: (i) had full power and authority to execute the Transaction Agreement and all other documents contemplated thereby; (ii) had all the power and authority necessary to consummate the Transaction; and (iii) upon entry of this Order, other than any consents identified in the Transaction Agreement (including with respect to antitrust matters, if any), needed no consent or approval from any other Person (as defined in the CCAA Vesting Order) or governmental unit to consummate the Transaction. As of the date of entry of the CCAA Vesting Order and at the Closing of the Transaction on the Closing Date and at the Closing Time (as the immediately preceding terms are defined in the Transaction Agreement), the Debtors and the Seller were the sole and rightful owners of the Purchased Assets, no other Person had any ownership rights, title, or interests therein, and the Transaction had been duly and validly authorized by all necessary corporate action of the Debtors and the Seller.

S. The Transaction Agreement is a valid and binding contract between the Seller and Purchaser and shall be enforceable pursuant to its terms. The Transaction Agreement, the Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors, the Seller and the Foreign Representative in these chapter 15 cases and any trustee that may be appointed in any chapter 7 or chapter 11 successor cases, and shall not be subject to rejection or avoidance by the foregoing parties or any other Person.

T. Purchaser would not have entered into the Transaction Agreement and would not consummate the Transaction, thus adversely affecting the Debtors, the Seller, their estates, their creditors, and other parties in interest, if the sale of the Purchased Assets to Purchaser was not free and clear of any and all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances), or if Purchaser would, or in the future could, be liable on account of any such lien, claim, encumbrance, or any other interest, including, as applicable, certain liabilities related to the Purchased Assets that will not be assumed by Purchaser, as described in the Transaction Agreement.

U. A sale of the Purchased Assets other than free and clear of any and all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances) would yield substantially less value than the sale of the Purchased Assets pursuant to the Transaction Agreement; thus, the sale of the Purchased Assets free and clear of any and all liens, claims, encumbrances, and other interests (other than the Permitted Encumbrances), in addition to all of the relief provided herein, is in the best interests of the Debtors, the Seller, their estates, their creditors, and other parties in interest.

V. Purchaser would not have entered into the Transaction Agreement and would not consummate the Transaction, thus adversely affecting the Debtors, the Seller, their estates, their creditors, and other parties in interest, if the parties could not close the Transaction immediately following the Canadian Court's entry of the CCAA Vesting Order with the Monitor to hold Purchase Price (as that term is defined in the Transaction Agreement) in trust pending entry of this Order; thus, the sale of the Purchased Assets immediately following the Canadian Court's entry of the CCAA Vesting Order with the Monitor to hold Purchase Price in trust pending entry of this Order is in the best interests of the Debtors, the Seller, their estates, their creditors, and other parties in interest.

W. The interests of the Debtors' and Seller's creditors in the United States are sufficiently protected. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policies of the United States, and warranted pursuant to sections 1521(b) and 1522 of the Bankruptcy Code.

X. The legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein.

Y. Any and all findings of fact and conclusions of law announced by this Court at the Hearing are incorporated herein.

Z. The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Entry of this Order is in the best interests of the Debtors, the Seller, their estates and their creditors and interest holders, and all other parties in interest.

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

1. The Motion is GRANTED in its entirety as set forth herein.

2. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled by stipulation filed with this Court, and all reservations of rights included therein, are hereby overruled on the merits. The parties who did not object, or who withdrew their objections, to the Sale Motion, are deemed to have consented to the relief sought therein, including, without limitation, consummation of the sale transaction, pursuant to section 363(f)(2) of the Bankruptcy Code.

3. The CCAA Vesting Order and all of its respective terms, including any immaterial or administrative amendments thereto, including those necessary to give effect to the substance of such order, either pursuant to the terms therein or as approved by the Canadian Court, are fully recognized and given full force and effect in the United States in their entirety.

4. The Transaction Agreement and the transactions contemplated thereunder, including, for the avoidance of doubt, (a) the sale of the Purchased Assets, (b) the assumption and assignment of the Assigned Contracts, (c) the closing of the Transaction immediately following the Canadian Court's issuance of the CCAA Vesting Order with the Monitor to hold Purchase Price in trust pending entry of this Order, and (d) the transfers of the Purchased Assets and any assets located within the United States on the terms set forth in the Transaction Agreement, the CCAA Vesting Order, including all transactions contemplated thereunder, this Order, including all transactions contemplated hereunder, and all of the terms and conditions of each of the foregoing are hereby approved and authorized pursuant to sections 105, 363, 365, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code. The failure specifically to include any particular provision of the Transaction Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Transaction Agreement and the Transaction be authorized and approved in its entirety. Upon entry of this Order, the covenants

contained in the Transaction Agreement, to the extent (if any) not already enforceable by their terms, shall be fully enforceable by the parties to the Transaction Agreement in accordance with and subject to the terms and conditions of the Transaction Agreement. The offer of Purchaser, upon the terms and conditions set forth in the Transaction Agreement, including the form and total consideration to be realized by the Debtors pursuant to the Transaction Agreement, is the highest and best offer received by the Debtors for the Purchased Assets.

5. Pursuant to sections 105, 363, 365, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, the CCAA Vesting Order, and this Order, the Debtors, the Seller, Purchaser, the Monitor, and the Foreign Representative (as well as their respective officers, employees, and agents) are authorized to take any and all actions necessary or appropriate to: (a) consummate the Transaction, including the sale of the Purchased Assets and the assumption and assignment of the Assigned Contracts to Purchaser, in accordance with the Transaction Agreement, the CCAA Vesting Order, and this Order; and (b) perform, consummate, implement, and close fully the Transaction, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Transaction Agreement and the Transaction and to take such additional steps and all further actions as may be necessary or appropriate to the performance of the obligations contemplated by the Transaction Agreement, all without further order of this Court, and are hereby authorized and empowered to cause to be executed and filed such statements, instruments, releases, and other documents on behalf of such Person with respect to the Purchased Assets or Assigned Contracts that are necessary or appropriate to effectuate the transactions, any related agreements, the CCAA Vesting Order, and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the

applicable laws of all applicable governmental units or as any of the officers of the Debtors, the Seller or Purchaser may determine are necessary or appropriate, and are hereby authorized and empowered to cause to be filed, registered, or otherwise recorded a certified copy of the CCAA Vesting Order, this Order, or the Transaction Agreement, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests against the Purchased Assets. The CCAA Vesting Order and this Order are deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office.

6. All Persons other than Purchaser that are currently in possession of any or all of the Purchased Assets located in the United States or that are otherwise subject to the jurisdiction of this Court are hereby directed to surrender possession of such Purchased Assets to Purchaser.

7. This Court shall retain jurisdiction to enforce this Order and any and all terms and provisions of the CCAA Vesting Order in the United States.

Transfer of the Purchased Assets Free and Clear

8. Pursuant to sections 105(a), 363, 365, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, all rights, title, and interests of the Debtors and the Seller in the Purchased Assets and the Assigned Contracts shall be transferred and absolutely vest in Purchaser, without further instrument of transfer or assumption and assignment, and such transfer shall: (a) be a legal, valid, binding, and effective transfer of the Purchased Assets and Assigned Contracts to Purchaser; (b) vest Purchaser with all rights, title, and interests of the Debtors and the Seller in the Purchased Assets and Assigned Contracts; and (c) be free and clear of any and all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances, with all such liens, claims, encumbrances, and other interests, including all Claims and Encumbrances (as defined in the CCAA Vesting Order), attaching to the 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.

9. Pursuant to sections 105(a), 363(f), 365, 1501, 1520, 1521, 1525 and 1527 of the Bankruptcy Code, except with respect to solely Permitted Encumbrances: (a) no holder of a lien, claim, encumbrance, or other interest shall interfere, and each and every holder of a lien, claim, encumbrance, or other interest is enjoined from interfering, with Purchaser's rights and title to or use and enjoyment of the Purchased Assets and the Assigned Contracts; and (b) the sale of the Purchased Assets and the assignment of the Assigned Contracts, the Transaction Agreement, and any instruments contemplated thereby shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors, the Seller, their estates, their creditors, or any successors thereof. All Persons holding a lien, claim, encumbrance, or other interest (other than the Permitted Encumbrances) are forever barred and enjoined from asserting such lien, claim, encumbrance, or other interest (other than the Permitted Encumbrances) against the Purchased Assets or the Assigned Contracts, Purchaser or any of its affiliates, successors or assigns, or any of its or their respective officers, directors, employees, managers, partners, members, financial advisors, attorneys, agents, and representatives, and their respective affiliates, successors, and assigns from and after closing of the Transaction.

10. Pursuant to sections 105(a), 363, 365, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, the Seller is authorized to assume the Assigned Contracts and assign such Assigned Contracts to Purchaser, and such transfer and assumption and assignment shall be deemed legal, valid, binding, and effective and shall be free and clear of any and all liens, claims, encumbrances, Cure Costs that are not Assumed Liabilities (as those terms are defined in the

Transaction Agreement), and other interests, other than the Permitted Encumbrances. The Assigned Contracts shall be transferred to and remain in full force and effect for the benefit of Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assigned Contract that prohibits, restricts, or conditions such assumption and assignment or transfer.

11. For the avoidance of doubt, transfer of title and possession of the Purchased Assets and Assigned Contracts in and to Purchaser shall be free and clear of any liabilities and other liens pursuant to any successor, successor-in-interest, successor employer, substantial continuation or other legal theory, including the following: (a) any employment or labor agreements, (b) all deeds of trust, security deeds, mortgages, liens, and security interests, (c) intercompany loans and receivables between the Debtors or the Seller and any non-Debtor subsidiary; (d) any pension or medical benefit plan of the Debtors or the Seller, any compensation or other employee benefit plan of the Debtors or the Seller, or any other employee welfare agreements, practices and programs, (e) any other employee, workers' compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims and other liens that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, and state equivalents thereof, (ii) the Fair Labor Standards Act, and state equivalents thereof, (iii) Title VII of the Civil Rights Act of 1964, and state equivalents thereof, (iv) the Federal Rehabilitation Act of 1973, and state equivalents thereof, (v) the National Labor Relations Act, and state equivalents thereof, (vi) the Worker Adjustment and Retraining Act of 1988, and state equivalents thereof, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, and state equivalents thereof, (viii) the Americans with Disabilities Act of 1990, and state equivalents thereof, (ix) the Consolidated

Omnibus Budget Reconciliation Act of 1985, and state equivalents thereof, (x) state discrimination laws, (xi) state unemployment compensation laws or any other similar state laws, or (xii) any other state or federal benefits or claims and other liens relating to any employment with the Debtors or the Seller or any of their predecessors, (f) environmental or other claims and other liens arising under any environmental laws with respect to any assets owned or operated by the Debtors or the Seller or any corporate predecessor at any time on or prior to the Closing Date (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or other state or federal statute, (g) any bulk sales or similar law, (h) any Tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (i) any and all theories based upon successor liability, including any theories on successor products liability grounds or otherwise; (j) any claims arising prior to the Closing Date based on equity ownership; and (k) any claims arising prior to the Closing Date based upon or sounding in equity.

12. Each and every federal, state, and local governmental agency or department is authorized and directed, to the fullest extent permitted by applicable law, to accept, file, register, or otherwise record (and not impose any fee, charge, or tax in connection therewith) any and all documents and instruments necessary or appropriate to consummate the sale of the Purchased Assets to Purchaser and the transactions generally. The CCAA Vesting Order and this Order shall constitute for any and all purposes a full and complete conveyance and transfer of the Debtors' and the Seller's interests in the Purchased Assets and Assigned Contracts to Purchaser free and clear of any and all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances.

13. This Order (a) shall be effective as a determination that, as of the Closing Date, all liens, claims, encumbrances, and other interests, other than the Permitted Encumbrances, have been unconditionally released, discharged, and terminated as to Purchaser and the Purchased Assets and Assigned Contracts, and that the conveyances and transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease. Each of the foregoing Persons is hereby authorized and directed, to the fullest extent permitted by applicable law, to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Transaction Agreement and effect the discharge of all liens, claims, encumbrances, and other interests other than the Permitted Encumbrances pursuant to this Order and the CCAA Vesting Order and not impose any fee, charge, or tax in connection therewith.

14. Purchaser is not and shall not be deemed to: (a) be a legal successor, or otherwise be deemed a successor, to any of the Debtors or the Seller; (b) have, *de facto* or otherwise, merged with or into any or all Debtors or the Seller; or (c) be a mere continuation or substantial continuation of any or all of the Debtors the Seller or the enterprise or operations of any or all the Debtors or the Seller.

15. The Transaction Agreement, including the purchase of the Purchased Assets and the assumption and assignment of the Assigned Contracts, is undertaken by Purchaser in good

faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorizations provided herein shall neither affect the validity of the Transaction nor the transfer of the Purchased Assets and Assigned Contracts to Purchaser free and clear of any and all liens, claims, encumbrances, and other interests, unless such authorization is duly stayed pending such appeal.

16. Neither the Debtors, the Seller, nor Purchaser has engaged in any conduct that would cause or permit the Transaction Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code.

17. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and this Order, and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

18. The terms and provisions of the Transaction Agreement, the CCAA Vesting Order, and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, the Seller, Purchaser, the Foreign Representative, the Monitor, the Debtors' and the Seller's estate and their creditors, and all other parties in interest, and any successors of the Debtors, the Seller, Purchaser, the Foreign Representative, the Monitor, and the Debtors' and the Seller's estates and their creditors, including any foreign representative(s) of the Debtors or the Seller, trustee(s), examiner(s), or receiver(s) appointed in any proceeding, including, without limitation, any proceeding under any chapter of the Bankruptcy Code, the CCAA, or any other law, and all such terms and provisions shall likewise be binding on such foreign representative(s), trustee(s), examiner(s), or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, the Seller, the Debtors' or the Seller's estates or their creditors, or any trustee(s), examiner(s), or receiver(s).

19. Subject to the terms and conditions of the CCAA Vesting Order, the Transaction Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by each party, and in accordance with the terms thereof, without further order of this Court; *provided* that any such modification, amendment, or supplement does not materially change the terms of the Transaction or the Transaction Agreement, or any related agreements, documents, or other instruments and is otherwise in accordance with or not expressly prohibited by the CCAA Vesting Order.

20. The provisions of this Order and the Transaction Agreement are non-severable and mutually dependent. To the extent that there are any inconsistencies between the terms of this Order and the CCAA Vesting Order, on the one hand, and the Transaction Agreement, on the other, this Order and the CCAA Vesting Order shall govern.

21. Nothing in this Order shall be deemed to waive, release, extinguish, or estop the Debtors, the Seller or the Foreign Representative from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset, or counterclaim in respect of any asset or interest that is not a Purchased Asset.

22. All Persons subject to the jurisdiction of the United States are permanently enjoined and restrained from taking any actions inconsistent with, or interfering with, the enforcement and implementation of the CCAA Vesting Order or any documents incorporated by the foregoing and this Order.

23. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion and the CCAA Vesting Order.

24. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

25. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry. For the avoidance of doubt, any stay pursuant to Bankruptcy Rule 6004(h) and 6006(d) is hereby dispensed with and waived.

EXHIBIT A

CCAA Vesting Order

Exhibit B

Canadian Application

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
(Commercial Division)

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

No.: 500-11-061483-224

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

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**¹

- 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.

¹ 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 SISF 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 TRANSACTION²

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**").

² 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 TRANSACTION³

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

³ 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 SISF 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 SISF 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 TRANSACTION⁴

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

⁴ 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:

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

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.

- 23 -

MONTREAL, March 15, 2023

Osler, Hoskin & Harcourt L.L.P.

Osler, Hoskin & Harcourt LLP

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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

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



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

**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 LIST OF EXHIBITS

- 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*)

MONTREAL, March 15, 2023



Osler, Hoskin & Harcourt LLP
Attorneys for Debtors / Petitioners

Exhibit C

Redacted Purchase Agreement

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:

<u>Schedule</u>	<u>Description</u>
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

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

Stikeman Elliott LLP
4300 Bankers Hall West
888 – 3rd Street SW, Calgary, Alberta
T2P 5C5

Attention: Craig Story
Telephone: 403-266-9098
Email: 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 / sarchambault@xebecinc.com

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

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

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

and the Monitor:

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

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

and counsel to the Monitor:

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

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

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

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

11.9 Counterparts; Facsimile Signatures

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

11.10 Language

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

[Signature pages follow]

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

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'

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

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)

**APPROVAL VESTING AND ASSIGNMENT ORDER IN RESPECT OF THE ASSETS
OF XEBEC SYSTEMS, USA LLC**

- [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.

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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 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**

Ref.	Type	Description	Cure Costs	Trade Payables
<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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SCS Carbon Removal, LLC (Summit)	Client	<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>	*Subject to agreement between Buyer and SCS	
Frank Lill & Son Inc.	Client	<p>Purchase Agreement dated June 15, 2020 and amended on June 23, 2020, by and between UEC, LLC and Frank Lill & Son, Inc. relating to various engineering, material, equipment and labour</p> <p>Contract #: SW-119214-006 Type: Gas Agreements</p>	0	0
Gilbane Alberici Construcciones Mexico	Client	<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>	0	0
PDC Energy	Client	<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>	0	0

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SCHEDULE C**ASSUMED CONTRACTS**

Ref.	Type	Description	Cure Costs	Trade Payables
<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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SCS Carbon Removal, LLC (Summit)	Client	<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>	*Subject to agreement between Buyer and SCS	
Frank Lill & Son Inc.	Client	<p>Purchase Agreement dated June 15, 2020 and amended on June 23, 2020, by and between UEC, LLC and Frank Lill & Son, Inc. relating to various engineering, material, equipment and labour</p> <p>Contract #: SW-119214-006 Type: Gas Agreements</p>	0	0
Gilbane Alberici Construcciones Mexico	Client	<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>	0	0
PDC Energy	Client	<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>	0	0

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Evraz	Client	<p>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</p> <p>Contract #: PO 4000223 Type: Air Compressors agreement</p>	0	0
Clean Harbors Environmental	Client	<p>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</p> <p>Contract #: PO 1311245 Type: Air Compressors agreement</p>	0	0
Andeavor Logistics (Marathon)	Client	<p>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)</p> <p>Contract #: PO 4500354087 Type: Air Compressors agreement</p>	0	0
Anadarko	Client	<p>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</p> <p>Contract #: PO 4501060505 Type: Air Compressors agreement</p>	0	0

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Verdad Resources	Client	<p>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</p> <p>Contract #: PO 22-0003-3-UEC Type: Doghouses</p>	0	0
Siemens Energy - Passaic Valley Sewerage Commission-US 1541	Client	<p>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.</p> <p>Contract #: PO 4500809299 (Added Lines 10 & 11)</p> <p>Type: Gas Compressors</p>	0	0
Southern California Gas	Client	<p>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</p> <p>Contract #: PO 4400169424</p> <p>Type: Air Compressors agreement</p>	0	0

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SCHEDULE 1.1(JJ)
EMPLOYEE PLANS

1. 401(k) plan
2. Xebec Adsorption USA Employee Benefit Program

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**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 UECompression
16. UEC Website, Domain Name and Social Media sites

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SCHEDULE 1.1(LL)
LETTERS OF CREDIT

1. Keybank National Association irrevocable standby letter of credit No. S326950 in favour of Siemens Energy, Inc.

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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.

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SCHEDULE 2.1(B)
PREPAID EXPENSES

[REDACTED]

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SCHEDULE 2.1(F)
PERSONAL PROPERTY LEASES

None.

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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.

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SCHEDULE 2.1(H)
ASSUMED CONTRACTS

Xebec System USA LLC ("UEC")					
Assumed Contracts - Potential Cure Costs					
As of March 14, 2023					
	Type	Master Contract #	Contract type	Cure Costs	Trade Payables
<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

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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
Toyol 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

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SCHEDULE 2.3(B)

TRADE DEBT

[REDACTED]

-

SCHEDULE

7.14

INVENTORY

[REDACTED]

Exhibit D

Assumption Notice

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

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

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 22- 10934 (KBO)

Jointly Administered

**NOTICE OF ASSUMPTION AND ASSIGNMENT
AND CURE AMOUNTS WITH RESPECT TO EXECUTORY
CONTRACTS AND UNEXPIRED LEASES OF THE DEBTORS**

PLEASE TAKE NOTICE that on September 30, 2022 (the “**Petition Date**”), FormerXBC Inc. (f/k/a Xebec Adsorption Inc.), in its capacity as the authorized foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”), filed voluntary petitions for relief under chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) for each of the Debtors, in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). Prior to the Petition Date, the Debtors initiated a proceeding under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, which is pending before the Superior Court of Québec, in the Province of Québec, District of Montréal (the “**Canadian Court**”).

PLEASE TAKE FURTHER NOTICE that, on March 15, 2023, the Foreign Representative filed the *Motion for Order (I) Recognizing and Enforcing CCAA Vesting Order; (II) Approving the Sale of Certain of Debtor Xebec Systems USA LLC’s Assets Free and Clear of Liens, Claims, and Encumbrances; (III) Approving Assumption and Assignment of Certain Contracts; and (IV) Granting Related Relief* (the “**U.S. Sale Motion**”).² Pursuant to the U.S. Sale Motion, the Foreign Representative seeks entry of an order, among other things: (a) approving the sale (the “**Sale**”) by Debtor Xebec Systems USA LLC (“**Seller**”) of substantially all of its assets to EnergyLink US Inc. (“**Buyer**”) free and clear of liens, claims, and encumbrances, as agreed by the parties in that certain Asset Purchase Agreement dated as of March 14, 2023 (the “**Purchase Agreement**”); and (b) authorizing Seller to assume and assign certain of its executory contracts and unexpired leases to Buyer in connection with the Sale.

¹ The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: FormerXBC Inc. (f/k/a Xebec Adsorption Inc.) (0228), 11941666 Canada Inc. (f/k/a Xebec RNG Holdings Inc.) (N/A), Applied Compression Systems Ltd. (N/A), 1224933 Ontario Inc. (f/k/a Compressed Air International Inc.) (N/A), Xebec Holding USA Inc. (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), Xebec Adsorption USA, Inc. (0821), The Titus Company (9757), Nortekbelair Corporation (1897), XBC Flow Services – Wisconsin Inc. (7493), California Compression, LLC (4752), and Xebec Systems USA LLC (4156). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 730 Industriel Boulevard, Blainville, Quebec, J7C 3V4, Canada.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the U.S. Sale Motion or, to the extent not defined therein, the Purchase Agreement attached to the U.S. Sale Motion as Exhibit C.

PLEASE TAKE FURTHER NOTICE that copies of the U.S. Sale Motion and related filings in these chapter 15 cases are available (a) on the Monitor’s case-specific website: <https://www.insolvencies.deloitte.ca/en-ca/pages/Xebec.aspx>; (b) on the Bankruptcy Court’s Electronic Case Filing System, which can be accessed from the Bankruptcy Court’s website at <http://www.ecf.deb.uscourts.gov> (a PACER login and password are required) or (c) upon request to counsel to the Foreign Representative, via email (jgadhaf@mcdonaldhopkins.com), or via mail, McDonald Hopkins LLC, 300 North LaSalle Street, Suite 1400, Chicago, Illinois 60654, Attn: Josh Gadharf.

PLEASE TAKE FURTHER NOTICE that you are receiving this Notice because you may be a counterparty to an executory contract (a “Contract”) or an unexpired lease (a “Lease”) that *may* be assumed and assigned in connection with such Sale. A list of the Contracts and Leases is attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that the Debtors have determined the cure amounts owing (the “Cure Amounts”) under each Contract and Lease, and the Foreign Representative has listed the applicable Cure Amounts on Exhibit A attached hereto. The Cure Amounts are the only amounts proposed to be paid upon any assumption and assignment of the Contracts or Leases, in full satisfaction of all amounts outstanding under the Contracts or Leases.

PLEASE TAKE FURTHER NOTICE that to the extent that a counterparty to a Contract or Lease objects to (a) the assumption and assignment of the counterparty’s Contract or Lease (including, without limitation, on the basis that Buyer cannot provide adequate assurance of future performance) or (b) the Cure Amount, the counterparty must file and serve an objection (an “Objection”). Any Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before 5:00 p.m. (ET) on March 29, 2023 (the “Objection Deadline”), and proof of service of such Objection upon the Objection Notice Parties shall be filed with the Court as and when required by the Local Rules; (iv) be served upon the Objection Notice Parties (as defined below); and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated Cure Amount and the legal and factual bases for any unliquidated Cure Amount that the counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto and any objection to the provision of adequate assurance of future performance by Buyer.

PLEASE TAKE FURTHER NOTICE that the “Objection Notice Parties” are as follows: (i) counsel for the Foreign Representative, McDonald Hopkins LLC, 300 North LaSalle Street, Suite 1400, Chicago, Illinois 60654, Attn: Josh Gadharf, jgadhaf@mcdonaldhopkins.com, (ii) co-counsel for the Foreign Representative, Bielli & Klauder, LLC, 1204 North King Street, Wilmington, Delaware 19801, Attn: David M. Klauder, dklauder@bk-legal.com; (iii) counsel to Buyer, Stikeman Elliot LLP, 4300 Bankers Hall West, 888 – 3rd Street SW, Calgary, Alberta T2P 5C5, Attn: Craig Story, cstory@stikeman.com; and (iv) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Timothy J. Fox, timothy.fox@usdoj.gov.

PLEASE TAKE FURTHER NOTICE that if no Objection is timely received with respect to a Contract or Lease: (i) the counterparty to such Contract or Lease shall be deemed to have consented to the assumption by Seller and assignment to Buyer of the Contract or Lease, and be forever barred (unless the Court orders otherwise) from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by Buyer); (ii) any and all defaults under the Contract or Lease and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) the Cure Amount for such Contract or Lease shall be controlling, notwithstanding anything to the contrary in such Contract or Lease, or any other related document, and the counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred (unless the Court orders otherwise) from asserting any other claims related to such Contract or Lease against the Debtors and their estates or Buyer, or the property of any of them, that existed prior to the entry of the Sale and Recognition Order.

PLEASE TAKE FURTHER NOTICE that to the extent that the Foreign Representatives and a counterparty are unable to consensually resolve any Objection prior to the commencement of the hearing set for **April 5, 2023, at 1:00 p.m. (prevailing Eastern time)**, before the Honorable Karen B. Owens at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Wilmington, DE 19801, in Courtroom No. 3 (the “**U.S. Sale Hearing**”), such Objection will be adjudicated at the U.S. Sale Hearing or at such other date and time as may be determined by the Foreign Representative, or otherwise fixed by the Court.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

Dated: March 15, 2023
Wilmington, Delaware

BIELLI & KLAUDER, LLC

/s/ David M. Klauder

David M. Klauder, Esquire (No. 5769)
1204 N. King Street
Wilmington, Delaware 19801
Phone: (302) 803-4600
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- and -

MCDONALD HOPKINS LLC

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ajericho@mcdonaldhopkins.com

Counsel for the Foreign Representative

Exhibit A**Contracts and Leases**

	Contact Information for Counterparty	Description	Cure Amount
1.	UE Compression LLC c/o United Holdings LLC Attn: Joe Reniers and Amy Husted 55 Waugh Drive, Suite 1000 Houston, TX 77007	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	\$0.00
2.	Russ C. Clark 4808 Secret Valley Dr. Billings, MT 59101	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	\$0.00
3.	CIC, LLC Attn: Keith P. Tyler P.O. Box 2671 Casper, WY 82602	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	\$0.00
4.	Cisco Systems Capital Corporation 1111 Old Eagle School Road Wayne, PA 19087	Equipment Lease Agreement by and between UEC, LLC and Cisco Capital Corporation relating to that certain quote dated June 18, 2020	\$0.00
5.	SCS Carbon Removal, LLC Attn: James Powell 2321 N. Loop Dr. Suite 221 Ames, IA 50010	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	Subject to agreement between Buyer and SCS Carbon Removal, LLC
6.	Frank Lill & Son, Inc. 785 Old Dutch Rd Victor, NY 14564	Purchase Agreement dated June 15, 2020 and amended on June 23, 2020, by and between UEC, LLC and Frank Lill & Son, Inc. relating to various engineering, material, equipment and labour	\$0.00
7.	Gilbane Alberici Construcciones Mexico, S. de R.L. de C.V. Attn: Jimmy Dale Upshaw Mario Pani No. 400 Int., Suite 145 Lomas de Santa Fe., 05300 Cuajimalpa de Morelos, Ciudad de Mexico	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	\$0.00

	Contact Information for Counterparty	Description	Cure Amount
8.	PDC Energy, Inc. Attn: Erin Crawford P.O. Box 26 Bridgeport, WV 26330	Purchase Orders December 8, 2022 and February 2, 2023, by and between UEC, LLC and PDC Energy relating to Instrument Air Skid Packages	\$0.00
9.	EVRAZ Palmer North America Attn: Chastitie Graves P.O. Box 316 Pueblo, CO 81002-0316	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	\$0.00
10.	Clean Harbors Environmental Services Attn: Jerald Honeycutt 2247 S. HWY 71 Kimball, NE 69145	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	\$0.00
11.	Andeavor Field Services LLC Attn: Brandon Becker and Clint Cole 17962 County Road 233 Granger, WY 82934	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)	\$0.00
12.	Anadarko Petroleum Corporation Attn: Houston Contracts Management P.O. Box 1330 Houston, TX 77251-1330	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	\$0.00
13.	Verdad Resources LLC Attn: Kenneth Landtroop 5950 Cedar Springs RD #200 Dallas, TX 75235	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	\$0.00
14.	Siemens Energy, Inc. Attn: Abraham Pothen 4400 Alafaya Trail Orlando, FL 32826	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.	\$0.00
15.	Southern California Gas Attn: Henry Tikualu and Carlito Tiongco P.O. Box 30777 Los Angeles, CA 90030-0777	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	\$0.00