

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Commercial Division)

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

No.: 500-11-061483-224

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

**XEBEC ADSORPTION INC.**

-and-

**XEBEC RNG HOLDINGS INC.**

-and-

**APPLIED COMPRESSION SYSTEMS LTD.**

-and-

**COMPRESSED AIR INTERNATIONAL INC.**

-and-

**XEBEC HOLDING USA INC.**

-and-

**ENERPHASE INDUSTRIAL SOLUTIONS, INC.**

-and-

**CDA SYSTEMS, LLC**

-and-

**XEBEC ADSORPTION USA INC.**

-and-

**THE TITUS COMPANY**

-and-

**NORTEKBELAIR CORPORATION**

-and-

**XBC FLOW SERVICES – WISCONSIN INC.**

-and-

**CALIFORNIA COMPRESSION, LLC**

-and-

**XEBEC SYSTEMS USA, LLC**

Debtors / Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

-and-

**1396905 B.C. LTD.**

-and-

**THE REGISTRAR OF THE BRITISH COLUMBIA  
PERSONAL PROPERTY REGISTRY**

Impleaded Parties

**AMENDED APPLICATION FOR THE ISSUANCE OF A SECOND  
AMENDED AND RESTATED INITIAL ORDER AND AN  
APPROVAL AND VESTING ORDER**

**(Sections 11, 11.52 and 36 of the *Companies' Creditors  
Arrangement Act*, RSC 1985, c C-36)**

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

**I. INTRODUCTION**

1. The Debtors / Petitioners Xebec Adsorption Inc., Xebec RNG Holdings Inc., Applied Compression Systems Ltd., Compressed Air International Inc., Xebec Holding USA Inc., Enerphase Industrial Solutions, Inc., California Compression, LLC, CDA Systems, LLC, Xebec Adsorption USA Inc., The Titus Company, Nortekbelair Corporation, Xebec Systems USA, LLC, 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 an order (the “**Second Amended and Restated Initial Order**”), substantially in the form of the draft order communicated herewith as **Exhibit [...]JP-4**, *inter alia*:
  - (a) extending the Stay (as defined below) until February 13, 2023 (the “**Extension Date**”);
  - (b) increasing the Administration Charge (as defined in the ARIO); and
  - (c) sealing the confidential exhibits filed in support of this Application and the summary of offers appended to the Monitor’s Report (as defined below).

A comparison of the Second Amended and Restated Initial Order and the ARIO (as defined below) is communicated herewith as **Exhibit [...]IP-4A**.

3. The Petitioners are also seeking the issuance of an order (the “**ACS Approval and Vesting Order**”), substantially in the form of the draft order communicated herewith as **Exhibit [...]IP-5**, *inter alia*:

- (a) authorizing the Petitioner Applied Compression Systems Ltd. (“**ACS**”) to execute an asset purchase agreement dated January 27, 2023 (the “**APA**”) between ACS, as vendor, and 1396905 B.C. Ltd., as purchaser (the “**Purchaser**”) for the sale of the Purchased Assets (as defined below) (the “**ACS Transaction**”); and
- (b) approving the ACS Transaction.

A comparison of the ACS Approval and Vesting Order and the model approval and vesting order published by the Barreau de Montréal is communicated herewith as **Exhibit [...]IP-5A**.

## 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 *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”) and a Bidding Procedures Order (the “**Bidding Procedures Order**” collectively with the FDIO, the “**First Day Orders**”), 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 pursuant to the ARIO (as defined below), (the “**Stay**”); and
- (c) declared that Québec is the “center of main interest” of the Petitioners and, accordingly, authorized the Petitioners to apply, as they may consider necessary or desirable, to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize and/or assist in carrying out the terms of the Initial Order and any subsequent Orders rendered by this Court in the context of these proceedings, including, without limitation, orders under Chapter 15 of the United States Bankruptcy Code 11 U.S.C. §§ 101-1532.

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” (the “**Bidding Procedures**”), 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 7, 2022, at the Petitioners’ request, the Court issued an Order Extending the Stay until October 20, 2022, as appears from the Court record.
9. 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.
10. The ARIO, *inter alia*:
  - (a) extended the Stay until November 28, 2022;
  - (b) approved a key employee retention plan, a key vice-president retention plan and a key executive incentive plan (collectively, the “**KERPs**”) and granted a Court-ordered charge to secure the payment owed to the key employees in accordance with the KERPs; and
  - (c) approved the debtor-in-possession evolving multiple draw credit facility (the “**DIP Facility**”) provided by the National Bank of Canada (“**NBC**”) and Export Development Canada (collectively, 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 DIP Facility.
11. On November 28, 2022, at the Petitioners’ request, the Court issued an Order Extending the Stay of Proceedings and Granting Ancillary Relief, which extended the Stay for a third time until February 3, 2023, as appears from the Court record.

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

12. In accordance with the Bidding Procedures Order, the SISP was conducted in accordance with the following milestones:
  - (a) non-binding letters of intent (“**LOIs**”) were due on or before November 11, 2022;
  - (b) NBF notified each Phase 1 Qualified Bidder as to whether its bid constituted a Phase 1 Satisfactory Bid on November 18, 2022; and

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

(c) Definitive offers by Phase 2 Qualified Bidders were due on or before January 6, 2023;

the whole as further provided for in the Bidding Procedures.

13. As previously reported to the Court, NBF distributed teasers to 479 potential targets, including potential investors and strategic acquirers.
14. A confidential virtual data room (the “**VDR**”) was made available to potential targets, provided that such potential targets execute a non-disclosure agreement (“**NDA**”).
15. As a result, 101 potential targets executed NDAs and were thereafter granted access to the VDR. Of those 101 potential bidders, 67 were deemed Phase 1 Qualified Bidders.
16. Of the 67 Phase 1 Qualified Bidders, 32 submitted bids in the form of non-binding LOIs.
17. The Petitioners, in consultation with the Monitor and NBF, determined that 19 Phase 1 Qualified Bidders were Phase 2 Qualified Bidders, and invited them to participate in phase 2 of the SISF.
18. On January 6, 2023 (the “**Phase 2 Bid Deadline**”), a number of Binding Offers were submitted by Phase 2 Qualified Bidders. A summary of the Binding Offers received in the context of the SISF will be appended (under seal) to the Monitor’s report to be filed in support of the present Application (the “**Monitor’s Report**”).
19. Further to a review of the Binding Offers, the Petitioners, in consultation with the Monitor and NBF determined that it would be in the best interests of the stakeholders that further clarifications in respect of the Binding Offers be sought.
20. Accordingly, NBF engaged with the Phase 2 Qualified Bidders to obtain clarifications regarding their Binding Offers and provided certain Phase 2 Qualified Bidders with an “Issues List” identifying key deficiencies in their respective Binding Offers.
21. NBF also held subsequent meetings to discuss the Binding Offers with each Phase 2 Qualified Bidder and requested that each Phase 2 Qualified Bidder address the identified issues and resubmit their “best and final offer” by no later than January 16, 2023.
22. On January 16, 2023, each of the Phase 2 Qualified Bidders submitted a revised Binding Offer.
23. Following receipt of same, the Petitioners, in consultation with NBF and the Monitor, conducted numerous meetings to review and evaluate the revised Binding

Offers and engaged in negotiations with certain Phase 2 Qualified Bidders with a view to entering into definitive agreements.

24. In light of the revised Binding Offers, the Petitioners, in consultation with the Monitor and NBF, determined that it was in the best interest of the Petitioners and their stakeholders to not hold an auction amongst the Phase 2 Qualified Bidders.

**A. Sale of ACS assets<sup>2</sup>**

25. ACS is a wholly owned subsidiary of Xebec Adsorption Inc. It offers a single source solution for air and gas compression requirements and focuses on custom designed and fabricated compressor packages for specialized applications in the industry sector. It operates in Cranbrook, British Columbia.
26. As at the Phase 2 Bid Deadline, no offers had been made with respect to ACS.
27. However, following the Phase 2 Bid Deadline, the Purchaser submitted an offer for the assets of ACS. Subsequently, the Petitioners, with the assistance of NBF, negotiated a revised and improved offer from the Purchaser.
28. The Purchaser is a newly established entity whose main stakeholder is the current general manager of ACS.
29. In light of the current context and after careful consideration of all alternatives, the Petitioners determined, in consultation with the Monitor and NBF, that the revised offer from the Purchaser was the most advantageous to the stakeholders of ACS and of the Xebec Group generally.
30. The ACS Transaction contemplates the sale of substantially all assets of ACS (the **"Purchased Assets"**) and the continuation of its business by the Purchaser, including the continued employment of 23 employees currently actively employed by ACS.
31. The APA contemplates the sale of the Purchased Assets for a purchase price, which should remain confidential, but which includes Accrued Liabilities (the **"Purchase Price"**)
32. The APA also includes the following key terms:
  - (a) the Purchased Assets are being sold on an "as is, where is" basis without any legal warrant and at the risk and peril of the Purchaser;
  - (b) it is a condition of the APA that the ACS Approval and Vesting Order be issued by this Court;

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

- (c) the APA provides that the Purchase Price is payable in full by the Purchaser to the Monitor at Closing;
- (d) the ACS Transaction must close on or before February 10, 2023, but it is currently contemplated that Closing is expected to occur on the day of the issuance of the ACS Approval and Vesting Order, should the Court determine it appropriate to issue same.

A redacted copy of the APA is communicated herewith as **Exhibit P-3**.

33. Given the current circumstances, the Petitioners believe that:

- (a) the Purchase Price for the sale of the Purchased Assets is reasonable and fair in the circumstances; and
- (b) the expedited closing of the ACS, should this Court issue the ACS Approval and Vesting Order, will benefit all stakeholders including in particular the employees of ACS.

34. As a result, the Petitioners are of the view that the ACS Transaction represents the highest and best transaction available resulting from the SISP.

35. As appears from above, the SISP was conducted in a fair and reasonable manner and in accordance with the Bidding Procedures Order.

36. As at the date hereof, absent a transaction, ACS does not have sufficient liquidity to continue its operations in the ordinary course.

37. Considering that all Purchased Assets are in Canada, there is no requirement to obtain the approval of the U.S. Bankruptcy Court seized with the Chapter 15 Proceedings in respect of the Petitioners (the "**U.S. Bankruptcy Court**").

37.1 The ACS Approval and Vesting Order authorizes the Monitor to use the net proceeds of the ACS Transaction to pay the Professionals (as defined in the FDIO Application) for professional services rendered covered by the Administrative Charge.

38. As will appear from the Monitor's Report, the Monitor supports the ACS Transaction and the issuance of the ACS Approval and Vesting Order. In addition, the Petitioners understand that the Interim Lenders support the ACS Transaction.

## **B. Sale of Tiger Filtration Limited**

39. Xebec Holding UK Limited ("**Holding UK**"), a wholly owned subsidiary of Xebec, has no active operations and is the sole shareholder of Tiger Filtration Limited ("**Tiger**"), which operates a facility located in Sunderland, United Kingdom, focused on the manufacturing of elements and filters. Neither Holding UK, nor Tiger are

Petitioners in the present CCAA Proceedings, however their assets were included and marketed as part of the SISP.

40. As at the Phase 2 Bid Deadline, an offer was made for the acquisition of all of the issued and outstanding shares of Tiger (the “**Tiger Shares**”).
41. After carefully considering all alternatives, the Petitioners determined, in consultation with the Monitor and NBF, that the aforementioned offer was the most advantageous to the stakeholders of Holding UK and of the Xebec Group generally.
42. As a result, on January 27, 2023, Holding UK, completed the sale of the Tiger Shares (the “**Tiger Transaction**”).
43. The Tiger Transaction will allow Tiger to continue operating as a going concern. The Monitor and the Interim Lenders supported the Tiger Transaction.
44. The proceeds of the Tiger Transaction will, *inter alia*, allow for the repayment in full of the secured Operating Facility (as defined in the Application for the issuance of a First Day Initial Order, a deemed extension of the stay period and a Bidding Procedures Order dated September 28, 2022, the “**FDIO Application**”) provided to the Xebec Group by NBC.

#### **C. Ongoing negotiations**

45. Sustained discussions are ongoing with several Phase 2 Qualified Bidders in respect of various transactions, designed to ensure that the SISP results in the highest and best transactions available in the circumstances, the whole for the benefit of all stakeholders.
46. Negotiations, including in respect of Definitive Documentation (as defined in the Bidding Procedures Order), are advancing well and the Petitioners expect to bring one or more applications seeking approval of one or more transaction(s) in the near term.

### **IV. GROUNDS FOR THE ISSUANCE OF THE SECOND AMENDED AND RESTATED INITIAL ORDER**

#### **A. Extension of the Stay**

47. Since the issuance of the ARIO, the Petitioners have acted, and continue to act in good faith and with due diligence.
48. As described above, the Petitioners, with the assistance of NBF and under the supervision of the Monitor, have diligently implemented and substantially advanced the SISP.
49. The Stay currently expires on February 3, 2023.



50. The Petitioners are seeking to extend the Stay to the Extension Date, which will provide the Petitioners with the sufficient time to notably:

- (a) complete discussions and negotiations with Interim Lenders to secure a supplemental interim financing to continue operations and advance the SISP past the Extension Date;
- (b) continue and complete negotiations with Phase 2 Qualified Bidders determined to be Successful Bidders pursuant to the SISP and finalize the Definitive Documentation;
- (c) [...] prepare for seeking approval of the resulting transaction(s) by this Honourable Court, and as required, the U.S. Bankruptcy Court; and
- (d) [...].

51. [...] Additional financing will be required to continue operations and advance the SISP [...] past the Extension Date. Discussions with respect to such financing are advancing with the Interim Lenders and the Petitioners are hopeful that [...] they will be able to seek approval by this Court of the required additional financing in the near term.

52. Should this Honourable Court not extend the Stay, the Petitioners will not be able to complete the SISP, to the detriment of their stakeholders.

53. No creditor will be unduly prejudiced by the extension sought.

**B. Increase of the Administration Charge**

54. The Petitioners seek the increase of the Administration Charge from a maximum amount of \$900,000 to a maximum amount of \$3,000,000. Such increase of the Administration Charge is justified by the Petitioners' cash flow considerations.

55. More specifically, Petitioners are required to preserve their liquidity while the transactions resulting from the SISP are being negotiated and proceed to closing with the approval of the Court. This process requires intensive work from the Professionals (as defined in the FDIO Application).

56. As a result, the Petitioners are currently not in a position to keep current all amounts due to the Professionals for professional services rendered on an ongoing basis and the outstanding balance is significantly higher than the amount of the Administration Charge, as it currently stands.

57. However, upon closing of the transactions resulting from the SISP, the Petitioners expect to be in a position to pay the Professionals out of the proceeds of such transactions, should same be approved by the Court.

58. The Petitioners believe that the increased amount of the Administration Charge is fair and reasonable in the circumstances and is essential to the viability of the Petitioners' restructuring efforts, particularly at this crucial juncture.

**C. Sealing of Confidential Documents**

59. The Petitioners are seeking an order declaring that the following be kept strictly confidential and under seal:
- (a) the unredacted version of the APA; and
  - (b) the Summary of offers received in the context of the SISP appended to the Monitor's report to be filed by the Monitor.
60. The sealing of the unredacted version of the APA is necessary considering that:
- (a) The SISP has not been completed, and disclosing the Purchase Price may affect negotiations with Phase 2 Qualified Bidders interested in other assets of the Xebec Group;
  - (b) Schedule 1.1(ii) contains individualized information on the compensation of ACS employees. In the current competitive employment market, such information could be highly prejudicial to ACS, allowing competitors to "poach" employees; and
  - (c) Schedule 2.3(b) contains commercially sensitive information regarding trade payables, which can give an unfair advantage to ACS's competitors, if disclosed.
61. The sealing of the Summary of offers received in the context of the SISP is justified and necessary for the Petitioners to continue negotiating transactions within the SISP. The disclosure of these documents would have a prejudicial impact on the ongoing SISP.

**D. Execution Notwithstanding Appeal**

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

**V. CONCLUSION**

63. The Monitor has informed the Petitioners that it supports the present Application.
64. For the reasons set forth above, the Petitioners respectfully submit that it is both appropriate and necessary that this Honourable Court render the order sought

herein. With such relief, the Petitioners will be able to continue going concern operations and pursue the ongoing SISF to maximize value for the benefit of stakeholders.

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

**GRANT** the present *Amended Application for the Issuance of a Second Amended and Restated Initial Order and an Approval and Vesting Order* (the “**Application**”);

**ISSUE** orders substantially in the form of the draft orders communicated in support of the Application as **Exhibits P-4** and **P-5**;

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

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

MONTREAL, February 1, 2023

*Osler, Hoskin & Harcourt LLP*

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**Osler, Hoskin & Harcourt LLP**

Mtre. Sandra Abitan | Mtre. Julien Morissette |

Mtre. Ilia Kravtsov | Mtre. Sophie Courville

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Our file: 1233913

## AFFIDAVIT

I the undersigned, Dimitrios Vounassis, domiciled for the purpose hereof at 700-1130 Sherbrooke Street West, in the city and judicial district of Montréal, Québec, H3A 2M8, solemnly declare the following:

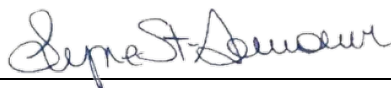
1. I am the President and CEO of Xebec Adsorption Inc. and a duly authorized representative of the Debtors / Petitioners for the purposes hereof.
2. I have taken cognizance of the attached *Amended Application for the Issuance of a Second Amended and Restated Initial Order and an Approval and Vesting Order* (the "**Application**").
3. All of the facts alleged in the Application of which I have personal knowledge are true.
4. Where the facts alleged in the Application have been obtained from others, I believe them to be true.

AND I HAVE SIGNED:



**Dimitrios Vounassis**

SOLEMNLY DECLARED BEFORE ME BY  
VIRTUAL MEANS IN MONTRÉAL,  
QUÉBEC, ON FEBRUARY 1, 2023.



Lyne St-Amour  
Commissioner for Oaths for the Province of  
Québec

**AMENDED NOTICE OF PRESENTATION**  
**COMMERCIAL DIVISION**

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

**1. PRESENTATION OF THE PROCEEDING**

**TAKE NOTE** that the *Amended Application for the Issuance of a Second Amended and Restated Initial Order and an Approval and Vesting Order* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in Courtroom 16.02 of the Montréal Courthouse during the virtual calling of the roll on February 3, 2023, at 9:15 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 16.02 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: 177 110 814#

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

Videoconference ID: 1180976201

**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 16.02 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 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 January 31, 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, February 1, 2023

*Osler, Hoskin & Harcourt LLP*

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

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Commercial Division)

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

No.: 500-11-061483-224

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**CALIFORNIA COMPRESSION, LLC**

-and-

**XEBEC SYSTEMS USA, LLC**

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

<b><u>AMENDED</u> LIST OF EXHIBITS</b>
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|--------------|--|
| P-1:         | Draft Second Amended and Restated Initial Order  |
| P-1A:        | Comparison between the Second Amended and Restated Initial Order and the ARIO  |
| P-2:         | Draft ACS Approval and Vesting Order   |
| P-2A:        | Comparison between the ACS Approval and Vesting Order and the model approval and vesting order published by the Barreau de Montréal                |
| P-3:         | Redacted copy of the APA   |
| <u>P-4:</u>  | <u>Revised Draft Second Amended and Restated Initial Order</u>   |
| <u>P-4A:</u> | <u>Comparison between the Revised Second Amended and Restated Initial Order and the ARIO</u>   |
| <u>P-5:</u>  | <u>Revised Draft ACS Approval and Vesting Order</u>  |
| <u>P-5A:</u> | <u>Comparison between the Revised ACS Approval and Vesting Order and the model approval and vesting order published by the Barreau de Montréal</u> |

MONTREAL, February 1, 2023

*Osler, Hoskin & Harcourt LLP*

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



## **EXHIBIT P-4**

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 3, 2023

---

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

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

**XEBEC ADSORPTION INC.  
XEBEC RNG HOLDINGS INC.  
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COMPRESSED AIR INTERNATIONAL INC.  
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XBC FLOW SERVICES – WISCONSIN INC.  
CALIFORNIA COMPRESSION, LLC  
XEBEC SYSTEMS USA, LLC**  
Debtors / Petitioners

and

**DELOITTE RESTRUCTURING INC.**  
Monitor

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**SECOND AMENDED AND RESTATED INITIAL ORDER**

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- [1] **CONSIDERING** the *Amended Application for the Issuance of a Second Amended and Restated Initial Order and an Approval and Vesting Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the “**ARIO Application**”) pursuant to the CCAA;
- [3] **CONSIDERING** the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the “**Initial Application**”) pursuant to the CCAA;
- [4] **CONSIDERING** the Firth Report of the Monitor dated January ●, 2023 (the “**Report**”);
- [5] **CONSIDERING** the submissions of counsel and the testimony of the witnesses heard;
- [6] **GIVEN** the provisions of the CCAA;
- [7] **GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

**THE COURT HEREBY:**

- [8] **GRANTS** the Application.
- [9] **ISSUES** an order pursuant to the CCAA (the “**Order**”), divided under the following headings:
- (a) Service;
  - (b) Application of the CCAA;
  - (c) Effective Time;
  - (d) Administrative Consolidation;
  - (e) Plan of Arrangement;
  - (f) Stay of Proceedings against the Petitioners and the Property;

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- (g) Stay of Proceedings against the Directors and Officers;
- (h) Possession of Property and Operations;
- (i) No Exercise of Rights or Remedies;
- (j) No Interference with Rights;
- (k) Continuation of Services;
- (l) Non-Derogation of Rights;
- (m) Interim Financing (DIP);
- (n) Directors' and Officers' Indemnification and Charge;
- (o) Restructuring;
- (p) Powers of the Monitor;
- (q) KERPs and KERP Charge;
- (r) Priorities and General Provisions Relating to CCAA Charges;
- (s) Hearing Scheduling and Details;
- (t) General.

**a. Service**

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

**b. Application of the CCAA**

- [11] **DECLARES** that the Petitioners are debtor companies to which the CCAA applies.

**c. Effective Time**

- [12] **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montréal time, Province of Québec, on September 29, 2022 (the "**Effective Time**").

**d. Administrative Consolidation**

- [13] **ORDERS** the consolidation of these CCAA proceedings of the Petitioners under one single Court file, in file number 500-11-061483-224.
- [14] **ORDERS** that all existing and future proceedings, filings, and other matters (including, without limitation, all applications, reports and cash flows) in the CCAA Proceedings henceforth be filed jointly and together by the Petitioners, and the Monitor, as applicable, under file number 500-11-061483-224.
- [15] **DECLARES** that the consolidation of these CCAA proceedings in respect of the Petitioners shall be for administrative purposes only and shall not effect a consolidation of the assets and property or of the debts and obligations of each of the Petitioners including, without limitation, for the purposes of any plan of compromise or arrangement (a “**Plan**”) that may be hereafter proposed.

**e. Plan of Arrangement**

- [16] **DECLARES** that the Petitioners shall have the authority to file with this Court and to submit to their creditors one or more Plans in accordance with the CCAA.

**f. Stay of Proceedings against the Petitioners and the Property**

- [17] **ORDERS** that, until and including February 13, 2023 (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Petitioners, or affecting the Petitioners’ business operations and activities (the “**Business**”) or the Property (as defined herein), including as provided in paragraph [29] herein except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.
- [18] **ORDERS** that the rights of His Majesty in right of Canada and His Majesty in right of a Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.
- [19] **ORDERS** and **DECLARES** that the National Bank of Canada (“**NBC**”) is an unaffected creditor in these CCAA proceedings and is not subject to the stay of proceedings, including the Stay Period and any renewal or extension thereof, or any other limitations of creditors’ right or recourses under this Order. Nothing in this Order shall prevent NBC from enforcing its security against the Petitioners’ Property in conformity with its contractual rights, subject only to NBC providing advance notice of its intention to do so.

**g. Stay of Proceedings against Directors and Officers**

- [20] **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioners nor against any person deemed to be a director or an officer of any of the Petitioners under subsection 11.03(3) CCAA (each, a “**Director**”, and collectively the “**Directors**”) in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioners where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

**h. Possession of Property and Operations**

- [21] **ORDERS** that the Petitioners shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the “**Property**”), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph [47] hereof.
- [22] **ORDERS** that the Petitioners shall be entitled, but not required to pay the following expenses with the prior consent of the Monitor or further order of the Court, as the case may be, whether incurred prior to or after this Order:
- (a) outstanding and future wages, salaries, expenses and, benefits payable prior to or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
  - (b) the fees and disbursements of any counsel, advisors and agents retained or employed by the Petitioners directly related to these proceedings, at their standard rates and charges; and
  - (c) amounts owing for goods or services actually supplied to the Petitioners prior to the date of this Order by third party suppliers up to a maximum aggregate amount of \$700,000, if, in the opinion of the Petitioners and of the Monitor, the supplier is critical to the business and ongoing operations of the Petitioners.
- [23] **ORDERS** that except as otherwise provided to the contrary herein, the Petitioners shall be entitled to pay all reasonable expenses incurred by the Petitioners in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

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- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business; and
- (b) payment for goods or services actually supplied to the Petitioners following the date of this Order.

[24] **ORDERS** that the Petitioners shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension Plan, and (iv) income taxes; and
- (b) all goods and services, harmonized sales or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners and in connection with the sale of goods and services by the Petitioners but only where such Sales Taxes are accrued or collected after the date of this Order.

[25] **ORDERS** that, subject to the consent of the Monitor, each of the Petitioners is authorized to complete outstanding transactions and engage in new transactions with other Petitioners or their affiliates, including, without limitation, (a) intercompany funding transactions, (b) purchase and sale transactions for goods or services in the ordinary course of the Business, (c) allocation and payments of costs, expenses and other amounts for the benefit of the Petitioners, including, without limitation, debt repayments and interest costs, head office, shared services and restructuring costs (collectively, "**Intercompany Transactions**"), and to continue, on and after the date of this Order, to effect Intercompany Transactions. All Intercompany Transactions among the Petitioners shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures as the Monitor may require, or subject to this Order or further Order of this Court.

[26] **ORDERS** that, in conformity with the DIP Term Sheet, the Petitioners shall notify, at least two (2) days in advance, the Interim Lenders of any monetary payment from a Petitioner to another Petitioner or their affiliates, and that the Monitor shall continue to report from time to time to the Court on such monetary payments constituting Intercompany Transactions.

[27] **ORDERS** that prior to the distribution of any net sale proceeds resulting from the sale or divestiture of any Business or Property (but excluding any distribution made

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in respect of any amounts owing under the CCAA Charges (as defined herein), as the case may, it being understood that in each such case, said distribution may in itself constitute an Intercompany Transaction to form part of a subsequent Intercompany Transactions Report, as defined herein), the Monitor shall prepare and file with the Court a report (each, an “**Intercompany Transactions Report**”) detailing all Intercompany Transactions which occurred on or after the date of the Initial Order with respect to the applicable Petitioner(s), which Intercompany Transactions Report shall include the Monitor’s proposed allocation of the net amount to be attributed to each Petitioner as a result of the applicable Intercompany Transactions, if any, and any net sale proceeds to be remitted by one Petitioner to another Petitioner as the case may be (the “**Proposed Allocation**”).

- [28] **ORDERS** the Monitor to serve a copy of the Intercompany Transactions Report upon the service list in these proceedings and **DECLARES** that any interested creditor shall be entitled to apply to this Court within five (5) calendar days of said notification to the service list of the Intercompany Transactions Report to contest or make representations with respect to the Proposed Allocation.
- [29] **DECLARES** that paragraph [26] and [27] of this Order and their effects shall apply to any distribution, even outside of these CCAA proceedings, including, without limitation, a distribution by any trustee in bankruptcy, receiver, receiver and manager, interim receiver or any other person appointed to make a distribution in respect of the Property, unless the Court orders otherwise.

#### **i. No Exercise of Rights or Remedies**

- [30] **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the Petitioners is a party as a result of the insolvency of the Petitioners and/or these CCAA proceedings, any events of default or non-performance by the Petitioners or any admissions or evidence in these CCAA proceedings, of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof are hereby stayed and suspended except with leave of this Court.
- [31] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods including, without limitation, to file grievances relating to the Petitioners or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature



whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioners, or any of them, become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) is appointed in respect of the Petitioners, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioners in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

**j. No Interference with Rights**

- [32] **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, fail to renew (when contractually provided), alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners except with the written consent of the Petitioners and the Monitor, or with leave of this Court.

**k. Continuation of Services**

- [33] **ORDERS** that during the Stay Period and subject to paragraphs [33] and [34] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioners or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioners, are hereby restrained until further order of this Court from discontinuing, altering, failing to renew (when contractually provided), interfering with or terminating the supply or, as the case may be, interrupting, delaying or stopping the transit of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Petitioners, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners, as applicable, with the consent of the Monitor, or as may be ordered by this Court.
- [34] **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioners on or after the date of this Order, nor shall

any Person be under any obligation on or after the date of this Order to make further advance of money or otherwise extend any credit to the Petitioners.

- [35] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any Petitioners with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of this Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by a Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into a Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

#### **I. Non-Derogation of Rights**

- [36] **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Petitioners shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of this Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

#### **m. Interim Financing (DIP)**

- [37] **ORDERS** that the Petitioners be and are hereby authorized to borrow from NBC and Export Development Canada (collectively, the "**Interim Lenders**") such amounts from time to time as the Petitioners may consider necessary or desirable, up to an aggregate principal amount not exceeding \$3,000,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed under seal as Exhibit P-2A in support of the Application (the "**DIP Term Sheet**") and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioners and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents (as defined hereinafter) (the "**DIP Facility**").
- [38] **ORDERS** that the Petitioners are hereby authorized to execute and deliver the DIP Term Sheet and other security documents and ancillary documents as may be required by the Interim Lenders in connection with the DIP Facility and the DIP Term Sheet (collectively, the "**Interim Financing Documents**"), with such non-

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material alterations, changes, amendments, deletions or additions thereto as may be agreed to with the Interim Lenders, but only with the consent of the Monitor, and the Petitioners are hereby authorized to perform all of its obligations under the DIP Term Sheet and the Interim Financing Documents.

- [39] **ORDERS** that Petitioners shall pay to the Interim Lenders, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other reasonably required advisors to or agents of the Interim Lenders on a full indemnity basis (the “**Interim Lender Expenses**”)) under the DIP Term Sheet and the Interim Financing Documents and shall perform all of their other obligations owed to the Interim Lenders pursuant to the DIP Term Sheet, the Interim Financing Documents and the Order.
- [40] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,600,000 (the “**DIP Charge**”) in favour of the Interim Lenders as security for all obligations of the Petitioners to the Interim Lenders with respect to the payment of the DIP Facility (including principal, interest and the Interim Lender Expenses) owing to the Interim Lenders under or in connection with the DIP Term Sheet and the Interim Financing Documents. Such Interim Lender Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs [61] and [62] of this Order.
- [41] **ORDERS** that the claims of the Interim Lenders pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lenders, in that capacity, shall be treated as unaffected creditors in these proceedings and in any Plan.
- [42] **ORDERS** that the Interim Lenders may:
- (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the DIP Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
  - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Petitioners if the Petitioners fail to meet the provisions of the DIP Term Sheet and the Interim Financing Documents.
- [43] **ORDERS** that the Interim Lenders shall not take any enforcement steps under the DIP Term Sheet, the Interim Financing Documents or the DIP Charge without providing at least 3 business days written notice (the “**Notice Period**”) of a default thereunder to the Petitioners, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such

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notice. Upon expiry of such Notice Period, the Interim Lenders shall be entitled to take any and all steps, the DIP Term Sheet, the Interim Financing Documents, the DIP Charge and otherwise permitted at law, but without having to send any additional demands under Section 244 of the BIA, under the Civil Code of Quebec or any other similar legislation.

- [44] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [68] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [36] to [43] of this Order unless either (a) notice of a motion for such order is served on the Interim Lenders by the moving party within at least seven (7) days prior to the presentation thereof or (b) the Interim Lenders apply for or consents to such order.

#### **n. Directors' and Officers' Indemnification and Charge**

- [45] **ORDERS** that the Petitioners shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioners after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.
- [46] **ORDERS** that the Directors of the Petitioners shall be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$3,700,000 (the "**D&O Charge**"), as security for the indemnity provided in paragraph [44] of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The D&O Charge shall have the priority set out in paragraphs [61] and [62] of this Order.
- [47] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Directors shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph [44] of this Order.

#### **o. Restructuring**

- [48] **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioners, subject to prior approval of the Monitor or further order of the Court, as the case may be, shall have the right to:

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- (a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate;
- (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
- (c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$750,000 or \$1,500,000 in the aggregate;
- (d) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioners and such employee, or failing such agreement, make provision to deal with, any consequences thereof in a Plan, as the Petitioners may determine;
- (e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the relevant Petitioner, as applicable, and the relevant party, or failing such agreement, to make provision for the consequences thereof in a Plan; and
- (f) subject to section 11.3 CCAA, assign any rights and obligations of Petitioners.

[49] **DECLARES** that, in order to facilitate the Restructuring, the Petitioners may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.

[50] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, C 5, and equivalent provisions of the *Act Respecting the Protection of Personal Information in the Private Sector*, RSQ, c P-39.1, the Petitioners are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a “**Third Party**”), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of a Plan or a transaction for that purpose,

provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of a Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

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

[51] **ORDERS** that *Deloitte Restructuring Inc.* is hereby appointed to monitor the business and financial affairs of the Petitioners as an officer of this Court (the “**Monitor**”) and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

- (a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, in *La Presse* (French version) and the *Globe and Mail National Edition* (English version) and (ii) within four (4) business days after the date of this Order (A) post on the Monitor’s website a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioners of more than \$1,000, advising them that this Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;
- (b) shall monitor the Petitioners’ receipts and disbursements;
- (c) shall assist the Petitioners, to the extent required by the Petitioners, in dealing with their creditors and other interested Persons during the Stay Period;
- (d) shall assist the Petitioners, to the extent required by the Petitioners, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;

- (e) shall advise and assist the Petitioners, to the extent required by the Petitioners, to review the Petitioners' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (f) shall assist the Petitioners, to the extent required by the Petitioners, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider a Plan;
- (g) shall report to the Court on the state of the business and financial affairs of the Petitioners or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated reports for the Petitioners;
- (h) shall report to this Court and interested parties, including but not limited to creditors affected by a Plan, with respect to the Monitor's assessment of, and recommendations with respect to, a Plan;
- (i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under this Order or under the CCAA;
- (k) may give any consent or approval as may be contemplated by this Order or the CCAA;
- (l) may hold and administer funds in connection with arrangements made among the Petitioners, any counter-parties and the Monitor, or by Order of this Court; and
- (m) may perform such other duties as are required by this Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioners, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Petitioners.

- [52] **ORDERS** that the Petitioners and their current and former shareholders, Directors, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties, rights and obligations as provided and set out in this Order.
- [53] **ORDERS** that, without limiting the generality of anything herein, the Petitioners and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of this Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioners in connection with the Monitor's duties and responsibilities hereunder.
- [54] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioners with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioners' counsel. In the case of information that the Monitor has been advised by the Petitioners is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioners unless otherwise directed by this Court.
- [55] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioners or continues the employment of the Petitioners' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
- [56] **DECLARES** that Section 215 of the BIA applies *mutatis mutandis* and that no action or other proceedings shall be commenced against the Monitor or its representatives relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least seven (7) days' notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor and their representatives shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [57] **DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.
- [58] **ORDERS** that the Petitioners shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

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- [59] **DECLARES** that the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel, as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, any Plan and the Restructuring, as well as National Bank Financial Inc. ("**NBF**"), as security for the Engagement Fee and the Fairness Opinion Fee (as such terms are defined in the engagement letter filed as Exhibit P-3 in support of the Initial Application, the "**Engagement Letter**") and all disbursements incurred by NBF pursuant to the Engagement Letter, be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$3,000,000 (the "**Administration Charge**"), having the priority established by paragraphs [61] and [62] of this Order.

**q. KERPs and KERP Charge**

- [60] **ORDERS** that the key employee retention plan, key vice-president retention plan and the key executive incentive plan (collectively, the "**KERPs**") described in the Application and summarized in the document filed under seal as Exhibit P-3 to the Application are hereby approved, and the Petitioners are hereby authorized and empowered to perform their obligations set forth thereunder, including by making the payments in accordance with the terms set out therein.
- [61] **ORDERS** that the employees designated in the KERPs shall be entitled to the benefit of and are hereby granted a charge and security in the on the Property, to the extent of the aggregate amount of \$1,080,000 (the "**KERP Charge**"), having the priority established by paragraphs [61] and [62] of this Order.

**r. Priorities and General Provisions Relating to CCAA Charges**

- [62] **DECLARES** that the priorities of the Administration Charge and the D&O Charge (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
- (a) first, the Administration Charge;
  - (b) second, the D&O Charge;
  - (c) third, the DIP Charge;
  - (d) fourth, the Transaction Charge (as defined in the Bidding Procedures Order dated September 29, 2022);
  - (e) fifth, the KERP Charge.
- [63] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options,

encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Property whether or not charged by such Encumbrances, save that, as regards the Transaction Charge and the KERP Charge only, the question with respect to its priority ranking as regards any amounts owing by the Petitioners pursuant to paragraph [23](a) of this Order shall be determined by the Court at a later date and time.

[64] **ORDERS** that, except as otherwise expressly provided for herein, the Petitioners shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioner, as applicable, obtains the prior written consent of the Monitor and the prior approval of the Court.

[65] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

[66] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease or other arrangement which binds the Petitioners (a “**Third Party Agreement**”), and notwithstanding any provision to the contrary in any Third Party Agreement:

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

[67] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any Petitioners

pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances, preferential payments, transfers at undervalue or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

- [68] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners.

**s. Hearing Scheduling and Details**

- [69] **ORDERS** that, subject to further Order of this Court, all applications in these CCAA proceedings are to be brought on not less than five (5) calendar days' notice to all Persons on the service list prepared by the Monitor or counsel for the Monitor in connection with these CCAA proceedings (the "**Service List**"). Each application shall specify a date (the "**Initial Return Date**") and time (the "**Initial Return Time**") for the hearing.
- [70] **ORDERS** that any Person wishing to object to the relief sought on an application in these CCAA proceedings must serve responding materials or a notice stating the objection to the application and the grounds for such objection (a "**Notice of Objection**") in writing to the moving party, the Petitioners and the Monitor, with a copy to all Persons on the Service List, no later than 5 P.M. on the date that is three (3) calendar days prior to the Initial Return Date (the "**Objection Deadline**").
- [71] **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of these proceedings (the "**Presiding Judge**") may determine: (a) whether a hearing is necessary; (b) whether such hearing will be in person, by videoconference, by telephone or by written submissions only; and (c) the parties from whom submissions are required (collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.
- [72] **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Monitor or the Monitor's counsel shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor or the Monitor's counsel shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in these proceedings.

- [73] **ORDERS** that, if a Notice of Objection is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time, or such earlier or later time as may be directed by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial Return Date and at the Initial Return Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested application and such other matters, including interim relief, as the Court may direct.

**t. General**

- [74] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, representatives, legal counsel or financial advisers of the Petitioners or of the Monitor in relation to the Business or Property of the Petitioners, without first obtaining leave of this Court, upon ten (10) calendar days' written notice to the Petitioners' counsel, the Monitor's counsel, and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
- [75] **DECLARES** that this Order and any proceeding or affidavit leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioners under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [76] **DECLARES** that, except as otherwise specified herein, the Petitioners and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery, electronic mail, or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioners and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.
- [77] **DECLARES** that the Petitioners and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses.
- [78] **ORDERS** that Exhibits-P-3, P-8, P-10 and Schedule D to Exhibit P-5 to the Initial Application, Exhibits P-2, P-2A and P-3 to the ARIO Application, and Exhibit ● to the Report shall be filed under seal and kept confidential until further order of this Court.

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- [79] **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served an Answer on the counsel for the Petitioners and the Monitor and has filed such notice with this Court, or appears on the Service List, save and except when an order is sought against a Person not previously involved in these proceedings.
- [80] **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.
- [81] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [82] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Petitioners in any foreign proceeding, to assist the Petitioners, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.
- [83] **AUTHORIZES** the Monitor or the Petitioners to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the U.S. Bankruptcy Code, including an order for recognition of these CCAA proceedings as "Foreign Main Proceedings" in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, for which Xebec Adsorption Inc., shall be the foreign representative of the Petitioners. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be deemed necessary or appropriate for that purpose.
- [84] **DECLARES** that, for the purposes of any applications authorized by paragraph [82] of this Order, Petitioners' centre of main interest is located in Montréal, Québec, Canada.

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

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

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Christian Immer, J.S.C.

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

Hearing date: February 3, 2023

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## **EXHIBIT P-4A**

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: ~~October 20~~ February 3, 2023

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

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

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

and

**DELOITTE RESTRUCTURING INC.**  
Monitor

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**SECOND AMENDED AND RESTATED INITIAL ORDER**

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- [1] **CONSIDERING** the Amended Application for the Issuance of ~~an~~ Second Amended and Restated Initial Order and an Approval and Vesting Order (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the “**ARIO Application**”) pursuant to the CCAA;
- [3] **CONSIDERING** the Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order (the “**Initial Application**”) pursuant to the CCAA;
- [4] ~~[3]~~ **CONSIDERING** the ~~Third~~Firth Report of the Monitor dated ~~October 19~~January 19, 202~~23~~23 (the “**Report**”);
- [5] ~~[4]~~ **CONSIDERING** the submissions of counsel and the testimony of the witnesses heard;
- [6] ~~[5]~~ **GIVEN** the provisions of the CCAA;
- [7] ~~[6]~~ **GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

**THE COURT HEREBY:**

- [8] ~~[7]~~ **GRANTS** the Application.
- [9] ~~[8]~~ **ISSUES** an order pursuant to the CCAA (the “**Order**”), divided under the following headings:
- (a) Service;
  - (b) Application of the CCAA;
  - (c) Effective Time;
  - (d) Administrative Consolidation;
  - (e) Plan of Arrangement;
  - (f) Stay of Proceedings against the Petitioners and the Property;

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- (g) Stay of Proceedings against the Directors and Officers;
- (h) Possession of Property and Operations;
- (i) No Exercise of Rights or Remedies;
- (j) No Interference with Rights;
- (k) Continuation of Services;
- (l) Non-Derogation of Rights;
- (m) Interim Financing (DIP);
- (n) Directors' and Officers' Indemnification and Charge;
- (o) Restructuring;
- (p) Powers of the Monitor;
- (q) KERPs and KERP Charge;
- (r) Priorities and General Provisions Relating to CCAA Charges;
- (s) Hearing Scheduling and Details;
- (t) General.

**a. Service**

[10] ~~[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 hereby dispenses with further service thereof.

**b. Application of the CCAA**

[11] ~~[10]~~ **DECLARES** that the Petitioners are debtor companies to which the CCAA applies.

**c. Effective Time**

[12] ~~[11]~~ **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montréal time, Province of Québec, on September 29, 2022 (the "**Effective Time**").

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**d. Administrative Consolidation**

[13] ~~[12]~~ **ORDERS** the consolidation of these CCAA proceedings of the Petitioners under one single Court file, in file number 500-11-061483-224.

[14] ~~[13]~~ **ORDERS** that all existing and future proceedings, filings, and other matters (including, without limitation, all applications, reports and cash flows) in the CCAA Proceedings henceforth be filed jointly and together by the Petitioners, and the Monitor, as applicable, under file number 500-11-061483-224.

[15] ~~[14]~~ **DECLARES** that the consolidation of these CCAA proceedings in respect of the Petitioners shall be for administrative purposes only and shall not effect a consolidation of the assets and property or of the debts and obligations of each of the Petitioners including, without limitation, for the purposes of any plan of compromise or arrangement (a “**Plan**”) that may be hereafter proposed.

**e. Plan of Arrangement**

[16] ~~[15]~~ **DECLARES** that the Petitioners shall have the authority to file with this Court and to submit to their creditors one or more Plans in accordance with the CCAA.

**f. Stay of Proceedings against the Petitioners and the Property**

[17] ~~[16]~~ **ORDERS** that, until and including ~~November 28~~ February 13, 202~~3~~3 (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Petitioners, or affecting the Petitioners’ business operations and activities (the “**Business**”) or the Property (as defined herein), including as provided in paragraph [29] herein except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

[18] ~~[17]~~ **ORDERS** that the rights of His Majesty in right of Canada and His Majesty in right of a Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.

[19] ~~[18]~~ **ORDERS** and **DECLARES** that the National Bank of Canada (“**NBC**”) is an unaffected creditor in these CCAA proceedings and is not subject to the stay of proceedings, including the Stay Period and any renewal or extension thereof, or any other limitations of creditors’ right or recourses under this Order. Nothing in this Order shall prevent NBC from enforcing its security against the Petitioners’ Property in conformity with its contractual rights, subject only to NBC providing advance notice of its intention to do so.

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**g. Stay of Proceedings against Directors and Officers**

[20] ~~[19]~~ **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioners nor against any person deemed to be a director or an officer of any of the Petitioners under subsection 11.03(3) CCAA (each, a “**Director**”, and collectively the “**Directors**”) in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioners where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

**h. Possession of Property and Operations**

[21] ~~[20]~~ **ORDERS** that the Petitioners shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the “**Property**”), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph [47] hereof.

[22] ~~[21]~~ **ORDERS** that the Petitioners shall be entitled, but not required to pay the following expenses with the prior consent of the Monitor or further order of the Court, as the case may be, whether incurred prior to or after this Order:

- (a) outstanding and future wages, salaries, expenses and, benefits payable prior to or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any counsel, advisors and agents retained or employed by the Petitioners directly related to these proceedings, at their standard rates and charges; and
- (c) amounts owing for goods or services actually supplied to the Petitioners prior to the date of this Order by third party suppliers up to a maximum aggregate amount of \$700,000, if, in the opinion of the Petitioners and of the Monitor, the supplier is critical to the business and ongoing operations of the Petitioners.

[23] ~~[22]~~ **ORDERS** that except as otherwise provided to the contrary herein, the Petitioners shall be entitled to pay all reasonable expenses incurred by the Petitioners in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

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- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business; and
- (b) payment for goods or services actually supplied to the Petitioners following the date of this Order.

[24] ~~[23]~~ **ORDERS** that the Petitioners shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension Plan, and (iv) income taxes; and
- (b) all goods and services, harmonized sales or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners and in connection with the sale of goods and services by the Petitioners but only where such Sales Taxes are accrued or collected after the date of this Order.

[25] ~~[24]~~ **ORDERS** that, subject to the consent of the Monitor, each of the Petitioners is authorized to complete outstanding transactions and engage in new transactions with other Petitioners or their affiliates, including, without limitation, (a) intercompany funding transactions, (b) purchase and sale transactions for goods or services in the ordinary course of the Business, (c) allocation and payments of costs, expenses and other amounts for the benefit of the Petitioners, including, without limitation, debt repayments and interest costs, head office, shared services and restructuring costs (collectively, "**Intercompany Transactions**"), and to continue, on and after the date of this Order, to effect Intercompany Transactions. All Intercompany Transactions among the Petitioners shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures as the Monitor may require, or subject to this Order or further Order of this Court.

[26] ~~[25]~~ **ORDERS** that, in conformity with the DIP Term Sheet, the Petitioners shall notify, at least two (2) days in advance, the Interim Lenders of any monetary payment from a Petitioner to another Petitioner or their affiliates, and that the Monitor shall continue to report from time to time to the Court on such monetary payments constituting Intercompany Transactions.

[27] ~~[26]~~ **ORDERS** that prior to the distribution of any net sale proceeds resulting from the sale or divestiture of any Business or Property (but excluding any

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distribution made in respect of any amounts owing under the CCAA Charges (as defined herein), as the case may, it being understood that in each such case, said distribution may in itself constitute an Intercompany Transaction to form part of a subsequent Intercompany Transactions Report, as defined herein), the Monitor shall prepare and file with the Court a report (each, an “**Intercompany Transactions Report**”) detailing all Intercompany Transactions which occurred on or after the date of the Initial Order with respect to the applicable Petitioner(s), which Intercompany Transactions Report shall include the Monitor’s proposed allocation of the net amount to be attributed to each Petitioner as a result of the applicable Intercompany Transactions, if any, and any net sale proceeds to be remitted by one Petitioner to another Petitioner as the case may be (the “**Proposed Allocation**”).

[28] ~~[27]~~ **ORDERS** the Monitor to serve a copy of the Intercompany Transactions Report upon the service list in these proceedings and **DECLARES** that any interested creditor shall be entitled to apply to this Court within five (5) calendar days of said notification to the service list of the Intercompany Transactions Report to contest or make representations with respect to the Proposed Allocation.

[29] ~~[28]~~ **DECLARES** that paragraph [26] and [27] of this Order and their effects shall apply to any distribution, even outside of these CCAA proceedings, including, without limitation, a distribution by any trustee in bankruptcy, receiver, receiver and manager, interim receiver or any other person appointed to make a distribution in respect of the Property, unless the Court orders otherwise.

#### **i. No Exercise of Rights or Remedies**

[30] ~~[29]~~ **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the Petitioners is a party as a result of the insolvency of the Petitioners and/or these CCAA proceedings, any events of default or non-performance by the Petitioners or any admissions or evidence in these CCAA proceedings, of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof are hereby stayed and suspended except with leave of this Court.

[31] ~~[30]~~ **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods including, without limitation, to file grievances relating to the Petitioners or any of the Property or the Business may expire (other than

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pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioners, or any of them, become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) is appointed in respect of the Petitioners, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioners in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

**j. No Interference with Rights**

[32] ~~[31]~~ **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, fail to renew (when contractually provided), alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners except with the written consent of the Petitioners and the Monitor, or with leave of this Court.

**k. Continuation of Services**

[33] ~~[32]~~ **ORDERS** that during the Stay Period and subject to paragraphs [33] and [34] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioners or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioners, are hereby restrained until further order of this Court from discontinuing, altering, failing to renew (when contractually provided), interfering with or terminating the supply or, as the case may be, interrupting, delaying or stopping the transit of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Petitioners, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners, as applicable, with the consent of the Monitor, or as may be ordered by this Court.

[34] ~~[33]~~ **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring

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immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioners on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to make further advance of money or otherwise extend any credit to the Petitioners.

[35] ~~[34]~~ **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any Petitioners with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of this Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by a Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into a Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

#### I. Non-Derogation of Rights

[36] ~~[35]~~ **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Petitioners shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of this Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

#### m. Interim Financing (DIP)

[37] ~~[36]~~ **ORDERS** that the Petitioners be and are hereby authorized to borrow from NBC and Export Development Canada (collectively, the "**Interim Lenders**") such amounts from time to time as the Petitioners may consider necessary or desirable, up to an aggregate principal amount not exceeding \$3,000,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed under seal as Exhibit P-2A in support of the Application (the "**DIP Term Sheet**") and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioners and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents (as defined hereinafter) (the "**DIP Facility**").

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[38] ~~[37]~~ **ORDERS** that the Petitioners are hereby authorized to execute and deliver the DIP Term Sheet and other security documents and ancillary documents as may be required by the Interim Lenders in connection with the DIP Facility and the DIP Term Sheet (collectively, the “**Interim Financing Documents**”), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to with the Interim Lenders, but only with the consent of the Monitor, and the Petitioners are hereby authorized to perform all of its obligations under the DIP Term Sheet and the Interim Financing Documents.

[39] ~~[38]~~ **ORDERS** that Petitioners shall pay to the Interim Lenders, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other reasonably required advisors to or agents of the Interim Lenders on a full indemnity basis (the “**Interim Lender Expenses**”)) under the DIP Term Sheet and the Interim Financing Documents and shall perform all of their other obligations owed to the Interim Lenders pursuant to the DIP Term Sheet, the Interim Financing Documents and the Order.

[40] ~~[39]~~ **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,600,000 (the “**DIP Charge**”) in favour of the Interim Lenders as security for all obligations of the Petitioners to the Interim Lenders with respect to the payment of the DIP Facility (including principal, interest and the Interim Lender Expenses) owing to the Interim Lenders under or in connection with the DIP Term Sheet and the Interim Financing Documents. Such Interim Lender Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs [61] and [62] of this Order.

[41] ~~[40]~~ **ORDERS** that the claims of the Interim Lenders pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lenders, in that capacity, shall be treated as unaffected creditors in these proceedings and in any Plan.

[42] ~~[41]~~ **ORDERS** that the Interim Lenders may:

- (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the DIP Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
- (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Petitioners if the Petitioners fail to meet the provisions of the DIP Term Sheet and the Interim Financing Documents.

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[43] ~~[42]~~ **ORDERS** that the Interim Lenders shall not take any enforcement steps under the DIP Term Sheet, the Interim Financing Documents or the DIP Charge without providing at least 3 business days written notice (the “**Notice Period**”) of a default thereunder to the Petitioners, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lenders shall be entitled to take any and all steps, the DIP Term Sheet, the Interim Financing Documents, the DIP Charge and otherwise permitted at law, but without having to send any additional demands under Section 244 of the BIA, under the Civil Code of Quebec or any other similar legislation.

[44] ~~[43]~~ **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [68] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [36] to [43] of this Order unless either (a) notice of a motion for such order is served on the Interim Lenders by the moving party within at least seven (7) days prior to the presentation thereof or (b) the Interim Lenders apply for or consents to such order.

**n. Directors’ and Officers’ Indemnification and Charge**

[45] ~~[44]~~ **ORDERS** that the Petitioners shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioners after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors’ or officers’ gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.

[46] ~~[45]~~ **ORDERS** that the Directors of the Petitioners shall be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$3,700,000 (the “**D&O Charge**”), as security for the indemnity provided in paragraph [44] of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The D&O Charge shall have the priority set out in paragraphs [61] and [62] of this Order.

[47] ~~[46]~~ **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Directors shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph [44] of this Order.

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9. Restructuring

[48] ~~[47]~~ **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the “**Restructuring**”) but subject to such requirements as are imposed by the CCAA, the Petitioners, subject to prior approval of the Monitor or further order of the Court, as the case may be, shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate;
- (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
- (c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$750,000 or \$1,500,000 in the aggregate;
- (d) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioners and such employee, or failing such agreement, make provision to deal with, any consequences thereof in a Plan, as the Petitioners may determine;
- (e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the relevant Petitioner, as applicable, and the relevant party, or failing such agreement, to make provision for the consequences thereof in a Plan; and
- (f) subject to section 11.3 CCAA, assign any rights and obligations of Petitioners.

[49] ~~[48]~~ **DECLARES** that, in order to facilitate the Restructuring, the Petitioners may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.

[50] ~~[49]~~ **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, C 5, and equivalent provisions of the *Act Respecting the Protection of Personal*

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*Information in the Private Sector*, RSQ, c P-39.1, the Petitioners are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a “**Third Party**”), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of a Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of a Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

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

[51] ~~[50]~~ **ORDERS** that *Deloitte Restructuring Inc.* is hereby appointed to monitor the business and financial affairs of the Petitioners as an officer of this Court (the “**Monitor**”) and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

- (a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, in *La Presse* (French version) and the *Globe and Mail National Edition* (English version) and (ii) within four (4) business days after the date of this Order (A) post on the Monitor’s website a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioners of more than \$1,000, advising them that this Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;
- (b) shall monitor the Petitioners’ receipts and disbursements;
- (c) shall assist the Petitioners, to the extent required by the Petitioners, in dealing with their creditors and other interested Persons during the Stay Period;

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- (d) shall assist the Petitioners, to the extent required by the Petitioners, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (e) shall advise and assist the Petitioners, to the extent required by the Petitioners, to review the Petitioners' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (f) shall assist the Petitioners, to the extent required by the Petitioners, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider a Plan;
- (g) shall report to the Court on the state of the business and financial affairs of the Petitioners or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated reports for the Petitioners;
- (h) shall report to this Court and interested parties, including but not limited to creditors affected by a Plan, with respect to the Monitor's assessment of, and recommendations with respect to, a Plan;
- (i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under this Order or under the CCAA;
- (k) may give any consent or approval as may be contemplated by this Order or the CCAA;
- (l) may hold and administer funds in connection with arrangements made among the Petitioners, any counter-parties and the Monitor, or by Order of this Court; and
- (m) may perform such other duties as are required by this Order or the CCAA or by this Court from time to time.

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Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioners, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Petitioners.

[52] ~~[51]~~ **ORDERS** that the Petitioners and their current and former shareholders, Directors, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties, rights and obligations as provided and set out in this Order.

[53] ~~[52]~~ **ORDERS** that, without limiting the generality of anything herein, the Petitioners and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of this Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioners in connection with the Monitor's duties and responsibilities hereunder.

[54] ~~[53]~~ **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioners with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioners' counsel. In the case of information that the Monitor has been advised by the Petitioners is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioners unless otherwise directed by this Court.

[55] ~~[54]~~ **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioners or continues the employment of the Petitioners' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.

[56] ~~[55]~~ **DECLARES** that Section 215 of the BIA applies *mutatis mutandis* and that no action or other proceedings shall be commenced against the Monitor or its representatives relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least seven (7) days' notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor and their representatives shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.

[57] ~~[56]~~ **DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.

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[58] ~~[57]~~ **ORDERS** that the Petitioners shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

[59] ~~[58]~~ **DECLARES** that the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel, as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, any Plan and the Restructuring, as well as National Bank Financial Inc. ("**NBF**"), as security for the Engagement Fee and the Fairness Opinion Fee (as such terms are defined in the engagement letter filed as Exhibit P-3 in support of the Initial Application, the "**Engagement Letter**") and all disbursements incurred by NBF pursuant to the Engagement Letter, be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$~~93~~,000,000 (the "**Administration Charge**"), having the priority established by paragraphs [61] and [62] of this Order.

#### q. KERPs and KERP Charge

[60] ~~[59]~~ **ORDERS** that the key employee retention plan, key vice-president retention plan and the key executive incentive plan (collectively, the "**KERPs**") described in the Application and summarized in the document filed under seal as Exhibit P-3 to the Application are hereby approved, and the Petitioners are hereby authorized and empowered to perform their obligations set forth thereunder, including by making the payments in accordance with the terms set out therein.

[61] ~~[60]~~ **ORDERS** that the employees designated in the KERPs shall be entitled to the benefit of and are hereby granted a charge and security in the on the Property, to the extent of the aggregate amount of \$1,080,000 (the "**KERP Charge**"), having the priority established by paragraphs [61] and [62] of this Order.

#### r. Priorities and General Provisions Relating to CCAA Charges

[62] ~~[61]~~ **DECLARES** that the priorities of the Administration Charge and the D&O Charge (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:

- (a) first, the Administration Charge;
- (b) second, the D&O Charge;

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- (c) third, the DIP Charge;
- (d) fourth, the Transaction Charge (as defined in the Bidding Procedures Order dated September 29, 2022);
- (e) fifth, the KERP Charge.

[63] ~~[62]~~ **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Property whether or not charged by such Encumbrances, save that, as regards the Transaction Charge and the KERP Charge only, the question with respect to its priority ranking as regards any amounts owing by the Petitioners pursuant to paragraph [23](a) of this Order shall be determined by the Court at a later date and time.

[64] ~~[63]~~ **ORDERS** that, except as otherwise expressly provided for herein, the Petitioners shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioner, as applicable, obtains the prior written consent of the Monitor and the prior approval of the Court.

[65] ~~[64]~~ **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

[66] ~~[65]~~ **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease or other arrangement which binds the Petitioners (a “**Third Party Agreement**”), and notwithstanding any provision to the contrary in any Third Party Agreement:

- (a) the creation of any of the CCAA Charges shall not create nor be deemed to constitute a breach by the Petitioners of any Third Party Agreement to which any of the Petitioners is a party; and

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(b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.

[67] ~~[66]~~ **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any Petitioners pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances, preferential payments, transfers at undervalue or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

[68] ~~[67]~~ **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners.

#### **s. Hearing Scheduling and Details**

[69] ~~[68]~~ **ORDERS** that, subject to further Order of this Court, all applications in these CCAA proceedings are to be brought on not less than five (5) calendar days' notice to all Persons on the service list prepared by the Monitor or counsel for the Monitor in connection with these CCAA proceedings (the "**Service List**"). Each application shall specify a date (the "**Initial Return Date**") and time (the "**Initial Return Time**") for the hearing.

[70] ~~[69]~~ **ORDERS** that any Person wishing to object to the relief sought on an application in these CCAA proceedings must serve responding materials or a notice stating the objection to the application and the grounds for such objection (a "**Notice of Objection**") in writing to the moving party, the Petitioners and the Monitor, with a copy to all Persons on the Service List, no later than 5 P.M. on the date that is three (3) calendar days prior to the Initial Return Date (the "**Objection Deadline**").

[71] ~~[70]~~ **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of these proceedings (the "**Presiding Judge**") may determine: (a) whether a hearing is necessary; (b) whether such hearing will be in person, by videoconference, by telephone or by written submissions only; and (c) the parties from whom submissions are required (collectively, the "**Hearing**

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**Details**”). In the absence of any such determination, a hearing will be held in the ordinary course.

[72] ~~[74]~~ **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Monitor or the Monitor’s counsel shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor or the Monitor’s counsel shall thereafter advise the Service List of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor’s next report in these proceedings.

[73] ~~[72]~~ **ORDERS** that, if a Notice of Objection is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time, or such earlier or later time as may be directed by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial Return Date and at the Initial Return Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested application and such other matters, including interim relief, as the Court may direct.

**t. General**

[74] ~~[73]~~ **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, representatives, legal counsel or financial advisers of the Petitioners or of the Monitor in relation to the Business or Property of the Petitioners, without first obtaining leave of this Court, upon ten (10) calendar days’ written notice to the Petitioners’ counsel, the Monitor’s counsel, and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.

[75] ~~[74]~~ **DECLARES** that this Order and any proceeding or affidavit leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioners under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.

[76] ~~[75]~~ **DECLARES** that, except as otherwise specified herein, the Petitioners and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery, electronic mail, or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioners and that any such service shall be deemed to be received on the date of delivery if by personal

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delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.

[77] ~~[76]~~ **DECLARES** that the Petitioners and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses.

[78] ~~[77]~~ **ORDERS** that Exhibits-P-3, P-8, P-10 and Schedule D to Exhibit P-5 to the Initial Application ~~and~~, Exhibits P-2, P-2A and P-3 to the ARIO Application, and Exhibit ● to the Report shall be filed under seal and kept confidential until further order of this Court.

[79] ~~[78]~~ **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served an Answer on the counsel for the Petitioners and the Monitor and has filed such notice with this Court, or appears on the Service List, save and except when an order is sought against a Person not previously involved in these proceedings.

[80] ~~[79]~~ **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.

[81] ~~[80]~~ **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

[82] ~~[81]~~ **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Petitioners in any foreign proceeding, to assist the Petitioners, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

[83] ~~[82]~~ **AUTHORIZES** the Monitor or the Petitioners to apply as they may consider necessary or desirable, with or without notice, to any other court or

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administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the U.S. Bankruptcy Code, including an order for recognition of these CCAA proceedings as “Foreign Main Proceedings” in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, for which Xebec Adsorption Inc., shall be the foreign representative of the Petitioners. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be deemed necessary or appropriate for that purpose.

[84] ~~[83]~~ **DECLARES** that, for the purposes of any applications authorized by paragraph [82] of this Order, Petitioners’ centre of main interest is located in Montréal, Québec, Canada.

[85] ~~[84]~~ **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.

[86] ~~[85]~~ **THE WHOLE WITHOUT COSTS.**

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Christian Immer, J.S.C.

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

Hearing date: ~~October 20~~ February 3, 20223

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## **EXHIBIT P-5**

**SUPERIOR COURT  
(Commercial Division)**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 3, 2023

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

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

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

and  
**DELOITTE RESTRUCTURING INC.**  
Monitor

and  
**1396905 B.C. LTD**  
Impleaded Party (Buyer)

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and  
**THE REGISTRAR OF THE BRITISH COLUMBIA PERSONAL PROPERTY  
REGISTRY**

Impleaded Party (Registrar)

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**APPROVAL AND VESTING ORDER IN RESPECT OF THE ASSETS OF APPLIED  
COMPRESSION SYSTEMS LTD.**

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- [1] **CONSIDERING** the *Amended Application for the Issuance of a Second Amended and Restated Initial Order and of an Approval and Vesting Order* and (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”), the exhibits thereto, and the affidavit of Dimitrios Vounassis filed in support thereof;
- [2] **CONSIDERING** the Amended and Restated Initial Order issued by this Court on October 20, 2022;
- [3] **CONSIDERING** the Second Amended and Restated Initial Order (the “**Second ARIO**”) issued by this Court on February 3, 2023;
- [4] **CONSIDERING** the Fifth Report of Deloitte Restructuring Inc. (in such capacity, the “**Monitor**”) dated January 1, 2023;
- [5] **CONSIDERING** the submissions of counsel;
- [6] **GIVEN** the provisions of the CCAA:
- [7] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Asset Purchase Agreement dated as of January 27, 2023 (the “**Purchase Agreement**”) between Applied Compression Systems Ltd as seller (the “**Seller**”) and 1396905 B.C. Ltd, as buyer, (the “**Buyer**”), a copy of which was filed as **Exhibit P-3** to the Application, and vesting in the Buyer the Purchased Assets.

**THE COURT HEREBY:**

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

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## **DEFINITIONS**

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

## **SERVICE**

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

## **TRANSACTION APPROVAL**

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

## **EXECUTION OF DOCUMENTATION**

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

## **AUTHORIZATION**

- [14] **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**

- [15] **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 the Civil Code of Québec, the Personal Property Security Act of the Province of British Columbia, or any other applicable legislation providing for a security interest in personal or movable property, and those Claims listed on **Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "C"**).

- [16] For greater certainty, **ORDERS** that all of the Encumbrances, other than those listed on Schedule "C" hereto, affecting or relating to the Purchased Assets be cancelled and discharged as against the Purchased Assets, in each case effective as of the issuance of the Monitor's Certificate.
- [17] **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.
- [18] **AUTHORIZES AND DIRECTS** the Monitor to use the net proceeds from the sale of the Purchased Assets to pay partially any outstanding invoices of the Monitor, the Monitor's legal counsel and the Petitioners' legal counsel covered by the Administration Charge (as defined in the Second ARIO), provided that such payments shall not affect nor reduce the quantum of the Administration Charge.
- [19] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.
- [20] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Purchase Agreement and shall have no liability with respect to the delivery of the Monitor's Certificate.

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- [21] **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**

- [22] **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, 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 Petitioners in the BC PPR, 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.

### **PROTECTION OF PERSONAL INFORMATION**

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

### **VALIDITY OF THE TRANSACTION**

- [25] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any petition for a bankruptcy order now or hereafter issued pursuant to the BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

the vesting of Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement 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.

## **RELEASES**

- [26] **ORDERS** that effective as of the issuance of the Monitor's Certificate (a) the current and former directors, officers, employees, legal counsel and advisors of the Seller; (b) the Monitor and its legal counsel; and (c) the Buyer and its respective current and former directors, officers, employees, legal counsel and advisors; (in such capacities, collectively, the **"Released Parties"**) shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the issuance of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the business, operations, assets, property and affairs of the Seller wherever or however conducted or governed, the administration and/or management of the Seller, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, as they relate to the Seller, or (ii) the Purchase Agreement and any agreement, document, instrument, matter or transaction involving the Seller arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively the **"Released Claims"**), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released

Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Purchase Agreement and/or any agreement, document, instrument, matter or transaction involving the Seller arising in connection with or pursuant to any of the foregoing.

### **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 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 Purchase Agreement, **Exhibit P-3** 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.
- [37] **THE WHOLE** without costs.

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Christian Immer, J.S.C.

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

Hearing date: **February 3, 2023**

Draft

**SCHEDULE A**  
**DRAFT CERTIFICATE OF THE MONITOR**

**CANADA**

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

No.: 500-11-061483-224

**SUPERIOR COURT**  
(Commercial Division)

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

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

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

Debtor/Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

## CERTIFICATE OF THE MONITOR

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### RECITALS:

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

**WHEREAS** on February 3, 2023, the Court issued an Order (the "**Approval and Vesting Order**") authorizing and approving, *inter alia*, the execution of a Asset Purchase Agreement by and among Applied Compression Systems Ltd as Seller (the "**Seller**") and 1396905 B.C. Ltd as buyer (the "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

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

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

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

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

Draft

Draft

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

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

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

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

\*\*\*\*\*



## **SCHEDULE B**

### **ENCUMBRANCE TO BE VESTED**

PPSA Security Agreement with the National Bank of Canada (BC Personal Property Registry no. 779666M)

Draft

## **SCHEDULE C**

### **PERMITTED ENCUMBRANCE**

PPSA Security Agreement with Ford Credit Canada Company with Vehicle Collateral  
(BC Personal Property Registry no. 589688K)

Draft

## **EXHIBIT P-5A**

May 2014

SUPERIOR COURT

SUPERIOR COURT  
(Commercial Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 3, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

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

Debtors / Petitioners

and

DELOITTE RESTRUCTURING INC.

Monitor

and

1396905 B.C. LTD

Draft

Impleaded Party (Buyer)

and

THE REGISTRAR OF THE BRITISH COLUMBIA PERSONAL PROPERTY  
REGISTRY

Impleaded Party (Registrar)

APPROVAL AND VESTING ORDER IN RESPECT OF THE ASSETS OF APPLIED  
COMPRESSION SYSTEMS LTD.

~~{Commercial Division}~~

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

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

~~IN THE MATTER OF ●:~~

~~●  
Debtor~~

~~-and-~~

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

~~Mis-en-Cause~~

~~-and-~~

~~●~~

\_\_\_\_\_~~[Petitioner]~~<sup>1</sup>

~~-and-~~

•

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

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

- [1] ~~ON-READING~~**CONSIDERING** the ~~[Debtor/Petitioner/Receiver/Trustee/Monitor]'s~~ ~~Motion~~Amended Application for the Issuance of a Second Amended and Restated Initial Order and of an Approval and Vesting Order and (the "Motion"); "Application" pursuant to the Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended ("CCAA"), the exhibits thereto, and the affidavit ~~and the exhibits~~of Dimitrios Vounassis filed in support thereof, as well as;
- [2] **CONSIDERING** the Amended and Restated Initial Order issued by this Court on October 20, 2022;
- [3] **CONSIDERING** the Second Amended and Restated Initial Order (the "Second ARIO") issued by this Court on February 3, 2023;
- [4] **CONSIDERING** the Fifth Report of Deloitte Restructuring Inc. (in such capacity, the [Receiver/Trustee/"Monitor"]) dated ~~• (the "Report")~~January 9, 2023;

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

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

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

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

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

[5] ~~[3]~~ **SEEING CONSIDERING** the submissions of counsel;

[6] **GIVEN** the provisions of ~~[Debtor/Receiver/Trustee/Monitor]'s attorneys and the submissions of •;~~ the CCAA:

[7] ~~[4]~~ **SEEING CONSIDERING** that it is appropriate to issue an order approving the sale transaction~~(s)~~ (the "Transaction") contemplated by the agreement entitled ~~• (the "Asset Purchase Agreement") by and between [Debtor/Receiver/Trustee/Monitor] (the "Vendor") dated as of January 27, 2023 (the "Purchase Agreement") between Applied Compression Systems Ltd as seller (the "Seller") and 1396905 B.C. Ltd, as vendor/buyer, and • (the "Purchaser" "Buyer"), as purchaser,~~ a copy of which was filed as **Exhibit RP-•3** to the Motion Application, and vesting in the Purchaser/Buyer the ~~assets described in the Purchase Agreement (the "Purchased Assets")~~<sup>5</sup>.

**WHEREFORE THE COURT HEREBY:**

[8] ~~[5]~~ **GRANTS** the ~~Motion;~~ Application.

**DEFINITIONS**

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

**SERVICE**

[10] ~~[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.

[11] ~~[7]~~ **PERMITS** service of this Order at any time and place and by any means whatsoever.

**SALE TRANSACTION APPROVAL**

[12] ~~[8]~~ **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the ~~Vendor~~ Seller is hereby authorized and approved nunc pro tunc, with such ~~non-material~~ minor alterations, changes, amendments, deletions or additions thereto as may be agreed to ~~but only by the Seller and the Buyer~~, with the consent of the ~~[Receiver/Trustee/Monitor]~~.

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

**EXECUTION OF DOCUMENTATION**

[13] ~~[9]~~ **AUTHORIZES** the ~~[Vendor/Receiver/Trustee/Monitor]~~ Buyer and the ~~Purchaser~~ Seller to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement (~~Exhibit R-1~~) and any other ancillary document which could be required or useful to give full and complete effect thereto, including the Transaction.

**AUTHORIZATION**

[14] ~~[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))~~

[15] ~~[11]~~ ~~A~~ **ORDERS** and AND **DECLARES** that upon the issuance of a ~~[Receiver/Trustee/Monitor]~~'s certificate substantially in the form appended as **Schedule "A"** hereto (the "Monitor's Certificate"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the ~~Purchaser~~ Buyer, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, ~~right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the Property, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "Encumbrances"<sup>6</sup>), ~~including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the Civil Code of Québec in movable / immovable property, excluding however, the permitted encumbrances and restrictive covenants listed on Schedule "B" hereto (the "Permitted Encumbrances")~~ and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be cancelled and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.~~

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



- [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 of the Province of British Columbia, or any other applicable legislation providing for a security interest in personal or movable property, excluding however, and those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "B" hereto (the "Permitted Encumbrances") and, for 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.
- [12] ~~ORDERS~~ and ~~DECLARES~~ that upon the issuance of the Certificate, the rights and obligations of the Vendor under the Agreements listed on ~~Schedule "C"~~ hereto (the "~~Assigned Agreements~~") are assigned to the Purchaser ~~[and ORDERS that all monetary defaults of the Debtor in relation to the Assigned Agreements – other than those arising by reason only of the insolvency of the Debtor, the commencement of proceedings under the [BIA/CCAA] or the failure to perform non-monetary obligations – shall be remedied on or before ●].~~
- [13] ~~DECLARES~~ that upon issuance of the Certificate, the Transaction shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the ~~Code of Civil Procedure~~ and a forced sale as per the provisions of the ~~Civil Code of Quebec~~. ~~[This paragraph is only required when the sale is done by a Receiver]~~
- [14] ~~ORDERS~~ and ~~DIRECTS~~ the ~~[Vendor/Receiver/Trustee/Monitor]~~ to serve a copy of this Order to every party to the Assigned Agreements.
- [15] ~~ORDERS~~ and ~~DIRECTS~~ the ~~[Receiver/Trustee/Monitor]~~ to file with the Court a copy of the Certificate, forthwith after issuance thereof.

\*\*\*\*\*

**CANCELLATION OF SECURITY REGISTRATIONS**<sup>789</sup>**For Quebec Property:**

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

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

~~[17] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to **[reduce the scope of]** or **[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;~~

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

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

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

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

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

**For British Columbia Property:**

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

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

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

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

~~[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.~~

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**For New Brunswick Property:**

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

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

\*\*\*\*\*

**NET PROCEEDS**

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

~~[26] "C").~~

[16] For greater certainty, **ORDERS** that all of the Encumbrances, other than those listed on Schedule "C" hereto, affecting or relating to the Purchased Assets be cancelled and discharged as against the Purchased Assets, in each case effective as of the issuance of the Monitor's Certificate.

[17] **ORDERS** that for the purposes of determining the nature and priority of the EncumbrancesClaims, 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

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

possession or control of the person having that possession or control immediately prior to the sale.

- [18] **AUTHORIZES AND DIRECTS** the Monitor to use the net proceeds from the sale of the Purchased Assets to pay partially any outstanding invoices of the Monitor, the Monitor's legal counsel and the Petitioners' legal counsel covered by the Administration Charge (as defined in the Second ARIO), provided that such payments shall not affect nor reduce the quantum of the Administration Charge.
- [19] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.
- [20] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Purchase Agreement and shall have no liability with respect to the delivery of the Monitor's Certificate.
- [21] **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**

- [22] **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, 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 Petitioners in the BC PPR, 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.

### **PROTECTION OF PERSONAL INFORMATION**

- [23] ~~[27]~~ **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the **Receiver is "Applicable Privacy Laws"**), the Petitioners and the Monitor are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including Buyer the personal information of those employees listed on Schedule "•" to in the custody or control of the Petitioners set out in the Purchase Agreement (the "**Disclosed Information**"). The Purchaser/Buyer shall maintain

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and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor;<sup>44</sup> ~~[NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause];~~ Petitioners.

[24] ORDERS that the Buyer shall:

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

**VALIDITY OF THE TRANSACTION**

[25] ~~[28]~~ ORDERS that notwithstanding:

- (a) ~~(i)~~ the pendency of these proceedings;
- (b) ~~(ii)~~ any petition for a receiving bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act ("BIA") 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 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].

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



**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]**;~~

**RELEASES**

[26] **ORDERS** that effective as of the issuance of the Monitor's Certificate (a) the current and former directors, officers, employees, legal counsel and advisors of the Seller; (b) the Monitor and its legal counsel; and (c) the Buyer and its respective current and former directors, officers, employees, legal counsel and advisors; (in such capacities, collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the issuance of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the business, operations, assets, property and affairs of the Seller wherever or however conducted or governed, the administration and/or management of the Seller, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, as they relate to the Seller, or (ii) the Purchase Agreement and any agreement, document, instrument, matter or transaction involving the Seller arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively the "**Released Claims**"), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Purchase Agreement and/or any agreement, document,

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instrument, matter or transaction involving the Seller arising in connection with or pursuant to any of the foregoing.

## 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 Purchase Agreement, **Exhibit P-3** 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.~~

[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;~~

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

• Christian Immer, J.S.C.

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

•  
Attorneys for • the Petitioners

Hearing date: February 3, 2023

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SCHEDULE "A"

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

CANADA

PROVINCE OF ~~QUEBEC~~ QUÉBEC  
DISTRICT OF MONTRÉAL

~~SUPERIOR COURT~~

SUPERIOR COURT  
(Commercial Division)

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

No.: 500-11-061483-224

~~File: No: 500-11-●~~

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

●  
~~Debtor~~

~~-and-~~

●  
~~[Petitioner]~~

~~-and-~~

●  
~~[Receiver/Trustee/Monitor]~~

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

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

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

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

### RECITALS:

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

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

**WHEREAS** on ~~●~~ February 3, 2023, the Court issued an Order (the "**Approval and Vesting Order**") thereby, *inter alia*, authorizing and approving, *inter alia*, the execution by the Petitioner of an agreement entitled ~~●~~ Agreement (the "**a Asset Purchase Agreement**") by and between ~~●~~, among Applied Compression Systems Ltd as ~~vendor~~ Seller (the "**Vendor Seller**") and ~~●~~ 1396905 B.C. Ltd as ~~purchaser~~ buyer (the "**Purchaser**" "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the [Receiver/Trustees/Monitor].

**WHEREAS** the Approval 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 (as defined in the Purchase Agreement) has been paid by the Purchaser/Buyer to the Seller; and (c) ~~and~~ all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

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

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

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

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

Per:	_____
Name:	_____
Title:	_____
Name:	_____
Title:	_____

\*\*\*\*\*

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**SCHEDULE "B"**  
**PERMITTED ENCUMBRANCES**

**ENCUMBRANCE TO BE VESTED**

PPSA Security Agreement with the National Bank of Canada (BC Personal Property  
Registry no. 779666M)

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

**PERMITTED ENCUMBRANCE**

PPSA Security Agreement with Ford Credit Canada Company with Vehicle Collateral  
(BC Personal Property Registry no. 589688K)

Draft

No: 500-11-061483-224

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**SUPERIOR COURT  
(Commercial Division)**

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

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**DISTRICT OF MONTRÉAL**

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

**XEBEC ADSORPTION INC. & AL**

Debtors / Petitioners

and.

**DELOITTE RESTRUCTURING INC.**

Monitor

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**AMENDED APPLICATION FOR THE ISSUANCE  
OF A SECOND AMENDED AND RESTATED  
INITIAL ORDER AND AN APPROVAL AND  
VESTING ORDER, AFFIDAVIT, NOTICE OF  
PRESENTATION, AMENDED LIST OF EXHIBITS,  
EXHIBITS P-4, P-4A, P-5, P-5A (Sections 11,  
11.52 and 36 of the *Companies' Creditors  
Arrangement Act*, RSC 1985, c C-36)**

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**ORIGINAL**

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**Osler, Hoskin & Harcourt LLP**

M<sup>e</sup> Sandra Abitan / M<sup>e</sup> Julien Morissette / M<sup>e</sup> Iliia  
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Code: BO 0323

Our file: 1233913