

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
(Commercial Division)

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

No.: 500-11-061483-224

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

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

-and-

11941666 CANADA INC. (formerly **XEBEC RNG
HOLDINGS INC.**)

-and-

APPLIED COMPRESSION SYSTEMS LTD.

-and-

1224933 ONTARIO INC. (formerly **COMPRESSED
AIR INTERNATIONAL INC.**)

-and-

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

-and-

ENERPHASE INDUSTRIAL SOLUTIONS, INC.

-and-

CDA SYSTEMS, LLC

-and-

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

-and-

THE TITUS COMPANY

-and-

NORTEKBELAIR CORPORATION

-and-

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

-and-

CALIFORNIA COMPRESSION, LLC

-and-

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

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

**APPLICATION FOR THE ISSUANCE OF A FIFTH AMENDED AND
RESTATED INITIAL ORDER (INTERIM FINANCING)**

**(Sections 11 and 11.2 of the *Companies' Creditors Arrangement
Act*, RSC 1985, c C-36)**

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

I. INTRODUCTION

1. The Debtors / Petitioners FormerXBC Inc. (formerly Xebec Adsorption Inc.), 11941666 Canada Inc. (formerly Xebec RNG Holdings Inc.), Applied Compression Systems Ltd., 1224933 Ontario Inc. (formerly Compressed Air International Inc.), FormerXBC Holding USA Inc. (formerly Xebec Holding USA Inc.), Enerphase Industrial Solutions, Inc., California Compression, LLC, CDA Systems, LLC, FormerXBC Adsorption Inc. (formerly Xebec Adsorption USA Inc.), The Titus Company, Nortekbelair Corporation, FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC), FormerXBC Flow Services – XBC Wisconsin Inc. (formerly XBC Flow Services – Wisconsin Inc.) (collectively, the “**Petitioners**”) form part of a global provider of sustainable gas solutions used in energy, mobility and industry applications, headquartered in Montréal, Québec.
2. By the present Application, the Petitioners are seeking the issuance of an order (the “**Fifth Amended and Restated Initial Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-1** (the “**Draft Fifth ARIO**”):
 - (a) approving the Third DIP Facility (as defined below) to be provided to the Petitioners pursuant to a Third DIP Term Sheet (as defined below) dated as of March 22, 2023, negotiated between the Petitioners and Export Development Canada (“**EDC**”) pursuant to which EDC agreed to provide interim financing to the Petitioners, and granting a Third DIP Charge (as

defined below) in an amount sufficient to cover the potential exposure of EDC under the Third DIP Facility; and;

- (b) declaring that upon the disbursement of the initial advance of \$1,500,000 by EDC as contemplated in the Third DIP Term Sheet and the issuance by the Monitor of a certificate confirming same, the Administration Charge shall be reduced by an amount equal to \$250,000 to an amount equal to \$1,250,000 and upon the disbursement of the second advance of \$1,950,000 by EDC and the issuance by the Monitor of a certificate confirming same, further reduced by an amount equal to \$250,000 to an amount equal to \$1,000,000.

A comparison of the Fifth Amended and Restated Initial Order and the Fourth ARIO (as defined below) is communicated herewith as **Exhibit P-1A**.

II. PROCEDURAL BACKGROUND

- 3. On September 29, 2022, at the Petitioners' request, the Court issued a First Day Initial Order (the "**FDIO**") pursuant to the CCAA and a Bidding Procedures Order (the "**Bidding Procedures Order**"), as appears from the Court record.
- 4. 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.
- 5. 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.
- 6. The Bidding Procedures Order also approved the engagement of National Bank Financial Inc. ("**NBF**") to assist in the implementation of the SISP.

7. Subsequent proceedings and orders of this Court germane to this Application are described below.
8. On October 20, 2022, at the Petitioners' request, the Court issued an Amended and Restated Initial Order (the "**ARIO**") pursuant to the CCAA, as appears from the Court record.
9. The ARIO, *inter alia*:
 - (a) extended the Stay until November 28, 2022; and
 - (b) approved the debtor-in-possession evolving multiple draw credit facility (the "**First DIP Facility**") provided by the National Bank of Canada ("**NBC**") and Export Development Canada ("**EDC**", and collectively with NBC, the "**Interim Lenders**") in accordance with the Interim Financing Term Sheet filed under seal as Exhibit P-2A in support of the Application for the Issuance of an Amended and Restated Initial Order and granted a Court-ordered charge (the "**First DIP Charge**") in an amount sufficient to cover the potential exposure of the Interim Lenders under the First DIP Facility.
10. On February 3, 2023, at the Petitioners' request, the Court issued a Second Amended and Restated Initial Order (the "**Second ARIO**"), pursuant to the CCAA, as appears from the Court record.
11. The Second ARIO, *inter alia*:
 - (a) extended the Stay until February 13, 2023; and
 - (b) increased the Administration Charge to a maximum amount of \$3,000,000.
12. On February 13, 2023, at the Petitioners' request, the Court issued a Third Amended and Restated Initial Order (the "**Third ARIO**"), pursuant to the CCAA, as appears from the Court record.
13. The Third ARIO, *inter alia*:
 - (a) extended the Stay until March 17, 2023;
 - (b) approved the Second DIP Facility (collectively with the First DIP Facility, the "**DIP Facilities**") provided by EDC and approved the execution by the Petitioners of the Second DIP Term Sheet (as defined in the Third ARIO) and granted a Court-ordered charge (the "**Second DIP Charge**"); and
 - (c) declared that at the earliest between the disbursement of the initial advance of \$1,250,000 by EDC or payments in the aggregate amount of \$1,100,000 by the Monitor of outstanding invoices to the beneficiaries of the Administration Charge (as defined in the Third ARIO) out of the net proceeds from the Ivys Transaction, the Sullair Transaction and/or the

FSTQ Transaction, the Administration Charge shall be reduced by an amount equal to \$750,000 to an amount equal to \$2,250,000 and upon the disbursement of the second advance of \$1,250,000 by EDC, further reduced by an amount equal to \$750,000 to an amount equal to \$1,500,000.

14. On February 21, 2023, in accordance with the Third ARIO, the Monitor issued a certificate confirming that the initial advance contemplated by the Second DIP Facility had been received and that the amount of the Administration Charge had been accordingly reduced to \$2,250,000.
15. On March 16, 2023, at the Petitioners' request, the Court issued a Fourth Amended and Restated Initial Order (the "**Fourth ARIO**"), pursuant to the CCAA, as appears from the Court record.
16. The Fourth ARIO, *inter alia*:
 - (a) extended the Stay until May 5, 2023;
 - (b) declared that the certificates of the Monitor to be issued and filed in the Court record pursuant to the Monitor Payments Order (as defined below) shall validly reduce and/or discharge the CCAA Charges (as defined in the Fourth ARIO), as applicable, without the necessity of any amendment to the Monitor Payments Order or of any other orders of the Court.
 - (c) approved an amendment to the list of participants in the KERPs.
17. On the same date, the Court also issued:
 - (a) an Approval, Vesting and Assignment Order (the "**Fluid-Aire AVO**") with respect to the sale of substantially all assets of the Titus Company (the "**Fluid-Aire Transaction**");
 - (b) an Approval, Vesting and Assignment Order (the "**Total Energy AVO**") with respect to the sale of substantially all assets of the XBC Flow Services – Wisconsin Inc. (the "**Total Energy Transaction**"); and
 - (c) an Approval, Vesting and Assignment Order (the "**EnergyLink AVO**") with respect to the sale of substantially all assets of Xebec Systems USA, LLC (the "**EnergyLink Transaction**");the whole as appears from the Court record.
18. On March 16, 2023, at the Monitor's request, the Court issued an Order Authorizing the Monitor to Pay Certain Amounts Owed to Beneficiaries of CCAA Charges (the "**Monitor Payments Order**"), as appears from the Court record.
19. The Monitor Payments Order, *inter alia*:

- (a) authorized the Monitor to pay from the net proceeds of the previously closed transactions, amounts owed under the DIP Charge, Second DIP Charge and the Transaction DIP Charge, as and when they become due;
 - (b) declared that upon making payments under the DIP Charge, Second DIP Charge and Transaction Charge, and receiving confirmation, respectively of the Interim Lenders, EDC and NBF of the reimbursement of the obligations secured by these charges, the Monitor shall notify and file with the Court record a certificate confirming and effecting the cancellation and discharge of the DIP Charge, the Second DIP Charge and the Transaction Charge;
 - (c) authorized the Monitor to pay from the net proceeds of the previously closed transactions, amounts owed under the KERP as and when they become due; and
 - (d) declared that upon making payments under the KERP Charge, the Monitor shall notify and file with the Court record a certificate confirming and effecting the reduction and/or cancellation and discharge of the KERP Charge, as the case may be, in an amount equivalent to the payments made.
20. On March 17, 2023, in accordance with the Third ARIO, the Monitor issued a certificate confirming that the second advance contemplated by the Second DIP Facility had been received on March 16, 2023, and that the amount of the Administration Charge had been accordingly reduced to \$1,500,000.
21. On the effective date of March 21, 2023, the Fluid-Aire Transaction closed, and the Monitor issued a certificate confirming same on March 21, 2023.

III. GROUNDS FOR THE ISSUANCE OF THE FIFTH AMENDED AND RESTATED INITIAL ORDER

A. Approval of the Third DIP Facility

22. Pursuant to the First DIP Facility approved by the ARIO, the Petitioners have been authorized to borrow from the Interim Lenders up to a maximum principal amount of \$3,000,000. As at the date hereof, the First DIP Facility has been fully drawn by the Petitioners.
23. The First DIP Facility is secured by the First DIP Charge for an aggregate amount of \$3,600,000 in favour of the Interim Lenders.
24. Pursuant to the Second DIP Facility approved by the Third ARIO, the Petitioners have been authorized to borrow from EDC up to a maximum principal amount of \$2,500,000. As at the date hereof, the Second DIP Facility has been fully drawn by the Petitioners.

25. The Second DIP Facility is secured by the Second DIP Charge for an aggregate maximum amount of \$3,000,000 in favour of EDC, ranking behind the First DIP Charge but before the Transaction Charge and the KERP Charge.
26. In accordance with the Monitor Payments Order:
 - (a) upon confirmation by the Interim Lenders that the First DIP Facility has been repaid in full, the Monitor will issue a certificate which will terminate the First DIP Charge; and
 - (b) upon confirmation by EDC that the Second DIP Facility has been repaid in full, the Monitor will issue a certificate which will terminate the Second DIP Charge.
27. It is currently expected that all amounts due under the First DIP Facility and the Second DIP Facility will have been repaid by the Monitor, in accordance with the Monitor Payments Order, prior to the hearing on the present Application.
28. As of the date hereof, the Administration Charge is equal to an aggregate amount of \$1,500,000.
29. As previously reported to the Court and as will appear from the cash-flow to be filed in support of the Eight Report of the Monitor, the Petitioners require additional financing in the approximate amount of \$1,500,000 to continue their operations in the week ending April 1, 2023, and an additional approximate amount of \$1,950,000 in the week ending April 8, 2023.
30. Following discussions with the Petitioners and the Monitor, subject to certain terms and conditions, EDC has agreed to continue to support the Petitioners through their restructuring efforts, with a view to maximizing recoveries for all stakeholders, and has agreed to provide the Petitioners with a third debtor-in-possession facility (the “**Third DIP Facility**”). The related term sheet (the “**Third DIP Term Sheet**”), which remains subject to final credit approval by EDC, will be filed, under seal, as **Exhibit P-2**, prior to or during the hearing on the present Application.
31. The Third DIP Facility includes the following commercial terms:
 - (a) Facility size: a multiple draw credit facility up to a maximum principal amount of \$3,450,000, payable in two tranches of \$1,500,000 and \$1,950,000, respectively, subject to the terms and conditions of the Third DIP Term Sheet;
 - (b) Term: May 8, 2023; and
 - (c) Administration Charge: reduction of the Administration Charge in the amount of \$250,000 (to an amount of \$1,250,000) concurrently with the disbursement of the first tranche and a further reduction of the Administration Charge in the amount of \$250,000 (to an amount of

\$1,000,000) concurrently with the disbursement of the second tranche, the whole in accordance with the terms set out in the Third DIP Term Sheet.

32. The DIP Facility is proposed to be secured by a Court-ordered charge (the “**Third DIP Charge**”) on all of the present and future assets, property and undertaking of the Petitioners up to a maximum amount of \$4,100,000. The DIP Charge will have priority over all other security interests, hypothecs, charges and liens, except the Administration Charge and the D&O Charge.
33. EDC has indicated that the Third DIP Charge is a key condition of the Third DIP Term Sheet, and that it is not prepared to provide further interim financing to the Petitioners without the Third DIP Charge.
34. The Third DIP Facility will notably allow the Petitioners to conclude the SISF, address various legal issues, analyse whether a plan of arrangement is appropriate with respect to certain entities, perform an orderly wind-down of operations and legal entities and determine the disposition strategy for remaining assets, the whole for the benefit of all stakeholders.
35. The Petitioners respectfully submit that it is in the interest of all stakeholders that the Third DIP Facility and related Third DIP Charge be approved by this Court.

B. Sealing of Confidential Documents

36. The Petitioners are seeking an order declaring that the Third DIP Term Sheet (Exhibit P-2) be kept strictly confidential and under seal, considering that it contains commercially sensitive information.

C. Execution Notwithstanding Appeal

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

IV. CONCLUSION

38. The Monitor has informed the Petitioners that it supports the present Application.
39. 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.

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

GRANT the present *Application for the Issuance of a Fifth Amended and Restated Initial Order (Interim Financing)* (the “**Application**”);

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

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, March 22, 2023

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP

Mtre. Sandra Abitan | Mtre. Julien Morissette |
Mtre. Ilia Kravtsov | Mtre. Sophie Courville
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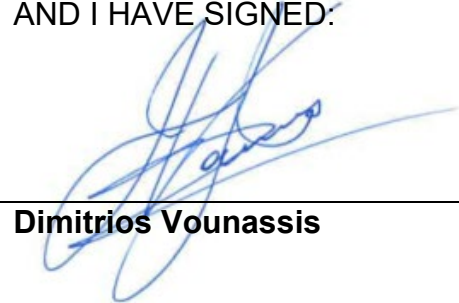
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AFFIDAVIT

I the undersigned, Dimitrios Vounassis, domiciled for the purpose hereof at 730 Industriel Boulevard, in the city of Blainville, district of Terrebonne, Québec, J7C 3V4, solemnly declare the following:

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

AND I HAVE SIGNED:



Dimitrios Vounassis

SOLEMNLY DECLARED BEFORE ME BY
VIRTUAL MEANS IN MONTRÉAL, QUÉBEC,
ON MARCH 22, 2023.



Danielle Bherer
Commissioner for Oaths for the Province of
Québec

**NOTICE OF PRESENTATION
COMMERCIAL DIVISION**

TO: SERVICE LIST (See attached)

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the *Application for the Issuance of a Fifth Amended and Restated Initial Order (Interim Financing)* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in Courtroom 16.04 of the Montréal Courthouse during the virtual calling of the roll on **March 27, 2023, at 14:15 p.m.**

2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL

The contact information to join the virtual calling of the roll in room 16.04 is as follows:

By Teams: by clicking on the link available at <http://www.tribunaux.qc.ca> ("*Liens TEAMS pour rejoindre les salles du Palais de justice*"):

You must then enter your name and click «Join now» («*Rejoindre maintenant*»). To facilitate the process and the identification of participants, we ask that you enter your name in the following manner:

Attorneys: Mtre Name, Surname (name of party represented)

Trustees: Name, Surname (trustee)

Superintendent: Name, Surname (superintendent)

Parties not represented by an attorney: Name, Surname (specify: plaintiff, defendant, applicant, respondent, creditor, opposing party, or other)

Persons attending a public hearing may simply indicate "public".

By telephone:

Canada, Québec (Charges will apply): +1 581-319-2194

Canada (Toll-free): (833) 450-1741

Conference ID: 516 211 860#

By VTC videoconference: teams@teams.justice.gouv.qc.ca

Videoconference ID: 1149478699

In person: If and only if you do not have access to one of the above-mentioned technological means. You may then go to room 16.04 of the Montréal Courthouse located at:

1, Notre-Dame Street East, Montréal, Québec.

3. DEFAULT TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL

TAKE NOTICE that in accordance with the Second Amended and Restated Initial Order, if you wish to contest this Application, you must serve responding materials or a notice stating the objection to the Application and the grounds for such objection in writing to the Petitioners and the Monitor, with a copy to all persons on the Service List, no later than **5:00 P.M. on March 24, 2023**, and participate at the virtual calling of the roll, failing which, judgment may be rendered during the presentation of the proceeding, without further notice or delay.

4. OBLIGATIONS

4.1 Duty of cooperation

TAKE NOTE that the parties are duty-bound to cooperate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and make sure that relevant evidence is preserved (s. 20, *Code of Civil Procedure*).

4.2 Dispute prevention and resolution processes

TAKE NOTE that the parties must consider private prevention and resolution processes before referring their dispute to the courts, which are namely negotiation, mediation or arbitration, for which the parties call on a third party (*Code of Civil Procedure*, art. 2).

DO GOVERN YOURSELF ACCORDINGLY.

MONTRÉAL, March 22, 2023

Osler, Hoskin & Harcourt LLP

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

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, RSC 1985,
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-and-

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

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

LIST OF EXHIBITS

- P-1: Draft Fifth ARIO
- P-1A: Comparison between the Fifth Amended and Restated Initial Order and the Fourth ARIO
- P-2: Third DIP Term Sheet (*confidential and under seal*)

MONTREAL, March 22, 2023

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Attorneys for Debtors / Petitioners

EXHIBIT P-1
Draft Fifth ARIO

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March 27, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)
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ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
FORMERXBC ADSORPTION USA INC. (FORMERLY XEBEC ADSORPTION USA INC.)
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
FORMERXBC FLOW SERVICES – WISCONSIN INC. (FORMERLY XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)
Debtors / Petitioners**

and

DELOITTE RESTRUCTURING INC.
Monitor

FIFTH AMENDED AND RESTATED INITIAL ORDER

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- [1] **CONSIDERING** the *Application for the Issuance of a Fifth Amended and Restated Initial Order (Interim Financing)* (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 *Amended Application for the Issuance of a Fourth Amended and Restated Initial Order, Approval and Vesting Orders, a Wage Earner Protection Program Order and Ancillary Relief* (the “**Fourth ARIO Application**”), pursuant to the CCAA;
- [3] **CONSIDERING** the *Application for the Issuance of a Third Amended and Restated Initial Order and Approval and Vesting Orders* (the “**Third ARIO Application**”) pursuant to the CCAA;
- [4] **CONSIDERING** the *Amended Application for the Issuance of a Second Amended and Restated Initial Order, and an Approval and Vesting Order* (the “**Second ARIO Application**”) pursuant to the CCAA;
- [5] **CONSIDERING** the *Application for the Issuance of an Amended and Restated Initial Order* (the “**ARIO Application**”) pursuant to the CCAA;
- [6] **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;
- [7] **CONSIDERING** the Eighth Report of the Monitor dated March ●, 2023 (the “**Report**”);
- [8] **CONSIDERING** the submissions of counsel and the testimony of the witnesses heard;
- [9] **GIVEN** the provisions of the CCAA;
- [10] **GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

THE COURT HEREBY:

- [11] **GRANTS** the Application.
- [12] **ISSUES** an order pursuant to the CCAA (the “**Order**”), divided under the following headings:
- (a) Service;

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- (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;
- (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) Second Interim Financing (DIP);
- (o) Directors' and Officers' Indemnification and Charge;
- (p) Restructuring;
- (q) Powers of the Monitor;
- (r) KERPs and KERP Charge;
- (s) Priorities and General Provisions Relating to CCAA Charges;
- (t) Hearing Scheduling and Details;
- (u) General.

a. Service

[13] **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.

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b. Application of the CCAA

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

c. Effective Time

[15] **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

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

[17] **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.

[18] **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

[19] **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

[20] **ORDERS** that, until and including May 5, 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 [33] 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.

[21] **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.

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- [22] **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

- [23] **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

- [24] **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 [67] hereof.
- [25] **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.

- [26] **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:
- (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.
- [27] **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.
- [28] **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.

- [29] **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.
- [30] **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 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**”).
- [31] **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.
- [32] **DECLARES** that paragraphs [30] and [31] 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

- [33] **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.

- [34] **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.

i. No Interference with Rights

- [35] **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

- [36] **ORDERS** that during the Stay Period and subject to paragraphs [37] and [38] 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.

- [37] **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.
- [38] **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

- [39] **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)

- [40] **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 ARIO 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**”).

- [41] **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.
- [42] **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.
- [43] **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 [83] and [84] of this Order.
- [44] **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.
- [45] **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

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(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.

[46] **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.

[47] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [91] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [40] to [47] 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. Second Interim Financing (DIP)

[48] **ORDERS** that the Petitioners be and are hereby authorized to borrow from Export Development Canada (“**EDC**”) such amounts from time to time as the Petitioners may consider necessary or desirable, up to an aggregate principal amount not exceeding \$2,500,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed under seal as Exhibit P-8 in support of the Third ARIO Application (the “**Second DIP Term Sheet**”) and in the EDC 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 “**Second DIP Facility**”).

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

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- [50] **ORDERS** that Petitioners shall pay to EDC, 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 EDC on a full indemnity basis (the “**EDC Interim Lender Expenses**”)) under the Second DIP Term Sheet and the EDC Interim Financing Documents and shall perform all of their other obligations owed to EDC pursuant to the Second DIP Term Sheet, the EDC Interim Financing Documents and the Order.
- [51] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,000,000 (the “**Second DIP Charge**”) in favour of EDC as security for all obligations of the Petitioners to EDC with respect to the payment of the Second DIP Facility (including principal, interest and the EDC Interim Lender Expenses) owing to EDC under or in connection with the Second DIP Term Sheet and the EDC Interim Financing Documents. Such Second DIP Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs [83] and [84] of this Order.
- [52] **ORDERS** that the claims of EDC pursuant to the EDC Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and EDC, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan.
- [53] **ORDERS** that EDC 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 Second DIP Charge and the EDC 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 Second DIP Term Sheet and the EDC Interim Financing Documents.
- [54] **ORDERS** that EDC shall not take any enforcement steps under the Second DIP Term Sheet, the EDC Interim Financing Documents or the Second 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, EDC shall be entitled to take any and all steps, the Second DIP Term Sheet, the EDC Interim Financing Documents, the Second 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.

[55] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [91] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [48] to [55] of this Order unless either (a) notice of a motion for such order is served on EDC by the moving party within at least seven (7) days prior to the presentation thereof or (b) EDC apply for or consents to such order.

o. Third Interim Financing (DIP)

[56] **ORDERS** that the Petitioners be and are hereby authorized to borrow from Export Development Canada (“**EDC**”) such amounts from time to time as the Petitioners may consider necessary or desirable, up to an aggregate principal amount not exceeding \$3,450,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed under seal as Exhibit P-2 in support of the Application (the “**Third DIP Term Sheet**”) and in the Third 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 Third Interim Financing Documents (as defined hereinafter) (the “**Third DIP Facility**”).

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

[58] **ORDERS** that Petitioners shall pay to EDC, 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 EDC on a full indemnity basis (the “**Third Interim Lender Expenses**”)) under the Third DIP Term Sheet and the Third Interim Financing Documents and shall perform all of their other obligations owed to EDC pursuant to the Third DIP Term Sheet, the Third Interim Financing Documents and the Order.

[59] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$4,100,000 (the “**Third DIP Charge**”) in favour of EDC as security for all obligations of the Petitioners to EDC with respect to the payment of the Third DIP Facility (including principal, interest and the Third Interim Lender Expenses) owing to EDC under or in connection with the Third DIP Term Sheet and the Third Interim Financing Documents. Such Third DIP Charge shall subsist without necessity of any publication, registration, recording, filing or

perfection and shall have the priority established by paragraphs [83] and [84] of this Order.

[60] **ORDERS** that the claims of EDC pursuant to the Third Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and EDC, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan.

[61] **ORDERS** that EDC 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 Third DIP Charge and the Third 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 Third DIP Term Sheet and the Third Interim Financing Documents.

[62] **ORDERS** that EDC shall not take any enforcement steps under the Third DIP Term Sheet, the Third Interim Financing Documents or the Third 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, EDC shall be entitled to take any and all steps, the Third DIP Term Sheet, the Third Interim Financing Documents, the Third 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.

[63] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [91] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [56] to [63] of this Order unless either (a) notice of a motion for such order is served on EDC by the moving party within at least seven (7) days prior to the presentation thereof or (b) EDC apply for or consents to such order.

p. Directors’ and Officers’ Indemnification and Charge

[64] **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.

- [65] **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 [64] 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 [83] and [84] of this Order.
- [66] **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 [64] of this Order.

g. Restructuring

- [67] **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 \$2,500,000 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.

[68] **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.

[69] **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.

r. Powers of the Monitor & Administration Charge

[70] **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.

- [71] **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.
- [72] **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.
- [73] **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.
- [74] **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.

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- [75] **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.
- [76] **DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.
- [77] **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.
- [78] **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 \$1,500,000 (the "**Administration Charge**"), having the priority established by paragraphs [83] and [84] of this Order.
- [79] **DECLARES** that:
- (a) upon disbursement of the initial advance of \$1,500,000 by EDC under the Third Interim Financing Documents (the "**Initial Advance**"), as confirmed by the issuance of a Monitor's Certificate confirming receipt of the Initial Advance and First Reduction of the Administration Charge, the Administration Charge shall be reduced by an amount equal to \$250,000 to an amount equal to \$1,250,000; and
 - (b) upon the disbursement of the second advance of \$1,950,000 by EDC under the Third Interim Financing Documents (the "**Second Advance**"), as confirmed by the issuance of a Monitor's Certificate confirming receipt of the Second Advance and Second Reduction of the Administration Charge,

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the Administration Charge shall be further reduced by an amount equal to \$250,000 to an amount equal to \$1,000,000.

s. KERPs and KERP Charge

- [80] **ORDERS** that the key employee retention plan, key vice-president retention plan and the key executive incentive plan (collectively, the “**KERPs**”) described in the Fourth ARIO Application and summarized in the document filed under seal as Exhibit P-3 to the Initial 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.
- [81] **ORDERS** that the amended and restated list of participants in the KERPs filed under seal as Exhibit P-9 to the Fourth ARIO Application is hereby approved, and the Petitioners are hereby authorized and empowered to perform their obligations set forth in the KERPs, including by making the payments to the individuals listed therein in accordance with the terms set out therein.
- [82] **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 [83] and [84] of this Order.

t. Priorities and General Provisions Relating to CCAA Charges

- [83] **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 Second DIP Charge;
 - (e) fifth, the Transaction Charge (as defined in the Bidding Procedures Order dated September 29, 2022);
 - (f) sixth, the KERP Charge.
- [84] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options,

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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 [27](a) of this Order shall be determined by the Court at a later date and time.

[85] **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.

[86] **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.

[87] **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.

[88] **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.

- [89] **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.
- [90] **DECLARES** that the certificates of the Monitor to be issued and filed in the Court record pursuant to the *Order authorizing the Monitor to Pay Certain Amounts Owed to Beneficiaries of CCAA Charges* issued by this Court on or about the date of this Order shall validly reduce and/or discharge the CCAA Charges, as applicable, without the necessity of any amendment to this Order or of any other orders of this Court.

u. Hearing Scheduling and Details

- [91] **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.
- [92] **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**").
- [93] **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.
- [94] **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

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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.

- [95] **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.

v. General

- [96] **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.
- [97] **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.
- [98] **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.
- [99] **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.

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- [100] **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, Appendices A and B to the Fifth Report of the Monitor dated February 1, 2023, Exhibits P-5, P-6, P-7 and P-8 to the Third ARIO Application, Appendix B to the Seventh Report of the Monitor dated March 15, 2023, Exhibits P-5A, P-6A, P-7 and P-9A to the Fourth ARIO Application and Exhibit P-2 to the Application shall be filed under seal and kept confidential until further order of this Court.
- [101] **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.
- [102] **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.
- [103] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [104] **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.
- [105] **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 FormerXBC Inc. (formerly

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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.

[106] **DECLARES** that, for the purposes of any applications authorized by paragraph [105] of this Order, Petitioners' centre of main interest is located in Montréal, Québec, Canada.

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

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

Christian Immer, J.S.C.

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

Hearing date: March 27, 2023

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EXHIBIT P-1A

**Comparison between the Fifth Amended and
Restated Initial Order and the Fourth ARIO**

SUPERIOR COURT
(Commercial Division)

CANADA

PROVINCE OF QUÉBEC

DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: March ~~16~~27, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)

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11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)

APPLIED COMPRESSION SYSTEMS LTD.

1224933 ONTARIO INC. (FORMERLY COMPRESSED AIR INTERNATIONAL INC.)

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

ENERPHASE INDUSTRIAL SOLUTIONS, INC.

CDA SYSTEMS, LLC

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

THE TITUS COMPANY

NORTEKBELAIR CORPORATION

FORMERXBC FLOW SERVICES – WISCONSIN INC. (FORMERLY XBC FLOW SERVICES – WISCONSIN INC.)

CALIFORNIA COMPRESSION, LLC

FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)

Debtors / Petitioners

and

DELOITTE RESTRUCTURING INC.

Monitor

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FIFTH AMENDED AND RESTATED INITIAL ORDER

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[1] **CONSIDERING** the *Application for the Issuance of a ~~Fourth~~^{Fifth} Amended and Restated ~~Initial Order, Approval and Vesting Orders, a Wage Earner Protection Program Order and Ancillary Relief~~^{Initial Order (Interim Financing)}* (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 *Amended Application for the Issuance of a ~~Fourth~~ Amended and Restated ~~Initial Order, Approval and Vesting Orders, a Wage Earner Protection Program Order and Ancillary Relief~~* (the "**Fourth ARIO Application**"), pursuant to the CCAA;

[3] ~~[2]~~ **CONSIDERING** the *Application for the Issuance of a ~~Third~~ Amended and Restated ~~Initial Order and Approval and Vesting Orders~~* (the "**Third ARIO Application**") pursuant to the CCAA;

[4] ~~[3]~~ **CONSIDERING** the *Amended Application for the Issuance of a ~~Second~~ Amended and Restated ~~Initial Order, and an Approval and Vesting Order~~* (the "**Second ARIO Application**") pursuant to the CCAA;

[5] ~~[4]~~ **CONSIDERING** the *Application for the Issuance of an ~~Amended and Restated Initial~~ Order* (the "**ARIO Application**") pursuant to the CCAA;

[6] ~~[5]~~ **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;

[7] ~~[6]~~ **CONSIDERING** the ~~Seventh~~^{Eighth} Report of the Monitor dated March ~~15~~¹⁶, 2023 (the "**Report**");

~~[7] CONSIDERING the Approval, Vesting and Assignment Order in Respect of the Assets of The Titus Company issued by this Court on March 16, 2023 approving the sale transaction contemplated by the agreement entitled Asset Purchase Agreement dated March 11, 2023 between The Titus Company, as seller, and Fluid-Aire Dynamics, Inc., as buyer;~~

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~~[8]CONSIDERING the Approval, Vesting and Assignment Order in Respect of XBC Flow Services — Wisconsin Inc. issued by this Court on March 16, 2023 approving the transaction contemplated by the agreement entitled Asset Purchase Agreement dated March 11, 2023 between XBC Flow Services — Wisconsin Inc., as seller, and Total Energy Systems, LLC, as buyer;~~

[8] ~~[9]~~**CONSIDERING** the submissions of counsel and the testimony of the witnesses heard;

[9] ~~[10]~~**GIVEN** the provisions of the CCAA;

[10] ~~[11]~~**GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

THE COURT HEREBY:

[11] ~~[42]~~ **GRANTS** the Application.

[12] ~~[43]~~ **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) ~~II~~ Stay of Proceedings against the Petitioners and the Property;
- (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) Second Interim Financing (DIP);
- (o) Directors’ and Officers’ Indemnification and Charge;
- (p) Restructuring;
- (q) Powers of the Monitor;
- (r) KERPs and KERP Charge;
- (s) Priorities and General Provisions Relating to CCAA Charges;

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(t) Hearing Scheduling and Details;

(u) General. ~~a.~~

a. **Service**

[13] ~~[14]~~ **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and ~~Validated~~ validated so that the Application is properly returnable today and hereby dispenses with further service thereof.

Application of the CCAA

[14] ~~[15]~~ **DECLARES** that the Petitioners are debtor companies to which the CCAA applies. ~~e.~~

c. **Effective Time**

[15] ~~[16]~~ **DECLARES** that this Order and all of its ~~provisions~~ provisions are effective as of 12:01 a.m. Montréal time, ~~Province~~ Province of Québec, on September 29, 2022 (the “**Effective Time**”).

Administrative Consolidation

[16] ~~[17]~~ **ORDERS** the consolidation of these CCAA proceedings of the Petitioners under one single Court file, in file number 500-11-061483-224.

[17] ~~[18]~~ **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.

[18] ~~[19]~~ **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.

Plan of Arrangement

[19] ~~[20]~~ **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.

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

[20] ~~[21]~~ **ORDERS** that, until and including May 5, 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 [343] herein except with ~~leave~~ 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.

[21] ~~[22]~~ **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.

[22] ~~[23]~~ **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~~ providing advance notice of its intention to do so.

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

[23] ~~[24]~~ **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~~ 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

[24] ~~[25]~~ **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 [607] hereof.

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[25] ~~[26]~~ **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.

[26] ~~[27]~~ **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:

- (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.

[27] ~~[28]~~ **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.

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[28] ~~[29]~~ **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)~~ (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.

[29] ~~[30]~~ **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.

[30] ~~[31]~~ **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 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**”).

[31] ~~[32]~~ **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.

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[32] ~~[33]~~ **DECLARES** that ~~paragraph~~ paragraphs ~~[340]~~ and ~~[321]~~ 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~~ receiver or any other person appointed to make a distribution in respect of the Property, unless the Court orders otherwise.

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or a ~~receiver~~receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA")

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

[33] ~~[34]~~ **ORDERS** that during the Stay Period, and subject to *inter alia*, subsection 11.1 of CCAA, all rights and remedies, including, but not limited to the determination of existing rights and events deemed to occur on the day of the Order and the day on which the Stay Period ends shall not be exercised or enforced by or on behalf 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.

[34] ~~[35]~~ **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

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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. ~~i.~~ **No Interference with Rights**

[35] ~~[36]~~ **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~~ 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**

[36] ~~[37]~~ **ORDERS** that during the Stay Period and subject to paragraphs ~~[387]~~ and ~~[398]~~ hereof and subsection 11.01 CCAA, all Persons ~~haVing~~ 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

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[38] ~~[39]~~ **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

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.

[37] ~~[38]~~ **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.

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

[39] ~~[40J]~~ **ORDERS** that, notwithstanding the foregoing, any Person who ~~proVided~~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.

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

[40] ~~[41]~~ **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 ARIO 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**”).

[41] ~~[42]~~ **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.

[42] ~~[43]~~ **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.

[43] ~~[44]~~ **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~~ have the priority established by paragraphs ~~[7583]~~ and ~~[7684]~~ of this Order.

[44] ~~[45]~~ **ORDERS** that the claims of the Interim Lenders pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the

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Plan or these proceedings and the Interim Lenders, in that capacity, shall be treated as unaffected creditors in these proceedings and in any Plan.

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[\[45\]](#) ~~[46]~~ **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.

[\[46\]](#) ~~[47]~~ **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~~[244](#) of the BIA, under the Civil Code of Quebec or any other similar legislation.

[\[47\]](#) ~~[48]~~ **ORDERS** that, subject to further order of this Court and notwithstanding paragraph ~~[8391]~~ of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs ~~[440]~~ to ~~[487]~~ 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)~~ ~~(7)~~ days prior to the presentation thereof or (b) the Interim Lenders apply for or consents to such order.

n. **Second Interim ~~Financing~~ [Financing](#) (DIP)**

[\[48\]](#) ~~[49]~~ **ORDERS** that the Petitioners be and are hereby authorized to borrow from Export Development Canada (“**EDC**”) such amounts from time to time as the Petitioners may consider necessary or desirable, up to an aggregate principal amount not exceeding \$2,500,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed under seal as Exhibit P-8 in support of the [Third ARIO](#) Application (the “**Second DIP Term Sheet**”) and in the EDC 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 “**Second DIP Facility**”).

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- [49] **ORDERS** that the Petitioners are hereby authorized to execute and deliver the Second DIP Term Sheet and other security documents and ancillary documents as may be required by EDC in connection with the Second DIP Facility and the Second DIP Term Sheet (collectively, the “EDC Interim Financing Documents”), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to with EDC, but only with the consent of the Monitor, and the Petitioners are hereby authorized to perform all of its obligations under the Second DIP Term Sheet and the EDC Interim Financing Documents.
- [50] **ORDERS** that Petitioners shall pay to EDC, 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 EDC on a full indemnity basis (the “EDC Interim Lender Expenses”)) under the Second DIP Term Sheet and the EDC Interim Financing Documents and shall perform all of their other obligations owed to EDC pursuant to the Second DIP Term Sheet, the EDC Interim Financing Documents and the Order.
- [51] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,000,000 (the “**Second DIP Charge**”) in favour of EDC as security for all obligations of the Petitioners to EDC with respect to the payment of the Second DIP Facility (including principal, interest and the EDC Interim Lender Expenses) owing to EDC under or in connection with the Second DIP Term Sheet and the EDC Interim Financing Documents. Such Second DIP Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs [83] and [84] of this Order.
- [52] **ORDERS** that the claims of EDC pursuant to the EDC Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and EDC, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan.
- [53] **ORDERS** that EDC 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 Second DIP Charge and the EDC 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 Second DIP Term Sheet and the EDC Interim Financing Documents.

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[54] **ORDERS** that EDC shall not take any enforcement steps under the Second DIP Term Sheet, the EDC Interim Financing Documents or the Second 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, EDC shall be entitled to take any and all steps, the Second DIP Term Sheet, the EDC Interim Financing Documents, the Second 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.

[55] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [91] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [48] to [55] of this Order unless either (a) notice of a motion for such order is served on EDC by the moving party within at least seven (7) days prior to the presentation thereof or (b) EDC apply for or consents to such order.

o. **Third Interim Financing (DIP)**

[56] **ORDERS** that the Petitioners be and are hereby authorized to borrow from Export Development Canada (“**EDC**”) such amounts from time to time as the Petitioners may consider necessary or desirable, up to an aggregate principal amount not exceeding \$3,450,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed under seal as Exhibit P-2 in support of the Application (the “**Third DIP Term Sheet**”) and in the Third 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 Third Interim Financing Documents (as defined hereinafter) (the “**Third DIP Facility**”).

[57] **ORDERS** that the Petitioners are hereby authorized to execute and deliver the ~~Second~~Third DIP Term Sheet and other security documents and ancillary documents

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as may be required by EDC in connection with the SecondThird DIP Facility and the SecondThird DIP Term Sheet (collectively, the “EDGThird Interim Financing Documents”), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to with EDC, but only with the consent of the Monitor, and the Petitioners are hereby authorized to perform all of its obligations under the SecondThird DIP Term Sheet and the EDC Interim Financing Documents.

[58] ~~[54]~~ **ORDERS** that Petitioners shall pay to EDC, 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 EDC on a full indemnity basis (the “EDGThird Interim Lender Expenses”)) under the SecondThird DIP Term Sheet and the EDGThird Interim Financing Documents and shall perform all of their other obligations owed to EDC pursuant to the SecondThird DIP Term Sheet, the EDGThird Interim Financing Documents and the Order.

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[59] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$~~34,010~~0100,000 (the "**SecondThird DIP Charge**") in favour of EDC as security for all obligations of the Petitioners to EDC with respect to the payment of the **SecondThird** DIP Facility (including principal, interest and the **EDGThird** Interim Lender Expenses) owing to EDC under or in connection with the **SecondThird** DIP Term Sheet and the **EDGThird** Interim Financing Documents. Such **SecondThird** DIP Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall ~~have~~have the priority established by paragraphs ~~(75)~~[83] and ~~476~~[84] of this Order.

[60] ~~[53]~~**ORDERS** that the claims of EDC pursuant to the **EDGThird** Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and EDC, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan.

[61] ~~[54]~~**ORDERS** that EDC 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 **SecondThird** DIP Charge and the **EDGThird** 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 **SecondThird** DIP Term Sheet and the **EDGThird** Interim Financing Documents.

[62] ~~[55]~~**ORDERS** that EDC shall not take any enforcement steps under the **SecondThird** DIP Term Sheet, the **EDGThird** Interim Financing Documents or the **SecondThird** 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, EDC shall be entitled to take any and all steps, the **SecondThird** DIP Term Sheet, the **EDGThird** Interim Financing Documents, the **SecondThird** DIP Charge and otherwise permitted at law, but without ~~having~~having to send any additional demands under Section 244 of the BIA, under the Civil Code of Quebec or any other similar legislation.

[63] ~~[56]~~ **ORDERS** that, subject to further order of this Court and notwithstanding paragraph ~~[83]~~[91] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs ~~[49]~~[56] to ~~[56]~~[f3] of this Order unless either (a) notice of a motion for such order is served on EDC by the moving party within at least seven (7) days prior to the presentation thereof or (b) EDC apply for or consents to such order.

p. ~~e.~~ **Directors' and Officers' Indemnification and Charge**

[64] ~~[57]~~ **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. ■

[65] ~~458]~~ **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~~extent of the aggregate amount of \$3,700,000 (the "**D&O Charge**"), as security for the indemnity provided in paragraph ~~[58]~~[64] 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 ~~[75]~~[83] and ~~[76]~~[84] of this Order.

[66] ~~459]~~ **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 ~~[58]~~[64] of this Order.

~~g.~~ **Restructuring**

q. **Restructuring**

[67] ~~[60]~~ **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~~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 \$2,500,000 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.

[68] ~~[64]~~ **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.

[69] ~~[62]~~ **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

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“**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,

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~~PAGE: 15~~ 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 ~~eVentevent~~ 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.

~~r.~~ ~~q.~~ **Powers of the Monitor & Administration Charge**

[70] ~~[63]~~ **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~~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) ~~(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) ~~(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;

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- (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) ~~It~~ 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~~ give any consent or ~~approval~~ 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.

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[71] ~~[64]~~**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.

[72] ~~[65]~~**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.

[73] ~~[66]~~**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.

[74] ~~[67]~~**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.

[75] ~~[68]~~**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~~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.

[76] ~~[69]~~**DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.

[77] ~~70~~**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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[78] ~~[74]~~ **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 \$~~2,21~~1,500,000 (the "**Administration Charge**"), having the priority established by paragraphs ~~[7583]~~ and ~~[7684]~~ of this Order.

[79] **DECLARES** that:

- (a) upon disbursement of the initial advance of \$1,500,000 by EDC under the Third Interim Financing Documents (the "**Initial Advance**"), as confirmed by the issuance of a Monitor's Certificate confirming receipt of the Initial Advance and First Reduction of the Administration Charge, the Administration Charge shall be reduced by an amount equal to \$250,000 to an amount equal to \$1,250,000; and
- (b) upon the disbursement of the second advance of \$1,950,000 by EDC under the Third Interim Financing Documents (the "**Second Advance**"), as confirmed by the issuance of a Monitor's Certificate confirming receipt of the Second Advance and Second Reduction of the Administration Charge, the Administration Charge shall be further reduced by an amount equal to \$250,000 to an amount equal to \$1,000,000.

s. ~~f.~~ **KERPs and KERP ChargeCharge**

[80] ~~[72]~~ **ORDERS** that the key employee retention plan, key vice-president retention plan and the key executive ~~incentive~~incentive plan (~~collectively~~collectively, the "**KERPs**") described in the Fourth ARIO Application and summarized in the document filed under seal as Exhibit P-3 to the Initial 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.

[81] ~~[73]~~ **ORDERS** that the amended and restated list of participants in the KERPs filed under seal as Exhibit P-9 to the Fourth ARIO Application is hereby approved, and the Petitioners are hereby authorized and empowered to perform

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their obligations set forth in the KERPs, including by making the payments to the individuals listed therein in accordance with the terms set out therein.

[82] ~~[74]~~ **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 ~~[75]~~[83] and ~~[76]~~[84] of this Order.

t. ~~s.~~ **Priorities and General Provisions Relating Relating to CCAA Charges**

[83] ~~[75]~~ **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~~follows:

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

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

[84] ~~[76]~~ **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 ~~[28]~~[7](a) of this Order shall be determined by the Court at a later date and time.

[85] ~~[77]~~ **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.

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[86] ~~[78]~~ **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.

[87] ~~[79]~~ **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 ~~co~~^o~~venants~~^{venants}, 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"~~^{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.

[88] ~~[80]~~ **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.

[89] ~~81]~~ **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~~ receiver and manager or interim receiver of the Petitioners.

[90] ~~[82]~~ **DECLARES** that the certificates of the Monitor to be issued and filed in the Court record pursuant to the *Order authorizing the Monitor to Pay Certain Amounts Owed to Beneficiaries of CCAA Charges* issued by this Court on or about the date of this Order shall validly reduce and/or discharge the CCAA Charges, as applicable, without the necessity of any amendment to this Order or of any other orders of this Court.

u. ~~t.~~ **Hearing ~~Scheduling~~ Scheduling and Details**

[91] ~~[83]~~ **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.

[92] ~~[84]~~ **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~~ moving party, the Petitioners

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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**”).

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[93] ~~[85]~~ **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.

[94] ~~[86]~~ **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.

[95] ~~[87]~~ **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.

v. ~~u.~~ **General**

[96] ~~[88]~~ **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.

[97] ~~[89]~~ **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.

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[98] ~~[90]~~ **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~~ delivered by courier, or three (3) business days after mailing if by ordinary mail.

[99] ~~[94]~~ **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.

[100] ~~[92]~~ **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 ARI0 Application, Appendices A and B to the Fifth Report of the Monitor dated February 1, 2023, Exhibits P-5, P-6, P-7 and P-8 to the Third ARI0 Application, Appendix B to the Seventh Report of the Monitor dated March 15, 2023 ~~and~~, Exhibits P-5A, P-6A, P-7 and P-9A to the Fourth ARI0 Application and Exhibit P-2 to the Application shall be filed under seal and kept confidential until further order of this Court.

[101] ~~[93]~~ **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.

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[102] **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.

[103] ~~[95]~~ **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

[104] ~~[96]~~ **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.

[105] ~~[97]~~ **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 FormerXBC Inc. (formerly 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.

[106] ~~[98]~~ **DECLARES** that, for the purposes of any applications authorized by paragraph ~~[97]~~[105] of this Order, Petitioners’ centre of main interest is located in Montréal, Québec, Canada.

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[107] ~~[99]~~ **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.

[108] ~~[100]~~ **THE WHOLE WITHOUT COSTS.**

[109]

Christian ~~e~~
Immer, J.S.C.

MTRE SANDRA ABITAN



MTRE ~~JULI~~
~~EN MORISSETTE~~ MTRE ~~ILIA KR~~
~~AVTSOV~~ JULIEN MORISSETTE

MTRE SOPHIE ~~COURVI~~
~~LE~~ COURVILLE

(OSLER HOSKIN & HARCOURT LLP)

COUNSEL TO THE PETITIONERS

Hearing date: ~~;~~
March ~~46~~27, 2023

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EXHIBIT P-2

Third DIP Term Sheet
(confidential and under seal)

No: 500-11-061483-224

**SUPERIOR COURT
(Commercial Division)**

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

DISTRICT OF MONTRÉAL

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

FORMERXBC INC. & AL

Debtors / Petitioners

and.

DELOITTE RESTRUCTURING INC.

Monitor

**APPLICATION FOR THE ISSUANCE OF A FIFTH
AMENDED AND RESTATED INITIAL ORDER,
AFFIDAVIT, NOTICE OF PRESENTATION, LIST
OF EXHIBITS, EXHIBITS P-1 and P-1A
(Sections 11 and 11.2 of the *Companies'*
Creditors Arrangement Act, RSC 1985, c C-36)**

ORIGINAL

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