

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

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

Debtor in a foreign proceeding.¹

Chapter 15

Case No. 22-10934 (KBO)

Jointly Administered

Hearing Date: October 5, 2023 at 2:00 p.m. (ET)

Objection Deadline: September 22, 2023 at 4:00 p.m. (ET)

**MOTION FOR ORDER (I) RECOGNIZING AND ENFORCING CCAA
VESTING ORDER; (II) APPROVING THE SALE OF CERTAIN OF THE
DEBTORS' ASSETS FREE AND CLEAR OF ANY AND ALL LIENS, CLAIMS,
AND ENCUMBRANCES; AND (III) 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 authorizing Debtor FormerXBC Systems USA, LLC (“**FormerXBC**” or the “**Seller**”) to sell five (5) BioStream units

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.

(the “**Purchased Assets**”) to Ivys Adsorption Inc. (“**Ivys**” or the “**Buyer**”), pursuant to that certain Asset Purchase Agreement by and between FormerXBC and Ivys, dated August 3, 2023, a copy of which is attached hereto as **Exhibit B** (the “**Purchase Agreement**”); (ii) approving the sale of the Purchased Assets free and clear of any and all liens, claims, and encumbrances (the “**BioStream Transaction**”); and (iii) 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 Motion for Order (I) Recognizing and Enforcing CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtors’ Assets Free and Clear of Any and All Liens, Claims, and Encumbrances; and (III) Granting Related Relief* (the “**Vounassis Sale Declaration**,” or the “**Vounassis Sale Decl.**”), filed contemporaneously herewith; (c) the *Declaration of Julien Morissette in Support of Foreign Representative’s Motion for Order (I) Recognizing and Enforcing CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtors’ Assets Free and Clear of Any and All Liens, Claims, and Encumbrances; and (III) Granting Related Relief* (the “**Morissette Declaration**,” or the “**Morissette Decl.**”), filed contemporaneously herewith; and (d) the *Declaration of Jean-François Nadon, CPA, CIRP, LIT, on behalf of Deloitte Restructuring Inc., in its Capacity as Court-Appointed Monitor in the Canadian Proceeding, in Support of Foreign Representative’s Motion for Order (I) Recognizing and Enforcing CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtors’ Assets Free and Clear of Any and All Liens, Claims, and Encumbrances; and (III) Granting Related Relief* (the “**Monitor Declaration**” or the “**Monitor Decl.**”). The Vounassis First Day Declaration, the Vounassis Sale Declaration, the Morissette Declaration, and

the Monitor 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, 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. Prior to the Petition Date, the Debtors and certain non-U.S. based subsidiaries and affiliates of the Debtors (the “**Xebec Group**”) primarily supplied 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 included 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 included manufacturing, research and development, service, and sales. The Xebec Group operated 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].

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 “**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

² On May 24, 2023, the Canadian Court entered an order extending the Canadian Stay until September 29, 2023. The Foreign Representative anticipates requesting a further extension of the Canadian Stay prior to its current expiration date. (Morissette Decl. ¶ 7.)

Code. (Morissette Decl. ¶ 6; *see also* Initial CCAA Order at ¶¶ 16-20, 40-48, 65, 67.)

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. 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].

10. 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

11. Pursuant to the 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 Decl. ¶ 8.)

12. 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 Decl. ¶ 9.)

13. 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 Decl. ¶ 10.)

14. 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 the Debtors entering into a series of sale transactions, including four sales previously approved by the Court, including the EnergyLink Transaction (as defined below). (Vounassis Sale Decl. ¶ 6; *see also* Docket Nos. 102, 145-47.)

15. The sale proceeds received as a result of the sale process enabled the Debtors to repay their debtor-in-possession loans in full. Currently, the Debtors are continuing to wind down their operations, in consultation with the Monitor, and have received Canadian Court approval of

a Claims Process.³ (Morissette Decl. ¶ 11.)

D. The BioStream Transaction

16. Prior to the Petition Date, FormerXBC was building and assembling the Purchased Assets at the Debtors' facility in Henderson, Colorado (the "**Colorado Facility**"), pursuant to a contract between FormerXBC and Brightmark LLC ("**Brightmark**"). The work on the Purchased Assets remains uncompleted. (Vounassis Sale Decl. ¶ 7.)

17. On March 31, 2023, the Court entered an order [Docket No. 147] (the "**EnergyLink Sale Order**"), which among other things: (a) recognized and enforced a March 16, 2023 CCAA vesting order that approved the sale (the "**EnergyLink Transaction**") of certain of the Debtors' assets primarily located at the Colorado Facility to EnergyLink U.S. Inc. ("**EnergyLink**"); and (b) approved the sale of such assets to EnergyLink free and clear of all liens, claims, and encumbrances pursuant to section 363 of the Bankruptcy Code. Notably, the Purchased Assets were expressly excluded from the EnergyLink Transaction.

18. Following the closing of a separate sale transaction with Ivys that did not include assets located in the United States, Ivys expressed an interest in acquiring the Purchased Assets from FormerXBC. (Monitor Decl. ¶ 4.) The Debtors and the Monitor subsequently engaged in discussion with Ivys regarding such a transaction, which culminated in FormerXBC and Ivys executing a binding letter of intent, dated May 19, 2023 (the "**Binding LOI**"), pursuant to which Ivys agreed in principle to purchase the Purchased Assets. (Monitor Decl. ¶ 5.)

19. On May 19, 2023, the Debtors filed that certain *Application for (I) an Extension of the Stay of Proceedings, (II) the Establishment of a Claims Process, (III) the Authorization to Use*

³ As that such phrase is defined in the *Foreign Representative's Motion for Entry of an Order (I) Recognizing and Enforcing Claims Procedure Order; and (II) Granting Related Relief* [Docket No. 160], filed on May 24, 2023.

Net Proceeds to Fund Cash-Flow Requirements and (IV) the Issuance of an Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC (the “Canadian Application”) in the Canadian Proceeding. Pursuant to the Canadian Application, the Debtors sought, among other things, approval of the BioStream Transaction. A copy of the Canadian Application is attached hereto as **Exhibit C**.⁴ (Morissette Decl. ¶ 13.)

20. On May 24, 2023, the Canadian Court entered that certain *Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (Formerly Xebec Systems USA, LLC)* (the “**BioStream Vesting Order**”), pursuant to which the Canadian Court, among other things, approved the BioStream Transaction and the execution of the Binding LOI, and authorized the Debtors and Ivys to enter into the Purchase Agreement. A copy of the BioStream Vesting Order is attached hereto as **Exhibit D**. On May 26, 2023, the Canadian Court entered those certain *Reasons for Issuing, on May 24, 2023, the: 1. The Approval and Vesting Order in Respect of BioStream Assets, 2. The Claims Procedure Order, 3. The Order Extending the Stay of Proceedings, 4. The Order Authorizing the Use of Net Proceeds to Fund Cash-Flow Requirements* (the “**Reasons**”), pursuant to which the Canadian Court explained, among other things, its reasons for issuing the BioStream Vesting Order. A copy of the Reasons is attached hereto as **Exhibit E**.

21. The Purchase Agreement is the product of an agreement between Seller and Buyer reached through arms’ length, good faith negotiations that included both parties to the transaction and the Monitor. (Monitor Decl. ¶¶ 9-10; Vounassis Sale Decl. ¶ 8.) 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 the Purchased Assets, the

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

Debtors believe a private sale process is appropriate under the circumstances. (Vounassis Sale Decl. ¶ 8.)

22. As noted above, Buyer and Seller entered into the Purchase Agreement on August 3, 2023. The Purchase Agreement required Buyer to satisfy certain conditions precedent to closing on or before August 31, 2023 (the “**Buyer Conditions**”).⁵ Buyer requested the terms of the Purchase Agreement remain confidential until it could satisfy the Buyer Conditions. (Monitor Decl. ¶ 6.) On or around August 30, 2023, Buyer informed the Monitor that the Buyer Conditions had been satisfied. (Monitor Decl. ¶ 7.) Accordingly, the Foreign Representative may now file this Motion and attach the Purchase Agreement as an exhibit.

23. In addition to the Buyer Conditions, the Purchase Agreement requires entry of the Sale and Recognition Order as an additional condition precedent to Closing. (Purchase Agreement, § 6.1(b)) Buyer and Seller have satisfied all other conditions precedent to Closing. (Monitor Decl. ¶ 8.) Accordingly, entry of the Sale and Recognition Order is the final step necessary to close the BioStream Transaction.

24. The material terms and conditions of the Purchase Agreement are as follows:⁶

MATERIAL TERMS OF THE PURCHASE AGREEMENT	
Purchased Assets/Excluded Assets	<p>Purchased Assets: <i>BioStream inventory and work in progress</i> – all of Seller’s right, title and interest in, to and under, or relating to, the five BioStream units and related inventory and work in progress, as identified in Schedule 2.1 to the Purchase Agreement.</p> <p>Excluded Assets: n/a</p>
Purchase Price	The purchase price payable to the Seller for the Purchased Assets (the “ Purchase Price ”) shall be CAD\$2,000,000.00, exclusive of

⁵ See Purchase Agreement, §§ 6.2(c)-(e).

⁶ 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.

MATERIAL TERMS OF THE PURCHASE AGREEMENT	
	<p>any and all applicable sales and transfer taxes, paid in accordance with the following schedule:</p> <p>(a) CAD\$500,000.00 at closing (plus applicable sales taxes), including CAD\$100,000 by the Monitor crediting the Deposit to Seller and the balance upon signature of the contract with Brightmark for Ivys to complete the five BioStream units in Denver, Colorado;</p> <p>(b) CAD\$1,500,000.00 to be paid in five installments of CAD\$300,000.00 upon Factory Acceptance Test at EnergyLink Corporation, Brightmark, or Ivys facility of each unit;</p> <p>(c) Any remaining balance will be due and payable on October 30, 2023, regardless of status of installation and commissioning or factory acceptance test of any or all of the units.</p> <p>(Purchase Agreement, §§ 3.1; 3.2).</p>
Escrow of the Purchase Price	None.
Sale to Insider Local Rule 6004-1(b)(iv)(A)	None.
Agreements With Management Local Rule 6004-1(b)(iv)(B)	None.
Releases Local Rule 6004-1(b)(iv)(C)	<p>Except as otherwise contained in the Purchase Agreement, effective as of the Closing, Buyer will release and forever discharge 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 (as defined in the Purchase Agreement) had, has or may have in the future to the extent relating to the Purchase Agreement and the Purchased Assets.</p> <p>Except as otherwise contained in the Purchase Agreement, effective as of the Closing, the Seller will release and forever discharge Buyer and its respective affiliates, and their respective successors and assigns, and all officers, directors, partners,</p>

MATERIAL TERMS OF THE PURCHASE AGREEMENT	
	members, shareholders, employees, and agents of each of them, from any and all actual or potential Claims which such Person (as defined in the Purchase Agreement) had, has or may have in the future to the extent relating to the Purchase Agreement and the Purchased Assets. (Purchase Agreement, § 7.3).
Private Sale/No Competitive Bidding Local Rule 6004-1(b)(iv)(D) Local Rule 6004-1(b)(iv)(G)	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 the Purchased Assets.
Closing and Other Deadlines Local rule 6004-1(b)(iv)(E)	The Closing shall occur no later than October 10, 2023, or such later date agreed to in writing by both Buyer and Seller (with the consent of the Monitor). (Purchase Agreement, §§ 1.1(q)-(r); 9.1(b)).
Good Faith Deposit Local Rule 6004-1(b)(iv)(F)	Contemporaneously with executing the Binding LOI, Buyer paid CAD\$100,000 to the Monitor as a good faith deposit, which will be credited against the Purchase Price or refunded to Buyer in the circumstance contemplated by Section 9 of the Binding LOI. (Purchase Agreement, § 3.2(b)).
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)	None.

MATERIAL TERMS OF THE PURCHASE AGREEMENT	
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.
Sale Free and Clear of Unexpired Leases Local Rule 6004-1(b)(iv)(M)	Upon Closing, 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 Buyer shall purchase, free and clear of all Encumbrances other than the BioStream Charge, all of the Seller's right, title and interest in, to and under, or relating to, the five BioStream units and related inventory and work in progress listed in Schedule 2.1 to the Purchase Agreement. (Purchase Agreement, § 2.1).
Credit Bid Local Rule 6004-1(b)(iv)(N)	None.
Relief from Bankruptcy Rule 6004(h) Local Rule 6004-1(b)(iv)(O)	<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 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 BioStream Vesting Order are reasonable and fair under the circumstances, and that the BioStream Transaction provides the highest and best return for the Purchased Assets. The Foreign Representative believes that consummating the BioStream Transaction in accordance with the deadlines set forth in the Purchase Agreement is critical to preserving the going-concern value of

the Purchased Assets. In short, the BioStream Transaction is the best transaction for the Purchased Assets available to the Debtors under the circumstances. (Monitor Decl. ¶¶ 9-11; Vounassis Sale Decl. ¶ 9.)

RELIEF REQUESTED

26. As set out above, the BioStream Transaction requires the Court’s recognition and enforcement of the BioStream Vesting Order as a condition to closing. Accordingly, the Foreign Representative seeks entry of the Order, (i) recognizing and enforcing the BioStream Vesting Order; (ii) approving the proposed BioStream Transaction; and (iii) granting related relief.

BASIS FOR RELIEF

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

27. 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.”).

28. 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).

29. 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).

30. 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)).

31. 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).

32. 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.”)

33. Entering into the BioStream Transaction is a prudent exercise of the Debtors’ business judgment. *First*, the BioStream 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 subsequent sales efforts which ultimately resulted in entry into the Binding LOI and the Purchase Agreement. (Monitor Decl. ¶ 9.) Further, the BioStream Transaction allows the Debtors to maximize the value of the Purchased Assets for the benefit of all stakeholders. Accordingly, the Foreign Representative contends that the Debtors have a sound business reason justifying the sale of the Purchased Assets to Ivys pursuant to the Purchase Agreement. (Vounassis Sale Decl. ¶ 10.) As such, recognition of the BioStream Vesting Order is necessary and appropriate.

34. *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 Ivys. (Vounassis Sale Decl. ¶ 11; Monitor Decl. ¶ 10.) As discussed below, the Foreign Representative submits that Ivys is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. Moreover, considering that the SISP and subsequent efforts were crafted to ensure that the Purchased Assets were sold for the maximum potential price, the Foreign Representative submits that the BioStream Transaction has been proposed in good faith. (Vounassis Sale Decl. ¶ 11.)

35. *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 BioStream Transaction. (Morissette Decl. ¶ 16.) 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 U.S. employees of the Debtors, (c) all relevant local, state, and federal taxing authorities and government agencies, (d) any party who has received notice by mail from the Foreign Representative of any previous filing in these chapter 15 cases; and (e) 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, and notice of the hearing on this Motion. Accordingly, the Foreign Representative submits that notice of the BioStream Transaction and the hearing on approval thereof is sufficient and appropriate.

36. *Fourth*, the Purchase Agreement is fair, reasonable, and the result of an extensive marketing process and negotiations between the Debtors, the Monitor, and Ivys. 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 Ivys 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.

37. *Fifth*, prior to entering into the Purchase Agreement and filing the Canadian Application, the Debtors had exhausted all reasonable options for attracting bids for the Purchased Assets that are higher and better than Ivys’ offer. More specifically, the Debtors and the Financial Advisor were engaged in the SISP for six months, followed by additional sale efforts by the Debtors, and have been unable to attract any higher and better offers for the Purchased Assets, whether through the sale of the Debtors’ entire business as a going concern, or through the sale of only FormerXBC’s assets. (See Vounassis Sale Decl. ¶ 12; Morissette Decl. ¶ 17; Monitor Decl. ¶ 11.) 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. Therefore, given FormerXBC’s financial circumstances, the proposed private sale is the only viable option. (Vounassis Sale Decl. ¶ 13.)

38. 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 entered the BioStream Vesting Order. Accordingly, for the reasons stated above and in the interest of comity and cooperation with the Canadian Court, approval of the BioStream Transaction would be appropriate. Accordingly, the Foreign Representative respectfully requests that the Court recognize and give effect to the BioStream 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

39. 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).

40. 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.

41. More specifically, the Debtors have obtained the requisite consent from their prepetition secured lenders to sell the Purchased Assets free and clear of their liens, claims, interests, or encumbrances.⁷ (Morissette Decl. ¶ 18.) Moreover, as noted above, the Debtors have provided notice of the proposed BioStream Transaction to all lienholders, in accordance with the service requirements of the CCAA and the applicable Bankruptcy Rules and Local Rules. (*See id.* ¶ 16.) 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).

42. Consequently, the Foreign Representative submits that the sale of the Purchased Assets free and clear of all interests, as provided in the proposed BioStream 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.

43. 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. ¶ 14.) Therefore, a sale free and clear of all interests is in the best interests of the Debtors, their creditors, and other parties in interest.

⁷ As noted above, the Debtors repaid all debtor-in-possession loans they received during these chapter 15 cases.

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

44. The Foreign Representative also requests that the Court find that Ivys 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 bankruptcy court, 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.”).

45. 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).

46. In other words, a party would have to show fraud or collusion between the Debtors and Ivys 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)).

47. The Foreign Representative submits that Ivys 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 BioStream Transaction to be avoided under section 363(n) of the Bankruptcy Code. The Debtors and Ivys have entered into the Purchase Agreement, sought and obtained entry of the BioStream Vesting Order, are negotiating the terms of the Purchase Agreement, and seek entry of 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 BioStream Transaction to be set aside under section 363(m) of the Bankruptcy Code. (Vounassis Sale Decl. ¶ 15; Monitor Decl. ¶ 12.)

48. Accordingly, the Foreign Representative submits that Ivys 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. Waiver of Notice and Stay Under Bankruptcy Rules 6004 and 6006

49. 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).

50. As described above, the relief sought by the Foreign Representative herein is time-sensitive and necessary for the Debtors to finalize the BioStream Transaction. Accordingly, any delay in entry of the Sale and Recognition Order could jeopardize the BioStream 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

51. 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 U.S. employees of the Debtors; (c) all relevant local, state, and federal taxing authorities and government agencies; (d) any party who has received notice by mail from the Foreign Representative of any previous filing in these chapter 15 cases; (e) 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; (f) the Office of the United States Trustee for the District of Delaware; (g) the United States Attorney’s Office for the District of Delaware; (h) National Bank of Canada; (i) Export Development Canada; and (j) 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

52. 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: September 8, 2023
Wilmington, Delaware

BIELLI & KLAUDER, LLC

/s/ David M. Klauder

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Counsel for the Foreign Representative

Exhibit A

Sale and Recognition Order

UNITED STATES BANKRUPTCY COURT
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 (I) RECOGNIZING AND ENFORCING CCAA VESTING
ORDER; (II) APPROVING THE SALE OF CERTAIN OF THE DEBTORS'
ASSETS FREE AND CLEAR OF ANY AND ALL LIENS, CLAIMS, AND
ENCUMBRANCES; AND (III) 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, 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and Local Rules 2002-1, 6004-1, and 9006-1 (this “**Order**”), (a) recognizing and enforcing that certain *Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (Formerly Xebec Systems USA, LLC)*, entered by the Canadian Court on May 24, 2023 (the “**CCAA Vesting Order**”), attached hereto as **Exhibit A**; (b) approving, under section 363 of the Bankruptcy Code, the sale of Debtor FormerXBC Systems USA, LLC’s rights,

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

title, and interests in and to the Purchased Assets (as defined below) to Ivys Adsorption Inc. (“**Buyer**”), pursuant to that certain Asset Purchase Agreement, dated August 3, 2023, by and between FormerXBC Systems USA, LLC (“**Seller**”) and Buyer (collectively with all exhibits and schedules thereto, the “**Purchase Agreement**”), free and clear of any and all liens, claims, encumbrances, and other interests; and (c) 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, the Morissette Declaration, and the Monitor Declaration (collectively, the “**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 scheduled 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 authorized the Debtors to implement a sale and investment solicitation process (the “**SISP**”).

D. On May 24, 2023, the Canadian Court entered the CCAA Vesting Order, which, among other things, authorized Seller to sell its rights, title, and interests in and to five (5) BioStream units (the “**Purchased Assets**”) to Buyer.

E. The CCAA Vesting Order granted Seller, as security for the payments to be made by Buyer pursuant to the Purchase Agreement, a charge and security in the Purchased Assets to the extent of the aggregate amount of the Payment Balance (as defined in the Purchase Agreement) (the “**BioStream Charge**”).

F. 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.

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

H. 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), 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.

I. Based on information contained in the Motion and the Declarations, the Debtors' advisors conducted the SISP to solicit interest in, among other of the Debtors' assets, the Purchased Assets, 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 sell the Purchased Assets to Buyer in accordance with the terms and conditions set forth in the Purchase Agreement.

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

K. The Debtors' and Seller's performance under the Purchase Agreement and related agreements: (i) constitute a sound and reasonable exercise of the Debtors' and Seller's business judgment; (ii) provide value and are beneficial to the Debtors and Seller, and are in the best interests of the Debtors and Seller, their estates, their creditors, and their stakeholders; and (iii) are reasonable and appropriate under the circumstances. The consideration provided by Buyer for the Purchased Assets under the Purchase 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.

L. Buyer is not a mere continuation or successor of the Debtors or Seller, there is no substantial continuity between Buyer and the Debtors or Seller, and there is no continuity of enterprise between Buyer and the Debtors or Seller. No common identity of incorporators, directors, officers, members or stockholders exists between Buyer and the Debtors or Seller. Buyer is not holding itself out to the public as a continuation of the Debtors or Seller. Buyer is not an “insider” or otherwise an “affiliate” of the Debtors or Seller (as such terms are defined in section 101 of the Bankruptcy Code). The transactions contemplated by the Purchase Agreement (collectively, the “**Transaction**”) does not amount to a consolidation, merger, or *de facto* merger of Buyer and any of the Debtors or Seller.

M. Time is of the essence in consummating the Purchase 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 Purchase Agreement. Accordingly, there is cause to waive the stay that would otherwise be applicable under Bankruptcy Rules 6004(a) and 6004(h).

N. Based upon information contained in the Motion, the Declarations, and the other pleadings filed in these chapter 15 cases, the Purchase Agreement and each of the transactions contemplated therein were negotiated, proposed, and entered into by the Debtors, Seller and Buyer in good faith, without collusion, and from arm’s-length bargaining positions. Buyer 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 Foreign Representative, nor Buyer have engaged in any conduct that would cause or permit the Purchase 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. Buyer is not an “insider” of any of the Debtors, 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 Buyer and the Debtors or Seller.

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

P. The Foreign Representative, on behalf of itself and the Debtors and 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 or the Purchased Assets, 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 pursuant to section 363(f)(2) of the Bankruptcy Code.

Q. The total consideration to be provided under the Purchase Agreement reflects Buyer’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.

R. The sale of the Purchased Assets to Buyer is a legal, valid, and effective sale of the Purchased Assets, and vests Buyer with all rights, title, and interests of the Debtors and Seller in

and to the Purchased Assets, free and clear of any and all liens, claims, encumbrances, and other interests.

S. The Foreign Representative, the Debtors, Seller, and the Monitor, as appropriate: (i) had full power and authority to execute the Purchase Agreement and all other documents contemplated thereby; (ii) have all the power and authority necessary to consummate the transactions contemplated by the Purchase Agreement; and (iii) other than any consents identified in the Purchase Agreement, need no consent or approval from any other person or governmental unit to consummate the Transaction. As of the date of entry of the CCAA Vesting Order, the Debtors and 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 Seller.

T. The Purchase Agreement is a valid and binding contract between Seller and Buyer and shall be enforceable pursuant to its terms. The Purchase Agreement, the Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors 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.

U. Buyer would not have entered into the Purchase Agreement and would not consummate the purchase of the Purchased Assets and the related transactions, thus adversely affecting the Debtors, their estates, their creditors, and other parties in interest, if the sale of the Purchased Assets to Buyer was not free and clear of any and all liens, claims, encumbrances, and other interests, or if Buyer 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 Buyer, as described in the Purchase Agreement.

V. A sale of the Purchased Assets other than free and clear of any and all liens, claims, encumbrances, and other interests would yield substantially less value than the sale of the Purchased Assets pursuant to the Purchase Agreement; thus, the sale of the Purchased Assets free and clear of any and all liens, claims, encumbrances, and other interests, in addition to all of the relief provided herein, is in the best interests of the Debtors, 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 interest 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 establish just cause for the relief granted herein.

Y. Entry of this Order is in the best interests of the Debtors, Seller, 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 Purchase Agreement and the transactions contemplated thereunder, including, for the avoidance of doubt, (a) the sale of the Purchased Assets, (b) the granting of the BioStream Charge to secure the Payment Balance (as defined in the Purchase Agreement), and (c) the transfer of the Purchased Assets and any assets located within the United States on the terms set forth in the Purchase 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, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Purchase Agreement and the Transaction be authorized and approved in its entirety. Upon entry of this Order, the covenants contained in the Purchase Agreement, to the extent (if any) not already enforceable by their terms, shall be fully enforceable by the parties to the Purchase Agreement in accordance with and subject to the terms and conditions of the Purchase Agreement. The offer of Buyer, upon the terms and conditions set forth in the Purchase Agreement, including the form and total consideration to be realized by the Debtors pursuant to the Purchase Agreement, is the highest and best offer received by the Debtors for the Purchased Assets.

5. Pursuant to sections 105, 363, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, the CCAA Vesting Order, and this Order, the Debtors, Seller, Buyer, 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, in accordance with the Purchase 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 Purchase 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 Purchase 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 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 or Buyer 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 Purchase 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 Buyer that are currently in possession of some 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 Buyer.

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, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, all rights, title, and interests of the Debtors and Seller in the Purchased Assets shall be transferred and absolutely vest in Buyer, without further instrument of transfer, and such transfer shall: (a) be a legal, valid, binding, and effective transfer of the Purchased Assets to Buyer; (b) vest Buyer with all rights, title, and interests of the Debtors and Seller in the Purchased Assets; and (c) be free and clear of any and all liens, claims, encumbrances, and other interests with all such liens, claims, encumbrances, and other interests, including all Claims and Encumbrances (as defined in the CCAA Vesting Order), but excluding the BioStream Charge, 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), 1501, 1520, 1521, 1525 and 1527 of the Bankruptcy Code: (a) other than Seller's rights with regard to the BioStream Charge, 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 Buyer's rights and title to

or use and enjoyment of the Purchased Assets; and (b) the sale of the Purchased Assets, the Purchase Agreement, and any instruments contemplated thereby shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors, Seller, their estates, their creditors, or any successors thereof. Other than Seller with regard to the BioStream Charge, all persons holding a lien, claim, encumbrance, or other interest are forever barred and enjoined from asserting such lien, claim, encumbrance, or other interest against the Purchased Assets, Buyer or its affiliates and 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. For the avoidance of doubt, transfer of title and possession of the Purchased Assets in and to Buyer 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 and any non-Debtor subsidiary; (d) any pension or medical benefit plan of the Debtors, any compensation or other employee benefit plan of the Debtors, 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 any predecessors, (f) environmental or other claims and other liens arising under any environmental laws with respect to any assets owned or operated by Debtor(s) 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.

11. 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 Buyer 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'

interests in the Purchased Assets to Buyer free and clear of any and all liens, claims, encumbrances, and other interests, other than the BioStream Charge.

12. This Order (a) shall be effective as a determination that, as of the Closing Date, all liens, claims, encumbrances, and other interests, excluding, for the avoidance of doubt, the BioStream Charge, have been unconditionally released, discharged, and terminated as to Buyer and the Purchased Assets, 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 Purchase Agreement and effect the discharge of all liens, claims, encumbrances, and other interests pursuant to this Order and the CCAA Vesting Order and not impose any fee, charge, or tax in connection therewith.

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

14. The Purchase Agreement, including the purchase of the Purchased Assets, is undertaken by Buyer 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 to Buyer free and clear of any and all liens, claims, encumbrances, and other interests, unless such authorization is duly stayed pending such appeal.

15. Neither the Debtors nor Buyer have engaged in any conduct that would cause or permit the Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code.

16. 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.

17. The terms and provisions of the Purchase Agreement, the CCAA Vesting Order, and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, Seller, Buyer, the Foreign Representative, the Monitor, the Debtors' creditors, and all other parties in interest, and any successors of the Debtors, Seller, Buyer, the Foreign Representative, the Monitor, and the Debtors' creditors, including any foreign representative(s) of the Debtors, 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, their creditors, or any trustee(s), examiner(s), or receiver(s).

18. Subject to the terms and conditions of the CCAA Vesting Order, the Purchase 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, the Purchase Agreement, or any related agreements, documents, or other instruments and is otherwise in accordance with or not expressly prohibited by the CCAA Vesting Order.

19. The provisions of this Order and the Purchase 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 Purchase Agreement, on the other, this Order and the CCAA Vesting Order shall govern.

20. Nothing in this Order shall be deemed to waive, release, extinguish, or estop the Debtors 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.

21. 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.

22. 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.

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

24. 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

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: May 24, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)
APPLIED COMPRESSION SYSTEMS LTD.
1224933 ONTARIO INC. (FORMERLY COMPRESSED AIR INTERNATIONAL INC.)
FORMERXBC HOLDING USA INC. (FORMERLY XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC. (FORMERLY XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY (FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION (FORMERLY NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES – WISCONSIN INC. (FORMERLY XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)
Debtors / Petitioners**

and
DELOITTE RESTRUCTURING INC.
Monitor

and

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IVYS ADSORPTION INC.
Impleaded Party (Buyer)

**APPROVAL AND VESTING ORDER IN RESPECT OF BIOSTREAM ASSETS OF
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)**

- [1] **CONSIDERING** the *Application for (i) an Extension of the Stay of Proceedings, (ii) the Establishment of a Claims Process, (iii) the Authorization to Use Net Proceeds to Fund Cash-Flow Requirements and (iv) the Issuance of an Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (Formerly Xebec Systems USA, LLC) (the "Application")* pursuant to the *Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended ("CCAA")* and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Tenth Report of the Monitor dated May 19, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **CONSIDERING** the provisions of the CCAA;
- [5] **GIVEN** the Fifth Amended and Restated Initial Order rendered by the Court on March 27, 2023 (the "**Fifth ARIO**");
- [6] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the "**Transaction**") contemplated by the agreement entitled Binding Letter of Intent For Purchase of Biostream WIP / Inventory dated May 19, 2023 (the "**Binding LOI**") between **FormerXBC Systems USA, LLC** (the "**Seller**"), and **Ivys Adsorption Inc.**, as buyer, (the "**Buyer**"), a copy of which was filed under seal as **Exhibit P-5** to the Application, and vesting in the Buyer certain work in progress and inventory (the "**Purchased Assets**").

THE COURT HEREBY:

- [7] **GRANTS** the Application, with further written reasons to follow.

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DEFINITIONS

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

SERVICE

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

TRANSACTION APPROVAL

- [11] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Binding LOI 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

- [12] **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 Binding LOI and any other ancillary document which could be required or useful to give full and complete effect thereto, including entering into an asset purchase agreement.

AUTHORIZATION

- [13] **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

- [14] **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

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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 (all of which are collectively referred to as the "**Encumbrances**"), excluding for greater certainty the Biostream Charge (as defined below).

- [15] 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.
- [16] **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.
- [17] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Binding LOI and shall have no liability with respect to the delivery of the Monitor's Certificate.
- [18] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.
- [19] **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

- [20] **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

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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.

BIOSTREAM CHARGE

- [21] **DECLARES** that the Seller, as security for the payments to be made by the Buyer pursuant to the Biostream Transaction, be entitled to the benefit of and is hereby granted a charge and security in the five biostream units of the Purchase Assets, to the extent of the aggregate amount of \$2,000,000 (the "**Biostream Charge**").
- [22] **DECLARES** that following the initial payment by the Buyer equivalent to 25% of the Purchase Price, such charge will be discharged on a unit-by-unit basis following the payment of each instalment payment received by the Monitor from the Buyer, as confirmed by the issuance of Monitor's certificates confirming receipt of the instalments and reductions of the Biostream Charge, except for the Biostream Charge on the last biostream unit which will only be discharged upon receipt by the Monitor of the balance of payment of the Purchase Price and as confirmed by the issuance of a Monitor's certificate confirming that the Purchase Price has been paid in full and cancelling and discharging the Biostream Charge.
- [23] **DECLARES** that the Biostream Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Purchase Assets.

PROTECTION OF PERSONAL INFORMATION

- [24] **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 Binding LOI (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.
- [25] **ORDERS** that the Buyer shall:
- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;

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

VALIDITY OF THE TRANSACTION

[26] **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 Binding LOI 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

[27] **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.

[28] **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.

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

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

- [30] **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

- [31] **ORDERS** that the Binding LOI, Exhibit P-5 shall be filed under seal and kept confidential until further order of this Court.

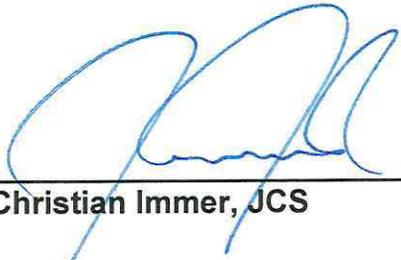
GENERAL

- [32] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [33] **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.
- [34] **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.
- [35] **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.
- [36] **ORDERS** provisional execution of this Order notwithstanding any appeal and without security.

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[37] **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: **May 24, 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
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.)
11941666 CANADA INC. (FORMERLY XEBEC
RNG HOLDINGS INC.)
APPLIED COMPRESSION SYSTEMS LTD.
1224933 ONTARIO INC. (FORMERLY
COMPRESSED AIR INTERNATIONAL INC.)
FORMERXBC HOLDING USA INC. (FORMERLY
XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC.
(FORMERLY XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY
(FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION
(FORMERLY NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES - WISCONSIN
INC. (FORMERLY XBC FLOW SERVICES -
WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY
XEBEC SYSTEMS USA, LLC)**

Debtors/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

CERTIFICATE OF THE MONITOR

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(CLOSING OF THE BIOSTREAM TRANSACTION AND CREATION OF THE BIOSTREAM CHARGE)

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. et 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 May 24, 2023, the Court issued the *Approval, Vesting and Assignment Order in Respect of Assets of FormerXBC Systems USA, LLC* (the "**Approval and Vesting Order**") authorizing and approving, *inter alia*, the execution of the Binding LOI and the conclusion of a definitive asset purchase agreement reflecting the terms of the Binding LOI (the "**Purchase Agreement**"), between FormerXBC Systems USA, LLC, as seller, (the "**Seller**"), and Ivys Adsorption Inc. as buyer, (the "**Buyer**") and all the transactions contemplated therein (the "**Transaction**"), with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed with the consent of the Monitor.

WHEREAS the Approval and Vesting Order contemplates the issuance of this Certificate of the Monitor once (a) the Purchase Agreement has been executed and delivered, (b) the Initial Payment (as provided by the Binding LOI and defined in the Purchase Agreement) has been paid, and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

WHEREAS, following confirmation of the above, it is also contemplated that the Monitor will issue this Certificate creating and effecting the Biostream Charge (as defined in the Approval and Vesting Order).

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 Initial Payment payable upon the closing of the Transaction has been paid and received by the Monitor;
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto, such that closing has occurred; and
- (d) The Biostream Charge is accordingly created and effected, in accordance with para. 21 of the Approval and Vesting Order.

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This Certificate was issued by the Monitor on ●, 2023.

Deloitte Restructuring Inc., in its capacity as Monitor
and not in its personal capacity.

Name: Jean-François Nadon, CPA, CIRP, LIT

Title: President

Exhibit B

Purchase Agreement

**ASSET PURCHASE AGREEMENT
(BioStream Purchased Assets)**

FORMERXBC SYSTEMS USA, LLC

as Seller

- and -

IVYS ADSORPTION INC.

as Buyer

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of August 3, 2023

BETWEEN:

FORMERXBC SYSTEMS USA, LLC, formerly Xebec Systems USA, LLC, a limited liability company governed by the laws of Delaware (the “**Seller**”)

- and -

IVYS ADSORPTION INC., a corporation governed by the laws of Canada (the “**Buyer**”)

RECITALS:

- A. On September 29, 2022, Xebec Adsorption Inc. (now FormerXBC Inc.) (“**Xebec**”) and certain of its affiliates and subsidiaries (the “**Xebec Group**”), filed an Application pursuant to the Companies’ Creditors Arrangement Act, RSC 1985, c C-36, as amended (“**CCAA**”) and the Monitor was appointed as monitor thereto.
- 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 Title 11 of the United States Code (the “**U.S. Proceedings**”) in the U.S. Bankruptcy Court.
- C. On May 19, 2023, the Seller and the Buyer entered into a binding letter of intent (the “**Binding LOI**”) pursuant to which the Seller agreed to sell to the Buyer, and the Buyer agreed to purchase from the Seller, the BioStream Purchased Assets upon the terms and subjects to the conditions set therein (the “**Transaction**”);
- D. The Binding LOI provides that the parties will use their best efforts to conclude a definitive contract reflecting the terms of the Binding LOI on or prior to June 9, 2023.
- E. On May 24, 2023, the CCAA Court issued the *Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC)* (the “**Approval and Vesting Order**”) approving the Transaction and authorizing and approving the execution of the Binding LOI and any document which could be required or useful to give full and complete effect thereto, including 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) “**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.
- (b) “**Access**” has the meaning given to such term in Section 10.4(b).
- (c) “**Access Period**” has the meaning given to such term in Section 10.4(b).
- (d) “**Agreement**” means this Asset Purchase Agreement, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Asset Purchase Agreement in its entirety, and unless otherwise indicated, references to Articles and Sections are to Articles and Sections in this Asset Purchase Agreement.
- (e) “**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 or any of the BioStream Purchased Assets.
- (f) “**Approval and Vesting Order**” has the meaning given to such term in Recital E, and is included as Schedule 1.1(f) herein.
- (g) “**Assembly Period**” has the meaning given to such term in Section 6.2(c).
- (h) “**Binding LOI**” has the meaning given to such term in Recital C.
- (i) “**BioStream Purchased Assets**” has the meaning given to such term in Section 2.1.

- (j) “**BioStream Charge**” has the meaning given to it in the Approval and Vesting Order.
- (k) “**Business Day**” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Montréal, Québec are open for commercial banking business during normal banking hours.
- (l) “**Buyer**” means Ivys Adsorption Inc., or an affiliate of same further to an assignment pursuant to Section 11.7.
- (m) “**CCAA**” has the meaning given to such term in Recital A.
- (n) “**CCAA Court**” means the Superior Court of Québec (Commercial Division) in the District of Montréal.
- (o) “**CCAA Proceedings**” means the proceedings commenced under the CCAA by the Seller pursuant to the Initial Order (Court File No. 500-11-061483-224).
- (p) “**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.
- (q) “**Closing**” means the completion of the sale and purchase of the BioStream 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 BioStream Purchased Assets.
- (r) “**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.
- (s) “**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.
- (t) “**Closing Payment**” has the meaning given to such term in Section 3.2(a)(i).
- (u) “**Closing Time**” means the time on the Closing Date as confirmed by the Monitor’s Certificate.
- (v) “**Confidential Information**” means non-public, confidential, personal or proprietary information which is furnished to one Party (the “**Receiving Party**”) by the other Party (the “**Disclosing Party**”) or any of the Disclosing Party’s representatives or the Monitor, including, without limitation, information about

identifiable individuals, any information relating to the Disclosing Party and its affiliates, or any customer or supplier of the Disclosing Party, but does not include information that is or becomes generally available to the public other than as a result of disclosure by the Receiving Party or its representatives in breach of this Agreement or that is received by the Receiving Party from an independent third party that, to the knowledge of the Receiving Party, 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 Receiving Party's employees or representatives without access or reference to any Confidential Information.

- (w) **“Deposit”** means the amount of \$100,000 which has been paid by the Buyer to the Monitor in accordance with the Binding LOI.
- (x) **“Disclosing Party”** has the meaning given to such term in Section 1.1(v).
- (y) **“Encumbrance”** means any security interest, lien (statutory or otherwise), prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, liability, mortgage, right-of-way, servitude, easement, lease, restriction, development or similar agreement, title defect, option or adverse claim or encumbrance of any nature or kind including any and all CCAA Court ordered charges granted in the CCAA Proceedings.
- (z) **“Final”** with respect to any order of any court of competent jurisdiction, means that such order shall not have been stayed, appealed, varied (except with the consent of the Buyer and Seller, each acting in a commercially reasonable manner) or vacated, and all time periods within which such order could at law be appealed shall have expired.
- (aa) **“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 or the BioStream Purchased Assets 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.
- (bb) **“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 any of the BioStream Purchased Assets by or from any Governmental Authority.

- (cc) “**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.
- (dd) “**Material Adverse Effect**” means any change, event, occurrence or circumstance, individually or in the aggregate that: materially and adversely impairs the BioStream Purchased Assets or materially and adversely impedes the consummation of the transactions contemplated by this Agreement.
- (ee) “**Monitor**” means Deloitte Restructuring Inc., in its capacity as CCAA Court appointed monitor pursuant to the Initial Order and not in its personal capacity.
- (ff) “**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 payable at the Closing Time and all applicable sales and transfer Taxes payable by the Buyer to the Seller have been received by the Monitor, in the form attached as Schedule 1.1(ff) hereto.
- (gg) “**NDA**” means the confidentiality agreement between the Buyer and Xebec dated October 13, 2022.
- (hh) “**Order**” means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.
- (ii) “**Parties**” means the Seller and the Buyer collectively, and “**Party**” means either the Seller or the Buyer, as the context requires.
- (jj) “**Payment Balance**” has the meaning given to such term in Section 3.2(a)(ii).
- (kk) “**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.
- (ll) “**Purchase Price**” has the meaning given to such term in Section 3.1.
- (mm) “**Receiving Party**” has the meaning given to such term in Section 1.1(v).
- (nn) “**Recognition Order**” means the order of the U.S. Bankruptcy Court in the U.S. Proceedings recognizing and giving effect to the Approval and Vesting Order and the CCAA Charge, which is set to be issued on or around September 28, 2023.

- (oo) **“Seller”** means FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC).
- (pp) **“Sunset Date”** has the meaning given to such term in Section 9.1(b).
- (qq) **“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 Canada Pension Plan, Québec Pension Plan 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.
- (rr) **“U.S. Bankruptcy Court”** means the United States Bankruptcy Court for the District of Delaware.
- (ss) **“U.S. Proceedings”** has the meaning given to such term in Recital B.
- (tt) **“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. References to “€” are to Euros.

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 the Buyer, it will be deemed to refer to the actual knowledge of the Buyer’s directors and officers, in each case, after due inquiry and without personal liability on the part of any of them.

1.8 Entire Agreement

This Agreement, the schedules to this Agreement, the NDA and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise, including the Binding LOI, which is hereby terminated except in respect of Section 7 of the Binding LOI relating to the treatment of the Deposit. 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(f)	Approval and Vesting Order
Schedule 1.1(ff)	Form of Monitor Certificate
Schedule 2.1	BioStream Purchased Assets
Schedule 3.2	Monitor's Wire Information

ARTICLE 2 PURCHASE AND SALE

2.1 Agreement to Purchase and Sell BioStream Purchased Assets

Upon and subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, the Seller shall sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, transferred, assigned and delivered, pursuant to the Approval and Vesting Order, and the Buyer shall purchase, free and clear of all Encumbrances other than the BioStream Charge, all of the Seller's right, title and interest in, to and under, or relating to, the five BioStream units and related inventory and work in progress listed in Schedule 2.1 (collectively, the "**BioStream Purchased Assets**").

ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

The purchase price payable to the Seller for the BioStream Purchased Assets (the "**Purchase Price**"), exclusive of any and all applicable sales and transfer taxes, shall be the amount of \$2,000,000 in cash.

3.2 Payment of Purchase Price and Treatment of Deposit

- (a) The Purchase Price will be satisfied as follows:

- (i) \$500,000 (plus applicable sales taxes) will be paid at the Closing Time, including \$100,000 by the Monitor crediting the Deposit to the Seller and the balance by wire transfer from the Buyer of immediately available funds to the account specified in Schedule 3.2 (the “**Closing Payment**”); and
 - (ii) the balance of \$1,500,000 (plus applicable sales taxes) (the “**Payment Balance**”) to be paid in five instalments of \$300,000 (plus applicable sales taxes) by wire transfer of immediately available funds from the Buyer to the account specified in Schedule 3.2 hereto, with each instalment payable within two Business Days of each unit’s approval pursuant to a standard/reasonable factory acceptance test, at the facilities of EnergyLink Corporation, Brightmark RNG Origination LLC (“**Brightmark**”) or an alternate customer or the Buyer; provided that any remaining balance of the Payment Balance will be due and payable in full on October 30, 2023, regardless of the status of installation and commissioning or factory acceptance test of any or all of the units. For more clarity, if any approval occurs prior to Closing, then applicable installment will be added to the Closing Payment.
- (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 3.2; or
 - (ii) refunded to the Buyer in the circumstance contemplated by Section 9 of the Binding LOI.

3.3 Obligation to Pay the Payment Balance Secured by the BioStream Charge

- (a) The obligation of the Buyer to pay the Payment Balance is secured by the BioStream Charge, in accordance with the Approval and Vesting Order.
- (b) Upon receipt of each instalment payment pertaining to the Payment Balance, the Monitor will issue a certificate to reduce and discharge the BioStream Charge, on a unit by unit basis, until the Payment Balance has been paid in full, upon which a final certificate will be issued by the Monitor to cancel and discharge the BioStream Charge.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES BY THE SELLER

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

4.1 Corporate Existence

The Seller is a limited liability company duly formed and validly existing under the laws of its jurisdiction of formation.

4.2 Due Authorization and Enforceability of Obligations

Subject to the issuance of the Recognition Order:

- (a) the Seller has all necessary corporate power, authority and capacity to:
 - (i) enter into and deliver this Agreement and the Closing Documents;
 - (ii) carry out its obligations under this Agreement and the Closing Documents;
and
 - (iii) own the BioStream Purchased Assets;
- (b) the execution, delivery and performance of this Agreement and the Closing Documents, and the consummation of the transactions contemplated by this Agreement and the Closing Documents, have been duly authorized by all necessary corporate action of the Seller; and
- (c) assuming the accuracy of the representations and warranties of the Buyer in Article 5, this Agreement does and the Closing Documents when executed by the Seller will constitute valid and binding obligations of the Seller enforceable against it in accordance with its terms.

4.3 Residence of the Seller

The Seller is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

4.4 No Other Representations, Warranties or Covenants

Unless and solely to the extent expressly set forth in this Agreement, no representation, warranty or covenant is expressed or implied by the Seller, including any warranties as to title, Encumbrance, description, merchantability or fitness for a particular purpose, environmental compliance, condition, quantity or quality, or in respect of any other matter or thing whatsoever concerning the BioStream Purchased Assets or the right of the Seller to sell or assign the same, as applicable. The disclaimer in this Section 4.4 is made notwithstanding the delivery or disclosure to the Buyer or its directors, officers, employees, agents or representatives of any documentation or other information (including any financial projections, estimates, budgets, offering memoranda, management presentations, due diligence materials or other supplemental data not included in this

Agreement). Without limiting the generality of the foregoing, any and all conditions, warranties or representations, express or implied, pursuant to Applicable Law (including under Article 1716 of the *Civil Code of Québec*, the *International Convention on Contracts for the Sale of Goods* (Geneva Convention) and any other applicable sale of goods legislation) do not apply hereto and are hereby expressly waived by the Buyer.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER

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

5.1 Corporate Existence

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

5.2 Residence of the Buyer

The Buyer is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

5.3 Financial Ability

Notwithstanding anything to the contrary contained herein, the Buyer's obligations under 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

Each Party is not a party to, bound or affected by or subject to (and the assets of the Parties 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 said Party 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

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 BioStream Purchased Assets hereunder.

5.7 Litigation

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

- (a) enjoin, restrict or prohibit the transfer of all or any part of the BioStream Purchased Assets as contemplated by this Agreement; or
- (b) prevent such Party from or delay it in fulfilling any of its obligations set out in this Agreement or arising from this Agreement.

5.8 As Is, Where Is

- (a) The Buyer acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the BioStream Purchased Assets and all related operations of the Xebec Group, and, based solely thereon, has determined to proceed with the transactions contemplated by this Agreement. The Buyer has relied solely on the results of its own independent investigation and verification, and the representations and warranties of the Seller expressly and specifically set forth in Article 4, and the Buyer understands, acknowledges and agrees that all other representations, warranties and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Seller, or the quality, quantity or condition of the BioStream 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, neither the Seller, nor any of its affiliates or the Monitor, is making any warranty or representation, express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples or condition of the BioStream 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 HEREIN: (A) THE BUYER IS ACQUIRING THE BIOSTREAM 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, ANY AFFILIATE OF THE SELLER 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 BIOSTREAM PURCHASED ASSETS, 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 EXISTENCE OF ANY DEFAULT ON THE PART OF THE SELLER OR THE EXISTENCE OF ANY ENCUMBRANCE AFFECTING THE BIOSTREAM PURCHASED ASSETS; AND WITHOUT LIMITING THE FOREGOING, ANY AND ALL CONDITIONS OR WARRANTIES EXPRESSED OR IMPLIED PURSUANT TO THE CIVIL CODE OF QUÉBEC, THE INTERNATIONAL CONVENTION ON CONTRACTS FOR THE SALE OF GOODS (GENEVA CONVENTION) AND ANY OTHER APPLICABLE SALE OF GOODS LEGISLATION, 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 QUEBEC AND THAT THE BUYER IS PURCHASING THE BIOSTREAM 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 QUEBEC, 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, EXISTENCE OF LATENT DEFECTS, QUALITY, QUANTITY, OR ANY OTHER THING AFFECTING ANY OF THE BIOSTREAM PURCHASED ASSETS, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAW IN ANY JURISDICTION, WHICH THE BUYER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE BUYER.

- (b) The Buyer acknowledges and agrees that: (i) the representations and warranties of the Seller set forth in Article 4 will merge on, and shall not survive, the Closing; and (ii) the Seller will not have or be subject to any liability or indemnification obligation to the Buyer or any other Person resulting from (nor will the Buyer or any other Person have any claim with respect to) the distribution to the Buyer, the Buyer's use of, or reliance on, any information, documents, projections, forecasts or other material made available to the Buyer in certain "data rooms," confidential information memoranda or management presentations in expectation of, or in connection with, the transactions contemplated by this Agreement, regardless of

the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise. None of the representatives of the Seller, whether in an individual, corporate or other capacity, will have or be subject to any such liability or indemnification obligations.

- (c) The remedies expressly set forth in this Agreement are the Buyer's sole and exclusive remedies relating to this Agreement, the Closing Documents, the transactions contemplated hereby and thereby, the BioStream Purchased Assets and all related operations of the Seller or either of them.
- (d) This Section 5.8 will not merge on Closing and is deemed incorporated by reference in all Closing Documents.

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 BioStream Purchased Assets or any of the other transactions pursuant to this Agreement shall be in effect; and
- (b) *Court Orders* – the Approval and Vesting Order shall not have been reversed, modified, amended or stayed and the Recognition Order shall have been issued.

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) *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;

- (b) *Officer's Certificate* – the Buyer shall have received a certificate confirming the satisfaction of the conditions contained in Section 6.2(a) (*Truth of Representations and Warranties*), signed for and on behalf of the Seller without personal liability by an executive officer of the Seller or other Persons acceptable to the Buyer, in each case in form and substance reasonably satisfactory to the Buyer;
- (c) *Lease Space Access* – the Buyer shall have received reasonably satisfactory assurances that the Buyer will have access to the required portion of the Seller lease space for a period up to October 31, 2023 (the “**Assembly Period**”);
- (d) *Agreement with EnergyLink Corporation* – the Buyer shall have entered into a transition services agreement with EnergyLink Corporation providing for the provision of technical services to finalize the BioStream Purchased Assets units during the Assembly Period;
- (e) *Agreement with Brightmark or Alternate Customer* – the Buyer shall have entered into agreements with Brightmark or any alternate customer to procure all the units forming part of the BioStream Purchased Assets.

6.3 Conditions for the Benefit of the Seller

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

- (a) *Performance of Covenants* – the covenants contained in this Agreement to be performed by the Buyer at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* – the representations and warranties of the Buyer contained in Article 5 shall be true and correct in all material respects on and as of the Closing Date, as if made on and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date); and
- (c) *Officer's Certificate* – the Seller shall have received a certificate confirming the satisfaction of the conditions contained in Sections 6.3(a) (*Performance of Covenants*) and 6.3(b) (*Truth of Representations and Warranties*) signed for and on behalf of the Buyer without personal liability by an executive officer of the Buyer, in form and substance satisfactory to the Seller, each acting in a commercially reasonable manner.

ARTICLE 7
ADDITIONAL AGREEMENTS OF THE PARTIES

7.1 No Broker

The Buyer acknowledges and agrees that the Seller shall not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Buyer.

7.2 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 in connection therewith and, subject to the directions of any applicable courts to the Seller, use commercially reasonable efforts to do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable and in any event prior to the Sunset Date, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, each Party shall and, where appropriate, shall cause each of its affiliates to:
- (i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and
 - (ii) not take any action, or refrain from taking any action, and use commercially reasonable efforts to not permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.
- (b) The Buyer hereby agrees, and hereby agrees to cause its representatives to, keep the Seller informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by the Seller or the Monitor, as to the Buyer's progress in terms of the satisfaction of the conditions precedent contained herein.
- (c) The Seller and the Buyer agree to execute and deliver such other documents, certificates, agreements and other writings, and to take such other actions as may be reasonably required to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

7.3 Release; Acknowledgements; Indemnity

- (a) Except as otherwise contained herein, effective as of the Closing, each Party hereby releases and forever discharges the other Party and its 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 Party had, has or may have in the future to the extent relating to this Agreement and the BioStream Purchased Assets.

ARTICLE 8 COURT ORDERS

8.1 CCAA Process

- (a) If the Approval and Vesting Order or any other Orders of the CCAA Court relating to the Binding LOI or to this Agreement shall be appealed or motion for rehearing or reargument shall be filed with respect thereto, the Seller agrees to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion and the Buyer agrees to use its commercially reasonable efforts to cooperate in such efforts, but will bear no costs therefore.
- (b) As soon as practicable, the Sellers shall serve and file a motion for the issuance of the Recognition Order and thereafter shall take all commercially reasonable steps to obtain the Recognition Order.
- (c) Notice of the motion seeking the issuance of the Recognition Order shall be served by the Seller on all Persons required to receive notice under Applicable Law and the requirements of the U.S. Bankruptcy Proceedings and the U.S. Bankruptcy Court and any other Person determined necessary by the Seller or the Buyer.

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 by October 10, 2023 (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 (with consent of the Monitor) if the conditions set out in Sections 6.2(c), 6.2(d) and 6.2(e) are not confirmed to have been satisfied or waived by the Buyer on or prior to August 31, 2023;

- (d) 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);
- (e) by the Seller, if required under any Order of a court of competent jurisdiction including the CCAA Court;
- (f) by the Seller (with the consent of the Monitor), if there has been a material violation or breach by the Buyer of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 6.1 or Section 6.3, as applicable, by the Sunset Date and such violation or breach has not been waived by the Seller or cured within ten (10) Business Days after written notice thereof from the Seller, unless the Seller is in material breach of its obligations under this Agreement; or
- (g) 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 11.1, 11.3, 11.5, 11.6, 11.7 and 11.8 shall survive, (b) the confidentiality, non-use and non-disclosure obligations under the NDA shall survive in accordance with the terms of the NDA, (c) no termination of this Agreement shall relieve any Party of any liability for any wilful breach by it of this Agreement and (d) the Deposit shall be reimbursed to Buyer, except when this Agreement is terminated pursuant to Section 9.1(b), where there has been a material violation or breach by the Buyer of any covenant, representation or warranty which has resulted in the Closing not occurring, and Section 9.1(f).

ARTICLE 10 CLOSING

10.1 Location and Time of the Closing

The Closing shall unless otherwise agreed between the Parties, be conducted virtually and take place at the Closing Time on the Closing Date or at such other time, date or location as may be agreed upon by the Parties.

10.2 Seller's Deliveries at Closing

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

- (a) an executed copy of the Monitor's Certificate;
- (b) the certificate contemplated by Section 6.2(b); and
- (c) 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 portion of the Purchase Price payable at the Closing Time pursuant to Section 3.2;
- (b) the certificate contemplated by Section 6.3(c); and
- (c) 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

- (a) The Seller will remain in possession of the BioStream Purchased Assets until Closing. On Closing, the Buyer will take possession of the BioStream Purchased Assets wheresoever situated at Closing. In no event will the BioStream Purchased Assets be sold, assigned, transferred or set over to the Buyer until the conditions set out in the Approval and Vesting Order, as applicable, have been satisfied, and the Buyer has satisfied all delivery requirements outlined in Section 10.3.
- (b) Notwithstanding the foregoing and subject to the prior consent of EnergyLink Corporation which the Parties shall use commercially reasonable efforts to obtain, the Buyer and its employees, subcontractors, partners, agents or any other person designated by Buyer, shall be granted reasonable access (the "**Access**") to the BioStream Purchased Assets, wheresoever situated on the date hereof, to work on the finalization of the Biostream Purchased Assets during the period starting on the date hereof and ending at Closing (the "**Access Period**"). The Access shall be

conditional to the payment by the Buyer to the Monitor of any industry standard insurance and reasonable storage fees incurred by the Seller during the Access Period in connection with the BioStream Purchased Assets no later than two (2) Business Days following the date hereof. Such payment shall be conditional upon the Monitor providing reasonable evidence of such insurance and storage fees for the Access Period in advance. The Monitor will apply the foregoing payment to the payment of such storage and insurance fees by the Seller.

- (c) The Buyer hereby acknowledges and agrees that, the Buyer shall not be entitled to claim any amount from the Seller in connection with any work performed by the Buyer on any BioStream Purchased Assets, including for the increased value of such BioStream Purchased Assets resulting from such work and whether or not this Agreement is terminated prior to Closing.
- (d) The Buyer shall be liable and shall (i) indemnify the Seller for any damage to any BioStream Purchased Assets resulting directly from the work performed by the Buyer on any such BioStream Purchased Assets during the Access Period and (ii) indemnify and save harmless the Seller from any loss, liability, cost, damage, injury or expense arising out of any injury to any person, agent or property as a result of the Access to the BioStream Purchased Assets.

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, 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.

10.7 Purchase Price Held in Trust by Monitor

The Closing Payment shall be paid by the Buyer to the Monitor at the Closing Time in accordance with Section 3.2(a)(i).

ARTICLE 11 GENERAL MATTERS

11.1 Confidentiality

The Buyer shall keep confidential all Confidential Information relating to the Seller and the BioStream Purchased Assets 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 and this Agreement may be disclosed by the Seller to the CCAA Court and the U.S. Bankruptcy Court. 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;
- (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; and
- (c) upon confirmation of satisfaction or waiver of the conditions set out in Sections 6.2(c), 6.2(d) and 6.2(e), the Seller will serve the necessary documentation and file it in the U.S. Bankruptcy Court's record in order to obtain the Recognition Order.

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

11.3 Injunctive Relief

- (a) The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek specific performance, injunctive and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such specific performance, injunctive or other equitable relief, this being in addition to any other remedy to which the Parties may be entitled at law or in equity.
- (b) Each Party hereby agrees not to raise any objections to the availability of the equitable remedies provided for herein and the Parties further agree that by seeking the remedies provided for in this Section 11.3, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement.
- (c) Notwithstanding anything herein to the contrary herein, under no circumstances shall a Party be permitted or entitled to receive both monetary damages and specific performance and election to pursue one shall be deemed to be an irrevocable waiver of the other.

11.4 Survival

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

11.5 Expenses

Except as otherwise specifically provided herein, 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 the other Party, except that without such consent the Buyer may, upon prior notice to the Seller assign this Agreement, or any or all of its rights and obligations hereunder, to one of its affiliates; provided, that no such assignment or direction shall relieve such assigning Party of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Except as provided in Section 7.3, 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:

Ivys Adsorption Inc.

Attention: Mr. Prabhu K. Rao
Telephone: 450-979-8706
Email: prabhu_rao@xebecinc.com

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

Langlois Lawyers, LLP

Attention: Étienne Lacoursière
Telephone: 514-282-7801
Email: etienne.lacoursiere@langlois.ca

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

FormerXBC Systems USA, LLC

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.

FORMERXBC SYSTEMS USA, LLC

By: 
Name: Jim Voukassis
Title: CEO

IVYS ADSORPTION INC.

By: 
Name: Prabhu K Rao
Title: President and CEO

SCHEDULE 1.1(F)
APPROVAL AND VESTING ORDER

See attached.

SCHEDULE 1.1(F)
FORM OF MONITOR'S CERTIFICATE

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.)
11941666 CANADA INC. (FORMERLY XEBEC
RNG HOLDINGS INC.)
APPLIED COMPRESSION SYSTEMS LTD.
1224933 ONTARIO INC. (FORMERLY
COMPRESSED AIR INTERNATIONAL INC.)
FORMERXBC HOLDING USA INC. (FORMERLY
XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC.
(FORMERLY XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY
(FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION
(FORMERLY NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES - WISCONSIN
INC. (FORMERLY XBC FLOW SERVICES -
WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY
XEBEC SYSTEMS USA, LLC)**

Debtors/Petitioners

-and-

DELOITTE RESTRUCTURING INC.
Monitor

**CERTIFICATE OF THE MONITOR
(CLOSING OF THE BIOSTREAM TRANSACTION AND CREATION OF THE
BIOSTREAM CHARGE)**

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. et 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 May 24, 2023, the Court issued the *Approval, Vesting and Assignment Order in Respect of Assets of FormerXBC Systems USA LLC* (the "**Approval and Vesting Order**") authorizing and approving, *inter alia*, the execution of the Binding LOI (as defined in the Approval and Vesting Order) and the conclusion of a definitive asset purchase agreement reflecting the terms of the Binding LOI (the "**Purchase Agreement**"), between FormerXBC Systems USA LLC, as seller, (the "**Seller**"), and Ivys Adsorption Inc. as buyer, (the "**Buyer**") and all the transactions contemplated therein (the "**Transaction**"), with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed with the consent of the Monitor.

WHEREAS the Approval and Vesting Order contemplates the issuance of this Certificate of the Monitor once (a) the Purchase Agreement has been executed and delivered, (b) the initial payment, provided for in the Binding LOI and referred to at para. 3.2a)i) of the Purchase Agreement (the "**Initial Payment**"), has been paid, and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

WHEREAS, following confirmation of the above, it also contemplated that the Monitor will issue this Certificate creating and effecting the Biostream Charge (as defined in the Approval and Vesting Order).

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 Initial Payment payable upon the closing of the Transaction has been paid and received by the Monitor, and the Payment Balance is payable by the Buyer to the Monitor in accordance with the Purchase Agreement;
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto, such that closing has occurred; and

- (d) The Biostream Charge is accordingly created and effected, in order to secure the obligation of the Buyer to pay the Payment Balance in conformity with the Purchase Agreement, in accordance with para. 21 and following of the Approval and Vesting Order.

This Certificate was issued by the Monitor on June ●, 2023.

Deloitte Restructuring Inc., in its capacity as Monitor
and not in its personal capacity.

Name: _____
Jean-François Nadon, CPA, CIRP, LIT
Title: President

SCHEDULE 2.1
BIOSTREAM PURCHASED ASSETS

Biostreams inventory

Summarized breakdown prepared by the Finance Controller of UEC on May 19, 2023

UEC Part	Ivys Part	item_desc	Quantity
10112143		CONTAINER STAGE 2 ASSY	6
10112142		CONTAINER STAGE 1 ASSY	6
10111791		TOP SKID MAJORS, STAGE 1	8
10112144		CONTAINER STAGE 3 ASSY	6
10112141		CONTAINER PRE-FAB MAJORS ASSY	6
10111725	R001-094-460	R001-094-460 CHILLER PACKAGE, AIR COOLED	12
10112138		CONTAINER PRE-FAB PIPE THREADED	11
10110820	P1216447	P1216447 WELDED TOP STRUCTURE	14
10112139		CONTAINER PRE-FAB PIPE WELDED	6
B220014A-16	A1216568	BIOSTREAM TOP STRUCT ASSY GA A1216568	1
10111725	R001-094-460	R001-094-460 CHILLER PACKAGE, AIR COOLED	4
10111510	B006-111	B006-111 Prosonic Flow B 200, 9B2B50, D	12
10111714	H001-533	H001-533 SHELL & TUBE HEAT EXCHANGER	10
10111509	B006-110	B006-110 Prosonic Flow B 200, 9B2B1H	12
10110861	A1216076	A1216076 BIOSTREAM CONTAINER (BC1)	1
10110861	A1216076	A1216076 BIOSTREAM CONTAINER (BC1)	1
10111789		TOP SKID PRE-FAB PIPE WELDED	6
10111534	C026-066	C026-066 GAS ANALYSIS SYSTEM FOR XEBEC	2
10111912		BIO STREAM TOP SKID INSULATION	6
10111792		TOP SKID STAGE 1 ASSY	8
10111886	E012-141	E012-141 CABLE #4/0 (0000) AWG, 3C +GND	1,202
10118657		ASSEMBLY FOR STAGE 3 REV CHANGES	6
10111505	B003-533-460	B003-533-460 VACUUM PUMP ROTARY VANE OIL	3
10111799	V012-380-CGA	V012-380-CGA BUTTERFLY VALVE 3" CL150	67
10111725	R001-094-460	R001-094-460 CHILLER PACKAGE, AIR COOLED	2
10111506	B003-607-460K	B003-607-460K 2HP AIR COMPRESSOR RECIP	16
10111726	R001-097-460	R001-097-460 CHILLER PACKAGE, AIR COOLED	3
10111536	C026-073	C026-073 SMOKE DETECTOR, X-PROOF	8
10118616	C030-154	C030-154 PRESSURE TRANSMITTER	72
60009111		PFRFSO0400150304 RFLGS0400	322
60009121	RFLGS06001	PFRFSO0600150304 RFLGS0600	205
10110801	T901-082	T901-082 FLEX HOSE. NPS 6" CL150 WITH	27
10111503	B003-307	B003-307 DIAPHRAGM CONDENSATE PUMP, MAX	41
10111793		TOP SKID STAGE 2 ASSY	6
10112132	E1216956	E1216956 RP1 POINT IO	4
10110799	T901-085	T901-085 FLEX HOSE. NPS 2" CL150 WITH	82
10112208		CONTAINER MISCELLANEOUS - NEXT 18	1
10111715	H001-534	H001-534 SHELL AND TUBE BIOSTREAM 0.5	6
60009102	RFLGS03001	PFRFSO0300150304 RFLGS03001	381
10111505	B003-533-460	B003-533-460 VACUUM PUMP ROTARY VANE OIL	2
60009090	RFLGS02001	PFRFSO0200150304 RFLGS02001	470
10111706	E023-406	E023-406 CABLE GLAND NICKEL-PLATED 1/2	1,584
10112132	E1216956	E1216956 RP1 POINT IO	3
10118615	C026-077	C026-077, CH4 LEL TRANSMITTER AND PROBE	21
B220014A-MISC		ADDITIONAL MISC PARTS FOR B220014A	1
10110805	T901-087	T901-087 FLEX HOSE. NPS 4" CL150 WITH	26
10112203	V1216949	V1216949 WELDED WET AIR COMPRESSOR ASSEM	6
10111660	E009-564	E009-564 LED 1200MM MACHINE LIGHT 45MM	27
750310305	RPPES06004	RPPES06004 PIPE 6" SCH10S 138 3/4"	19
10113262		020 ALUMINUM STUCCO	40
10111619	T901-090	T901-090 FLEX-HOSE, NPS 6", 30"	21
10111662	E012-034	E012-034 CABLE 500 KCMIL FLEXIBLE	1,080
10110806	T901-088	T901-088 FLEX HOSE. NPS 2" CL150 WITH	62
10111736	V004-473	V004-473 CHECK VALVE 3" - CLASS 150	48
10111665	E012-038	E012-038 CABLE 6 AWG (16 mm ²) 3C+ GND	1,548
10111579	E021-211	E021-211 MULTI-ENTRY POWER/SPLICE/TEE	54

Biostreams inventory

Summarized breakdown prepared by the Finance Controller of UEC on May 19, 2023

UEC Part	Ivys Part	item_desc	Quantity
10111684	E013-016	E013-016 SELF REGULATING HEATING CABLE	3,420
10112132	E1216956	E1216956 RP1 POINT IO	2
10110887		COMPRESS GRAY - TNEMEC F073A13714A	215
10111735	V004-136	V004-136 CHECK VALVE 3", WAFER TYPE	24
10111618	T901-089	T901-089 FLEX-HOSE, DIA. 2" X 16-1/2"	63
10111740	V1216783	V1216783 WELDED BIOSTREAM INLET WATER	5
10110802	T901-083	T901-083 FLEX HOSE. NPS 3" CL150 WITH	28
10111707	E023-409	E023-409 CABLE GLAND NICKEL-PL 1 1/4"	198
10111563	E009-152	E009-152 CABLE SEALING KIT BY ROXTEC	13
60016214	B006-106	B006-106 FLOW SWITCH 3/4" MNPT, 6" INSER	13
10111732	V001-570	V001-570 BALL VALVE 1 1/2" NPT FEMALE	14
10111615	R001-095-OUT	R001-095-OUT THERMOPUMP 36K BTU: OUT INV	7
10111739	V012-436	V012-436 BUTTERFLY VALVE 4IN CL150	9
10111607	F011-004	F011-004 DEMISTER PAD // VANE TYPE	16
750311506	RPPES04002	RPPES04002 PIPE 4" SCH10S 200 1/8"	14
10110780	RGASK03032-H2S	DURALON 9000 3" GASKET RGASK03032-H2S	739
10110803	T901-084	T901-084 FLEX HOSE. NPS 2" CL150 WITH	28
10111738	V012-435	V012-435 BUTTERFLY VALVE 3 CL 150	12
10112252	MAD-10-NANO	MAD-10-NANO HEATLESS MODULAR AIR DRYER	10
10110779	RGASK02024-H2S	DURALON 9000 2" GASKET RGASK02024-H2S	942
10111713	H001-513	H001-513 XB EXPLOSION-PROOF HEATER	5
10118658		BIOSTREAM BOTTOM CONTAINER INSULATION	3
10110804	T901-086	T901-086 FLEX HOSE. NPS 3" CL150 WITH	23
10111617	T901-062	T901-062 FLEX-HOSE, DIA. 1-1/2" X 44"	45
60016202	RFASS00030	HEX NUT 5/8"- 11 UNC RFASS00030	12,984
750350242	RPPES06004	RPPES06004 PIPE 6" SCH10S, SMLS, 81 5/8"	12
10111668	E012-042	E012-042 CABLE 4 AWG (21 mm ²)+GND	1,098
60016216	RFASC12001	RFASC12001 12" REVERSIBLE CHANNEL BRACKE	339
60004245	RFTWS06037	PFLRBW060010S304 RFTWS06037	95
60016743	RGASK00017	RGASK00017 SEALING STRIP, 1" THK X 2" W	108
60016868	RFASS00033	RFASS00033 STUD, 5/8"-11UNC x 4", SA193	2,806
10110787	V1216242	V1216242 REC SURGE TANK (B1-TK-03A)	1
10110778	V1216211	V1216211 VACUUM SURGE TANK	1
10110788	V1216244	V1216244 RECYC SURGE TANK (B1-TK-03B)	1
10111660	E009-564	E009-564 LED 1200MM MACHINE LIGHT 45MM	11
10110808	H500-020	H500-020 INSULATION,FLEX,2"THK,48"	3,000
10110800	RGASK04036-H2S	RGASK04036-H2S 4" GASKET, CL150 RING TYP	333
10111737	V004-505	V004-505 CHECK VALVE 3", METAL HINGE	12
10111598	E023-405	E023-405 CABLE GLAND NICKEL-PLATED 1/4	584
10110883		TNEMEC SERIES 73 RAL9016 TRAFFIC WHITE	110
10111554	E007-208-03	E007-208-03 RITTAL PANEL SINGLE DOOR	66
10111641	V012-381-CGA	V012-381-CGA HIGH PERFORMANCE BUTTERFLY	12
10112247	P1216596	P1216596 ASSEMBLED	7
Other		1186 Line items grouped	188,867
Total			223,899

UEC Part	Description	Xebec Part	Quantity
DCP0010-M1	Compair CE0010B/E Alternative element	#N/A	5
DCP0010-MX	Compair CE0010C Alternative element	XBC-CE0010-C	5
DCP0018-M1	Compair CE0018B/E Alternative element	XBC-CE0018-B	5
DCP0018-MX	Compair CE0018C Alternative element	XBC-CE0018-C	5
DCP0036-M1	Compair CE0036B/E Alternative element	XBC-CE0036-B	20
DCP0036-MX	Compair CE0036C Alternative element	XBC-CE0036-C	20
DCP0048-M1	Compair CE0048B/E Alternative element	XBC-CE0048-B	20
DCP0048-MX	Compair CE0048C Alternative element	XBC-CE0048-C	20
DCP0072-M1	Compair CE0072B/E Alternative element	XBC-CE0072-B	20
DCP0072-MX	Compair CE0072C Alternative element	XBC-CE0072-C	20
DCP0087-M1	Compair CE0087B/E Alternative element	XBC-CE0087-B	20
DCP0087-MX	Compair CE0087C Alternative element	XBC-CE0087-C	20
DCP0120-M1	Compair CE0120B/E Alternative element	XBC-CE0120-B	20
DCP0120-MX	Compair CE0120C Alternative element	#N/A	20
DCP0132-M1	Compair CE0132B/E Alternative element	XBC-CE0132-B	20
DCP0132-MX	Compair CE0132C Alternative element	XBC-CE0132-C	4
DCP0132-MX	Compair CE0132C Alternative element	XBC-CE0132-C	16
DCP0198-M1	Compair CE0198B/E Alternative element	XBC-CE0198-B	20
DCP0198-MX	Compair CE0198C Alternative element	XBC-CE0198-C	20
DCP0258-M1	Compair CE0258B/E Alternative element	XBC-CE0258-B	5
DCP0258-MX	Compair CE0258C Alternative element	XBC-CE0258-C	5
DCP0372-M1	Compair CE0372B/E Alternative element	XBC-CE0372-B	5
DCP0372-MX	Compair CE0372C Alternative element	XBC-CE0372-C	5
DDH010-AC-N	Domnick Hunter 010ACS Evolution Alternative element	XBC-010ACS	5
DDH010-M1-N	Domnick Hunter 010AO Evolution Alternative element	XBC-010AO	10
DDH010-MX-N	Domnick Hunter 010AA Evolution Alternative element	XBC-010AA	10
DDH015-AC-N	Domnick Hunter 015ACS Evolution Alternative element	XBC-015ACS	5
DDH015-M1-N	Domnick Hunter 015AO Evolution Alternative element	XBC-015AO	8
DDH015-MX-N	Domnick Hunter 015AA Evolution Alternative element	XBC-015AA	30
DDH020-AC-N	Domnick Hunter 020ACS Evolution Alternative element	XBC-020ACS	10
DDH020-M1-N	Domnick Hunter 020AO Evolution Alternative element	XBC-020AO	40
DDH020-MX-N	Domnick Hunter 020AA Evolution Alternative element	XBC-020AA	40
DDH025-AC-N	Domnick Hunter 025ACS Evolution Alternative element	XBC-025ACS	10
DDH025-M1-N	Domnick Hunter 025AO Evolution Alternative element	XBC-025AO	22
DDH025-MX-N	Domnick Hunter 025AA Evolution Alternative element	XBC-025AA	30
DDH030-AC-N	Domnick Hunter 030ACS Evolution Alternative element	XBC-030ACS	5
DDH030-M1-N	Domnick Hunter 030AO Evolution Alternative element	XBC-030AO	30
DDH030-MX-N	Domnick Hunter 030AA Evolution Alternative element	XBC-030AA	30
DDH035-AC-N	Domnick Hunter 035ACS Evolution Alternative element	XBC-035ACS	5
DDH035-M1-N	Domnick Hunter 035AO Evolution Alternative element	XBC-035AO	25
DDH035-MX-N	Domnick Hunter 035AA Evolution Alternative element	XBC-035AA	7
DDH040-AC-N	Domnick Hunter 040ACS Evolution Alternative element	XBC-040ACS	5
DDH040-M1-N	Domnick Hunter 040AO Evolution Alternative element	XBC-040AO	40
DDH040-MX-N	Domnick Hunter 040AA Evolution Alternative element	XBC-040AA	40
DDH045-AC-N	Domnick Hunter 045ACS Evolution Alternative element	XBC-045ACS	5
DDH045-M1-N	Domnick Hunter 045AO Evolution Alternative element	XBC-045AO	40
DDH045-MX-N	Domnick Hunter 045AA Evolution Alternative element	XBC-045AA	40
DDH050-AC-N	Domnick Hunter 050ACS Evolution Alternative element	XBC-050ACS	5

DDH050-M1-N	Domnick Hunter 050AO Evolution Alternative element	XBC-050AO	20
DDH050-MX-N	Domnick Hunter 050AA Evolution Alternative element	XBC-050AA	1
DDH050-MX-N	Domnick Hunter 050AA Evolution Alternative element	XBC-050AA	19
DDH055-AC-N	Domnick Hunter 055ACS Evolution Alternative element	XBC-055ACS	5
DDH055-M1-N	Domnick Hunter 055AO Evolution Alternative element	XBC-055AO	15
DDH055-MX-N	Domnick Hunter 055AA Evolution Alternative element	XBC-055AA	15
DDH060-AC-N	Domnick Hunter 060ACS Evolution Alternative element	XBC-060ACS	4
DDH060-M1-N	Domnick Hunter 060AO Evolution Alternative element	XBC-060AO	15
DDH060-MX-N	Domnick Hunter 060AA Evolution Alternative element	XBC-060AA	15
DWF0305-M1	Walker E0305X1 Alternative element	XBC-E0305X1	5
DWF0305-MX	Walker E0305XA Alternative element	XBC-E0305XA	5
DWF0406-M1	Walker E0406X1 Alternative element	XBC-E0406X1	5
DWF0406-MX	Walker E0406XA Alternative element	XBC-E0406XA	5
DWF0407-M1	Walker E0407X1 Alternative element	XBC-E0407X1	20
DWF0407-MX	Walker E0407XA Alternative element	XBC-E0407XA	20
DWF0413-M1	Walker E0413X1 Alternative element	XBC-E0413X1	20
DWF0413-MX	Walker E0413XA Alternative element	XBC-E0413XA	20
DWF0613-M1	Walker E0613X1 Alternative element	XBC-E0613X1	20
DWF0613-MX	Walker E0613XA Alternative element	XBC-E0613XA	20
DWF0620-M1	Walker E0620X1 Alternative element	XBC-E0620X1	20
DWF0620-MX	Walker E0620XA Alternative element	XBC-E0620XA	20
DWF0625-M1	Walker E0625X1 Alternative element	XBC-E0625X1	20
DWF0625-MX	Walker E0625XA Alternative element	XBC-E0625XA	20
DWF0730-M1	Walker E0730X1 Alternative element	XBC-E0730X1	20
DWF0730-MX	Walker E0730XA Alternative element	XBC-E0730XA	20
DWF0830-M1	Walker E0830X1 Alternative element	XBC-E0830X1	2
DWF0830-M1	Walker E0830X1 Alternative element	XBC-E0830X1	18
DWF0830-MX	Walker E0830XA Alternative element	XBC-E0830XA	20
DWF0860-M1	Walker E0860X1 Alternative element	XBC-E0860X1	20
DWF0860-MX	Walker E0860XA Alternative element	XBC-E0860XA	20
DWF1140-M1	Walker E1140X1 Alternative element	XBC-E1140X1	20
DWF1140-MX	Walker E1140XA Alternative element	XBC-E1140XA	20
DWF1160-M1	Walker E1160X1 Alternative element	XBC-E1160X1	5
DWF1160-MX	Walker E1160XA Alternative element	XBC-E1160XA	5
DWF1175-M1	Walker E1175X1 Alternative element	XBC-E1175X1	5
DWF1175-MX	Walker E1175XA Alternative element	XBC-E1175XA	5
DZA105-M1	Zander 1050Z Alternative element	XBC-1050Z	25
DZA105-MX	Zander 1050X Alternative element	#N/A	5
DZA107-M1	Zander 1070Z Alternative element	#N/A	25
DZA107-MX	Zander 1070X Alternative element	XBC-1070-X	25
DZA114-M1	Zander 1140Z Alternative element	XBC-1140-Z	20
DZA114-MX	Zander 1140X Alternative element	XBC-1140-X	20
DZA2010-M1	Zander CP2010ZL Alternative element	XBC-CP2010-ZL	20
DZA2010-MX	Zander CP2010XL Alternative element	#N/A	20
DZA201-M1	Zander 2010Z Alternative element	XBC-2010-Z	20
DZA201-MX	Zander 2010X Alternative element	XBC-2010-X	20
DZA2020-M1	Zander CP2020ZL Alternative element	XBC-CP2020-ZL	20
DZA2020-MX	Zander CP2020XL Alternative element	XBC-CP2020-XL	20
DZA202-M1	Zander 2020Z Alternative element	XBC-2020-Z	20
DZA202-MX	Zander 2020X Alternative element	XBC-2020-X	20
DZA203-M1	Zander 2030Z Alternative element	XBC-2030-Z	4
DZA203-M1	Zander 2030Z Alternative element	XBC-2030-Z	16
DZA203-MX	Zander 2030X Alternative element	XBC-2030-X	20

DZA205-M1	Zander 2050Z Alternative element	XBC-2050-Z	20
DZA205-MX	Zander 2050X Alternative element	XBC-2050-X	20
DZA3025-M1	Zander CP3025ZL Alternative element	XBC-CP3025-ZL	30
DZA3025-MX	Zander CP3025XL Alternative element	XBC-CP3025-XL	30
DZA3040-M1	Zander CP3040ZL Alternative element	XBC-CP3040-XL	30
DZA3040-MX	Zander CP3040XL Alternative element	XBC-CP3040-ZL	30
DZA305-M1	Zander 3050Z Alternative element	XBC-3050-Z	20
DZA305-MX	Zander 3050X Alternative element	XBC-3050-X	9
DZA305-MX	Zander 3050X Alternative element	XBC-3050-X	11
DZA307-M1	Zander 3075Z Alternative element	XBC-3075-Z	20
DZA307-MX	Zander 3075X Alternative element	XBC-3075-X	6
DZA307-MX	Zander 3075X Alternative element	XBC-3075-X	14
DZA4040-M1	Zander CP4040ZL Alternative element	XBC-CP4040-XL	30
DZA4040-MX	Zander CP4040XL Alternative element	XBC-CP4040-XL	30
DZA4050-M1	Zander CP4050ZL Alternative element	XBC-CP4050-XL	30
DZA4050-MX	Zander CP4050XL Alternative element	XBC-CP4050-ZL	30
DZA4065-M1	Zander CP4065ZL Alternative element	XBC-CP4065-ZL	20
DZA4065-MX	Zander CP4065XL Alternative element	XBC-CP4065-XL	20
DZA5065-M1	Zander CP5065ZL Alternative element	#N/A	20
DZA5065-MX	Zander CP5065XL Alternative element	XBC-CP5065-XL	20
DZA506-M1	Zander 5060Z Alternative element	XBC-5060-Z	20
DZA506-MX	Zander 5060X Alternative element	XBC-5060-X	20
DZA507-M1	Zander 5075Z Alternative element	XBC-5075-Z	9
DZA507-M1	Zander 5075Z Alternative element	XBC-5075-Z	11
DZA507-MX	Zander 5075X Alternative element	XBC-5075-X	20
DGD18-M0	Gardner Denver FIL18EE Alternative element	XBC-FIL18 EE	20
DGD18-M1	Gardner Denver FIL18CE Alternative element	XBC-FIL18 CE	20
DGD18-M3	Gardner Denver FIL18BE Alternative element	XBC-FIL18 BE	20
DGD18-MX	Gardner Denver FIL18FE Alternative element	#N/A	20
DGD20-M0	Gardner Denver FIL20EE Alternative element	XBC-FIL20 EE	20
DGD20-M1	Gardner Denver FIL20CE Alternative element	XBC-FIL20 CE	20
DGD20-M3	Gardner Denver FIL20BE Alternative element	XBC-FIL20 BE	20
DGD20-MX	Gardner Denver FIL20FE Alternative element	XBC-FIL20 FE	20
DGD22-M0	Gardner Denver FIL22EE Alternative element	XBC-FIL22 EE	20
DGD22-M1	Gardner Denver FIL22CE Alternative element	XBC-FIL22 CE	20
DGD22-M3	Gardner Denver FIL22BE Alternative element	XBC-FIL22 BE	20
DGD22-MX	Gardner Denver FIL22FE Alternative element	XBC-FIL22 FE	20
DGD24-M0	Gardner Denver FIL24EE Alternative element	XBC-FIL24 EE	20
DGD24-M1	Gardner Denver FIL24CE Alternative element	XBC-FIL24 CE	20
DGD24-M3	Gardner Denver FIL24BE Alternative element	XBC-FIL24 BE	20
DGD24-MX	Gardner Denver FIL24FE Alternative element	XBC-FIL24 FE	20
DGD26-M0	Gardner Denver FIL26EE Alternative element	XBC-FIL26 EE	20
DGD26-M1	Gardner Denver FIL26CE Alternative element	XBC-FIL26 CE	20
DGD26-M3	Gardner Denver FIL26BE Alternative element	XBC-FIL26 BE	20
DGD26-MX	Gardner Denver FIL26FE Alternative element	XBC-FIL26 FE	20
DGD28-M0	Gardner Denver FIL28EE Alternative element	XBC-FIL28 EE	20
DGD28-M1	Gardner Denver FIL28CE Alternative element	XBC-FIL28 CE	20
DGD28-M3	Gardner Denver FIL28BE Alternative element	XBC-FIL28 BE	20
DGD28-MX	Gardner Denver FIL28FE Alternative element	XBC-FIL28 FE	20
DGD30-M0	Gardner Denver FIL30EE Alternative element	XBC-FIL30 EE	20
DGD30-M1	Gardner Denver FIL30CE Alternative element	XBC-FIL30 CE	20
DGD30-M3	Gardner Denver FIL30BE Alternative element	XBC-FIL30 BE	20
DGD30-MX	Gardner Denver FIL30FE Alternative element	XBC-FIL30FE	20

DGD32-M0	Gardner Denver FIL32EE Alternative element	XBC-FIL32 EE	20
DGD32-M1	Gardner Denver FIL32CE Alternative element	XBC-FIL32 CE	20
DGD32-M3	Gardner Denver FIL32BE Alternative element	XBC-FIL32 BE	20
DGD32-MX	Gardner Denver FIL32FE Alternative element	XBC-FIL32FE	20
DGD34-M0	Gardner Denver FIL34EE Alternative element	XBC-FIL34 EE	20
DGD34-M1	Gardner Denver FIL34CE Alternative element	XBC-FIL34 CE	20
DGD34-M3	Gardner Denver FIL34BE Alternative element	XBC-FIL34 BE	4
DGD34-M3	Gardner Denver FIL34BE Alternative element	XBC-FIL34 BE	16
DGD34-MX	Gardner Denver FIL34FE Alternative element	XBC-FIL34FE	20
DNP0008-M1	Nano E008M5 Alternative element	XBC-E0008 M1	5
DNP0008-M5	Nano E008M5 Alternative element	XBC-E0008 M5	5
DNP0008-MX	Nano E0008M01 Alternative element	XBC-E0008 M01	5
DNP0015-M1	Nano E0015M1 Alternative element	XBC-E0015 M1	5
DNP0015-M5	Nano E0015M5 Alternative element	XBC-E0015 M5	5
DNP0015-MX	Nano E0015M01 Alternative element	XBC-E0015 M01	5
DNP0025-M1	Nano E0025M1 Alternative element	XBC-E0025-M1	20
DNP0025-M5	Nano E0025M5 Alternative element	XBC-E0025-M5	20
DNP0025-MX	Nano E0025M01 Alternative element	XBC-E0025-M01	20
DNP0030-M1	Nano E0030M1 Alternative element	XBC-E0030 M1	20
DNP0030-M5	Nano E0030M5 Alternative element	XBC-E0030 M5	20
DNP0030-MX	Nano E0030M01 Alternative element	XBC-E0030 M01	20
DNP0035-AC	Nano E0035AC Alternative element	XBC-E0035 AC	5
DNP0035-M1	Nano E0035M1 Alternative element	XBC-E0035 M1	20
DNP0035-M5	Nano E0035M5 Alternative element	XBC-E0035 M5	20
DNP0035-MX	Nano E0035M01 Alternative element	XBC-E0035 M01	20
DNP0050-M1	Nano E0050M1 Alternative element	XBC-E0050 M1	20
DNP0050-M5	Nano E0050M5 Alternative element	#N/A	20
DNP0050-MX	Nano E0050M01 Alternative element	XBC-E0050 M01	20
DNP0090-AC	Nano E0090AC Alternative element	XBC-E0090 AC	5
DNP0090-M1	Nano E0090M1 Alternative element	XBC-E0090 M1	20
DNP0090-M5	Nano E0090M5 Alternative element	XBC-E0090 M5	20
DNP0090-MX	Nano E0090M01 Alternative element	XBC-E0090 M01	9
DNP0090-MX	Nano E0090M01 Alternative element	XBC-E0090 M01	11
DNP0135-AC	Nano E0135AC Alternative element	#N/A	4
DNP0135-M1	Nano E0135M1 Alternative element	XBC-E0135-M1	20
DNP0135-M5	Nano E0135M5 Alternative element	XBC-E0135-M5	20
DNP0135-MX	Nano E0135M01 Alternative element	XBC-E0135-M01	20
DNP0175-M1	Nano E0175M1 Alternative element	XBC-E0175 M1	20
DNP0175-M5	Nano E0175M5 Alternative element	XBC-E0175 M5	20
DNP0175-MX	Nano E0175M01 Alternative element	XBC-E0175 M01	20
DNP0325-M1	Nano E0325M1 Alternative element	XBC-E0325 M1	20
DNP0325-M5	Nano E0325M5 Alternative element	#N/A	20
DNP0325-MX	Nano E0325M01 Alternative element	XBC-E0325 M01	20
DNP0450-M1	Nano E0450M1 Alternative element	XBC-E0450 M1	20
DNP0450-M5	Nano E0450M5 Alternative element	XBC-E0450 M5	20
DNP0450-MX	Nano E0450M01 Alternative element	XBC-E0450 M01	20
DNP0700-M1	Nano E0700M1 Alternative element	XBC-E0700 M1	20
DNP0700-M5	Nano E0700M5 Alternative element	XBC-E0700 M5	20
DNP0700-MX	Nano E0700M01 Alternative element	XBC-E0700 M01	20
DNP1000-M1	Nano E1000M1 Alternative element	XBC-E1000 M1	5
DNP1000-M5	Nano E1000M5 Alternative element	XBC-E1000 M5	5
DNP1000-MX	Nano E1000M01 Alternative element	XBC-E1000 M01	5
DNP1250-M1	Nano E1250M1 Alternative element	XBC-E1250 M1	2

DNP1250-M1	Nano E1250M1 Alternative element	XBC-E1250 M1	3
DNP1250-M5	Nano E1250M5 Alternative element	XBC-E1250 M5	5
DNP1250-MX	Nano E1250M01 Alternative element	XBC-E1250 M01	5
DNP1500-M1	Nano E1500M1 Alternative element	#N/A	5
DNP1500-M5	Nano E1500M5 Alternative element	XBC-E1500 M5	5
DNP1500-MX	Nano E1500M01 Alternative element	XBC-E1500 M01	5
DSU423-M1	Sullair 250024-423 Alternative element	XBC-250024-423	2
DSU424-M1	Sullair 250024-424 Alternative element	XBC-250024-424	4
DSU425-M1	Sullair 250024-425 Alternative element	XBC-250024-425	4
DSU425-M1	Sullair 250024-425 Alternative element	XBC-250024-425	16
DSU426-M1	Sullair 250024-426 Alternative element	XBC-250024-426	5
DSU426-M1	Sullair 250024-426 Alternative element	XBC-250024-426	15
DSU427-M1	Sullair 250024-427 Alternative element	XBC-250024-427	20
DSU428-M1	Sullair 250024-428 Alternative element	XBC-250024-428	20
DSU429-M1	Sullair 250024-429 Alternative element	XBC-250024-429	20
DSU430-M1	Sullair 250024-430 Alternative element	XBC-250024-430	4
DSU431-MX	Sullair 250024-431 Alternative element	XBC-250024-431	4
DSU432-MX	Sullair 250024-432 Alternative element	XBC-250024-432	4
DSU433-MX	Sullair 250024-433 Alternative element	XBC-250024-433	20
DSU434-MX	Sullair 250024-434 Alternative element	XBC-250024-434	20
DSU435-MX	Sullair 250024-435 Alternative element	XBC-250024-435	20
DSU436-MX	Sullair 250024-436 Alternative element	XBC-250024-436	20
DSU437-MX	Sullair 250024-437 Alternative element	XBC-250024-437	20
DSU438-MX	Sullair 250024-438 Alternative element	XBC-250024-438	4
DSU439-AC	Sullair 250024-439 Alternative element	#N/A	4
DSU440-AC	Sullair 250024-440 Alternative element	XBC-250024-440	4
DSU441-AC	Sullair 250024-441 Alternative element	XBC-250024-441	2
DSU443-AC	Sullair 250024-443 Alternative element	XBC-250024-443	4
DSU444-AC	Sullair 250024-444 Alternative element	XBC-250024-444	4
DSU445-AC	Sullair 250024-445 Alternative element	XBC-250024-445	4
DSU446-AC	Sullair 250024-446 Alternative element	XBC-250024-446	4
DSU447-AC	Sullair 250024-447 Alternative element	XBC-250024-447	4
DSU644-M1	Sullair 250024-644 Alternative element	XBC-250024-644	4
DSU646-AC	Sullair 250024-646 Alternative element	XBC-250024-646	2
DSU655-MX	Sullair 250024-655 Alternative element	#N/A	4
DHK16-M1	Hankison E7-16 Alternative element	XBC-E7-16	10
DHK16-MX	Hankison E5-16 Alternative element	XBC-E5-16	10
DHK20-M1	Hankison E7-20 Alternative element	XBC-E7-20	10
DHK20-MX	Hankison E5-20 Alternative element	XBC-E5-20	10
DHK24-M1	Hankison E7-24 Alternative element	XBC-E7-24	20
DHK24-MX	Hankison E5-24 Alternative element	XBC-E5-24	10
112	Hankison E5-24 Alternative element	XBC-E5-24	10
DHK28-M1	Hankison E7-28 Alternative element	XBC-E7-28	20
DHK28-MX	Hankison E5-28 Alternative element	XBC-E5-28	20
DHK36-M1	Hankison E7-36 Alternative element	XBC-E7-36	20
DHK36-MX	Hankison E5-36 Alternative element	XBC-E5-36	20
DHK40-M1	Hankison E7-40 Alternative element	XBC-E7-40	20
DHK40-MX	Hankison E5-40 Alternative element	XBC-E5-40	20
DHK44-M1	Hankison E7-44 Alternative element	XBC-E7-44	15
DHK44-MX	Hankison E5-44 Alternative element	XBC-E5-44	15
DHK48-M1	Hankison E7-48 Alternative element	XBC-E7-48	10
DHK48-MX	Hankison E5-48 Alternative element	XBC-E5-48	10
DHK54-M1	Hankison E7-54 Alternative element	XBC-E7-54	10

DHK54-MX	Hankison E5-54 Alternative element	XBC-E5-54	10
DIR108-AC	Ingersoll Rand F108IA Alternative element	XBC-108 IA	2
DIR108-M1	#NAME?	XBC-108 IG	20
DIR108-MX	Ingersoll Rand F108IH Alternative element	XBC-108 IH	20
DIR1155-AC	Ingersoll Rand F1155IA Alternative Element	XBC-1155 IA	2
DIR1155-M1	Ingersoll Rand F1155IG Alternative Element	XBC-1155 IG	20
DIR1155-MX	Ingersoll Rand F1155IH Alternative Element	XBC-1155 IH	20
DIR144-AC	Ingersoll Rand F144IA Alternative element	XBC-144 IA	2
DIR144-M1	Ingersoll Rand F144IG Alternative element	XBC-144 IG	20
DIR144-MX	Ingersoll Rand F144IH Alternative element	XBC-144 IH	20
DIR1529-AC	Ingersoll Rand F1529IA Alternative Element	XBC-1529 IA	2
DIR1529-M1	Ingersoll Rand F1529IG Alternative Element	XBC-1529 IG	20
DIR1529-MX	Ingersoll Rand F1529IH Alternative Element	XBC-1529 IH	20
DIR178-AC	Ingersoll Rand F178IA Alternative element	XBC-178 IA	2
DIR178-M1	Ingersoll Rand F178IG Alternative element	XBC-178 IG	20
DIR178-MX	Ingersoll Rand F178IH Alternative element	XBC-178 IH	20
DIR1817-AC	Ingersoll Rand F1817IA Alternative Element	XBC-1817 IA	2
DIR1817-M1	Ingersoll Rand F1817IG Alternative Element	XBC-1817 IG	20
DIR1817-MX	Ingersoll Rand F1817IH Alternative Element	XBC-1817 IH	20
DIR212-AC	Ingersoll Rand F212IA Alternative element	XBC-212 IA	2
DIR212-M1	Ingersoll Rand F212IG Alternative element	XBC-212-IG	20
DIR212-MX	Ingersoll Rand F212IH Alternative element	XBC-212 IH	20
DIR2378-AC	Ingersoll Rand F2378IA Alternative Element	XBC-2378 IA	2
DIR2378-M1	Ingersoll Rand F2378IG Alternative Element	XBC-2378 IG	10
DIR2378-MX	Ingersoll Rand F2378IH Alternative Element	XBC-2378 IH	10
DIR35-AC	Ingersoll Rand F35IA Alternative element	XBC-35 IA	2
DIR35-M1	Ingersoll Rand F35IG Alternative element	XBC-35 IG	5
DIR35-MX	Ingersoll Rand F35IH Alternative element	XBC-35 IH	5
DIR395-AC	Ingersoll Rand F395IA Alternative element	XBC-395 IA	2
DIR395-M1	Ingersoll Rand F395ID Alternative element	XBC-395 IG	20
DIR395-MX	Ingersoll Rand F395IH Alternative element	XBC-395 IH	20
DIR424-AC	Ingersoll Rand F424IA Alternative element	XBC-424 IA	2
DIR424-M1	Ingersoll Rand F424IG Alternative element	XBC-424 IG	5
DIR424-M1	Ingersoll Rand F424IG Alternative element	XBC-424 IG	15
DIR424-MX	Ingersoll Rand F424IH Alternative element	XBC-424 IH	20
DIR577-AC	Ingersoll Rand F577IA Alternative element	XBC-577 IA	2
DIR577-M1	Ingersoll Rand F577IG Alternative element	#N/A	20
DIR577-MX	Ingersoll Rand F577IH Alternative element	XBC-577 IH	20
DIR71-AC	Ingersoll Rand F71IA Alternative element	XBC-71 IA	2
DIR71-M1	Ingersoll Rand F71IG Alternative element	XBC-71 IG	5
DIR71-MX	Ingersoll Rand F71IH Alternative element	XBC-71 IH	5
DIR791-AC	Ingersoll Rand F791IA Alternative element	XBC-791 IA	2
DIR791-M1	Ingersoll Rand F791IG 1 Micron Alternative element	XBC-791 IG	20
DIR791-MX	Ingersoll Rand F791IH Alternative element	XBC-791 IH	20
DIR985-AC	Ingersoll Rand F985IA Alternative element	XBC-985 IA	2
DIR985-M1	Ingersoll Rand F985IG Alternative element	XBC-985 IG	20
DIR985-MX	Ingersoll Rand F985IH Alternative element	XBC-985 IH	20
DUF0210-M0	Ultrafilter MF02/10 Alternative element	XBC-MF02/10	5
DUF0210-M1	Ultrafilter FF02/10 Alternative element	XBC-FF02/10	5
DUF0210-MX	Ultrafilter SMF02/10 Alternative element	XBC-SMF02/10	5
DUF0305-M0	Ultrafilter MF03/05 Alternative element	XBC-MF03/05	5
DUF0305-M1	Ultrafilter FF03/05 Alternative element	XBC-FF03/05	5
DUF0305-MX	Ultrafilter SMF03/05 Alternative element	XBC-SMF03/05	5

DUF0310-M0	Ultrafilter MF03/10 Alternative element	XBC-MF03/10	10
DUF0310-M1	Ultrafilter FF03/10 Alternative element	XBC-FF03/10	10
DUF0310-MX	Ultrafilter SMF03/10 Alternative element	XBC-SMF03/10	10
DUF0410-M0	Ultrafilter MF04/10 Alternative element	XBC-MF04/10	10
DUF0410-M1	Ultrafilter FF04/10 Alternative element	XBC-FF04/10	10
DUF0410-MX	Ultrafilter SMF04/10 Alternative element	XBC-SMF04/10	10
DUF0420-M0	Ultrafilter MF04/20 Alternative element	XBC-MF04/20	20
DUF0420-M1	Ultrafilter FF04/20 Alternative element	XBC-FF04/20	20
DUF0420-MX	Ultrafilter SMF04/20 Alternative element	XBC-SMF04/20	20
DUF0520-M0	Ultrafilter MF05/20 Alternative element	XBC-MF05/20	10
DUF0520-M1	Ultrafilter FF05/20 Alternative element	XBC-FF05/20	20
DUF0520-MX	Ultrafilter SMF05/20 Alternative element	XBC-SMF05/20	20
DUF0525-M0	Ultrafilter MF05/25 Alternative element	XBC-MF05/25	20
DUF0525-M1	Ultrafilter FF05/25 Alternative element	XBC-FF05/25	10
DUF0525-MX	Ultrafilter SMF05/25 Alternative element	XBC-SMF05/25	20
DUF0725-M0	Ultrafilter MF07/25 Alternative element	XBC-MF07/25	20
DUF0725-M1	Ultrafilter FF07/25 Alternative element	XBC-FF07/25	20
DUF0725-MX	Ultrafilter SMF07/25 Alternative element	XBC-SMF07/25	20
DUF0730-M0	Ultrafilter MF07/30 Alternative element	XBC-MF07/30	20
DUF0730-M1	Ultrafilter FF07/30 Alternative element	#N/A	20
DUF0730-MX	Ultrafilter SMF07/30 Alternative element	XBC-SMF07/30	20
DUF1030-M0	Ultrafilter MF10/30 Alternative element	XBC-MF10/30	20
DUF1030-M1	Ultrafilter FF10/30 Alternative element	XBC-FF10/30	20
DUF1030-MX	Ultrafilter SMF10/30 Alternative element	XBC-SMF10/30	20
DUF1530-M0	Ultrafilter MF15/30 Alternative element	XBC-MF15/30	20
DUF1530-M1	Ultrafilter FF15/30 Alternative element	XBC-FF15/30	20
DUF1530-MX	Ultrafilter SMF15/30 Alternative element	XBC-SMF15/30	20
DUF2030-M0	Ultrafilter MF20/30 Alternative element	XBC-MF20/30	20
DUF2030-M1	Ultrafilter FF20/30 Alternative element	XBC-FF20/30	20
DUF2030-MX	Ultrafilter SMF20/30 Alternative element	XBC-SMF20/30	20
DUF3030-M0	Ultrafilter MF30/30 Alternative element	XBC-MF30/30	10
DUF3030-M1	Ultrafilter FF30/30 Alternative element	XBC-FF30/30	20
DUF3030-MX	Ultrafilter SMF30/30 Alternative element	XBC-SMF30/30	20
DUF3050-M0	Ultrafilter MF30/50 Alternative element	XBC-MF30/50	5
DUF3050-M1	Ultrafilter FF30/50 Alternative element	XBC-FF30/50	5
DUF3050-MX	Ultrafilter SMF30/50 Alternative element	XBC-SMF30/50	5
DZK1000-M1	Zeks E1000-G Alternative element	XBC-E1000 G	9
DZK1000-M1	Zeks E1000-G Alternative element	XBC-E1000 G	11
DZK1000-M5	Zeks E1000-P Alternative element	XBC-E1000 P	20
DZK1000-MX	Zeks E1000-H Alternative element	XBC-E1000 H	20
DZK100-M1	Zeks E100-G Alternative element	XBC-E100 G	20
DZK100-M5	Zeks E100-P Alternative element	XBC-E100 P	20
DZK100-MX	Zeks E100-H Alternative element	XBC-E100 H	20
DZK1250-M1	Zeks E1250-G Alternative element	XBC-E1250 G	2
DZK1250-M1	Zeks E1250-G Alternative element	XBC-E1250 G	18
DZK1250-M5	Zeks E1250-P Alternative element	XBC-E1250 P	20
DZK1250-MX	Zeks E1250-H Alternative element	XBC-E1250 H	20
DZK150-M1	Zeks E150-G Alternative element	XBC-E150 G	20
DZK150-M5	Zeks E150-P Alternative element	XBC-E150 P	20
DZK150-MX	Zeks E150-H Alternative element	XBC-E150 H	20
DZK15-M1	Zeks E15-G Alternative element	XBC-E15 G	5
DZK15-M5	Zeks E15-P Alternative element	XBC-E15 P	5
DZK15-MX	Zeks E15-H Alternative element	XBC-E15 H	5

DZK1600-M1	Zeks E1600-G Alternative element	XBC-E1600 G	20
DZK1600-M5	Zeks E1600-P Alternative element	XBC-E1600 P	20
DZK1600-MX	Zeks E1600-H Alternative element	XBC-E1600 H	4
DZK1600-MX	Zeks E1600-H Alternative element	XBC-E1600 H	16
DZK250-M1	Zeks E250-G Alternative element	XBC-E250 G	20
DZK250-M5	Zeks E250-P Alternative element	XBC-E250 P	20
DZK250-MX	Zeks E250-H Alternative element	XBC-E250 H	20
DZK300-M1	Zeks E300-G Alternative element	XBC-E300 G	20
DZK300-M5	Zeks E300-P Alternative element	XBC-E300 P	20
DZK300-MX	Zeks E300-H Alternative element	XBC-E300 H	20
DZK30-M1	Zeks E30-G Alternative element	XBC-E30 G	5
DZK30-M5	Zeks E30-P Alternative element	XBC-E30 P	5
DZK30-MX	Zeks E30-H Alternative element	XBC-E30 H	5
DZK32-M1	Zeks E32-G Alternative element	XBC-E32 G	20
DZK32-M5	Zeks E32-P Alternative element	XBC-E32 P	20
DZK32-MX	Zeks E32-H Alternative element	XBC-E32 H	20
DZK500-M1	Zeks E500-G Alternative element	XBC-E500 G	20
DZK500-M5	Zeks E500-P Alternative element	XBC-E500 P	20
DZK500-MX	Zeks E500-H Alternative element	XBC-E500 H	20
DZK650-M1	Zeks E650-G Alternative element	XBC-E650 G	20
DZK650-M5	Zeks E650-P Alternative element	XBC-E650 P	20
DZK650-MX	Zeks E650-H Alternative element	XBC-E650 H	20
DZK65-M1	Zeks E65-G Alternative element	XBC-E65 G	8
DZK65-M1	Zeks E65-G Alternative element	XBC-E65 G	12
DZK65-M5	Zeks E65-P Alternative element	XBC-E65 P	20
DZK65-MX	Zeks E65-H Alternative element	XBC-E65 H	9
DZK65-MX	Zeks E65-H Alternative element	XBC-E65 H	11
DZK80-M1	Zeks E80-G Alternative element	XBC-E80 G	20
DZK80-M5	Zeks E80-P Alternative element	#N/A	20
DZK80-MX	Zeks E80-H Alternative element	XBC-E80 H	10
DZK80-MX	Zeks E80-H Alternative element	XBC-E80 H	10

SCHEDULE 3.2

MONITOR'S WIRE INFORMATION

National Bank of Canada

600 Gauchetière West

Montréal QC H3B 4L2

Account : 51-997-20

Branch/Transit : 00011

Bank : 006

Swift Code : BND CCA MM INT

ABA Code : ABA 021000021 (For wire from USA)

Account Name : RDI in trust for Xebec Adsorption Inc.

Account Address : 1190 av. des Canadiens-de-Montréal, Suite 500 Montréal QC H3B 0M7

Exhibit C

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-

FORMERXBC HOLDING USA INC. (formerly
XEBEC HOLDING USA INC.)

-and-

ENERPHASE INDUSTRIAL SOLUTIONS, INC.

-and-

CDA SYSTEMS, LLC

-and-

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

-and-

FORMERXBC PENNSYLVANIA COMPANY
(formerly **THE TITUS COMPANY**)

-and-

FORMERXBC NOR CORPORATION (formerly
NORTEKBELAIR CORPORATION)

-and-

- 2 -

FORMERXBC FLOW SERVICES – WISCONSIN INC. (formerly **XBC FLOW SERVICES – WISCONSIN INC.**)

-and-

CALIFORNIA COMPRESSION, LLC

-and-

FORMERXBC SYSTEMS USA, LLC (formerly **XEBEC SYSTEMS USA, LLC**)

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

APPLICATION FOR (I) AN EXTENSION OF THE STAY OF PROCEEDINGS, (II) THE ESTABLISHMENT OF A CLAIMS PROCESS, (III) THE AUTHORIZATION TO USE NET PROCEEDS TO FUND CASH-FLOW REQUIREMENTS AND (IV) THE ISSUANCE OF AN APPROVAL AND VESTING ORDER IN RESPECT OF BIOSTREAM ASSETS OF FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)

(Sections 11 and 11.02 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36)

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., 1224933 Ontario Inc. (formerly Compressed Air International Inc.) ("**FormerCAI**"), FormerXBC Holding USA Inc. (formerly Xebec Holding USA Inc.), Enerphase Industrial Solutions, Inc., California Compression, LLC, CDA Systems, LLC, FormerXBC Adsorption Inc. (formerly Xebec Adsorption USA Inc.), FormerXBC Pennsylvania Company (formerly The Titus Company), FormerXBC NOR Corporation (formerly Nortekbelair Corporation), FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC), FormerXBC Flow Services – XBC Wisconsin Inc. (formerly XBC Flow Services – Wisconsin Inc.) (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:
 - (a) an order extending the Stay Period (as defined below) until September 29, 2023 (the “**Extension Date**”), substantially in the form of the draft Order Extending the Stay of Proceedings communicated herewith as **Exhibit P-1**;
 - (b) a claims procedure order substantially in the form of the draft Claims Procedure Order communicated herewith as **Exhibit P-2** (the “**Draft Claims Procedure Order**”); and
 - (c) an order authorizing the use of the Net Proceeds (as defined below) to fund the cash-flow requirements of the Petitioners.

3. The Petitioners are also seeking the issuance of an order (the “**Biostream AVO**”), substantially in the form of the draft order communicated herewith as **Exhibit P-4**, *inter alia*:
 - (a) authorizing the execution by the petitioner FormerXBC of a binding letter of intent dated May 19, 2023 (the “**Binding LOI**”), as vendor, with Ivys Adsorption Inc. (“**Ivys**”), as purchaser of the Biostream Assets (as defined below);
 - (b) approving the transactions contemplated by the Binding LOI (the “**Biostream Transaction**”);
 - (c) granting the Biostream Charge (as defined below); and
 - (d) sealing the confidential exhibit filed in support thereof (Exhibit P-5).

A comparison of the Biostream AVO and the model approval and vesting order published by the Barreau de Montréal is communicated herewith as **Exhibit P-4A**.

II. PROCEDURAL BACKGROUND

4. 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.

5. 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 (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.
6. 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”, as appears from the Court record.
7. The Bidding Procedures Order also approved the engagement of National Bank Financial Inc. (“**NBF**”) to assist in the implementation of the SISP.
8. 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.
9. The ARIO, *inter alia*:
 - (a) extended the Stay until November 28, 2022; and
 - (b) 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 in an amount sufficient to cover the potential exposure of the Interim Lenders under the First DIP Facility.
10. 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.
11. 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.
12. 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.

13. The Third ARIO, *inter alia*:
 - (a) extended the Stay until March 17, 2023;
 - (b) approved the Second DIP Facility 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.
14. On February 21, 2023, in accordance with the Third ARIO, the Monitor issued a certificate confirming that the initial advance of \$1,250,000 by EDC contemplated in the Third ARIO had been received and the Administration Charge accordingly reduced to \$2,250,000.
15. On March 16, 2023, at the Petitioners’ request, the Court issued a Fourth Amended and Restated Initial Order (the “**Fourth ARIO**”), pursuant to the CCAA, as appears from the Court record.
16. The Fourth ARIO, *inter alia*:
 - (a) extended the Stay until May 5, 2023;
 - (b) declared that the certificates of the Monitor to be issued and filed in the Court record pursuant to the Monitor Payments Order (as defined below) shall validly reduce and/or discharge the CCAA Charges (as defined in the Fourth ARIO), as applicable, without the necessity of any amendment to the Monitor Payments Order or of any other orders of the Court.
 - (c) approved an amendment to the list of participants in the KERPs.
17. On the same date, the Court also issued:
 - (a) an Approval, Vesting and Assignment Order with respect to the sale of substantially all assets of FormerXBC Pennsylvania Company (formerly The Titus Company) (the “**Fluid-Aire Transaction**”);

- (b) an Approval, Vesting and Assignment Order with respect to the sale of substantially all assets of FormerXBC Flow Services – XBC Wisconsin Inc. (formerly XBC Flow Services – Wisconsin Inc.) (the “**Total Energy Transaction**”); and
- (c) an Approval, Vesting and Assignment Order with respect to the sale of substantially all assets of FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC, “**FormerUEC**”) (the “**EnergyLink Transaction**”);

the whole as appears from the Court record.

18. On March 16, 2023, at the Monitor’s request, the Court issued an Order Authorizing the Monitor to Pay Certain Amounts Owed to Beneficiaries of CCAA Charges (the “**Monitor Payments Order**”), as appears from the Court record.
19. The Monitor Payments Order, *inter alia*:
 - (a) authorized the Monitor to pay from the net proceeds of the previously closed transactions, amounts owed under the DIP Charge, Second DIP Charge and the Transaction DIP Charge, as and when they become due;
 - (b) declared that upon making payments under the DIP Charge, Second DIP Charge and Transaction Charge, and receiving confirmation, respectively of the Interim Lenders, EDC and NBF of the reimbursement of the obligations secured by these charges, the Monitor shall notify and file with the Court record a certificate confirming and effecting the cancellation and discharge of the DIP Charge, the Second DIP Charge and the Transaction Charge;
 - (c) authorized the Monitor to pay from the net proceeds of the previously closed transactions, amounts owed under the KERP as and when they become due; and
 - (d) declared that upon making payments under the KERP Charge, the Monitor shall notify and file with the Court record a certificate confirming and effecting the reduction and/or cancellation and discharge of the KERP Charge, as the case may be, in an amount equivalent to the payments made.
20. On March 17, 2023, in accordance with the Third ARIO and the Monitor Payments Order, the Monitor issued a certificate confirming that the second advance of \$1,250,000 by EDC contemplated in the Third ARIO had been received and the Administration Charge accordingly reduced to \$1,500,000.
21. On March 23, 2023, in accordance with the Monitor Payments Order, the Monitor issued certificates confirming that the obligations secured by the Transaction Charge, the DIP Charge and the Second DIP Charge had been fully satisfied and

- that the Transaction Charge, DIP Charge and Second DIP Charge had been accordingly cancelled and discharged.
22. On March 24, 2023, in accordance with the Monitor Payments Order, the Monitor issued a certificate confirming that the amount of the KERP Charge had been reduced to \$400,000 following payment of amounts owed under the KERP.
 23. On March 27, 2023, at the Petitioners' request, the Court issued a Fifth Amended and Restated Initial Order (the "**Fifth ARIO**"), pursuant to the CCAA, as appears from the Court record.
 24. The Fifth ARIO, *inter alia*:
 - (a) approved the Third DIP Facility to be provided to the Petitioners pursuant to a Third DIP Term Sheet (as defined in the Fifth ARIO) dated as of March 22, 2023, negotiated between the Petitioners and EDC pursuant to which EDC agreed to provide interim financing to the Petitioners, and granting a Third DIP Charge (as defined in the Fifth ARIO) in an amount sufficient to cover the potential exposure of EDC under the Third DIP Facility; and
 - (b) declared that upon the disbursement of the initial advance of \$1,500,000 by EDC as contemplated in the Third DIP Term Sheet and the issuance by the Monitor of a certificate confirming same, the Administration Charge shall be reduced to an amount equal to \$1,250,000 and upon the disbursement of the second advance of \$1,950,000 by EDC and the issuance by the Monitor of a certificate confirming same, further reduced to an amount equal to \$1,000,000.
 25. The Fluid-Aire Transaction, Total Energy Transaction and EnergyLink Transaction closed on March 20, March 23 and April 5, 2023, respectively.
 26. On April 13, 2023, in accordance with the Third ARIO, the Monitor issued a certificate confirming that the initial advance of \$1,500,000 by EDC contemplated in the Fifth ARIO had been received and the Administration Charge accordingly reduced to \$1,250,000.
 27. On May 5, 2023, at the Petitioners' request, the Court issued an order (the "**Stay Order**") extending the Stay to May 24, 2023 (the "**Stay Period**"), as appears from the Court record.
 28. On the same date, at the Petitioners' request, the Court issued an order lifting the Stay for the sole purpose of authorizing the filing before the Superior Court of Québec (Class Action Division) in file no. 500-06-001135-215 (*Maurice Leclair et al. v. FormerXBC et al.*) seeking approval of a settlement agreement therein (the "**Class Action Settlement**").

29. On the same date, at the Monitor's request, the Court issued an Order Authorizing the Monitor to Pay Amounts Owed Under the Third DIP Facility and Secured by the Third DIP Charge (the "**Second Monitor Payments Order**").
30. On May 10, 2023, the Monitor issued a Certificate confirming the cancellation and discharge of the Third DIP Charge, as appears from the Court record.

III. RESTRUCTURING EFFORTS SINCE THE ISSUANCE OF STAY ORDER

31. Since the issuance of the Stay Order, the Petitioners, under the supervision of the Monitor, have:
 - (a) worked to finalize the Class Action Settlement and corresponding court documents to seek approval of the Class Action Settlement;
 - (b) prepared a revised and updated cash flow statement covering the period until the Extension Date (as defined below), in consultation with the Monitor;
 - (c) continued to wind down the Petitioners' activities, in consultation with the Monitor;
 - (d) worked with the Monitor to establish the Claims Process (as defined below); and
 - (e) assisted the Monitor in its preparation of the proposed allocation pursuant to paragraph 30 of the Fifth ARIO, which will be presented in a subsequent report of the Monitor to be filed with the Court.

IV. GROUNDS FOR THE EXTENSION OF THE STAY OF PROCEEDINGS

32. Since the issuance of the Stay Order, the Petitioners have acted and continue to act in good faith and with due diligence.
33. The Stay Period currently expires on May 24, 2023.
34. It is respectfully submitted that the extension of the Stay Period to the Extension Date is required to, *inter alia*:
 - (a) obtain recognition of the order to be issued by this Honourable Court in respect of the Claims Process in the Petitioners' Chapter 15 Proceedings;
 - (b) report to the Court on the proposed method of allocation of proceeds, disbursements and costs between the Petitioners' estates, which will be applied in the context of preparing the Proposed Allocation, which is required to be filed prior to any distribution, as provided for in the ARIO (and in each of the ARIOs rendered since, including in the Fifth ARIO);

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- (c) hold an information session led by the Monitor regarding the Proposed Allocation with any interested creditors;
 - (d) conduct the Claims Process as outlined below;
 - (e) provide the Petitioners with sufficient time to seek such additional relief from this Court as may be required, notably in connection with the filing of one or more plan(s) of arrangement for the benefit of the Petitioners' creditors, as applicable;
 - (f) continue working towards presenting one or more CCAA plan(s) to their creditors; and
 - (g) continue to wind down the Petitioners' activities, in consultation with the Monitor.
35. The tenth report of the Monitor to be filed with the Court prior to the hearing hereon (the "**Monitor's Report**") will provide additional information regarding the steps detailed above as well as a timeline of approximate dates for upcoming milestones in this matter.
36. The Petitioners have paid their suppliers, employees and other creditors for the sums due from the date of the Fifth ARIO in the ordinary course of business and intend to continue doing so.
37. The Petitioners' cash flow is sufficient to continue operations up to and until the Extension Date, as will appear from the Monitor's Report.
38. No creditor will be unduly prejudiced by the extension sought.

V. GROUNDS FOR THE ISSUANCE OF THE CLAIMS PROCEDURE ORDER

39. The Petitioners intend to present one or more plan(s) of arrangement or compromise to their creditors and as such, submit that it would be in the best interests of all of their stakeholders that this Court establish a process for the determination of the claims of their creditors (the "**Claims Process**").
40. In light of the foregoing, the Petitioners are seeking the issuance of an order substantially in the form of the Draft Claims Procedure Order, which will allow them to definitively determine the quantum of claims that will be subject to a future plan of arrangement or compromise.
41. The Claims Process will allow for:
- (a) a fair and efficient way to deal with all claims against the Petitioners and, if any, their current and former directors and officers (the "**Directors and Officers**"); and

- (b) the quantification of claims required for the Petitioners to prepare one or more plan(s) of arrangement or compromise.
- 42. The contemplated Claims Process includes, *inter alia*, the following key features (capitalized terms in this paragraph have the meaning ascribed to them in the Draft Claims Procedure Order):
 - (a) the Determination Date will be September 29, 2022, being the date of the issuance of the FDIO;
 - (b) the Claims Bar Date for the filing of a Proof of Claim or of a Notice of Dispute with the Monitor will be July 24, 2023. The Draft Claims Procedure Order also provides for a Restructuring Claims Bar Date, being the later of (i) thirty days after the date on which the Monitor sends a Claims Package (in the event that the Creditor receives a Disclaimer Notice after the issuance of the Draft Claims Procedure Order) or (ii) the Claims Bar Date;
 - (c) the Petitioners may choose to assess the amounts of the Claims of employees and send to each such employees a Notice of Scheduled Employee Claim. Unless such employees file a Notice of Dispute with the Monitor by no later than the Claims Bar Date, such employees will be deemed to have accepted the amount set out in the Notice of Scheduled Employee Claim, as applicable;
 - (d) Claims shall include any and all claims against the Directors and Officers; and
 - (e) Disputed Claims will be resolved through the mechanism set out in the Draft Claims Procedure Order.
- 43. The Petitioners intend to seek the recognition of the order approving the Claims Process, as sought herein in its Chapter 15 Proceedings in the United States during the week of June 12, 2023.
- 44. The Petitioners and the Monitor believe that a period of approximately two months following the Claims Bar Date shall be required to properly review and process the filed Claims, following which the Petitioners intend to file one or more plan(s) of arrangement for approval by this Court, as well as an application for the issuance of an order approving the filing of the plan(s) and the holding of a creditors' meeting. It is the intention of the Petitioners that such relief will be sought on or around the Extension Date.
- 45. The Petitioners respectfully submit that:
 - (a) the proposed Claims Process is fair and reasonable;
 - (b) its approval is appropriate in the circumstances to allow the Petitioners to better assess the number, nature and quantum of claims against them and,

if any, against the Directors and Officers, all with a view to properly inform the next steps in the restructuring process; and

- (c) the timeline contemplated in the Draft Claims Procedure Order will allow for the presentation of one or more plan(s) of compromise or arrangement in a timely manner, while at the same time affording a reasonable period of time for the creditors to submit their proofs of claim.

VI. GROUNDS FOR THE ISSUANCE OF AN ORDER AUTHORIZING THE USE OF THE NET PROCEEDS TO FUND CASH-FLOW REQUIREMENTS

- 46. As will be reported in the Monitor's Report, the Monitor currently holds an amount of approximately \$17.075 million in its trust account on account of the net proceeds resulting from transactions arising out of the SISP process or of subsequent transactions (the "**Net Proceeds**").
- 47. In accordance with the orders issued by this Court, the terms of the DIP Facility, Second DIP Facility and Third DIP Facility and as reported in the several reports issued by the Monitor throughout the present matter, the Petitioners have funded their operations and cash-flow requirements, *inter alia*, through their revenue from operations and the interim financing facilities provided by NBC, EDC or both, as applicable, and the authorization by this Court to use a portion of the Net Proceeds to pay outstanding amounts secured by the CCAA Charges.
- 48. As authorized by this Court pursuant to the Second Monitor Payments Order and as evidenced by the Monitor's certificate dated May 8, 2023, the Third DIP Facility has now been reimbursed and the Third DIP Charge cancelled.
- 49. As evidenced in the cash-flow statement which will be included in the Monitor's Report, additional financing is required to fund the restructuring process until the Extension Date.
- 50. Given the costs relating to a potential fourth interim financing facility and the fact that the Monitor currently holds a significant amount of Net Proceeds, which are readily available, subject to an order of this Court, the Petitioners respectfully submit that cash-flow requirements should be funded from the Net Proceeds, up to a maximum amount of \$3 million, until the Extension Date.
- 51. The use of Net Proceeds as contemplated herein would eliminate the need for the Petitioners to seek additional interim financing, amend the Fifth ARIO and put in place an interim financing charge and accordingly, would eliminate significant costs which would relate to such financing, including fees and interest.
- 52. At the present time, there has been no determination by the Monitor and the Petitioners as to the allocation of the portion of Net Proceeds authorized to be used for the purposes contemplated above. Such determination will form part of the eventual Proposed Allocation, in accordance with the Fifth ARIO issued by this Court.

53. The Petitioners have been advised that the Monitor approves the use of Net Proceeds for the purposes set forth herein and the order sought.

VII. BIOSTREAM TRANSACTION

A. Description of the Biostream Transaction

54. On February 17, 2023, at the request of the Petitioners, this Court issued an approval, vesting and assignment order in respect of the sale of certain assets of FormerXBC and FormerCAI, pursuant to the asset purchase agreement dated February 8, 2023, between FormerXBC and FormerCAI as vendors and Ivys as buyer, including assets related to the business operated at the FormerXBC facility in Blainville, Québec (the “**Ivys Transaction**”).
55. On March 16, 2023, at the request of the Petitioners, this Court approved the EnergyLink Transaction, concerning notably the assets related to the operations of the FormerUEC facility in Henderson, Colorado.
56. At the time of the closing of the EnergyLink Transaction, certain work in progress and, including five (5) biostream units (the “**5 Biostream Units**” and the “**Biostream Assets**”) were located at the UEC facility for the purposes of completing a contract entered into between FormerXBC and Brightmark LLC (“**Brightmark**”) and were expressly excluded from the EnergyLink Transaction.
57. Following the closing of the Ivys Transaction, Ivys expressed an interest in purchasing the Biostream Assets from FormerUEC, and the Petitioners and the Monitor have since then engaged in discussions with Ivys regarding same, which discussions resulted in the Binding LOI.
58. The BioStream Transaction contemplates a purchase price to be paid in accordance with the following payment schedule (the “**Purchase Price**”):
- (a) 25% to be paid upon Ivys entering into a contract with Brightmark to complete the 5 Biostream Units; and
 - (b) five instalments to be paid upon having conducted a factory acceptance test of each of the 5 Biostream Units;
59. The Binding LOI also includes the following key terms:
- (a) all payments to be made by Ivys pursuant to the BioStream Transaction will be made directly to the Monitor;
 - (b) a refundable deposit equivalent to 5% of the Purchase Price is to be made by Ivys to the Monitor on or before May 24, 2023;
 - (c) the Biostream Assets are being sold on an “as is, where is” basis without any legal warranty and at the risk and peril of Ivys;

- (d) it is a condition of the Binding LOI that the Biostream AVO be issued by this Court and the U.S. Bankruptcy Court grant an order recognizing the Biostream AVO and approving the Biostream Transaction;
- (e) Ivys and UEC will use their best efforts to enter into an asset purchase agreement reflecting the terms of the Binding LOI on or before May 31, 2023; and
- (f) the Biostream Transaction must close on or before June 16, 2023.

A copy of the Binding LOI is communicated herewith *under seal* as **Exhibit P-5**.

- 60. It is also a key condition of the Binding LOI that this Court grant FormerXBC a charge on the 5 Biostream Units in the amount of the Purchase Price to secure all payment obligations of Ivys towards FormerXBC pursuant to the Biostream Transaction (the “**Biostream Charge**”).
- 61. The Biostream Transaction contemplates that following the initial payment the Biostream Charge will be discharged on a unit-by-unit basis following receipt of each of the five subsequent payments by the Monitor, save and except for the charge on the last of the 5 Biostream Units, which will only be discharged upon receipt by the Monitor of the balance of the Purchase Price.

B. Grounds for Approval of the Biostream Transaction

- 62. The Petitioners believe that the Purchase Price for the sale of Purchased Assets is reasonable and fair in the circumstances and that the expedited closing of the Biostream Transaction will benefit all stakeholders.
- 63. The Biostream Charge is necessary and benefits FormerXBC in ensuring that the Purchase Price will be paid in full.
- 64. The Petitioners are confident that, should this Court grant this Application, the remaining conditions to closing will be satisfied and should lead to the closing of the Biostream Transaction.
- 65. Should the Court authorize the Biostream Transaction, the Petitioners will be proceeding before the U.S. Bankruptcy Court to obtain recognition of the Biostream AVO.

- 66. The Petitioners understand that the Monitor supports the Biostream Transaction.

C. Grounds for the Sealing of Confidential Documents

- 67. The Petitioners are seeking an order declaring that the Binding LOI be kept strictly confidential and under seal.

68. The sealing is necessary considering that disclosing the Purchase Price may affect the Petitioners' ability to monetize the Biostream Assets should the Biostream Transaction not close.

VIII. CONCLUSION

69. The Monitor has informed the Petitioners that it supports the present Application.
70. The Petitioners respectfully submit that they are justified to seek provisional execution of the order to be rendered on the present Application notwithstanding appeal, given the need to advance the restructuring process as quickly as possible.
71. For the reasons set forth above, the Petitioners respectfully submit that it is both appropriate and necessary that this Honourable Court render the orders sought herein.

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

GRANT the present *Application for (i) an Extension of the Stay of Proceedings, (ii) the Establishment of a Claims Process, (iii) the Authorization to Use Net Proceeds to Fund Cash-Flow Requirements and (iv) the Issuance of an Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (Formerly Xebec Systems USA, LLC)* (the "**Application**");

ISSUE an order substantially in the form of the draft Order Extending the Stay of Proceedings communicated in support of the Application as **Exhibit P-1**;

ISSUE an order substantially in the form of the draft Claims Procedure Order communicated in support of the Application as **Exhibit P-2**;

ISSUE an order substantially in the form of the draft Order Authorizing the Use of Net Proceeds to Fund Cash-Flow Requirements communicated in support of the Application as **Exhibit P-3**;

ISSUE an order substantially in the form of the draft Approval and Vesting Order communicated in support of the Application as **Exhibit P-4**;

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.

- 15 -

MONTREAL, May 19, 2023

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP

Mtre. Sandra Abitan | Mtre. Julien Morissette |

Mtre. Ilya Kravtsov | Mtre. Sophie Courville

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Our file: 1233913

AFFIDAVIT

I the undersigned, Dimitrios Vounassis, domiciled for the purpose hereof at 1000 De La Gauchetière Street West, Suite 2100, Montréal, Québec, H3B 4W5, 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 (i) an Extension of the Stay of Proceedings, (ii) the Establishment of a Claims Process, (iii) the Authorization to Use Net Proceeds to Fund Cash-Flow Requirements and (iv) the Issuance of an Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (Formerly Xebec Systems USA, LLC) (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 SAINT-CONSTANT,
QUÉBEC, ON MAY 19, 2023.



LYNE ST-AMOUR

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 (i) an Extension of the Stay of Proceedings, (ii) the Establishment of a Claims Process, (iii) the Authorization to Use Net Proceeds to Fund Cash-Flow Requirements and (iv) the Issuance of an Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (Formerly Xebec Systems USA, LLC)* 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 **May 24, 2023, at 9:30 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 May 21, 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, May 19, 2023

Osler, Hoskin & Harcourt LLP

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-

FORMERXBC HOLDING USA INC. (formerly
XEBEC HOLDING USA INC.)

-and-

ENERPHASE INDUSTRIAL SOLUTIONS, INC.

-and-

CDA SYSTEMS, LLC

-and-

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

-and-

FORMERXBC PENNSYLVANIA COMPANY
(formerly **THE TITUS COMPANY**)

-and-

FORMERXBC NOR CORPORATION (formerly
NORTEKBELAIR CORPORATION)

-and-

FORMERXBC FLOW SERVICES – WISCONSIN INC. (formerly **XBC FLOW SERVICES – WISCONSIN INC.**)

-and-

CALIFORNIA COMPRESSION, LLC

-and-

FORMERXBC SYSTEMS USA, LLC (formerly **XBEC SYSTEMS USA, LLC**)

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

LIST OF EXHIBITS

- P-1: Draft Order Extending the Stay of Proceedings
- P-2: Draft Claims Procedure Order
- P-3: Draft Order Authorizing the Use of the Net Proceeds to Fund Cash-Flow Requirements
- P-4: Draft Approval and Vesting Order
- P-4A: Comparison between the Biostream AVO and the model approval and vesting order published by the Barreau de Montréal
- P-5: Ivys Binding Letter of Intent for Purchase of the Biostream WIP and Inventory, UNDER SEAL

MONTRÉAL, May 19, 2023

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Attorneys for Debtors / Petitioners

EXHIBIT P-1

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: May 24, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)
APPLIED COMPRESSION SYSTEMS LTD.
1224933 ONTARIO INC. (FORMERLY COMPRESSED AIR INTERNATIONAL INC.)
FORMERXBC HOLDING USA INC. (FORMERLY XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC. (FORMERLY XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY (FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION (FORMERLY NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES – WISCONSIN INC. (FORMERLY XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)**
Debtors / Petitioners

and

DELOITTE RESTRUCTURING INC.
Monitor

Draft

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PAGE: 2

ORDER EXTENDING THE STAY OF PROCEEDINGS

- [1] **CONSIDERING** the *Application for (i) an Extension of the Stay of Proceedings, (ii) the Establishment of a Claims Process, (iii) the Authorization to Use Net Proceeds to Fund Cash-Flow Requirements and (iv) the Issuance of an Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (Formerly Xebec Systems USA, LLC) (the “Application”)* pursuant to the *Companies’ Creditors Arrangement Act, RSC 1985, c C-36, as amended (“CCAA”)* and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Tenth Report of the Monitor dated May [●], 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **GIVEN** the provisions of the CCAA;
- [5] **GIVEN** the Fifth Amended and Restated Initial Order rendered by the Court on March 27, 2023 (the “**Fifth ARIO**”);

THE COURT HEREBY:

- [6] **GRANTS** the Application.
- [7] **EXTENDS** the Stay Period (as defined in the Fifth ARIO) to and including September 29, 2023.
- [8] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [9] **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.
- [10] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.

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[11] **THE WHOLE WITHOUT COSTS.**

Christian Immer, J.S.C.

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

Hearing date: May 24, 2022

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EXHIBIT P-2

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: May 24, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)
APPLIED COMPRESSION SYSTEMS LTD.
1224933 ONTARIO INC. (FORMERLY COMPRESSED AIR INTERNATIONAL INC.)
FORMERXBC HOLDING USA INC. (FORMERLY XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC. (FORMERLY XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY (FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION (FORMERLY NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES – WISCONSIN INC. (FORMERLY XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)**
Debtors / Petitioners

and

DELOITTE RESTRUCTURING INC.
Monitor

CLAIMS PROCEDURE ORDER

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500-11-057985-208

-
- [1] **CONSIDERING** the *Application for (i) an Extension of the Stay of Proceedings, (ii) the Establishment of a Claims Process, (iii) the Authorization to Use Net Proceeds to Fund Cash-Flow Requirements and (iv) the Issuance of an Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC. (Formerly Xebec Systems USA, LLC) (the “Application”)* pursuant to the *Companies’ Creditors Arrangement Act, RSC 1985, c C-36, as amended (“CCAA”)* and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Tenth Report of the Monitor dated May ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **CONSIDERING** the provisions of the CCAA;
- [1] **GIVEN** the Fifth Amended and Restated Initial Order rendered by the Court on March 27, 2023 (the “**Fifth ARIO**”);

THE COURT HEREBY:

- [5] **GRANTS** the Application.
- [6] **ISSUES** an order pursuant to the CCAA (the “**Order**”), divided under the following headings:
- (a) Service;
 - (b) Definitions;
 - (c) Notification Procedure;
 - (d) Excluded Claims;
 - (e) Claims Procedure;
 - (f) Evidence that Claim was Paid;
 - (g) Transfer of Claims;
 - (h) Notices and Communications;
 - (i) Aid and Assistance of Other Courts;
 - (j) General Provisions.

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A. SERVICE

- [7] **ORDERS** that any prior delay for the presentation of this Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.
- [8] **DECLARES** that sufficient prior notice of the presentation of this Application has been given by the Petitioner.

B. DEFINITIONS

- [9] **ORDERS** that the following terms in this Order shall, unless otherwise indicated, have the following meanings ascribed thereto:
- (a) **“Business Day”** means a day, other than a Saturday, a Sunday, or another day on which courts do not sit pursuant to article 82 of the *Code of Civil Procedure*, CQLR c C-25.01, as amended;
 - (b) **“CCAA Proceedings”** means the proceedings in respect of the Debtors before the Court commenced pursuant to the CCAA;
 - (c) **“Claim”** means any right or claim of any Person against the Debtors, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind of the Debtors owed to such Person and any interest accrued thereon or costs payable in respect thereof, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts existing prior to the Determination Date, or which would have been claims provable in bankruptcy had the Debtors become bankrupt on the Determination Date, and, without limitation, shall include any Restructuring Claim or D&O Claim, provided however, that in no case shall a Claim include an Excluded Claim;
 - (d) **“Claims Bar Date”** means 5:00 p.m. (Montréal time) on **July 24, 2023**;
 - (e) **“Claims Package”** means a notice to the Known Creditors of the Claims Process and of the Claims Bar Date, including a reference to the Monitor’s website to access a copy of this Order, including:

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- (i) For all Creditors other than the Scheduled Employees, a Proof of Claim and an instruction letter explaining how to complete the Proof of Claim; and
 - (ii) For the Scheduled Employees, a Notice of Scheduled Employee's Claim and a Notice of Dispute in the case an employee is dissatisfied with its scheduled claim, and an instruction letter;
- (f) **"Claims Process"** means the claims process set forth herein including the Schedules to this Order;
- (g) **"Court"** means the Superior Court of Québec (Commercial Division);
- (h) **"Creditor"** means any Person having a Claim and may, where the context requires, include the assignee of a Claim or a trustee, interim receiver, receiver, receiver and manager, or other Person acting on behalf of such Person and includes a Known Creditor. A Creditor shall not include an Excluded Creditor in respect of that Person's claim resulting from an Excluded Claim;
- (i) **"Creditors' List"** means a list of all Known Creditors;
- (j) **"Creditors' Meeting"** means any meeting of the Debtors' Creditors to be convened, with leave of the Court, for the purposes of voting on the Plan, and any adjournment or suspension thereof;
- (k) **"D&O Claim"** means a claim as defined in paragraph 11.03(1) CCAA as well as any claim by any Person against the Directors and Officers of the Debtors of any nature whatsoever, present, future, due or accruing due to such Person and any interest accrued thereon or cost payable in respect thereof, whether liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, secured, unsecured, known or unknown, and the right or ability of any Person to advance a claim for contribution, indemnity or otherwise with respect to any matter, action or cause, which indebtedness, liability or obligations is based in whole or in part on facts existing as at the Determination Date;
- (l) **"Debtors"** means the Debtors / Petitioners FormerXBC Inc. (formerly Xebec Adsorption Inc.), 11941666 Canada Inc. (formerly Xebec RNG Holdings Inc.), Applied Compression Systems Ltd., 1224933 Ontario Inc. (formerly Compressed Air International Inc.), FormerXBC Holding USA Inc. (formerly Xebec Holding USA Inc.), Enerphase Industrial Solutions, Inc., California Compression, LLC, CDA Systems, LLC, FormerXBC Adsorption Inc. (formerly Xebec Adsorption USA Inc.), FormerXBC Pennsylvania Company (formerly The Titus Company), FormerXBC NOR Corporation (formerly

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Nortekbelair Corporation), FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC) and FormerXBC Flow Services – Wisconsin Inc. (formerly XBC Flow Services – Wisconsin Inc.).

- (m) “**Designated Newspapers**” means the Globe & Mail (National Edition), La Presse+, USA Today (National Edition);
- (n) “**Determination Date**” means September 29, 2022;
- (o) “**Disclaimer Notice**” means any notice from the Debtors under section 32 CCAA or otherwise pursuant to which any contract, lease, employment agreement, or other agreement is repudiated, disclaimed or terminated;
- (p) “**Disputed Claim**” means a claim which is disputed pursuant to the receipt by a Creditor of a Notice of Revision or Disallowance;
- (q) “**Director**” means anyone who is or was or may be deemed to be or to have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the Debtors, in such capacity;
- (r) “**Excluded Claim**” means:
 - (i) any claim that may be asserted by any beneficiary of the Administration Charge, the D&O Charge (as defined in the Fifth ARIO), the KERP Charge and any other claims secured by any other charges that may be ordered by the Court;
 - (ii) any right of any Person against the Debtors in connection with any indebtedness or obligation of any kind which came into existence on or after the Determination Date (other than a Restructuring Claim) and any interest thereon, including any obligation of the Debtors toward creditors who have supplied or shall supply services, utilities, goods or materials or who have or shall have advanced funds to the Debtors after the Determination Date, but only to the extent of their claims in respect of the supply of such services, utilities, goods, materials or funds after the Determination Date and to the extent that such claims are not otherwise affected by the Plan; and
 - (iii) any claim by any Person who has renounced to its rights to file a claim;
- (s) “**Excluded Creditor**” means a Person having a Claim in respect of an Excluded Claim but only in respect of such Excluded Claim and to the extent that the Plan does not otherwise affect such Claim;

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- (t) “**Known Creditor**” means a Creditor whose Claim is included in the Debtors’ books and records or whose Claim or potential Claim is otherwise known by the Debtors;
- (u) “**Monitor**” means Deloitte Restructuring Inc., in its capacity as monitor pursuant to the Fifth ARIO, and not in its personal or corporate capacity;
- (v) “**Newspaper Notice**” means the notice of this Order to be published in the Designated Newspapers on the Publication Date in accordance with paragraph [12], which shall set out the Claims Bar Date, being substantially in the form of Schedule A hereto;
- (w) “**Notice of Dispute**” means a written notice, substantially in the form of Schedule B hereto, delivered to the Monitor by a Scheduled Employee who has received a Notice of Scheduled Employee’s Claim and who intends to dispute such Notice of Scheduled Employee’s Claim, which shall include all reasons for such dispute;
- (x) “**Notice of Scheduled Employee’s Claim**” means a notice, substantially in the form of Schedule C hereto, to be sent to each of the Scheduled Employees;
- (y) “**Notice of Revision or Disallowance**” means a notice, substantially in the form of Schedule D hereto, advising a Creditor that the Monitor has revised or rejected all or part of its Proof of Claim, or his/her/its Notice of Dispute in the case of a Scheduled Employee, for the purposes of voting or distribution and setting out the reasons for such revision or rejection;
- (z) “**Officer**” means anyone who is or was or may be deemed to be or have been whether by statute, operation of law or otherwise, an officer or *de facto* officer of the Debtors, in such capacity;
- (aa) “**Person**” means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, governmental body or agency, or any other entity;
- (bb) “**Plan**” means a plan or several plans to be filed by the Debtors pursuant to the CCAA, as such plan or plans may be amended or supplemented from time to time;
- (cc) “**Proof of Claim**” means the form of Proof of Claim for Creditors other than the Scheduled Employees, being substantially in the form of Schedule E hereto;

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- (dd) **“Proven Claim”** means the amount of a Claim which has been finally determined for voting and distribution purposes in accordance with this Claims Process;
- (ee) **“Publication Date”** means the date on which the publication of the Newspaper Notice in all of the Designated Newspapers has been completed;
- (ff) **“Restructuring Claim”** means any right of any Person against the Debtors in connection with any indebtedness, liability or obligation of any kind owed to such Person arising out of the restructuring, repudiation, or termination of any contract, lease, employment agreement, collective agreement or other agreement, whether written or oral, after the Determination Date, including any right of any Person who receives a Disclaimer Notice from the Debtors; provided, however, that a Restructuring Claim shall not include an Excluded Claim;
- (gg) **“Restructuring Claims Bar Date”** means, in respect of a Restructuring Claim, the later of (i) thirty (30) days after the date on which the Monitor sends a Claims Package (but only in the event that the Creditor receives a Disclaimer Notice after the date of this Order) or (ii) the Claims Bar Date;
- (hh) **“Scheduled Employees”** means those Creditors who are or were employed by the Debtors and whose Claims are assessed by the Debtors;
- (ii) **“Schedules”** means the Schedules A to E to this Order;
- (jj) **“Voting Claim”** of a Creditor means the Proven Claim of the Creditor unless the Proven Claim of the Creditor is not finally determined at the time of the Creditors’ Meeting, in which case it means the Claim of the Creditor which is accepted for voting purposes in accordance with the provisions of this Order, the Plan and the CCAA.

C. NOTIFICATION PROCEDURE

- [10] **ORDERS** that the form of Newspaper Notice, which is hereby approved, shall be published by the Monitor in the Designated Newspapers as soon as possible following the issuance of this Order, but in any event no later than **June 5, 2023**.
- [11] **ORDERS** that the Monitor shall publish, on or before 5:00 p.m. (Montréal time) on **May 31, 2023**, on its website at <https://www.insolvencies.deloitte.ca/en-ca/pages/Xebec.aspx>, a copy of the Creditors’ List and of the Claims Package.

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- [12] **ORDERS** that, in addition to the publication referred to in paragraph [11], the Monitor shall send, by regular mail, courier, email or other means of electronic communication a copy of the Claims Package to each Known Creditor, other than the Scheduled Employees, by no later than 5:00 p.m. (Montréal time) on **June 22, 2023**.
- [13] **ORDERS** that the Monitor shall send, by regular mail, courier, email or other means of electronic communication to each Scheduled Employee his/her Notice of Scheduled Employee's Claim, together with a copy of the Claims Package, by no later than 5:00 p.m. (Montréal time) on **June 22, 2023**.
- [14] **ORDERS** that any Scheduled Employee who wishes to dispute the amount of his/her Claim as set out in the Notice of Scheduled Employee's Claim sent to him/her must return his/her duly completed Notice of Dispute to the Monitor by no later than the Claims Bar Date (or the Restructuring Claims Bar Date if he or she received a Disclaimer Notice after the date of this Order). Upon receipt of any Notice of Dispute, the Monitor shall forthwith provide a copy thereof to the Debtors.
- [15] **ORDERS** that any Scheduled Employee who does not file a Notice of Dispute with the Monitor by the Claims Bar Date (or the Restructuring Claims Bar Date if he or she received a Disclaimer Notice after the date of this Order) shall be deemed to have accepted the amount set out in the Notice of Scheduled Employee's Claim and be entitled to vote at the Creditors' Meeting and shall be entitled to receive any distributions pursuant to the Plan (to the extent that the holders of such Claims are entitled to vote upon and receive distributions under the Plan) only with respect to his/her Claim, if any, as set out in the Notice of Scheduled Employee's Claim and the remainder of his/her Claim, if any, shall be extinguished and forever barred.

D. EXCLUDED CLAIMS

- [16] **ORDERS** that Excluded Claims are excluded from the Claims Process and that no Proof of Claim is required to be filed in respect therewith.

E. CLAIMS PROCEDURE

- [17] **ORDERS** that, unless otherwise authorized by this Court, a Creditor, other than a Scheduled Employee, who does not file a Proof of Claim by the Claims Bar Date (or by the Restructuring Claims Bar Date if it received a Disclaimer Notice after the date of this Order) shall not be entitled to any further notice, shall not be entitled to participate as a Creditor in these proceedings, shall not be entitled to vote on any matter in these CCAA Proceedings, including the Plan, and shall be forever barred

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from advancing a Claim against the Debtors or the Directors and Officers of the Debtors, or from receiving a distribution under the Plan.

- [18] **ORDERS** that the following procedure shall apply where a Creditor, other than a Scheduled Employee, files a Proof of Claim on or before the Claims Bar Date (or the Restructuring Claims Bar Date if such Creditor received a Disclaimer Notice after the date of this Order):
- (a) the Monitor, together with the Debtors, shall review the Proof of Claim to value the amounts and terms set out therein for voting and distribution purposes. Where applicable, the Monitor shall send the Creditor a Notice of Revision or Disallowance by regular mail, courier, email or other means of electronic communication;
 - (b) the Creditor who receives a Notice of Revision or Disallowance and wishes to dispute it shall, within fifteen (15) calendar days of the receipt of the Notice of Revision or Disallowance, file an appeal application with the Court and serve a copy of such appeal application to the Debtors and the Monitor;
 - (c) unless otherwise authorized by this Court, if the Creditor does not file an appeal application within the delay provided for in (b) above, such Creditor shall be deemed to have accepted the value of its Claim as set out in the Notice of Revision or Disallowance;

where the Creditor appeals from the Notice of Revision or Disallowance or its Claim has not been finally determined prior to the date of any Creditors' Meeting, the Monitor, in consultation with the Debtors, will determine the amount of the Voting Claim without admission that such quantification is acceptable for distribution purposes.

- [19] **ORDERS** that the following procedure shall apply where a Scheduled Employee files a Notice of Dispute on or before the Claims Bar Date (or the Restructuring Claims Bar Date if such Scheduled Employee received a Disclaimer Notice after the date of this Order):
- (a) the Monitor, together with the Debtors, shall review the Notice of Dispute to value the amounts and terms set out therein for voting and distribution purposes. Where applicable, the Monitor shall send the Scheduled Employee a Notice of Revision or Disallowance by regular mail, courier, email or other means of electronic communication;
 - (b) the Scheduled Employee who receives a Notice of Revision or Disallowance and wishes to dispute it shall, within twenty (20) days of the receipt of the Notice of Revision or Disallowance, file an appeal application

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with the Court and serve a copy of such appeal application to the Debtors and the Monitor;

- (c) unless otherwise authorized by this Court, if the Scheduled Employee does not file an appeal application within the delay provided in (b) above, such Scheduled Employee shall be deemed to have accepted the value of his/her Claim as set out in the Notice of Revision or Disallowance;
- (d) where the Scheduled Employee appeals from the Notice of Revision or Disallowance or his/her Claim has not been finally determined prior to the date of any Creditors' Meeting, the Monitor, in consultation with the Debtors, will determine the amount of the Voting Claim without admission that such quantification is acceptable for distribution purposes.

F. EVIDENCE THAT CLAIM WAS PAID

- [20] **ORDERS** that, should the Monitor receive evidence satisfactory to it that the Claim of a Creditor was paid in part or in full by a party other than the Debtors prior to the Determination Date, such Claim shall be reduced or rejected, for the purposes of distributions under the Plan.

G. TRANSFER OF CLAIMS

- [21] **ORDERS** that if the holder of a Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the Debtors shall be obligated to give notice or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until written notice of such transfer or assignment, together with evidence satisfactory to the Monitor, in its sole discretion, of such transfer or assignment, has been received by the Monitor and the Monitor has provided written confirmation acknowledging the transfer or assignment of such Claim, and thereafter such transferee or assignee shall for the purposes hereof constitute the "Creditor" in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Order prior to receiving written confirmation by the Monitor acknowledging such assignment or transfer. After the Monitor has delivered a written confirmation acknowledging the notice of the transfer or assignment of a Claim, the Debtors and the Monitor shall thereafter be required only to deal with the transferee or assignee and not the original holder of the Claim. A transferee or assignee of a Claim takes the Claim subject to any defences and rights of set-off or compensation to which the Debtors may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set-off, compensate, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by

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such Person to the Debtors. Reference to transfer in this Order includes a transfer or assignment whether absolute or intended as security.

- [22] **ORDERS** that if a Creditor or any subsequent holder of a Claim, who in any such case has previously been acknowledged by the Monitor as the holder of the Claim, transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person, such transfers or assignments shall not create separate Claims and such Claims shall continue to constitute and be dealt with as a single Claim notwithstanding such transfers or assignments. The Debtors and the Monitor shall not, in each case, be required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim, provided such Creditor may, by notice in writing delivered to the Monitor, direct that subsequent dealings in respect of such Claim, but only as a whole, shall be dealt with by a specified Person and in such event, such Person shall be bound by any notices given or steps taken in respect of such Claim with such Creditor or in accordance with the provisions of this Order.

H. NOTICES AND COMMUNICATIONS

- [23] **ORDERS** that any notice or other communication to be given under this Order by a Creditor to the Monitor or the Debtors shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if given by courier or email communication addressed to:

Monitor: **Deloitte Restructuring Inc.**
La Tour Deloitte
500 - 1190 Av. des Canadiens-de-Montréal
Montréal, QC H3B 0M7
Attention: Jean-François Nadon
Julie Morteux and
Frédéric Turbide
Email: jnadon@deloitte.ca
jmorteux@deloitte.ca
fturbide@deloitte.ca
frbeaudoin@deloitte.ca and
xebec_ccaa@deloitte.ca

With a copy to: **McCarthy Tétrault LLP**
1000 De La Gauchetière Street West
Suite MZ400
Montréal, QC H3B 0A2

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Attention: Mtre Jocelyn T. Perreault
Mtre Gabriel Faure
Mtre Marc-Étienne Boucher
Email: jperreault@mccarthy.ca
gfaure@mccarthy.ca
meboucher@mccarthy.ca and
notification@mccarthy.ca

Debtors: **Osler, Hoskin, Harcourt LLP**
1000 De La Gauchetière Street West
Suite 2100
Montréal, QC H3B 4W5
Attention: Mtre Sandra Abitan
Mtre Julien Morissette
Mtre Iliia Kravtsov and
Mtre Sophie Courville
Email: sabitan@osler.com
jmorissette@osler.com
ikravtsov@osler.com and
scourville@osler.com

[24] **ORDERS** that any document sent by the Monitor pursuant to this Order may be sent by regular mail, registered mail, courier, email or other means of electronic communication. A Creditor shall be deemed to have received any document sent pursuant to this Order two (2) Business Days after the document is sent by regular mail or registered mail and one (1) Business Day after the document is sent by courier, email or other means of electronic communication. Documents shall not be sent by regular or registered mail during a postal strike or work stoppage of general application.

I. AID AND ASSISTANCE OF OTHER COURTS

[25] **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.

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J. GENERAL PROVISIONS

- [26] **ORDERS** that the following Schedules form part of this Claims Process:
- (a) Schedule A – Newspaper Notice;
 - (b) Schedule B – Notice of Dispute;
 - (c) Schedule C – Notice of Scheduled Employee’s Claim;
 - (d) Schedule D – Notice of Revision or Disallowance;
 - (e) Schedule E – Proof of Claim and instruction letter;
- [27] **ORDERS** that the Monitor may make any amendments or modifications to the Schedules that are not material without seeking approval of this Court.
- [28] **ORDERS** that the Monitor is authorized and empowered to exercise all its powers hereunder.
- [29] **ORDERS** that for the purposes of this Order, all Claims that are denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging currency to Canadian dollars on the Determination Date.
- [30] **ORDERS** that the Monitor shall use reasonable discretion as to the adequacy of completion and execution of any document completed and executed pursuant to this Order and, where the Monitor is satisfied that any matter to be proven under this Order has been adequately proven, the Monitor may waive strict compliance with the requirements of this Order as to the completion and execution of documents.
- [31] **ORDERS** that references in this Order to the singular include the plural, to the plural include the singular.
- [32] **ORDERS** that the Monitor may apply to this Court for advice and direction in connection with the discharge or variation of its powers and duties under this Order.
- [33] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.

THE WHOLE WITHOUT COSTS.

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500-11-057985-208

Christian Immer, J.S.C.

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

Hearing date: May 24, 2022

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Schedule "A" – Newspaper Notice

NOTICE OF CLAIMS PROCEDURE ORDER

On September 29, 2022, the Superior Court of Québec (the "**Court**") issued an initial order commencing proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of FORMERXBC INC. (formerly, Xebec Adsorption Inc.), 11941666 CANADA INC. (formerly, Xebec RNG Holdings Inc.), 1224933 Ontario Inc. (formerly, Compressed Air International Inc.), Applied Compression Systems Ltd., FORMERXBC Holding USA Inc. (formerly, Xebec Holding USA Inc.), Enerphase Industrial Solutions Inc., CDA Systems, LLC, FORMERXBC Adsorption USA Inc. (formerly, Xebec Adsorption USA Inc.), FORMERXBC Pennsylvania Company (formerly, The Titus Company), FORMERXBC NOR Corporation (formerly, Nortekbelair Corporation), FORMERXBC Flow Services – Wisconsin Inc. (formerly, XBC Flow Services – Wisconsin Inc.), California Compression, LLC and FORMERXBC Systems USA, LLC (formerly Xebec Systems USA, LLC) (collectively the "**Petitioners**" or the "**Debtors**") and appointing Deloitte Restructuring Inc. (the "**Monitor**") as Monitor of the Debtors.

On September 30, 2022, FormerXBC Inc. (f/k/a Xebec Adsorption Inc.), in its capacity as the authorized foreign representative (the "**Foreign Representative**") for the Debtors, commenced proceedings (the "**Chapter 15 Cases**") under chapter 15 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**"). On October 27, 2022, the U.S. Court entered that certain *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief*, pursuant to which, the U.S. Court recognized the CCAA Proceedings 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 CCAA Proceedings, and recognized and granted comity to, and gave full force and effect in the United States to the CCAA Proceedings and the orders entered by the Canadian Court in the CCAA Proceedings.

Pursuant to an Order issued on May 24, 2023 (the "**Claims Procedure Order**"), the Canadian Court authorized the Monitor, with the assistance of the Debtors, to conduct a claims process (the "**Claims Process**") with respect to Claims against the Debtors and their present and or former Directors and Officers. The Claims Procedure Order governs the filing and determination of all Claims against the Debtors. [Sentence to be inserted following the recognition hearing - On June [●], 2023, the U.S. Court entered an order recognizing, enforcing, and approving the Claims Process].

Pursuant to the Claims Procedure Order, any Person wishing to assert a Claim against any of the Debtors or against the Directors and Officers must do so through the Claims Process by filing a Proof of Claim with the Monitor on or before the Claims Bar Date, being 5:00 pm (Montreal time) on July 24, 2023 or, in the case of a Restructuring Claim, the later of (i) thirty (30) days after the date on which the Monitor sends a Claims Package

(but only in the event that the Creditor receives a Disclaimer Notice after the date of the Order) or (ii) the Claims Bar Date.

FOR THE AVOIDANCE OF DOUBT, THE CLAIMS PROCESS APPLIES TO ALL OF THE DEBTORS' CREDITORS, INCLUDING THOSE LOCATED IN THE UNITED STATES. ANY PERSON HAVING PREVIOUSLY FILED A PROOF OF CLAIM IN THE CHAPTER 15 CASES MUST FILE A PROOF OF CLAIM IN THE CCAA PROCEEDINGS. ANY PROOF OF CLAIM FILED IN THE CHAPTER 15 CASES WILL NOT BE RECOGNIZED IN THE CCAA PROCEEDINGS.

FAILURE BY A CREDITOR TO SUBMIT ITS CLAIM TO THE MONITOR ON OR BEFORE THE CLAIMS BAR DATE WILL RESULT IN SUCH CREDITOR'S CLAIM BEING BARRED AND FOREVER EXTINGUISHED AND PRECLUDE SUCH CREDITOR FROM RECEIVING A POTENTIAL DISTRIBUTION.

Please note that copies of the Claims Procedure Order, the Creditors' Instructions and other documents related to the Claims Process and to the CCAA Proceedings, generally, are available on the Monitor's Website at the following address:

<https://www.insolvencies.deloitte.ca/en-ca/pages/Xebec.aspx>.

DATED AT MONTREAL, this 24th day of May, 2023.

DELOITTE RESTRUCTURING INC.

In its capacity as Court-appointed Monitor of
the Petitioners and not in its personal
capacity
1190 Avenue des Canadiens-de-Montréal,
Suite 500
Montreal QC H3B 0M7



Schedule B – Notice of Dispute (Scheduled Employees)

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF QUÉBEC**
No.: 500-11-061483-224

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

**FORMERXBC INC. (formerly, XEBEC
ADSORPTION INC.)
11941666 CANADA INC. (formerly, XEBEC
RNG HOLDINGS INC.)
1224933 ONTARIO INC. (formerly,
COMPRESSED AIR INTERNATIONAL INC.)
APPLIED COMPRESSION SYSTEMS LTD.
FORMERXBC HOLDING USA INC. (formerly,
XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC.
(formerly, XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY
(formerly, THE TITUS COMPANY)
FORMERXBC NOR CORPORATION (formerly,
NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES –
WISCONSIN INC. (formerly, XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
- and -
FORMERXBC SYSTEMS USA, LLC (formerly
XEBEC SYSTEMS USA, LLC)**

Debtors/Petitioners

DELOITTE RESTRUCTURING INC.

Monitor

NOTICE OF DISPUTE

TO: Deloitte Restructuring Inc., in its capacity as the Court-appointed Monitor of the Petitioners

The creditor identified below, having received a Notice of a Scheduled Employee's Claim, as the case may be, hereby gives notice that the assessment of the claim as performed by the Debtors is hereby disputed, in the manner and for the reasons set out hereinbelow.

A. PARTICULARS OF THE CREDITOR:

- 1. Full Legal Name of the Creditor: _____
- 2. Full Mailing Address of the Creditor: _____

- 3. Telephone Number of the Creditor: _____
- 4. Facsimile Number of the Creditor: _____
- 5. E-mail Address of the Creditor: _____

B. DISPUTE OF NOTICE RECEIVED:

The Scheduled Employee hereby disagrees with the value of his/her Claim as set out in the Notice of Scheduled Employee's Claim, dated _____, and instead declares that its Claim is as set out below:

If you are a Scheduled Employee complete the box below:

Claims as per Scheduled Employee as at _____, 2023	
	\$
Unpaid pre-filing salary	
Unpaid pre-filing commissions	
Unpaid pre-filing vacations	
Notice, severance, termination, etc.	
Expense reimbursements	
Other	
Total	
Allocated as follows:	
Priority contemplated in section 6(5) CCAA	
Residual claim	
Total	

Creditor of:

- FORMERXBC INC. (formerly, XEBEC ADSORPTION INC.)**
- 11941666 CANADA INC. (formerly, XEBEC RNG HOLDINGS INC.)**
- 1224933 ONTARIO INC. (formerly, COMPRESSED AIR INTERNATIONAL INC.)**
- APPLIED COMPRESSION SYSTEMS LTD.**

Dated at _____ this _____ day of _____, 2023.

(Signature of Witness)

(Signature of the Creditor or of his representative)

(Please print name)

(Please print name)

An electronic version of this form is available at
<https://www.insolvencies.deloitte.ca/en-ca/pages/Xebec.aspx>

This Notice of Dispute must be returned to and received by the Debtors, to the attention of their counsel, and the Monitor by e-mail or courier service **by no later than 5:00 p.m. (Montreal time) on ●, 2023 at the addresses set forth below:**

Debtors' Counsel:

Osler, Hoskin, Harcourt LLP
1000 De La Gauchetière Street West
Suite 2100
Montréal, QC H3B 4W5

Attention:

Mtre Sandra Abitan
Mtre Julien Morissette
Mtre Iliia Kravtsov and
Mtre Sophie Courville

Email: sabitan@osler.com
jmorissette@osler.com
ikravtsov@osler.com and
scourville@osler.com

The Monitor:

Deloitte Restructuring Inc.

1190 avenue des Canadiens-de-Montréal
Suite 500, Montreal, QC, H3B 0M7, Canada

Attention:

Xebec claim process

Email: xebec_ccaa@deloitte.ca

Tel: 514-393-6722 Toll Free: 1-888-393-6722

And to the attention of:

Mr. Jean-François Nadon

Mme. Julie Mortreux

Mr. Frédéric Turbide

Email:

jnadon@deloitte.ca

jmortreux@deloitte.ca

fturbide@deloitte.ca

The Monitor's counsel:

McCarthy Tétrault LLP

To the attention of:

Mtre Jocelyn Perreault

Mtre Marc-Étienne Boucher

Email:

jperreault@mccarthy.ca

meboucher@mccarthy.ca



Schedule C – Notice of Scheduled Employee’s Claim

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF QUÉBEC**
No.: 500-11-061483-224

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE *COMPANIES’
CREDITORS ARRANGEMENT ACT, R.S.C.*
1985, c. C-36, AS AMENDED:**

**FORMERXBC INC. (formerly, XEBEC
ADSORPTION INC.)
11941666 CANADA INC. (formerly, XEBEC
RNG HOLDINGS INC.)
1224933 ONTARIO INC. (formerly,
COMPRESSED AIR INTERNATIONAL INC.)
APPLIED COMPRESSION SYSTEMS LTD.
FORMERXBC HOLDING USA INC. (formerly,
XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC.
(formerly, XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY
(formerly, THE TITUS COMPANY)
FORMERXBC NOR CORPORATION (formerly,
NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES –
WISCONSIN INC. (formerly, XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
- and -
FORMERXBC SYSTEMS USA, LLC (formerly
XEBEC SYSTEMS USA, LLC)**

Debtors/Petitioners

DELOITTE RESTRUCTURING INC.

Monitor

NOTICE OF SCHEDULED EMPLOYEE'S CLAIM

TO: Deloitte Restructuring Inc., in its capacity as Court-appointed Monitor of the Petitioners

The Debtors have determined that you have a Claim in the aggregate amount set out below. Subject to any dispute by you in accordance with the provisions of the Claims Procedure Order, your Claim will be allowed as follows:

Claims as per Creditors as at _____, 2023 (in _____ \$)	
	\$
Unpaid pre-filing salary	
Unpaid pre-filing commissions	
Unpaid pre-filing vacations	
Notice, severance, termination, etc.	
Expense reimbursements	
Other	
Total	

CREDITOR OF:

- FORMERXBC INC. (formerly, XEBEC ADSORPTION INC.)**
- 11941666 CANADA INC. (formerly, XEBEC RNG HOLDINGS INC.)**
- 1224933 ONTARIO INC. (formerly, COMPRESSED AIR INTERNATIONAL INC.)**
- APPLIED COMPRESSION SYSTEMS LTD.**
- FORMERXBC HOLDING USA INC. (formerly, XEBEC HOLDING USA INC.)**
- ENERPHASE INDUSTRIAL SOLUTIONS INC.**
- CDA SYSTEMS, LLC**
- FORMERXBC ADSORPTION USA INC. (formerly, XEBEC ADSORPTION USA INC.)**
- FORMERXBC PENNSYLVANIA COMPANY (formerly, THE TITUS COMPANY)**
- FORMERXBC NOR CORPORATION (formerly, NORTEKBELAIR CORPORATION)**
- FORMERXBC FLOW SERVICES – WISCONSIN INC. (formerly, XBC FLOW SERVICES – WISCONSIN INC.)**
- CALIFORNIA COMPRESSION, LLC**
- FORMERXBC SYSTEMS USA, LLC (formerly XEBEC SYSTEMS USA, LLC)**

An electronic version of this form is available at
<https://www.insolvencies.deloitte.ca/en-ca/pages/Xebec.aspx>.

IF YOU INTEND TO DISPUTE THIS NOTICE OF SCHEDULED EMPLOYEE'S CLAIM, YOU MUST, NO LATER THAN 5:00 P.M. (MONTREAL TIME) ON • , 2023, DELIVER TO THE MONITOR AND THE ATTORNEYS OF THE DEBTORS A NOTICE OF DISPUTE IN ACCORDANCE WITH THE CLAIMS PROCESS ORDER AT THE ADDRESSES SET OUT BELOW.

Debtors' Counsel:

Osler, Hoskin, Harcourt LLP
1000 De La Gauchetière Street West
Suite 2100
Montréal, QC H3B 4W5

Attention:

Mtre Sandra Abitan
Mtre Julien Morissette
Mtre Ilia Kravtsov and
Mtre Sophie Courville

Email: sabitan@osler.com
jmorissette@osler.com
ikravtsov@osler.com and
scourville@osler.com

The Monitor:

Deloitte Restructuring Inc.
1190 avenue des Canadiens-de-Montréal
Suite 500, Montreal, QC, H3B 0M7, Canada

Attention:

Xebec claim process

Email: xebec_ccaa@deloitte.ca

Tel: 514-393-6722 Toll Free: 1-888-393-6722

And to the attention of:

Mr. Jean-François Nadon
Mme. Julie Mortreux
Mr. Frédéric Turbide

Email:

jnadon@deloitte.ca
jmortreux@deloitte.ca
fturbide@deloitte.ca

The Monitor's counsel:

McCarthy Tétrault LLP

To the attention of:

Mtre Jocelyn Perreault
Mtre Marc-Étienne Boucher

Email:

jperreault@mccarthy.ca
meboucher@mccarthy.ca



Schedule D - Notice of Revision or Disallowance

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-11-061483-224

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED:

FORMERXBC INC. (formerly, XEBEC ADSORPTION INC.)
11941666 CANADA INC. (formerly, XEBEC RNG
HOLDINGS INC.)
1224933 ONTARIO INC. (formerly, COMPRESSED AIR
INTERNATIONAL INC.)
APPLIED COMPRESSION SYSTEMS LTD.
FORMERXBC HOLDING USA INC. (formerly, XEBEC
HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC. (formerly, XEBEC
ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY (formerly, THE
TITUS COMPANY)
FORMERXBC NOR CORPORATION (formerly,
NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES – WISCONSIN INC.
(formerly, XBC FLOW SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
- and -
FORMERXBC SYSTEMS USA, LLC (formerly XEBEC
SYSTEMS USA, LLC)

Debtors/Petitioners

DELOITTE RESTRUCTURING INC.

Monitor

NOTICE OF REVISION OR DISALLOWANCE

TO: •

(the “Creditor”)

FROM: Deloitte Restructuring Inc. in its capacity as Court-appointed Monitor of the
Petitioners

All capitalized terms used but not otherwise defined in this Notice of Revision or Disallowance (this “**Notice**”) have the meaning ascribed to them in the Claims Procedure Order issued by the Court on May 24, 2023 (the “**Claims Procedure Order**”).

This Notice is issued pursuant to the Claims Procedure Order and further to the Proof of Claim submitted by the Creditor (your “**Proof of Claim**”).

The Monitor hereby gives you notice that it has reviewed your Proof of Claim and has revised or disallowed the Claim set forth therein as follows:

NATURE AND VALUE OF CLAIM (in original currency)

i) Claim as at the Determination Date:

Amount claimed		Disallowed amount		Allowed amount		Currency
Unsecured	Secured	Unsecured	Secured	Unsecured	Secured	

ii) Restructuring Claim (arising on or after September 29, 2023):

Amount claimed		Disallowed amount		Allowed amount		Currency
Unsecured	Secured	Unsecured	Secured	Unsecured	Secured	

iii) Directors and/or Officers (a **D&O Claim**, as defined in the Claims Procedure Order):

Amount claimed	Disallowed amount	Allowed amount	Currency

REASONS FOR REVISION OR DISALLOWANCE:

The reasons for the revision or disallowance of your Claim are as follows:

-

If you disagree with the nature or value of your Claim as determined by the Monitor in this Notice (your “**Allowed Claim**”) and wish to dispute this Notice you must, within ten (10) calendar days of the date hereof, file an appeal application with the Court and serve a copy of such appeal application to Debtors and the Monitor at the following addresses:

The Debtors:	<p>Osler</p> <p>To the attention of: M^{re} Sandra Abitan M^{re} Julien Morissette M^{re} Ilia Kravstov M^{re} Sophie Courville-Le Bouyonnec</p> <p>Email: sabitan@osler.com jMorissette@osler.com ikravtsov@osler.com scourville@osler.com</p>
The Monitor:	<p>Deloitte Restructuring Inc.</p> <p>Att: Xebec - Claims Process 1190 avenue des Canadiens-de-Montréal Suite 500, Montreal, QC, H3B 0M7, Canada Email: xebec_ccaa@deloitte.ca Tel: 514-393-6722 Toll Free: 1-888-393-6722</p> <p>And to the attention of: Mr. Jean-François Nadon Mme. Julie Mortreux Mr. Frédéric Turbide</p> <p>Email: jnadon@deloitte.ca jmortreux@deloitte.ca fturbide@deloitte.ca</p>
With a copy to the Monitor's Counsel:	<p>McCarthy Tétrault LLP</p> <p>To the attention of: M^{re} Jocelyn Perreault M^{re} Marc-Étienne Boucher</p> <p>Email: jperreault@mccarthy.ca meboucher@mccarthy.ca</p>



Schedule "E" – Proof of Claim and Instruction Letter

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF QUÉBEC**
No.: 500-11-061483-224

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

**FORMERXBC INC. (formerly, XEBEC
ADSORPTION INC.)
11941666 CANADA INC. (formerly, XEBEC
RNG HOLDINGS INC.)
1224933 ONTARIO INC. (formerly,
COMPRESSED AIR INTERNATIONAL INC.)
APPLIED COMPRESSION SYSTEMS LTD.
FORMERXBC HOLDING USA INC. (formerly,
XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC.
(formerly, XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY
(formerly, THE TITUS COMPANY)
FORMERXBC NOR CORPORATION (formerly,
NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES – WISCONSIN
INC. (formerly, XBC FLOW SERVICES –
WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (formerly
XEBEC SYSTEMS USA, LLC)**

Debtors/Petitioners

DELOITTE RESTRUCTURING INC.

Monitor

INSTRUCTION LETTER FOR THE CLAIMS PROCEDURE

On September 29, 2022, the Superior Court of Québec (the “**Canadian Court**”) issued an initial order commencing proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) in respect of FORMERXBC INC. (formerly, Xebec Adsorption Inc.), 11941666 CANADA INC. (formerly, Xebec RNG Holdings Inc.), 1224933 Ontario Inc. (formerly, Compressed Air International Inc.), Applied Compression Systems Ltd., FORMERXBC Holding USA Inc. (formerly, Xebec Holding USA Inc.), Enerphase Industrial Solutions Inc., CDA Systems, LLC, FORMERXBC Adsorption USA Inc. (formerly, Xebec Adsorption USA Inc.), FORMERXBC Pennsylvania Company (formerly, The Titus Company), FORMERXBC NOR Corporation (formerly, Nortekbelair Corporation), FORMERXBC Flow Services – Wisconsin Inc. (formerly, XBC Flow Services – Wisconsin Inc.), California Compression, LLC and FORMERXBC Systems USA, LLC (formerly Xebec Systems USA, LLC) (collectively the “**Petitioners**” or the “**Debtors**”) and appointing Deloitte Restructuring Inc. (the “**Monitor**”) as Monitor of the Debtors.

On September 30, 2022, FormerXBC Inc. (f/k/a Xebec Adsorption Inc.), in its capacity as the authorized foreign representative (the “**Foreign Representative**”) for the Debtors, commenced proceedings (the “**Chapter 15 Cases**”) under chapter 15 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”). On October 27, 2022, the U.S. Court entered that certain *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief*, pursuant to which, the U.S. Court recognized the CCAA Proceedings 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 CCAA Proceedings, and recognized and granted comity to, and gave full force and effect in the United States to the CCAA Proceedings and the orders entered by the Canadian Court in the CCAA Proceedings.

Pursuant to an Order issued on May 24, 2023 (the “**Claims Procedure Order**”), the Canadian Court authorized the Monitor, with the assistance of the Debtors, to conduct a claims process (the “**Claims Process**”) with respect to Claims against the Debtors and their present and or former Directors and Officers. The Claims Procedure Order governs the filing and determination of all Claims against the Debtors. **[Sentence to be inserted following the recognition hearing - On June [•], 2023, the U.S. Court entered an order recognizing, enforcing, and approving the Claims Process].**

All capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Claims Procedure Order.

The purpose of this Instruction Letter is to provide you with the information required to complete a Proof of Claim in respect of any Claims you may have against any of the Debtors and/or the Directors and Officers. Reference should be made to the Claims Procedure Order for a complete description of the Claims Process. **FOR THE AVOIDANCE OF DOUBT, THE CLAIMS PROCESS APPLIES TO ALL OF THE DEBTORS’ CREDITORS, INCLUDING THOSE LOCATED IN THE UNITED STATES.**

The Claims Procedure Order which can be accessed electronically at <https://www.insolvencies.deloitte.ca/en-ca/pages/Xebec.aspx> on the Monitor’s website, as well as other documents relating to the Claims Process.

Please review these documents carefully.

FILING A PROOF OF CLAIM

The Claims Procedure is intended for any Person with any Claims, other than Excluded Claims, of any kind or nature whatsoever against the Debtors, the Directors or Officers or any of them, whether liquidated, unliquidated, contingent or otherwise. Please review the enclosed material for the complete definitions of “**Claim**”, “**Claims Bar Date**”, “**D&O Claim**”, “**Creditor**”, “**Excluded Claim**”, and “**Restructuring Claim**”, to which the Claims Process applies.

Please note that this form of Proof of Claim is to be used if you have a Claim against any of the Debtors and/or the Directors and Officers.

If you wish to assert a Claim against any of the Debtors or against the Directors and Officers, you must complete, sign and submit a Proof of Claim form to the Monitor. The Monitor must receive the Proof of Claim on or before the Claims Bar Date.

When submitting a Proof of Claim, you must specify which of the Debtors you are asserting your Claim against or that you are asserting a Claim against the Directors and Officers. Where a Claim is asserted against multiple parties, separate Proofs of Claim must be filed in respect of each party against which the Claim is asserted.

When submitting a Proof of Claim, you must provide particulars of your Claim and attach supporting documents. The particulars should succinctly explain the factual and legal basis of your Claim and the supporting documents should include all documents that are necessary to establish the nature, validity and quantum of your Claim.

In the event you should file an appeal application in connection with your Claim, the appeal may be decided on the basis of the documents submitted in support of the applicable Proof of Claim.

ANY PERSON HAVING PREVIOUSLY FILED A PROOF OF CLAIM IN THE CHAPTER 15 CASES MUST FILE A PROOF OF CLAIM IN THE CCAA PROCEEDINGS. ANY PROOF OF CLAIM FILED IN THE CHAPTER 15 CASES WILL NOT BE RECOGNIZED IN THE CCAA PROCEEDINGS.

A completed and signed Proof of Claim may be provided to the Monitor by e-mail at xebec_ccaa@deloitte.ca, courier or registered mail to the address set out below.

PROOF OF CLAIMS MUST BE FILED BEFORE THE CLAIMS BAR DATE

Pursuant to the Claims Procedure Order, any Person wishing to assert a Claim against any of the Debtors or against the Directors and Officers must do so through the Claims Process by filing a Proof of Claim with the Monitor on or before the Claims Bar Date, being 5:00 pm (Montreal time) on July 24, 2023 or, in the case of a Restructuring Claim, the later of (i) thirty (30) days after the date on which the Monitor sends a Claims Package (but only in the event that the Creditor receives a Disclaimer Notice after the date of the Order) or (ii) the Claims Bar Date.

FAILURE BY A CREDITOR TO SUBMIT ITS CLAIM TO THE MONITOR ON OR BEFORE THE CLAIMS BAR DATE WILL RESULT IN SUCH CREDITOR'S CLAIM BEING BARRED AND FOREVER EXTINGUISHED AND PRECLUDE SUCH CREDITOR FROM RECEIVING A POTENTIAL DISTRIBUTION.

FURTHER INFORMATION

If you have any questions regarding the Claims Process or any of the enclosed forms, please contact Deloitte Restructuring Inc.:

Deloitte Restructuring Inc.
Att: Xebec - Claims Process
1190 avenue des Canadiens-de-Montréal
Suite 500, Montréal, QC, H3B 0M7, Canada

Email: xebec_ccaa@deloitte.ca
Tel: 514-393-6722 Toll Free: 1-888-393-6722

Copies of this Instruction Letter, the Claims Procedure Order, the form Proof of Claim and various other relevant documents can be found on the Monitor's website at <https://www.insolvencies.deloitte.ca/en-ca/pages/Xebec.aspx> or obtained by contacting the Monitor at the coordinates indicated above and providing particulars as to your name, address, facsimile number and e-mail address.

Schedule E (Cont'd) - Proof of Claim



<input type="checkbox"/>	U	_____
<input type="checkbox"/>	P	_____
<input type="checkbox"/>	S	_____

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF QUÉBEC**
No.: 500-11-061483-224

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

**FORMERXBC INC. (formerly, XEBEC
ADSORPTION INC.)
11941666 CANADA INC. (formerly, XEBEC
RNG HOLDINGS INC.)
1224933 ONTARIO INC. (formerly,
COMPRESSED AIR INTERNATIONAL INC.)
APPLIED COMPRESSION SYSTEMS LTD.
FORMERXBC HOLDING USA INC.
(formerly, XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS
INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC.
(formerly, XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY
(formerly, THE TITUS COMPANY)
FORMERXBC NOR CORPORATION
(formerly, NORTEKBELAIR
CORPORATION)
FORMERXBC FLOW SERVICES –
WISCONSIN INC. (formerly, XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
- and -
FORMERXBC SYSTEMS USA, LLC
(formerly XEBEC SYSTEMS USA, LLC)**

Debtors/Petitioners

DELOITTE RESTRUCTURING INC.

Monitor

PROOF OF CLAIM

Pursuant to an Order of the Superior Court of Québec issued on May 24, 2023 (the **Claims Procedure Order**), a process was approved for the purpose of identifying, reviewing and determining claims against the Debtors as well as against their Directors and Officers. All capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Claims Procedure Order.

Please read the Instruction Letter carefully prior to completing this Proof of Claim.

A. PARTICULARS OF CREDITOR

1) Full legal name of creditor¹: _____
(the “**Creditor**”)

2) Full mailing address of the Creditor:

3) Telephone number of Creditor: _____

4) Facsimile number of Creditor: _____

5) E-mail address of Creditor: _____

6) Attention (contact person): _____

7) Has the Claim been sold or assigned to the Creditor to another party? Yes ___ No ___

8) If yes, please indicate in a separate document the full legal name of any assignor, their full address, email, telephone number as well as the amount of the Claim assigned and the date of assignment

¹ Full legal or corporate name should be the name of the original Creditor, not the Assignee. Do not file separate Proofs of Claim by division of the same Creditor.

B. PARTICULARS OF THE XEBEC GROUP PARTY

Identify the party against which the Claim is asserted (please **SELECT ONLY ONE PER CLAIM**) (A separate Proof of Claim must be filed for each Xebec Group Party against which any Claim is asserted):

Creditor of (x):

- FORMERXBC INC. (formerly, XEBEC ADSORPTION INC.)**
- 11941666 CANADA INC. (formerly, XEBEC RNG HOLDINGS INC.)**
- 1224933 ONTARIO INC. (formerly, COMPRESSED AIR INTERNATIONAL INC.)**
- APPLIED COMPRESSION SYSTEMS LTD.**
- FORMERXBC HOLDING USA INC. (formerly, XEBEC HOLDING USA INC.)**
- ENERPHASE INDUSTRIAL SOLUTIONS INC.**
- CDA SYSTEMS, LLC**
- FORMERXBC ADSORPTION USA INC. (formerly, XEBEC ADSORPTION USA INC.)**
- FORMERXBC PENNSYLVANIA COMPANY (formerly, THE TITUS COMPANY)**
- FORMERXBC NOR CORPORATION (formerly, NORTEKBELAIR CORPORATION)**
- FORMERXBC FLOW SERVICES – WISCONSIN INC. (formerly, XBC FLOW SERVICES – WISCONSIN INC.)**
- CALIFORNIA COMPRESSION, LLC**
- FORMERXBC SYSTEMS USA, LLC (formerly XEBEC SYSTEMS USA, LLC)**

(the entity with an **X** above is hereinafter referred to as the “**Xebec Group Party**”)

C. PROOF OF CLAIM

I, _____ (Name of Creditor or representative of the Creditor), of _____ (City, Province/State, Country) do hereby certify:

1) That, I (please check one):

____ am the Creditor of the Xebec Group Party; or

____ hold the position of _____ (state position or title) of the Creditor of the Xebec Group Party.

2) The Xebec Group Party was and is indebted to the Creditor as follows²:

i) Claim as at the Determination Date:

Amount of Claim	Currency

Amount unsecured	Amount secured

ii) Restructuring Claim:

Amount of Claim	Currency

Amount unsecured	Amount secured

D. D&O Claim

A Claim which may be brought against Directors and Officers of the Debtors as defined pursuant to paragraph 11.03(1) of the CCAA and the right of a Person against one or more of the Directors and Officers in respect of any debt or obligation of the Directors and Officers.

Amount of Claim	Currency

Description

² Include all Claims that you are asserting against the Xebec Group Party and the applicable currency.

E. PARTICULARS OF A CLAIM AND SUPPORTING DOCUMENTS

Please provide in a separate document all particulars of the Claim including the amount and description of any transactions or agreements giving rise to the Claim as well as a description of the security, if any, granted to the Creditor in respect of the Claim and the estimated value of such security. Please also provide particulars of all credits, discounts, counterclaims or payments to which the Debtor is entitled. If the Claim is contingent or unliquidated, state the basis and provide evidence upon which the claim has been valued.

Please attach all documentation necessary to support the quantum, nature and validity of your Claim, such as invoices, statements of account, affidavits³, agreements, transaction or other documents. In the event you must eventually file an appeal application in connection with your Claim, the appeal may be decided on the basis of the documents submitted in support of the Proof of Claim.

F. FILING OF PROOF OF CLAIM

The duly completed Proof of Claim together with supporting documentation must be returned and received by the Monitor, no later than **5:00 p.m. (Montreal Time) on July 24, 2023** by e-mail or registered mail to the address set out below:

FAILURE TO FILE YOUR PROOF OF CLAIM BY SUCH DATE WILL RESULT IN YOUR CLAIM BEING FOREVER EXTINGUISHED AND BARRED.

Mailing Address:

Deloitte Restructuring Inc., Court-appointed Monitor of the Petitioners
1190 avenue des Canadiens-de-Montréal
Suite 500, Montreal, QC, H3B 0M7, Canada

Attention: Xebec – Claims Process

E-mail: xebec_ccaa@deloitte.ca

G. CERTIFICATION

I hereby certify that:

- I am the Creditor or an authorized representative of the Creditor;
- I have knowledge of all the circumstances connected the Claim asserted pursuant to this Proof of Claim;
- The Creditor asserts this Claim against the Xebec Group Party; and
- Complete documentation in support of this Claim is attached.

DATED at _____ this _____ day of _____, 2023.

(Signature of Witness)

(Signature of individual completing this form)

(Please print name)

(Please print name)

An electronic version of this form is available at <https://www.insolvencies.deloitte.ca/en-ca/pages/Xebec.aspx>.

³ If you include an affidavit or solemn declaration, it must have been made before a person qualified to take affidavits or solemn declarations.

EXHIBIT P-3

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: May 24, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)
APPLIED COMPRESSION SYSTEMS LTD.
1224933 ONTARIO INC. (FORMERLY COMPRESSED AIR INTERNATIONAL INC.)
FORMERXBC HOLDING USA INC. (FORMERLY XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC. (FORMERLY XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY (FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION (FORMERLY NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES – WISCONSIN INC. (FORMERLY XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)**
Debtors / Petitioners

and

DELOITTE RESTRUCTURING INC.
Monitor

Draft

500-11-057985-208

**ORDER AUTHORIZING THE USE OF NET PROCEEDS
TO FUND CASH-FLOW REQUIREMENTS**

- [1] **CONSIDERING** the *Application for (i) an Extension of the Stay of Proceedings, (ii) the Establishment of a Claims Process and (iii) the Authorization to Use Net Proceeds to Fund Cash-Flow Requirements* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Tenth Report of the Monitor dated May ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **CONSIDERING** the provisions of the CCAA;
- [5] **GIVEN** the Fifth Amended and Restated Initial Order rendered by the Court on March 27, 2023 (the “**Fifth ARIO**”);
- [6] **CONSIDERING** that, following the issuance of various approval and vesting orders (the “**AVOs**”), the Monitor issued seven (7) certificates on February 7, 15, 21 and 27, 2023, March 21 and 24, 2023 and April 5, 2023, which were filed in the Court record, and which confirmed the closing of the transactions relating thereto;
- [7] **GIVEN** that, in accordance with the AVOs, the Net Proceeds were transferred to the Monitor and are currently held in trust by the Monitor;
- [8] **GIVEN** that it is appropriate and justified to fund cash flow requirements of the Petitioners from the Net Proceeds, the whole in accordance with the mechanism set forth hereinafter;

THE COURT HEREBY:

- [9] **GRANTS** the Application.
- [10] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Application.
- [11] **DECLARES** that the Monitor is authorized to disburse to the Petitioners from the Net Proceeds amounts required to comply with the cash-flow requirements of the Petitioners up to a maximum amount of \$3,000,000.

Draft

500-11-057985-208

- [12] **DECLARES** that the Petitioners are authorized to fund, from the Net Proceeds received from the Monitor in compliance with this Order, cash-flow requirements as and when they become due, without further order by this Court, up to and until September 29, 2023.
- [13] **DECLARES** that this Order shall have full force and effect in all provinces and territories of Canada.
- [14] **DECLARES** that the Petitioners may, from time to time, apply to this Court for directions concerning the exercise of their powers, duties and rights hereunder or in respect of the proper execution of this Order.
- [15] **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.
- [16] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable and dispenses with further service thereof.
- [17] **PERMITS** service of this Order at any time and place and by any means whatsoever.
- [18] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without security.
- [19] **THE WHOLE WITHOUT COSTS.**

Christian Immer, J.S.C.

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

Hearing date: May 24, 2022

Draft

500-11-057985-208

Draft

EXHIBIT P-4

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: May 24, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)
APPLIED COMPRESSION SYSTEMS LTD.
1224933 ONTARIO INC. (FORMERLY COMPRESSED AIR INTERNATIONAL INC.)
FORMERXBC HOLDING USA INC. (FORMERLY XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC. (FORMERLY XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY (FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION (FORMERLY NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES – WISCONSIN INC. (FORMERLY XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)
Debtors / Petitioners**

and
DELOITTE RESTRUCTURING INC.
Monitor

and

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IVYS ADSORPTION INC.
Impleaded Party (Buyer)

**APPROVAL AND VESTING ORDER IN RESPECT OF BIOSTREAM ASSETS OF
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)**

- [1] **CONSIDERING** the *Application for (i) an Extension of the Stay of Proceedings, (ii) the Establishment of a Claims Process, (iii) the Authorization to Use Net Proceeds to Fund Cash-Flow Requirements and (iv) the Issuance of an Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (Formerly Xebec Systems USA, LLC) (the “Application”)* pursuant to the *Companies’ Creditors Arrangement Act, RSC 1985, c C-36, as amended (“CCAA”)* and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Tenth Report of the Monitor dated May ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **CONSIDERING** the provisions of the CCAA;
- [5] **GIVEN** the Fifth Amended and Restated Initial Order rendered by the Court on March 27, 2023 (the “**Fifth ARIO**”);
- [6] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Binding Letter of Intent For Purchase of Biostream WIP / Inventory dated May 19, 2023 (the “**Binding LOI**”) between **FormerXBC Systems USA, LLC** (the “**Seller**”), and **Ivys Adsorption Inc.**, as buyer, (the “**Buyer**”), a copy of which was filed under seal as **Exhibit P-5** to the Application, and vesting in the Buyer certain work in progress and inventory (the “**Purchased Assets**”).

THE COURT HEREBY:

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

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DEFINITIONS

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

SERVICE

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

TRANSACTION APPROVAL

- [11] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Binding LOI 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

- [12] **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 Binding LOI and any other ancillary document which could be required or useful to give full and complete effect thereto, including entering into an asset purchase agreement.

AUTHORIZATION

- [13] **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

- [14] **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

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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 (all of which are collectively referred to as the "**Encumbrances**"), excluding for greater certainty the Biostream Charge (as defined below).

- [15] 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.
- [16] **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.
- [17] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Binding LOI and shall have no liability with respect to the delivery of the Monitor's Certificate.
- [18] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.
- [19] **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

- [20] **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

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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.

BIOSTREAM CHARGE

- [21] **DECLARES** that the Seller, as security for the payments to be made by the Buyer pursuant to the Biostream Transaction, be entitled to the benefit of and is hereby granted a charge and security in the five biostream units of the Purchase Assets, to the extent of the aggregate amount of \$2,000,000 (the “**Biostream Charge**”).
- [22] **DECLARES** that following the initial payment by the Buyer equivalent to 25% of the Purchase Price, such charge will be discharged on a unit-by-unit basis following the payment of each instalment payment received by the Monitor from the Buyer, as confirmed by the issuance of Monitor’s certificates confirming receipt of the instalments and reductions of the Biostream Charge, except for the Biostream Charge on the last biostream unit which will only be discharged upon receipt by the Monitor of the balance of payment of the Purchase Price and as confirmed by the issuance of a Monitor’s certificate confirming that the Purchase Price has been paid in full and cancelling and discharging the Biostream Charge.
- [23] **DECLARES** that the Biostream Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Purchase Assets.

PROTECTION OF PERSONAL INFORMATION

- [24] **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 Binding LOI (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.
- [25] **ORDERS** that the Buyer shall:
- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;

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

VALIDITY OF THE TRANSACTION

[26] **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 Binding LOI 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

[27] **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.

[28] **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.

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

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

- [30] **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

- [31] **ORDERS** that the Binding LOI, Exhibit P-5 shall be filed under seal and kept confidential until further order of this Court.

GENERAL

- [32] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [33] **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.
- [34] **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.
- [35] **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.
- [36] **ORDERS** provisional execution of this Order notwithstanding any appeal and without security.

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[37] **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: **May 24, 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
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.)**
**11941666 CANADA INC. (FORMERLY XEBEC
RNG HOLDINGS INC.)**
APPLIED COMPRESSION SYSTEMS LTD.
**1224933 ONTARIO INC. (FORMERLY
COMPRESSED AIR INTERNATIONAL INC.)**
**FORMERXBC HOLDING USA INC. (FORMERLY
XEBEC HOLDING USA INC.)**
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC.
(FORMERLY XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY
(FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION
(FORMERLY NORTEKBELAIR CORPORATION)
**FORMERXBC FLOW SERVICES - WISCONSIN
INC. (FORMERLY XBC FLOW SERVICES -
WISCONSIN INC.)**
CALIFORNIA COMPRESSION, LLC
**FORMERXBC SYSTEMS USA, LLC (FORMERLY
XEBEC SYSTEMS USA, LLC)**

Debtors/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

CERTIFICATE OF THE MONITOR

- 2 -

**(CLOSING OF THE BIOSTREAM TRANSACTION AND CREATION OF THE
BIOSTREAM CHARGE)**

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. et 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 May 24, 2023, the Court issued the *Approval, Vesting and Assignment Order in Respect of Assets of FormerXBC Systems USA, LLC* (the "**Approval and Vesting Order**") authorizing and approving, *inter alia*, the execution of the Binding LOI and the conclusion of a definitive asset purchase agreement reflecting the terms of the Binding LOI (the "**Purchase Agreement**"), between FormerXBC Systems USA, LLC, as seller, (the "**Seller**"), and Ivys Adsorption Inc. as buyer, (the "**Buyer**") and all the transactions contemplated therein (the "**Transaction**"), with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed with the consent of the Monitor.

WHEREAS the Approval and Vesting Order contemplates the issuance of this Certificate of the Monitor once (a) the Purchase Agreement has been executed and delivered, (b) the Initial Payment (as provided by the Binding LOI and defined in the Purchase Agreement) has been paid, and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

WHEREAS, following confirmation of the above, it also contemplated that the Monitor will issue this Certificate creating and effecting the Biostream Charge (as defined in the Approval and Vesting Order).

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 Initial Payment payable upon the closing of the Transaction has been paid and received by the Monitor;
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto, such that closing has occurred; and
- (d) The Biostream Charge is accordingly created and effected, in accordance with para. 21 of the Approval and Vesting Order.

- 3 -

This Certificate was issued by the Monitor on ●, 2023.

Deloitte Restructuring Inc., in its capacity as Monitor
and not in its personal capacity.

Name: Jean-François Nadon, CPA, CIRP, LIT

Title: President

EXHIBIT P-4A

May 2014

SUPERIOR COURT

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: May 24, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)
APPLIED COMPRESSION SYSTEMS LTD.
1224933 ONTARIO INC. (FORMERLY COMPRESSED AIR INTERNATIONAL INC.)
FORMERXBC HOLDING USA INC. (FORMERLY XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC. (FORMERLY XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY (FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION (FORMERLY NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES – WISCONSIN INC. (FORMERLY XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)
Debtors / Petitioners

and
DELOITTE RESTRUCTURING INC.
Monitor

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and
IVYS ADSORPTION INC.
Impleaded Party (Buyer)

APPROVAL AND VESTING ORDER IN RESPECT OF BIOSTREAM ASSETS OF
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)

~~(Commercial Division)~~

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

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

~~IN THE MATTER OF ●:~~

●
~~Debtor~~

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

~~Mis-en-Cause~~

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~~-and-~~

•

_____~~[Petitioner]~~¹

~~-and-~~

•

_____~~[Receiver/Trustee/Monitor]~~

~~APPROVAL AND VESTING ORDER~~²⁻³

[1] ~~ON READING CONSIDERING~~ the ~~[Debtor/Petitioner/Receiver/Trustee/Monitor]'s~~ ~~Motion for~~ Application for (i) an Extension of the Stay of Proceedings, (ii) the Establishment of a Claims Process, (iii) the Authorization to Use Net Proceeds to Fund Cash-Flow Requirements and (iv) the Issuance of an Approval and Vesting Order (the "Motion"), the affidavit in Respect of BioStream Assets of Former XBC Systems USA, LLC (Formerly Xebec Systems USA, LLC) (the "Application") pursuant to the Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended ("CCAA") and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof, as well as;

[2] CONSIDERING the Tenth Report of the ~~[Receiver/Trustee/Monitor]~~ dated ~~•~~ May •, 2023;

[3] CONSIDERING the submissions of counsel;

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

² A blacklined version must to be included with the Motion

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

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[4] CONSIDERING the provisions of the CCAA;

[5] GIVEN the Fifth Amended and Restated Initial Order rendered by the Court on March 27, 2023 (the "~~Report~~" "Fifth ARIO");

[2] ~~SEEING~~ the service of the Motion⁴;

[3] ~~SEEING~~ the submissions of [~~Debtor/Receiver/Trustee/Monitor~~]'s attorneys and the submissions of ~~•~~;

[6] [4] ~~SEEING~~ CONSIDERING that it is appropriate to issue an order approving the sale transaction(s) (the "Transaction") contemplated by the agreement entitled ~~•~~ (the "Binding Letter of Intent For Purchase Agreement" of Biostream WIP / Inventory dated May 19, 2023 (the "Binding LOI") ~~by and~~ between [~~Debtor/Receiver/Trustee/Monitor~~] (the "Vendor"), as ~~vendor~~, and ~~•~~ FormerXBC Systems USA, LLC (the "Seller"), and Ivys Adsorption Inc., as buyer, (the "~~Purchaser~~" "Buyer"), ~~as purchaser~~, a copy of which was filed under seal as Exhibit RP-•5 to the Motion Application, and vesting in the ~~Purchaser~~ the assets described in the Purchase Agreement Buyer certain work in progress and inventory (the "Purchased Assets")⁵.

~~WHEREFORE~~ THE COURT HEREBY:

[7] [5] ~~GRANTS~~ the ~~Motion~~; Application.

DEFINITIONS

[8] DECLARES that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Application.

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

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

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SERVICE

[9] ~~[6]~~ **ORDERS** that any prior delay for the presentation of ~~this Motion~~ the Application is hereby abridged and validated so that ~~this Motion~~ the Application is properly returnable today and ~~hereby~~ dispenses with further service thereof.

[10] ~~[7]~~ **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE TRANSACTION APPROVAL

[11] ~~[8]~~ **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the ~~Purchase Agreement~~ Binding LOI by the ~~Vendor~~ Seller is hereby authorized and approved *nunc pro tunc*, with such ~~non-material~~ minor alterations, changes, amendments, deletions or additions thereto as may be agreed to ~~but only by the Seller and the Buyer,~~ with the consent of the ~~[Receiver/Trustee/Monitor]~~.

EXECUTION OF DOCUMENTATION

[12] ~~[9]~~ **AUTHORIZES** the ~~[Vendor/Receiver/Trustee/Monitor]~~ Seller and the ~~Purchaser~~ Buyer to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the ~~Purchase Agreement (Exhibit R-●)~~ Binding LOI and any other ancillary document which could be required or useful to give full and complete effect thereto, including entering into an asset purchase agreement.

AUTHORIZATION

[13] ~~[10]~~ **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the ~~Vendor~~ Petitioners to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

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

[14] ~~[11]~~ **A** ~~—~~ **ORDERS** and **AND DECLARES** that upon the issuance of a ~~[Receiver/Trustee/Monitor]~~'s certificate substantially in the form appended as **Schedule "A"** hereto (the **"Monitor's Certificate"**), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the ~~Purchaser~~ Buyer, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, ~~right~~

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~~of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the Property, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "Encumbrances"⁶), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable / immovable property, excluding however, the permitted encumbrances and restrictive covenants listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be cancelled and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.~~

[11] ~~**B**~~ ~~**ORDERS**~~ and ~~**DECLARES**~~ that upon the issuance of a ~~[Receiver/Trustee/Monitor]'s~~ certificate substantially in the form appended as Schedule "A" hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "~~Encumbrances~~" "Claims"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges, or security ~~interests or charges~~ evidenced by registration, publication or filing pursuant to ~~the Civil Code of Québec, the [Province(s)] Personal Property Security Act, or any other~~ applicable legislation providing for a security interest in personal or movable property (all of which are collectively referred to as the "**Encumbrances**"), excluding however, the permitted encumbrances, easements and restrictive covenants listed on Schedule "B" hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances ~~affecting or relating to the Purchased Assets~~, other than the Permitted Encumbrances, be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate for greater certainty the Biostream Charge (as defined below).

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

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- ~~[12] **ORDERS and DECLARES** that upon the issuance of the Certificate, the rights and obligations of the Vendor under the Agreements listed on **Schedule "C"** hereto (the "**Assigned Agreements**") are assigned to the Purchaser **[and ORDERS that all monetary defaults of the Debtor in relation to the Assigned Agreements – other than those arising by reason only of the insolvency of the Debtor, the commencement of proceedings under the [BIA/GCAA] or the failure to perform non-monetary obligations – shall be remedied on or before ●]**.~~
- ~~[13] **DECLARES** that upon issuance of the Certificate, the Transaction shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*. **[This paragraph is only required when the sale is done by a Receiver]**~~
- ~~[14] **ORDERS and DIRECTS** the **[Vendor/Receiver/Trustee/Monitor]** to serve a copy of this Order to every party to the Assigned Agreements.~~
- ~~[15] **ORDERS and DIRECTS** the **[Receiver/Trustee/Monitor]** to file with the Court a copy of the Certificate, forthwith after issuance thereof.~~

CANCELLATION OF SECURITY REGISTRATIONS⁷⁸⁹

For Quebec Property:

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

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

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

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

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

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

~~**For Ontario Property:**~~

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

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

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

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

~~**For British Columbia Property:**~~

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

~~(a) to enter the Purchaser as the owner of the lands, as identified in Schedule "●" hereto (the "BC Real Property"), together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments~~

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~~belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the BC Real Property; and~~

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

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

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

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

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

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

~~**NET PROCEEDS**~~

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~~[25] **ORDERS** that the net proceeds¹⁰ from the sale of the Purchased Assets (the "**Net Proceeds**") shall be remitted to the **[Receiver/Trustee/Monitor]** and shall be distributed in accordance with applicable legislation.~~

[15] 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.

[16] ~~[26]~~ **ORDERS** that for the purposes of determining the nature and priority of ~~the Encumbrances~~ Claims, the ~~Net Proceeds~~ net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that ~~upon payment from and after the delivery of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances except for the Permitted~~ Monitor's Certificate all Claims and Encumbrances shall attach to the ~~Net Proceeds~~ net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

[17] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Binding LOI and shall have no liability with respect to the delivery of the Monitor's Certificate.

[18] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.

[19] **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

[20] **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.

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

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BIOSTREAM CHARGE

- [21] DECLARES that the Seller, as security for the payments to be made by the Buyer pursuant to the Biostream Transaction, be entitled to the benefit of and is hereby granted a charge and security in the five biostream units of the Purchase Assets, to the extent of the aggregate amount of \$2,000,000 (the "Biostream Charge").
- [22] DECLARES that following the initial payment by the Buyer equivalent to 25% of the Purchase Price, such charge will be discharged on a unit-by-unit basis following the payment of each instalment payment received by the Monitor from the Buyer, as confirmed by the issuance of Monitor's certificates confirming receipt of the instalments and reductions of the Biostream Charge, except for the Biostream Charge on the last biostream unit which will only be discharged upon receipt by the Monitor of the balance of payment of the Purchase Price and as confirmed by the issuance of a Monitor's certificate confirming that the Purchase Price has been paid in full and cancelling and discharging the Biostream Charge.
- [23] DECLARES that the Biostream Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the "Encumbrances") affecting the Purchase Assets.

PROTECTION OF PERSONAL INFORMATION

- [24] ~~[27]~~ ORDERS that, pursuant to sub-section 7(3)(c) of the ~~Canada~~ Personal Information Protection and Electronic Documents Act, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the ~~Receiver~~ is "Applicable Privacy Laws"), the Petitioners and the Monitor are authorized and permitted to disclose and transfer to the ~~Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "•" to the Purchase Agreement~~ Buyer the personal information in the custody or control of the Petitioners set out in the Binding LOI (the "Disclosed Information"). The ~~Purchaser~~ Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the ~~Debtor~~;⁴⁴ ~~[NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause];~~ Petitioners.
- [25] ORDERS that the Buyer shall:

⁴⁴ ~~This paragraph may not be necessary depending on the nature of the Purchased Assets.~~

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

VALIDITY OF THE TRANSACTION

[26] ~~[28]~~ **ORDERS** that notwithstanding:

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

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

LIMITATION OF LIABILITY

~~[29]~~ ~~DECLARES~~ that, ~~subject to other orders of this Court, nothing herein contained shall require the [Receiver/Trustee/Monitor] to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The [Receiver/Trustee/Monitor] shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the [BIA/CCAA];~~

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THE MONITOR

- [27] 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.
- [28] ~~[30]~~ **DECLARES** that no action lies against the ~~[Receiver/Trustee/Monitor]~~ by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the ~~[Receiver/Trustee/Monitor]~~ or belonging to the same group as the ~~Receiver/Monitor~~ shall benefit from the protection arising under the present paragraph.
- [29] 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.
- [30] 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

- [31] ORDERS that the Binding LOI, Exhibit P-5 shall be filed under seal and kept confidential until further order of this Court.

GENERAL

- ~~[31] **ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario). [NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause] [Ontario – Adapt for other common law Provinces where applicable]~~
- ~~[32] **ORDERS** that the Purchaser or the [Vendor/Receiver/Trustee/Monitor] shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.~~
- ~~[33] **ORDERS** that the Purchase Agreement be kept confidential and under seal until the earlier of a) the closing of the Transaction; or b) further order of this Court.~~

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- [32] ~~[34]~~ **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;
- ~~[35]~~ **DECLARES** that the ~~[Vendor/Receiver/Trustee/Monitor]~~ shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the ~~[Vendor/Receiver/Trustee/Monitor]~~ shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the ~~[Vendor/Receiver/Trustee/Monitor]~~ as may be deemed necessary or appropriate for that purpose;
- [33] **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.
- [34] **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.
- [35] ~~[36]~~ **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or ~~administrative body and any federal or state court or administrative body~~ in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to ~~act in aid of and to be complementary to this Court~~ give effect to this Order, and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of the ~~this~~ Order; All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order in any foreign proceeding, to assist the Petitioners, the Monitor and their respective agents in carrying out this Order.
- [36] ~~[37]~~ **ORDERS** ~~the~~ provisional execution of ~~the present~~ this Order notwithstanding any appeal and without ~~the requirement to provide any security or provision for costs whatsoever;~~
- [37] **THE WHOLE** ~~[WITH/WITHOUT]~~ **COSTS** without costs.

●, J.S.C.Christian Immer, JCS

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

Attorneys for the Petitioners

Hearing date: May 24, 2023

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SCHEDULE "A"

DRAFT CERTIFICATE OF THE [RECEIVER/TRUSTEE/MONITOR]

<p>CANADA</p> <p>PROVINCE OF QUEBEC DISTRICT OF MONTRÉAL</p> <p>File: No: 500-11-●</p>	<p>SUPERIOR COURT Commercial Division</p> <hr/> <p>IN THE MATTER OF ●:</p> <p>● Debtor</p> <p>-and-</p> <p>●</p> <p>[Petitioner]</p> <p>-and-</p> <p>●</p> <p>[Receiver/Trustee/Monitor]</p> <p>●</p>
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CERTIFICATE OF THE [RECEIVER/TRUSTEE/MONITOR]

<p><u>CANADA</u></p> <p><u>PROVINCE OF QUÉBEC</u> <u>DISTRICT OF MONTRÉAL</u></p> <p><u>No.: 500-11-061483-224</u></p>	<p><u>SUPERIOR COURT</u> <u>(Commercial Division)</u></p> <p><u>(Sitting as a court designated pursuant to the</u> <u>Companies' Creditors Arrangement Act, RSC</u> <u>1985, c. C-36)</u></p> <p><u>IN THE MATTER OF THE COMPROMISE OR</u> <u>ARRANGEMENT OF:</u></p> <p><u>FORMERXBC INC. (FORMERLY XEBEC</u> <u>ADSORPTION INC.)</u> <u>11941666 CANADA INC. (FORMERLY XEBEC</u> <u>RNG HOLDINGS INC.)</u> <u>APPLIED COMPRESSION SYSTEMS LTD.</u> <u>1224933 ONTARIO INC. (FORMERLY</u></p>
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- 2 -

COMPRESSED AIR INTERNATIONAL INC.)
FORMERXBC HOLDING USA INC. (FORMERLY
XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC.
(FORMERLY XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY
(FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION
(FORMERLY NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES - WISCONSIN
INC. (FORMERLY XBC FLOW SERVICES -
WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY
XEBEC SYSTEMS USA, LLC)

Debtors/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

CERTIFICATE OF THE MONITOR
(CLOSING OF THE BIOSTREAM TRANSACTION AND CREATION OF THE
BIOSTREAM CHARGE)

RECITALS:

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

~~WHEREAS pursuant to the terms of the [● Order/NOI], ● (the "[Receiver/Trustees/Monitor]") was named [Receiver/Trustees/Monitor] of the Petitioner; and~~

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. et 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").

- 3 -

WHEREAS on ~~●~~ May 24, 2023, the Court issued ~~an Order~~ the Approval, Vesting and Assignment Order in Respect of Assets of FormerXBC Systems USA, LLC (the "Approval and Vesting Order") ~~thereby, inter alia,~~ authorizing and approving, inter alia, the execution ~~by~~ of the ~~Petitioner of an~~ Binding LOI and the conclusion of a definitive asset purchase agreement ~~entitled ● Agreement~~ reflecting the terms of the Binding LOI (the "Purchase Agreement") ~~by and,~~ between ~~●~~ FormerXBC Systems USA, LLC, as ~~vendor~~ seller, (the "VendorSeller"), and ~~●~~ Ivys Adsorption Inc. as ~~purchaser~~ buyer, (the "Purchaser"), ~~copy of which was filed in the Court record,~~ Buyer) and ~~into~~ all the transactions contemplated therein (the "Transaction"), with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed ~~to~~ with the consent of the ~~{Receiver/Trustees/Monitor}~~.

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

WHEREAS, following confirmation of the above, it also contemplated that the Monitor will issue this Certificate creating and effecting the Biostream Charge (as defined in the Approval and Vesting Order).

THE ~~{RECEIVER/TRUSTEES/MONITOR}~~ CERTIFIES ~~{~~ THAT IT HAS BEEN ADVISED BY THE ~~VENDORSELLER~~ AND THE ~~PURCHASERBUYER~~ AS TO ~~}~~ THE FOLLOWING:

- (a) the Purchase Agreement has been executed and delivered;
- (b) the ~~Purchase Price (as defined in the Purchase Agreement)~~ Initial Payment payable upon the closing of the Transaction ~~and all applicable taxes have~~ has been paid; ~~and~~ received by the Monitor;
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto, such that closing has occurred; and
- (d) The Biostream Charge is accordingly created and effected, in accordance with para. 21 of the Approval and Vesting Order.

This Certificate was issued by the ~~{Receiver/Trustees/Monitor}~~ at ~~_____~~ ~~[TIME]~~ on ~~_____~~ ~~[DATE]~~ ~~●~~, 2023.

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

Name: Jean-François Nadon, CPA, CIRP, LIT

Name: _____

Title: _____

President

***~~**~~

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SCHEDULE "B"

PERMITTED ENCUMBRANCES

- 6 -

SCHEDULE "C"

ASSIGNED AGREEMENTS

EXHIBIT P-5
Under Seal

No: 500-11-061483-224

**SUPERIOR COURT
(Commercial Division)**

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

DISTRICT OF MONTRÉAL

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

FORMERXBC INC. & AL

Debtors / Petitioners

and.

DELOITTE RESTRUCTURING INC.

Monitor

**APPLICATION FOR (I) AN EXTENSION OF THE
STAY OF PROCEEDINGS, (II) THE
ESTABLISHMENT OF A CLAIMS PROCESS, (III)
THE AUTHORIZATION TO USE NET PROCEEDS
TO FUND CASH-FLOW REQUIREMENTS AND
(IV) THE ISSUANCE OF AN APPROVAL AND
VESTING ORDER IN RESPECT OF BIOSTREAM
ASSETS OF FORMERXBC SYSTEMS USA, LLC
(FORMERLY XEBEC SYSTEMS USA, LLC),
AFFIDAVIT, NOTICE OF PRESENTATION, LIST
OF EXHIBITS, EXHIBITS P-1 TO P-4A
(Sections 11 and 11.02 of the *Companies'
Creditors Arrangement Act*, RSC 1985, c C-36)**

ORIGINAL

Osler, Hoskin & Harcourt LLP

M^e Sandra Abitan / M^e Julien Morissette / M^e Iliia
Kravtsov / M^e Sophie Courville

1000 de La Gauchetière St West, Suite 2100
Montréal, Québec H3B 4W5

Tél: 514.904.8100 Téléc.: 514.904.8101

sabitan@osler.com; jmorissette@osler.com;
ikravtsov@osler.com; scourville@osler.com /
notificationosler@osler.com

Code: BO 0323

Our file: 1233913

Exhibit D

Vesting Order

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: May 24, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)
APPLIED COMPRESSION SYSTEMS LTD.
1224933 ONTARIO INC. (FORMERLY COMPRESSED AIR INTERNATIONAL INC.)
FORMERXBC HOLDING USA INC. (FORMERLY XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC. (FORMERLY XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY (FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION (FORMERLY NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES – WISCONSIN INC. (FORMERLY XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)
Debtors / Petitioners**

and
DELOITTE RESTRUCTURING INC.
Monitor

and

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IVYS ADSORPTION INC.
Impleaded Party (Buyer)

**APPROVAL AND VESTING ORDER IN RESPECT OF BIOSTREAM ASSETS OF
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)**

- [1] **CONSIDERING** the *Application for (i) an Extension of the Stay of Proceedings, (ii) the Establishment of a Claims Process, (iii) the Authorization to Use Net Proceeds to Fund Cash-Flow Requirements and (iv) the Issuance of an Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (Formerly Xebec Systems USA, LLC) (the “Application”) pursuant to the Companies’ Creditors Arrangement Act, RSC 1985, c C-36, as amended (“CCAA”) and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;*
- [2] **CONSIDERING** the Tenth Report of the Monitor dated May 19, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **CONSIDERING** the provisions of the CCAA;
- [5] **GIVEN** the Fifth Amended and Restated Initial Order rendered by the Court on March 27, 2023 (the “Fifth ARIO”);
- [6] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Binding Letter of Intent For Purchase of Biostream WIP / Inventory dated May 19, 2023 (the “**Binding LOI**”) between **FormerXBC Systems USA, LLC** (the “**Seller**”), and **Ivys Adsorption Inc.**, as buyer, (the “**Buyer**”), a copy of which was filed under seal as **Exhibit P-5** to the Application, and vesting in the Buyer certain work in progress and inventory (the “**Purchased Assets**”).

THE COURT HEREBY:

- [7] **GRANTS** the Application, with further written reasons to follow.

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DEFINITIONS

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

SERVICE

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

TRANSACTION APPROVAL

- [11] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Binding LOI 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

- [12] **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 Binding LOI and any other ancillary document which could be required or useful to give full and complete effect thereto, including entering into an asset purchase agreement.

AUTHORIZATION

- [13] **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

- [14] **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

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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 (all of which are collectively referred to as the "**Encumbrances**"), excluding for greater certainty the Biostream Charge (as defined below).

- [15] 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.
- [16] **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.
- [17] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Binding LOI and shall have no liability with respect to the delivery of the Monitor's Certificate.
- [18] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.
- [19] **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

- [20] **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

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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.

BIOSTREAM CHARGE

- [21] **DECLARES** that the Seller, as security for the payments to be made by the Buyer pursuant to the Biostream Transaction, be entitled to the benefit of and is hereby granted a charge and security in the five biostream units of the Purchase Assets, to the extent of the aggregate amount of \$2,000,000 (the "**Biostream Charge**").
- [22] **DECLARES** that following the initial payment by the Buyer equivalent to 25% of the Purchase Price, such charge will be discharged on a unit-by-unit basis following the payment of each instalment payment received by the Monitor from the Buyer, as confirmed by the issuance of Monitor's certificates confirming receipt of the instalments and reductions of the Biostream Charge, except for the Biostream Charge on the last biostream unit which will only be discharged upon receipt by the Monitor of the balance of payment of the Purchase Price and as confirmed by the issuance of a Monitor's certificate confirming that the Purchase Price has been paid in full and cancelling and discharging the Biostream Charge.
- [23] **DECLARES** that the Biostream Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Purchase Assets.

PROTECTION OF PERSONAL INFORMATION

- [24] **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 Binding LOI (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.
- [25] **ORDERS** that the Buyer shall:
- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;

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

VALIDITY OF THE TRANSACTION

[26] **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 Binding LOI 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

[27] **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.

[28] **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.

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

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

- [30] **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

- [31] **ORDERS** that the Binding LOI, Exhibit P-5 shall be filed under seal and kept confidential until further order of this Court.

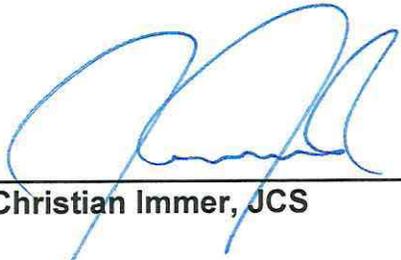
GENERAL

- [32] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [33] **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.
- [34] **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.
- [35] **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.
- [36] **ORDERS** provisional execution of this Order notwithstanding any appeal and without security.

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[37] **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: **May 24, 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
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.)
11941666 CANADA INC. (FORMERLY XEBEC
RNG HOLDINGS INC.)
APPLIED COMPRESSION SYSTEMS LTD.
1224933 ONTARIO INC. (FORMERLY
COMPRESSED AIR INTERNATIONAL INC.)
FORMERXBC HOLDING USA INC. (FORMERLY
XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC.
(FORMERLY XEBEC ADSORPTION USA INC.)
FORMERXBC PENNSYLVANIA COMPANY
(FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION
(FORMERLY NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES - WISCONSIN
INC. (FORMERLY XBC FLOW SERVICES -
WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY
XEBEC SYSTEMS USA, LLC)**

Debtors/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

CERTIFICATE OF THE MONITOR

- 2 -

(CLOSING OF THE BIOSTREAM TRANSACTION AND CREATION OF THE BIOSTREAM CHARGE)

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. et 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 May 24, 2023, the Court issued the *Approval, Vesting and Assignment Order in Respect of Assets of FormerXBC Systems USA, LLC* (the "**Approval and Vesting Order**") authorizing and approving, *inter alia*, the execution of the Binding LOI and the conclusion of a definitive asset purchase agreement reflecting the terms of the Binding LOI (the "**Purchase Agreement**"), between FormerXBC Systems USA, LLC, as seller, (the "**Seller**"), and Ivys Adsorption Inc. as buyer, (the "**Buyer**") and all the transactions contemplated therein (the "**Transaction**"), with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed with the consent of the Monitor.

WHEREAS the Approval and Vesting Order contemplates the issuance of this Certificate of the Monitor once (a) the Purchase Agreement has been executed and delivered, (b) the Initial Payment (as provided by the Binding LOI and defined in the Purchase Agreement) has been paid, and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

WHEREAS, following confirmation of the above, it is also contemplated that the Monitor will issue this Certificate creating and effecting the Biostream Charge (as defined in the Approval and Vesting Order).

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 Initial Payment payable upon the closing of the Transaction has been paid and received by the Monitor;
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto, such that closing has occurred; and
- (d) The Biostream Charge is accordingly created and effected, in accordance with para. 21 of the Approval and Vesting Order.

- 3 -

This Certificate was issued by the Monitor on ●, 2023.

Deloitte Restructuring Inc., in its capacity as Monitor
and not in its personal capacity.

Name: Jean-François Nadon, CPA, CIRP, LIT

Title: President

Exhibit E

Reasons

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: May 26, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**FORMERXBC INC., (FORMERLY, XEBEC ADSORPTION INC.)
11941666 CANADA INC., (FORMERLY, XEBEC RNG HOLDINGS INC.)
12224933 ONTARIO INC., (FORMERLY, COMPRESSED AIR INTERNATIONAL INC.)
APPLIED COMPRESSION SYSTEMS LTD.
FORMERXBC HOLDING USA INC. (FORMERLY, XEBEC HOLDING USA INC.)
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMER XBC ADSORPTION USA INC., (FORMERLY, XEBEC ADSORPTION USA
INC.)
FORMER PENNSYLVANIA COMPANY (FORMERLY, THE TITUS COMPANY)
FORMERXBC NOR CORPORATION (FORMERLY, NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES – WISCONSIN INC. (FORMERLY, XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
-AND-
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)
Debtors / Petitioners**

And

DELOITTE RESTRUCTURING INC.
Monitor

500-11-061483-224

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REASONS FOR ISSUING, ON MAY 24, 2023, THE:

- 1. THE APPROVAL AND VESTING ORDER IN RESPECT OF BIOSTREAM ASSETS**
 - 2. THE CLAIMS PROCEDURE ORDER**
 - 3. THE ORDER EXTENDING THE STAY OF PROCEEDINGS**
 - 4. THE ORDER AUTHORIZING THE USE OF NET PROCEEDS TO FUND CASH-FLOW REQUIREMENTS**
-

[1] On September 29, 2022, the Court, relying on its powers conferred under the *Companies' Creditors Arrangement Act* ("CCAA")¹, issued an Initial First Day Order². Since then, it has issued several restated amended orders. Presently, the debtors are subject to a Fifth Restated Amended Initial Order.

[2] In a hearing held on May 24, 2023, the Court was asked and did render the following four orders, with reasons to follow:

- 2.1. *The Approval and Vesting Order in Respect of Biostream Assets of FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC)*
- 2.2. *The Claims Procedure Order*
- 2.3. *The Order Extending the Stay of Proceedings*
- 2.4. *The Order Authorizing the Use of Net Proceeds to Fund Cash-Flow Requirements*

[3] Here are the reasons why it did so for each such order.

1. The Approval and Vesting Order in Respect of Biostream Assets of FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC)

[4] The Court was asked to exercise its powers under s. 36 of the CCAA to issue an approval and vesting order ("AVO") for the sale of five Biostream Units (the "Units") presently located at the premises of FormerXBC Systems USA, LLC ("FormerXBC USA") in the United States.

[5] Prior to the CCAA proceedings, Xebec Adsorption Inc., now FormerXBC Inc. ("Former XBC") and Brightmark LLC entered into a contract to deliver the Units. Work to build and assemble them was being carried out at FormerXBC USA when the CCAA

¹ R.S.C. (1985), c. C-36.

² *Arrangement relatif à Xebec Adsorption Inc.*, 2022 QCCS 3596.

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proceedings were filed. The work on the Units was at that time, and remains, uncompleted.

[6] On February 17, 2023, the Court issued an AVO in relation to a purchase agreement for certain of FormerXBC's assets which were to be sold to Ivys Energy Solutions ("Ivys")³. This transaction was closed on February 24, 2023. The contract relating to the delivery of the five Units were not part of the assets purchased by Ivys⁴.

[7] On March 16, 2023, the Court issued an AVO in relation to a purchase agreement for certain of FormerXBC USA's assets which were to be sold to EnergyLink U.S. Inc.⁵ This transaction was closed on April 5, 2023. The five Units were excluded from this sale and remain in the hands of Former XBC USA.

[8] The Monitor explained that after the two closings, intense negotiations have been carried out between the Monitor and Ivys for the sale of the five Units. Ivys intends to complete the assembly of the Units and to deliver them to Brightmark. The sale of the unfinished Units is therefore but one piece of a broader agreement to be hammered out between several parties.

[9] A binding letter of intent ("LOI") was entered into between FormerXBC USA and Ivys which was filed in the Court record under seal⁶. The LOI provides that 25% of the sale price will be paid at closing and that the balance will be paid by way of five instalments, each payable upon successful completion of factory acceptance tests for each of the five Units.

[10] The Debtors' Motion explains that to guarantee the timely payment of the outstanding balance, the following conditions were inserted in the LOI:

60. It is also a key condition of the Binding LOI that this Court grant FormerXBC a charge on the 5 Biostream Units in the amount of the Purchase Price to secure all payment obligations of Ivys towards FormerXBC pursuant to the Biostream Transaction (the "Biostream Charge").
61. The Biostream Transaction contemplates that following the initial payment the Biostream Charge will be discharged on a unit-by-unit basis following receipt of each of the five subsequent payments by the Monitor, save and except for the charge on the last of the 5 Biostream Units, which will only be discharged upon receipt by the Monitor of the balance of the Purchase Price.

³ *Arrangement relatif à Xebec Adsorption Inc.*, 2023 QCCS 466.

⁴ Filed partially under seal as exhibit P-9A.

⁵ *Arrangement relatif à Xebec Adsorption Inc.*, 2023 QCCS 838

⁶ Exhibit P-5. The order was made under art. 12 of the Civil Code of Procedure to protect the substantial and legitimate interests of various third parties

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[11] It is in relation to the transaction set out in the Binding LOI that the Court was asked to issue an AVO.

[12] Ss. 36(3) of the CCAA lists six criteria which the Court must consider when exercising its discretion to grant such an order, namely:

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[13] These criteria are neither cumulative nor exhaustive and the Court “must look at the proposed transaction as a whole and decide whether it is appropriate, fair and reasonable”⁷. It must abstain from second-guessing the commercial and business judgment properly exercised by the Monitor. Its recommendation “carries great weight” and “absent some compelling, exceptional factor to the contrary, a Court should accept an applicant’s proposed sale process where it is recommended by the Monitor and supported by the stakeholders”⁸.

[14] The Monitor recommends that this sale process be carried out. Its representative, Mr. Jean-François Nadon, has explained how these Units, in their present state, cannot be readily sold. They will attain far greater value once they are completed. The sale process and payment schedule contemplated in the LOI therefore ensures maximisation of the Units’ value, for the benefit of Debtors but also for all stakeholders. Ivys insists that the balance of payment must be deferred until completion of the Units, but agrees that the Units be subject to a charge to guarantee its payment obligations.

⁷ *Bloom Lake, g.p.l. (Arrangement relatif à)*, 2015 QCCS 1920, par. 36.

⁸ *Id.*, par. 27 and 28.

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[15] The Monitor has been closely involved in all discussions leading to the execution of the LOI. In its Tenth Report and through the testimony of Mr. Nadon, the Monitor recommended why the sale should be carried out according to the LOI's terms.

[16] No creditor has opposed the process and the secured creditor, EDC, agreed to the issuance of the AVO. The AVO provides that all Claims and Encumbrances shall attach to the net proceeds from the sale of the Units with the same priority they had with respect to the Units prior to the sale.

[17] This is why the Court found that all the criteria set out in s. 36(3) CCAA were met and, given the Monitor's recommendation, the Court therefore issued the *Approval and Vesting Order in Respect of Biostream Assets of FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC)* .

2. The Claims Procedure Order

[18] Presently, excluding the proceeds of sale of the 5 Units and of other minor assets, but including the 3M\$ transfer to the operating accounts dealt with in section 4 below, the outstanding balance of Net Proceeds after payment of the remaining KERP charge is estimated by the Monitor to be approximately 17M\$.

[19] Hence, the Debtors explain that they intend to present one or more plan of arrangements or compromise to their secured and unsecured creditors. Presently, they do not know which of the Debtors will be in a position to distribute funds. They will propose, in a hearing to be held on June 27, 2023, an allocation and distribution plan amongst the various Debtors. In the meantime, they need to establish a process for the determination of claims for all entities and therefore asked the Court to approve their proposed Claims Procedure. The Court did so for the following reasons.

[20] The Claims Procedure Order provides that any claim's "Determination Date" will be September 29, 2022, i.e., the date of the issuance of the Initial First Order. This is in line with what is provided for at sub-par. 19(1)(a)(i) of the CCAA.

[21] A "Claims Package" will be sent to all creditors, the content of which is described at paragraph 10 (3) of the Claims Procedure Order, by regular mail, courier, email or other means of electronic communication. These modes of transmission are satisfactory.

[22] There will be two types of Claims Packages:

- 22.1. Any Scheduled Employee (i.e. a past or present employee of any of the Debtors) will receive a Notice of Scheduled Employee's Claim and a Notice of Dispute. The Notice of Scheduled Employee's Claim, a template of which being appended as Schedule C to the Claims Procedure Order, will contain an amount which corresponds to the Debtors' human resources department's calculations. If

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the Scheduled Employee accepts this calculation, he or she will not need to do anything else. However, in the event of disagreement, he or she may fill out and file the Notice of Dispute in the format set out at Schedule B of the Order. This proposed process is efficient and does not impose an undue burden on the Scheduled Employees. The Claims Package materials are clear.

22.2. All creditors who hold a Claim other than Scheduled Employees will receive a Proof of Claim and an Instruction Letter in the format set out at Schedule E to the Claims Procedure Order. The Proof of Claim and the Instruction Letter are clear and comprehensive.

[23] The Claims Procedure Order stipulates that the Claims Bar Date will be July 24, 2023 at 5:00 p.m. As per S. 12 of the CCAA, it is appropriate to set a deadline. This Claims Bar Date arises 32 days after the latest date at which the Newspaper Notice is published and the Claims Package is sent. Considering that close to nine months have already elapsed since CCAA proceedings have commenced and that information has been regularly provided by the Monitor as is explained in its reports, this delay is sufficient and reasonable.

[24] The Claims Procedure Order provides that where a Proof of Claim is received before the Claims Bar Date, the Monitor may send a Notice of Revision or Disallowance of the Proof of Claim. If this Notice is not contested, the Creditor will be deemed to have accepted the value of its claim as set out in this Notice. The Creditor who wishes to dispute the Notice of Revision or Disallowance will have 15 days to file an appeal application. The matter must then be submitted to this Court for adjudication. The Order stipulates that where the Creditor appeals from the Notice of Revision or Disallowance, the Monitor may determine the amount of the Voting Claim without admission that such quantification is acceptable for distribution purposes. This process is in line with what is set out at subsection 20(2) of the CCAA.

[25] A very similar process is provided if a Scheduled Employee files a Notice of Dispute, save for the fact that the delay to file an appeal application is extended to 20 days.

[26] No one opposed this Claims Procedure.

[27] For these reasons, the Court found the modalities of this claims procedure to be fair, efficient, and reasonable and therefore signed the *Claim Procedure Order*.

3. The Order Extending the Stay of Proceedings

[28] The Debtors, supported by the Monitor, are seeking a further extension of the stay. Subsection 11.02(2) of the CCAA provides that the Court may so order if the Debtors can

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convince it that circumstances exist that make the order appropriate and that the Debtors are acting in good faith and with due diligence.

[29] As the ten reports of the Monitor show, an considerable amount of work has been carried out over the last nine months, including:

- 29.1. Continued operations of all entities;
- 29.2. Carrying out the Court authorized SISP process;
- 29.3. Negotiating, both during the SISP Process and thereafter, the sale of the substantially all of the assets of CDA Systems LLC, California Compression, LLC, Xebec Inc, Compressed Air International Inc., Titus Company, XBC Flow Services – Wisconsin Inc., the purchase agreements for the certain assets of Xebec Systems USA LLC, the five Biostream Units and the sale of the partnership interest in the capital of GNR Québec Capital L.P.;
- 29.4. Obtaining three DIP financing facilities and reimbursing same;
- 29.5. Setting up and managing the KERP;
- 29.6. Applying for the WEPP Order which in turn provided WEPP relief for 35 employees whose employment was terminated; to date, 28 employees have filed for WEPP relief and 24 have received WEPP relief;
- 29.7. Participation in the negotiation of the settlement of a class action, which still requires the Court's authorization.

[30] The finish line is in sight. The professionals and the Debtors' remaining employees, directors and officers must carry out the Claims Procedure, prepare an allocation and distribution plan, the plans of arrangement, hold the creditors meeting and obtain this Court's and the US court's authorizations and sanctions throughout. Appendix E to the Monitor's report sets out the remaining milestones. It is evaluated that all this work will be completed by the end of 2023.

[31] The Court was therefore convinced that all this strongly favoured extending the stay to September 29, 2023, and did do so via the Order Extending the Stay of Proceedings.

4. The Order Authorizing the Use of Net Proceeds to Fund Cash-Flow Requirements

[32] The Monitor has filed, as Appendix G to its report, a cash flow projection for the period from the week ending on May 20, 2023 to the week ending on September 30, 2023.

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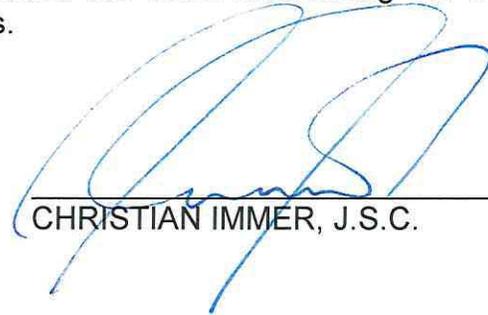
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[33] At the outset, the Net Cash is estimated to be at \$3,168,000. Save for a transfer from a related party and two sales tax reimbursement collections, the Debtors will essentially be disbursing sums for payroll (\$1,530,000), professional fees (\$3,297,000) and certain purchases (\$1,735,000). Cash injections will therefore necessarily be called for to prevent a Net Cash shortfall.

[34] Over the course of the past nine months, any net cash shortfall was covered by DIP financing provided by the secured creditors. This is a cumbersome process as the Court must authorize the DIP financing, create a charge, and eventually permit the reimbursement of the DIP Charge and the cancellation of the charge. Furthermore, such DIP financing carries with it significant financing costs.

[35] Given the Debtor's limited activities and their greater ability to project cash flow and the substantial sums the Monitor holds in its trust account, it is more appropriate to fund the forecasted cash shortfall with advances from the Monitor's trust account than with new DIP financing. The secured creditors do not object to this process.

[36] This explains why the Court also issued the Order Authorizing the Use of Net Proceeds to Fund Cash-Flow Requirements.



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Date of hearing: May 24, 2023