

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FORMERXBC HOLDING USA INC. (f/k/a
XEBEC HOLDING USA INC.), *et al.*,

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 22-10934 (KBO)

Jointly Administered

**ORDER APPROVING STIPULATION BY AND BETWEEN THE FOREIGN
REPRESENTATIVE AND KEYBANK NATIONAL ASSOCIATION GRANTING
RELIEF FROM THE AUTOMATIC STAY TO TERMINATE OF CERTAIN SERVICE
AGREEMENTS AND SCHEDULES**

Upon consideration of the *Stipulation By And Between The Foreign Representative And KeyBank National Association Granting Relief From The Automatic Stay To Terminate Of Certain Service Agreements And Schedules* (the “Stipulation”),² a copy of which is attached to this Order as “**Exhibit 1**,” and the Court having determined that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper in this district pursuant to 28 U.S.C. § 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (iv) notice was sufficient under the circumstances; and after due deliberation, the Court, having determined that good and adequate cause exists for approval of the Stipulation;

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), FormerXBC Holding USA Inc. (f/k/a Xebec Holding USA Inc.) (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), FormerXBC Adsorption USA Inc. (f/k/a Xebec Adsorption USA Inc.) (0821), FormerXBC Pennsylvania Company (f/k/a The Titus Company) (9757), FormerXBC NOR Corporation (f/k/a Nortekbelair Corporation) (1897), FormerXBC Flow Services – Wisconsin Inc. (f/k/a XBC Flow Services – Wisconsin Inc.) (7493), California Compression, LLC (4752), and FormerXBC Systems USA, LLC (f/k/a 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 not otherwise defined herein shall have the meanings ascribed to such terms in the Stipulation.

IT IS HEREBY ORDERED THAT:

1. The Stipulation is APPROVED;
2. The Parties are hereby authorized to take any and all actions reasonably necessary to effectuate the terms of the Stipulation;
3. Subject to the terms and conditions of the Stipulation, the automatic stay imposed by 11 U.S.C. § 1520(a)(1) pursuant to the Recognition Order, to the extent applicable, is hereby lifted as of the Termination Date in order to allow for the termination of the Service Agreements and Schedules, and to otherwise effectuate the terms of the Stipulation; and
4. The Court shall retain jurisdiction over any and all matters arising from or related to the implementation, interpretation and enforcement of the Stipulation or this Order.

**Dated: April 26th, 2023
Wilmington, Delaware**

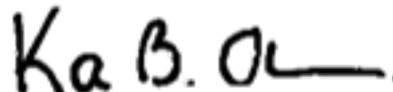

**KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE**

Exhibit “1”

Stipulation

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:

FORMERXBC HOLDING USA INC. (f/k/a
XEBEC HOLDING USA INC.), *et al.*,

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**STIPULATION BY AND BETWEEN THE FOREIGN REPRESENTATIVE AND
KEYBANK NATIONAL ASSOCIATION GRANTING RELIEF FROM THE
AUTOMATIC STAY TO TERMINATE OF CERTAIN SERVICE AGREEMENTS AND
SCHEDULES**

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, and pending before the Superior Court of Québec, in the Province of Québec, District of Montréal and KeyBank National Association (“KeyBank,” and together with the Foreign Representative, the “Parties”), by and through their undersigned counsel, hereby stipulate to relief from the automatic stay imposed by section 1520(a)(1) of the Bankruptcy Code pursuant to the Recognition Order (each as defined herein) to terminate the Service Agreements and Schedules (as defined herein) for the reasons and on the terms and conditions set forth in this stipulation (this “Stipulation”).

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), FormerXBC Holding USA Inc. (f/k/a Xebec Holding USA Inc.) (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), FormerXBC Adsorption USA Inc. (f/k/a Xebec Adsorption USA Inc.) (0821), FormerXBC Pennsylvania Company (f/k/a The Titus Company) (9757), FormerXBC NOR Corporation (f/k/a Nortekbelair Corporation) (1897), FormerXBC Flow Services – Wisconsin Inc. (f/k/a XBC Flow Services – Wisconsin Inc.) (7493), California Compression, LLC (4752), and FormerXBC Systems USA, LLC (f/k/a 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.

RECITALS

A. On or about September 30, 2022 (the “Petition Date”), the Foreign Representative filed voluntary petitions for relief under chapter 15 of title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the District of Delaware (the “Court”) seeking recognition by this Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

B. On November 22, 2022, the Court entered an Order [Docket No. 48] (the “Recognition Order”) granting final recognition the Canadian Proceedings as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

C. Pursuant to paragraph 4 of the Recognition Order, the Debtors are entitled to the protections of section 1520(a) of the Bankruptcy Code, including the protections of the automatic stay provided of section 362 of the Bankruptcy Code, for property located within the United States.

D. Prior to the Petition Date and continuing as of the date hereof, KeyBank provided (and continues to provide) credit card merchant services (collectively, the “Services”) to the debtor, FormerXBC Systems USA, LLC (formerly known as Xebec Systems USA LLC and known prior to that as UEC, LLC) and in connection thereto, KeyBank and UEC, LLC, as debtor FormerXBC Systems USA, LLC was then known, had also entered into a credit card merchant agreement as well as various agreements related thereto, including, without limitation, a cash management services agreement, an automated clearing house agreement, a deposit account agreement, a lockbox account agreement, and a merchant services agreement, each listed on

Exhibit A attached hereto (collectively, and together with any schedules, exhibits or attachments thereto, the “Service Agreements and Schedules”).

E. By their terms, the Service Agreements and Schedules may be terminated by either party on thirty (30) days’ prior written notice to the other party.

F. The Foreign Representative has represented to KeyBank that, as a result of developments occurring in the Foreign Proceedings, including, without limitation, a sale of substantially all of the Debtors’ assets, the Debtors are no longer in need of the Services provided under the Service Agreements and Schedules; however, the Foreign Representative has requested KeyBank allow the Debtors sufficient time to transition its business to the purchaser of its assets and, subject to the terms of this Stipulation, KeyBank has agreed to continue to provide the Services required to be performed pursuant to the Service Agreements and Schedules up to and including May 15, 2023 (the “Termination Date”), but for no additional period.

G. The Foreign Representative has agreed that KeyBank can terminate the Service Agreements and Schedules on the Termination Date, subject to the terms and conditions set forth herein.

NOW, THEREFORE, THE UNDERSIGNED, ON BEHALF OF THE PARTIES, STIPULATE AND AGREE AS FOLLOWS:

AGREEMENT

1. The recitals set forth in Paragraphs A. through G. above are incorporated herein by this reference as though set forth at length.

2. The Foreign Representative represents that it has the requisite power and authority on behalf of the Debtors and the Debtors’ estates to agree that KeyBank can terminate the Service Agreements and Schedules, at 5:00 p.m. ET on the Termination Date.

3. Subject to the terms of this Stipulation and upon the occurrence of the Order Effective Date (as defined below), the Service Agreements and Schedules shall be deemed terminated effective as of 5:00 p.m. ET on the Termination Date, and solely for the foregoing purposes, the automatic stay imposed by 11 U.S.C. § 1520(a)(1) pursuant to the Recognition Order, to the extent applicable, is hereby lifted so that KeyBank can take whatever steps necessary or appropriate to terminate the Service Agreements and Schedules at 5:01 p.m. ET on the Termination Date. without any further action, notice to any party or further order of this Court.

4. Except as expressly set forth herein, nothing herein is intended, nor shall be deemed, to be a waiver or release by KeyBank of (i) the Foreign Representative, the Debtors or their estates for any of their obligations under the Service Agreements and Schedules, or (ii) any claims of KeyBank against the Debtors or their estates under the Service Agreements and Schedules.

5. This Stipulation is conditioned upon the Court's entry of an order (the "Approval Order") approving this Stipulation in a form reasonably acceptable to the Parties and on such notice and after such hearing as the Court may require, and the Parties shall use their commercially reasonable efforts to obtain entry of the Approval Order.

6. The date upon which the Approval Order has been entered by the Court and has become a final, non-appealable order shall be referred to as the "Order Effective Date." This Stipulation shall be effective and binding upon the Parties on and after the Order Effective Date.

7. This Stipulation and the Approval Order contain the entire agreement by and between the Parties with respect to the subject matter hereof, and all prior understandings or agreements, if any, are merged into this Stipulation and the Approval Order.

8. This Stipulation may only be changed, modified or otherwise altered in a writing executed by the Parties. Oral modifications are not permitted.

9. This Stipulation may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A signature transmitted by facsimile or other electronic copy shall be deemed an original signature for purposes of this Stipulation.

10. Each person who executes this Stipulation represents and warrants that he or she is duly authorized and has the requisite authority to execute and deliver this Stipulation on behalf of such Party and to bind his or her respective Party to the terms and conditions of this Stipulation.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have made and entered into this Stipulation as of the day and year stated below.

Dated: April 25, 2023

BIELLI & KLAUDER, LLC

/s/ David M. Klauder
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- and -

MCDONALD HOPKINS LLC

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Counsel to KeyBank National Association

EXHIBIT A

Service Agreements and Schedules

1. Cash Management Services Master Agreement, dated September 24, 2015 (the “Master Agreement”), between UEC, LLC and KeyBank National Association, together with all schedules, exhibits, addenda and other attachments thereto, including but not limited to the following:
 - a. Automated Clearing House Debit Protection: EPA Service Schedule issued to UEC, LLC by KeyBank National Association issued under, and made a part of, the Master Agreement;
 - b. Automated Clearing House Electronic Data Interchange Service Schedule, issued to UEC, LLC by KeyBank National Association issued under, and made a part of, the Master Agreement;
 - c. Automated Credit Sweep Service Schedule issued to UEC, LLC by KeyBank National Association issued under, and made a part of, the Master Agreement;
 - d. Key Capture Service Schedule issued to UEC, LLC by KeyBank National Association issued under, and made a part of, the Master Agreement;
 - e. Positive Pay Service Schedule issued to UEC, LLC by KeyBank National Association issued under, and made a part of, the Master Agreement; and
 - f. ACH Direct Service Schedule issued to UEC, LLC by KeyBank National Association issued under, and made a part of, the Master Agreement.
2. Key2Purchase Program Agreement, dated November 18, 2015, between UEC, LLC and KeyBank National Association;
3. Merchant Services Application, dated November 18, 2015, executed by UEC, LLC in favor of KeyBank National Association; and
4. Wire Transfer Service Payment Authorization Agreement dated May 11, 2022, between UEC, LLC and KeyBank National Association.