CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

S U P E R I O R C O U R T
(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.) ET AL.**

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

APPLICATION OF THE MONITOR FOR THE APPROVAL OF A PROPOSED ALLOCATION METHOD

(Section 11 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**"))

TO THE HONOURABLE JUSTICE CHRISTIAN IMMER, J.S.C. SITTING IN COMMERCIAL DIVISION, IN THE JUDICIAL DISTRICT OF MONTRÉAL, THE MONITOR, DELOITTE RESTRUCTURING INC., RESPECTFULLY SUBMITS AS FOLLOWS:

I. INTRODUCTION

1. By the present Application, Deloitte Restructuring Inc., in its capacity as Court-appointed monitor (the "**Monitor**") is seeking the approval of a proposed allocation method (the "**Proposed Allocation Method**") in respect of the net proceeds currently held by the Monitor (the "**Net Proceeds**"), including regarding the allocation, between the Petitioners' estates, of proceeds from sale transactions, intercompany transactions and costs incurred since the initiation of these CCAA proceedings, the whole as more fully described in this Application and in the Monitor's report (the "**Proposed Allocation Method Report**") filed as **Exhibit M-1** in support of this Application for approval by the Court.

2. The necessity for an allocation method has been contemplated since the beginning of these CCAA proceedings, and is currently required pursuant to para. 28 to 30 of the *Fifth Amended and Restated Initial Order* issued on March 27, 2023 (the "**Fifth ARIO**").

II. PROCEDURAL BACKGROUND

3. On September 29, 2022 (the "**Filing Date**"), at the request of the Debtors / Petitioners (the "**Petitioners**"), the Court issued a First Day Initial Order (the "**FDIO**") pursuant to the CCAA and a Bidding Procedures Order, as appears from the Court record.

4. The FDIO, *inter alia*:

   (a) appointed the Monitor;

   (b) ordered a stay of proceedings in respect of the Petitioners and their directors and officers until October 7, 2022 (as extended from time to time), (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, including the engagement of National Bank Financial ("**NBF**") to assist in the implementation of the SISP, as appears from the Court record.

6. On October 20, 2022, at the Petitioners' request, the Court issued an Amended and Restated Initial Order (the "**ARIO**") pursuant to the CCAA, which, *inter alia*:

   (a) approved a key employee retention plan, a key vice-president retention plan and a key executive incentive plan (collectively, the "**KERPs**") and granted a Court-ordered charge to secure the payment owed to the key employees in accordance with the KERPs (the "**KERP Charge**"); and

   (b) approved the interim financing facility (the "**DIP Facility**") provided by the secured creditors of the Petitioners, 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 in support of the Application for the Issuance of an Amended and Restated Initial Order, and granted a Court-ordered charge (the "**DIP Charge**") in an amount sufficient to cover the potential exposure of the Interim Lenders under the DIP Facility.

7. 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.

8. The Second ARIO, *inter alia*, increased the Administration Charge to a maximum amount of $3,000,000.

9. On the same date, the Court also issued the Approval and Vesting Order in respect of the assets of Applied Compression Systems Ltd. (the "**ACS AVO**") and authorized that the

proceeds from said transaction be used to pay amounts owed to professionals secured by the Administration Charge, the whole as appears from the Court record.

10. On February 13, 2023, at the Petitioners' request, the Court issued a Third Amended and Restated Initial Order (the "**Third ARIO**"), pursuant to which the Court, *inter alia*:

    (a) approved the second interim financing facility (the "**Second DIP Facility**") provided by EDC in accordance with the Second Interim Financing Term Sheet filed under seal support of the Application for the Issuance of a Third Amended and Restated Order, and granted a Court-ordered charge (the "**Second DIP Charge**") in an amount sufficient to covert the potential exposure of EDC under the Second DIP Facility;

    (b) provided for a reduction mechanism of the Administration Charge, to take effect upon issuance of the Monitor's certificate confirming, at the earliest of (i) the receipt of the Initial Advance of the Second DIP Facility or (ii) of the payments of the net proceeds of the transaction, as further detailed at paragraph 72 of the Third ARIO.

11. On the same date, the Court also issued the GNR AVO and the Sullair AVO, as defined and as further described below.

12. The Ivys AVO, dated February 17, 2023, was also subsequently issued by the Court.

13. Pursuant to the GNR AVO, the Sullair AVO and the Ivys AVO, the Court authorized that a portion of the proceeds from said transactions, up to an amount up to $1,100,000, be used to pay amounts owed to professionals secured by the Administration Charge, the whole as appears from the Court record.

14. On February 21, 2023, in accordance with the Third ARIO, the Monitor issued a certificate confirming that the initial advance of the Second DIP Facility of $1,250,000 by EDC contemplated in the Third ARIO had been received and the Administration Charge was accordingly reduced to $2,250,000.

15. 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.

16. 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 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 of the respective parties 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.

17. Also on March 16, 2023, at the Petitioners' request, the Court issued a Fourth Amended and Restated Initial Order (the "**Fourth ARIO**"), pursuant to which the Court, *inter alia*:

(a) declared that the certificates of the Monitor to be issued and filed in the Court record pursuant to the Monitor Payments Order shall validly reduce and/or discharge the CCAA Charges, as applicable, without the necessity of any other orders of the Court; and

(b) approved an amendment to the list of participants in the KERPs.

18. On the same date, the Court also issued:

(a) an Approval, Vesting and Assignment Order with respect to the sale of substantially all assets of FormerXBC Pennsylvania Company (formerly The Titus Company) (the "**Fluid-Aire AVO**");

(b) an Approval, Vesting and Assignment Order with respect to the sale of substantially all assets of FormerXBC Flow Services – XBC Wisconsin Inc. (formerly XBC Flow Services – Wisconsin Inc.) (the "**Total Energy AVO**"); and

(c) an Approval, Vesting and Assignment Order with respect to the sale of substantially all assets of FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC) (the "**EnergyLink AVO**").

19. In accordance with the Monitor Payments Order, the Monitor used a portion of the Net Proceeds to pay amounts secured by the DIP Charge, the Second DIP Charge and the Transaction Charge and, on March 23, 2023 issued certificates confirming and effecting the cancellation and discharge of said charges, as appears from the Court record.

20. Also in accordance with the Monitor Payments Order, the Monitor used a portion of the Net Proceeds to pay amounts owing under the KERPs, in accordance with the Monitor Payments Order and, on March 24, 2023, issued certificates confirming the reduction of the KERP Charge, as appears from the Court record.

21. On March 27, 2023, at the Petitioners' request, the Court issued the Fifth ARIO (collectively with the ARIO, the Second ARIO, the Third ARIO and the Fourth ARIO, the "**ARIOs**"), pursuant to which the Court, *inter alia*:

(a) approved the Third DIP Facility provided to the Petitioners pursuant to a Third DIP Term Sheet (as defined in the Fifth ARIO) dated as of March 22, 2023, negotiated between the Petitioners and EDC, pursuant to which EDC agreed to provide interim financing to the Petitioners, and granting a Third DIP Charge (as defined

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

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

22. On April 13, 2023, in accordance with the Fifth ARIO, the Monitor issued a certificate confirming that the initial advance of $1,500,000 by EDC contemplated in the Fifth ARIO had been received and the Administration Charge was accordingly reduced to $1,250,000.

23. On May 2, 2023, the second advance under the Third DIP Facility was received. On May 3, 2023, the Monitor issued its certificate confirming that the second advance under the Third DIP Facility had been received and the Administration Charge was accordingly reduced to $1,000,000.

24. On May 5, 2023, at the Petitioners' request, the Court issued an order extending the stay period to May 24, 2023, as appears from the Court record.

25. On the same date, at the Petitioners' request, the Court issued an order lifting the Stay for the sole purpose of authorizing the filing before the Superior Court of Québec (Class Action Division) in file no. 500-06-001135-215 (Maurice Leclair et al. v. FormerXBC et al.) of an application seeking approval of a settlement agreement therein (the "**Class Action Settlement**").

26. On the same date, at the Monitor's request, the Court issued an Order Authorizing the Monitor to Pay Amounts Owed Under the Third DIP Facility and Secured by the Third DIP Charge (the "**Second Monitor Payments Order**").

27. On May 10, 2023, the Monitor paid sums owed under the Third DIP Facility issued a Certificate confirming and effecting the cancellation and discharge of the Third DIP Charge, in accordance with the Second Monitor Payments Order, as appears from the Court record.

28. On May 24, 2023, at the Petitioners' request, the Court issued a series of orders, namely the:

(a) Claims Procedure Order;

(b) Order extending the Stay of Proceedings, up to and until September 29, 2023 (the "**Extension Period**"); and

(c) Approval and Vesting Order in Respect of Biostreams Assets of FormerXBC Systems USA, LLC (formerly, Xebec Systems USA, LLC) (the "**Biostreams AVO**"); and the

(d) Order Authorizing the Use of Net Proceeds to Fund Cash-Flow Requirements (the "**Net Proceeds Order**").

29. In accordance with the Monitor Payments Order, the Monitor used a portion of the Net Proceeds to pay the remaining amounts owing under the KERPs and, on June 13, 2023, issued a certificate confirming and effecting the cancellation and discharge of the KERP Charge, as appears from the Court record.

III. SUMMARY OF TRANSACTIONS APPROVED BY THE COURT AND UPDATE ON CCAA CHARGES

A. Approval and Vesting Orders issued by the Court

30. As indicated above, and as of the present date, the Court has issued the following Approval and Vesting Orders:

(e) the ACS AVO;

(f) the GNR AVO;

(g) the Sullair AVO;

(h) the Ivys AVO;

(i) the Fluid-Aire AVO;

(j) the Total Energy AVO;

(k) the EnergyLink AVO; and

(l) the Biostreams AVO.

(collectively, the "**AVOs**").

B. Closing of transactions and Monitor's certificates evidencing receipt of sale proceeds from purchasers

31. Following the issuance by the Court of the AVOs, with the exception of the transaction in respect of the biostream assets of FormerXBC Systems USA, LLC (the "**Biostreams Transaction**") for which closing is expected to occur shortly, the parties to the transactions thereto, with the assistance of the Monitor, proceeded to closing.

32. As provided for under the AVOs, following the Monitor's receipt of confirmation from the purchaser and the seller(s) of (i) the execution of the applicable purchase agreement, (ii) the payment of the cash purchase price, and (iii) the satisfaction and/or waiver of all conditions to closing of these transactions, the Monitor was to issue and notify a certificate of completion in respect of same.

33. Consequently, the Monitor issued the following certificates and filed same in the Court record, confirming the closing of the seven transactions in accordance with the AVOs:

(a) February 7, 2023: Certificate of the Monitor in respect of the transaction relating to Applied Compression Systems Ltd.;

(b) February 15, 2023: Certificate of the Monitor in respect of the transaction relating to GNR LP;

(c) February 21, 2023: Certificate of the Monitor in respect of the transaction relating to CDA Systems, LLC and California Compression LLC;

(d) February 27, 2023: Certificate of the Monitor in respect of the transaction relating to FormerXBC Inc. (formerly Xebec Adsorption Inc.) (including its shares in Xebec Adsorption (Shanghai) Co., Ltd.) and Compressed Air International Inc.;

(e) March 21, 2023: Certificate of the Monitor in respect of the transaction relating to FormerXBC Pennsylvania Company (formerly The Titus Company);

(f) March 24, 2023: Certificate of the Monitor in respect of FormerXBC Flow Services – XBC Wisconsin Inc. (formerly XBC Flow Services – Wisconsin Inc.); and

(g) April 5, 2023: Certificate of the Monitor in respect of FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC).

C. Other transactions

34. Several other sale transactions that did not require specific court authorization, being under the threshold of $750,000 per transaction and $2,500,000 in the aggregate, as provided in the Fifth ARIO, have also been concluded, with the proceeds from same having been paid to the Monitor.

35. At the present date, two remaining transactions are expected to be finalized in the near term, namely the (i) the Biostreams Transaction and (ii) the Western Midstream Transaction, as namely described in the Ninth and Tenth Monitor's reports.

36. While there are certain other remaining assets to be realized (essentially litigious claims or intercompany claims as part of foreign insolvency proceedings), all or almost all assets of the Petitioners have now been sold as part of the SISP or as part of the subsequent processes implemented by the Petitioners and the Monitor, the status of which has been regularly reported to the Court and to stakeholders as part of the Monitor's reports and applications filed by the Petitioners and the Monitor.

37. As a result of the closing of all transactions mentioned above and as reported to the Court by the Monitor in its Ninth and Tenth Reports, as well as in the report filed in support hereof, the Monitor currently holds in its account the remaining Net Proceeds from such transactions, excluding sums paid in accordance with orders issued by this Court, including in accordance with the (i) ACS AVO, (ii) the Sullair AVO, the GNR AVO and the Ivys AVO, (iii) the Monitor Payments Order, (iv) the Second Monitor Payments Order and (v) the Net Proceeds Order.

38. Moreover, following the issuance of the Monitor's Certificate confirming the First Reduction of the Administration Charge and both the Monitor Payments Order and the Second Monitor Payments Order, the Monitor issued several certificates confirming and effecting the reduction and/or discharge of certain CCAA Charges, following payments made out of the Net Proceeds, as evidenced by the following Monitor's certificates, which were notified to the service list and filed in the Court record:

(a) March 17, 2023: Second Reduction of the Administration Charge to an amount of $1,500,000;

(b) March 23, 2023: Cancellation and Discharge of the Transaction Charge;

(c) March 23, 2023: Cancellation and Discharge of the DIP Charge;

(d) March 23, 2023: Cancellation and Discharge of the Second DIP Charge;

(e) March 24, 2023: Reduction of the KERP Charge to an amount of $400,000;

(f) April 13, 2023: Third Reduction of the Administration Charge to an amount of $1,250,000;

(g) April 13, 2023: Second Reduction of the KERP Charge to an amount of $100,000;

(h) May 3, 2023: Fourth Reduction of the Administration Charge to an amount of $1,000,000;

(i) May 10, 2023: Cancellation and Discharge of the Third DIP Charge; and

(j) June 13, 2023: Cancellation and Discharge of the KERP Charge.

39. As at the present date, pursuant to the Fifth ARIO and the priority set forth at para. 75 therein, and following payments made in accordance with the Monitor Payments Order and the Second Monitor Payments Order, subject to any further amendments ordered by this Court, the CCAA Charges currently in place are the following:

(a) Administration Charge, in the amount of $1,000,000; and

(b) D&O Charge, in the amount of $3,700,000;

IV. THE PROPOSED ALLOCATION METHOD AND THE INTERCOMPANY TRANSACTIONS REPORT FORMING PART THEREOF

A. INTRODUCTION

40. These CCAA proceedings, from the outset, contemplated one or more eventual transactions, with a view to preserve the going concern of the Petitioners' businesses and to maximize realization value, the whole in the best interest of the Petitioners' stakeholders, including the creditors, employees, clients and suppliers. It is in this context that the Bidding Procedures Order was rendered concurrently with the FDIO, and that the SISP was launched and implemented as part of the CCAA proceedings.

41. Now that the transactions have essentially been completed (except for the Biostreams Transaction and the Western Midstream Transaction) and these restructuring objectives have been attained, the ultimate outcome of the CCAA proceedings will involve the eventual distribution of the Net Proceeds to the creditors of the Petitioners entitled to same. The

claims process which is currently ongoing pursuant to the Claims Process Order is a necessary step towards that goal.

42. However, prior to being in a position to determine how the Net Proceeds should be shared between creditors of the respective Petitioners and eventually distributed, through one or more plan(s) of arrangement or otherwise, a determination of the Net Proceeds, on an estate by estate basis, must be made.

43. The CCAA proceedings involve 13 Petitioners (excluding the overseas affiliates of the Petitioners which are not part of the CCAA proceedings). Since the beginning of the CCAA proceedings, it was contemplated that there would be intercompany transactions between the Petitioners and the non-Petitioners during these CCAA proceedings and that an eventual allocation of the proceeds received and of the disbursements made in the course of these CCAA proceedings would be necessary.

B. GOVERNING PRINCIPLES FOR THE PROPOSED ALLOCATION METHOD

44. The ARIOs have consistently provided that, prior to the distribution of the Net Proceeds, excluding payments made in respect of amounts owing under the CCAA Charges, the Monitor would prepare and file with the Court the Intercompany Transactions Report and the Proposed Allocation (as such terms are defined in the ARIOs),

45. Paragraphs 28 to 30 of the Fifth ARIO[1] specifically provide as follows:

> [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

[1] These conclusions were also part of previous orders. See corresponding conclusions at para. 24 to 26 of the ARIO, para. 25 to 27 of the Second ARIO and para. 29 to 31 of the Third ARIO and Fourth ARIO.

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**").

46. The particular mechanism detailed above was rendered necessary from the inception of these CCAA proceedings, as the different entities forming part of the Petitioners operated *de facto* on a consolidated basis and relied on regular Intercompany Transactions (as defined in the ARIOs) in the context of their activities and the CCAA proceedings, including intercompany monetary transfers.

47. In addition, certain entities operated as cost centres (for example, FormerXBC Adsorption USA Inc. (formerly, Xebec Adsorption USA Inc., "**XSU**")) and therefore assumed a large part of certain corporate expenses, while others for instance performed the majority of sale transactions between Petitioners.

48. Moreover, certain entities assumed the lion's share of the restructuring and financing costs, such as professional fees, interim financing fees, or otherwise (such as in particular FormerXBC Adsorption Inc. (formerly Xebec Adsorption Inc., "**BLA**")).

49. In this context, and as contemplated by the ARIOs, it is now necessary, fair, beneficial and equitable to the stakeholders of the various estates, to allocate proceeds, disbursements and expenses between said estates, taking into consideration, *inter alia*, the Intercompany Transactions entered into between Petitioners, including the intercompany monetary transfers and the corporate recharge of certain fees, expenses, disbursements and overhead costs, as further detailed herein.

50. Moreover, the structure of the security and guarantees held by NBC and EDC, and the fact that these secured creditors did not have perfected security in the cash balances of certain entities as of the Filing Date, opens the possibility that certain sums could be available for unsecured creditors, but also rendered it necessary to allocate proceeds and expenses between estates, as NBC and EDC hold different security and guarantees on different entities, as reported previously both by the Petitioners and the Monitor. There are also several Petitioners in respect of which EDC simply does not hold any security, as detailed in the appended security chart prepared by the Monitor and its counsel following review of security and guarantee documents provided by EDC and NBC, communicated herewith as **Exhibit M-2**.

51. It is in this context that the Monitor, in the last weeks and months, has proceeded to reconcile all Intercompany Transactions having taken place since the Filing Date and perform an analysis as to how proceeds, disbursements and expenses should be allocated between estates, which analysis forms part of the Proposed Allocation Method presented herein and in the **Proposed Allocation Method Report**. The Proposed Allocation Method Report integrates the Intercompany Transactions Report contemplated by the ARIOs.

52. The Proposed Allocation Method includes three main subsets of "allocations", namely (i) the allocation of the "**Proceeds from transactions**", (ii) the adjustments for the "**Intercompany Transactions**" and (iii) the allocation of the "**Restructuring Costs**", the "**DIP Financing**" receipts and repayments and the "**Secured Debt Reimbursements**",

which last subset is itself subdivided (as these terms are defined in the Proposed Allocation Method Report).

53. The Proposed Allocation Method Report sets out in detail the Proposed Allocation Method, in view of establishing the Net Proceeds available in each Debtor's estate prior to any future distribution, as further detailed below and in the Proposed Allocation Method Report.

54. The Proposed Allocation Method is the result of a comprehensive and rigorous process undertaken by the Monitor, with the assistance of the Petitioners, with the objective of allocating the Net Proceeds in a fair and equitable manner among the Petitioners' stakeholders.

C. SUMMARY OF THE PROPOSED ALLOCATION METHOD DETAILED IN THE PROPOSED ALLOCATION METHOD REPORT

55. As indicated above, the Proposed Allocation Method Report comprises three (3) main allocation sections.

56. The Proposed Allocation Method Report outlines the methodology used and recommended by the Monitor to allocate the various receipts and disbursements and includes a general overview of the Proposed Allocation Method, by item, at its page 7.

i. Proceeds from transactions

57. The first step of the Proposed Allocation Method consists of identifying and allocating the Proceeds from transactions, which consists of proceeds from sale transactions having occurred since the Filing Date, whether as part of the SISP or otherwise and as detailed above and in previous applications and reports of the Monitor.

58. Proceeds from transactions are attributed to the concerned entity and form the base, or the "top line", of the Proposed Allocation Method.

59. For transactions involving a single Petitioner, the total amount of the Proceeds from transactions received by the Monitor pursuant to the respective transactions is allocated to the applicable Petitioner. For transactions involving more than one Petitioner (i.e. the Sullair Transaction and the Ivys Transaction), the allocation is based on the purchase price allocation included in the transaction documents relating thereto, which had been reviewed and considered reasonable by the Monitor and approved by the applicable secured creditors.

60. For transactions concluded in a currency other than the Canadian dollar, the Proceeds from transactions are converted to Canadian dollars at the rate in effect as at the date of closing of the particular transaction.

61. The Proposed Allocation Method Report does not include the proceeds resulting from the Biostreams Transaction and the Western Midstream Transaction, since these transactions have yet to close and the estimated proceeds to be realized remain confidential at this stage. These proceeds, like the proceeds for other remaining assets to be realized as the case may be, will be allocated using the same method. The Monitor has prepared a pro forma confidential version of certain extracts of the Proposed Allocation Method Report

including the expected proceeds from these transactions, and this version is filed ***under seal*** as **Exhibit M-3**.

ii. Intercompany Transactions, including monetary transfers, sale and purchase transactions and corporate overhead recharges between Petitioners

62. At this step of the Proposed Allocation Method, the Monitor accounts for three main items, being (i) monetary transfers made between Petitioners since the Filing Date, (ii) sales and purchases made between Petitioners since the Filing Date, for which no payment was made from the purchaser Petitioner to the vendor Petitioner, and (iii) the allocation/recharge of corporate overhead and management costs incurred by XSU and BLA from the Filing Date until the end of April 2023.

63. The net amounts of such transactions (calculated on a per entity basis) are thereafter subtracted or added from/to the Proceeds of transactions line, resulting in an adjustment to account for (i) the movement of funds between Petitioners, (ii) the unpaid sale and purchase transactions between Petitioners, and (iii) the allocation of amounts paid mainly by XSU and BLA for and on behalf of other Petitioners and non-Petitioners, as corporate overhead and management costs.

64. First, the intercompany monetary transfers include all cash transfers made since the Filing Date and in accordance with the Initial Order (as amended on several occasions up to and until the Fifth ARIO) and the protocol for monetary transfers implemented by the Monitor, in consultation with the Petitioners, NBC and EDC. In conformity with the applicable ARIOs (including para. 29 of the Fifth ARIO), the Monitor has maintained an ongoing record of all intercompany funding transactions since the Filing Date and provided regular reporting to the Court of same.

65. Second, the Monitor accounts for the purchases and sales between Petitioners since the Filing Date, for which the purchaser Petitioner did not pay the vendor Petitioner.

66. Third, the Monitor must allocate (or “recharge”) the corporate overhead and management expenses (as those are detailed in the Proposed Allocation Method Report) paid mainly by XSU and BLA during the CCAA proceedings for the benefit of the Petitioners. This is done separately for XSU and for BLA.

67. As mentioned above and as reported previously, XSU operates a cost centre and accordingly, it has incurred significant costs and expenses for the benefit and on behalf of other Petitioners, since the Filing Date, including for example for insurance costs, payroll items for members of the finance team and operations team, each servicing multiple entities, employee plans, lease expenses and other expenses of this nature.

68. In order to properly allocate between Petitioners the corporate overhead expenses incurred by XSU, the Monitor, in consultation with XSU, determined that it would be appropriate to allocate to each Petitioner which benefitted from the services provided and costs incurred by XSU a percentage of corporate overhead expenses, based on the average monthly payroll expenses and other expenses, as further detailed in the Proposed Allocation Method Report.

69. Regarding BLA, the headquarters of the Xebec group, it also incurred costs and expenses for the benefit and on behalf of the Petitioners, as well as certain non-Petitioners. The

corporate overhead expenses incurred by BLA since the Filing Date include services rendered and expenses incurred for marketing, investor relations, integration, in-house legal, IT, finance/accounting, head office lease, directors' and officers' insurance and administration items. These amounts are collectively referred to as corporate overhead expenses in the Proposed Allocation Method Report, and have been tabulated for the purposes of determining the amounts to be allocated to each of the Petitioners.

70. Contrary to XSU, which is mainly a cost centre, BLA also had operations, such that it is not all or substantially all of its costs that consist of corporate overhead and management costs to be allocated. The expenses and costs relating to the operations of BLA are excluded from the corporate overhead and management costs allocated between Petitioners.

71. In order to properly allocate between Petitioners the corporate overhead expenses incurred by BLA, the Monitor, in consultation with the Petitioners, determined that it would be appropriate to apply the methodology used by the Petitioners in the course of the 2021 fiscal year (an allocation based namely on the value of sales, headcount and assets of each entity), which the Monitor determined to be the best available indicator in the circumstances.

72. As part of the Proposed Allocation Method, the Monitor considers that the non-Petitioners' attributed share of BLA's corporate overhead expenses should be allocated to BLA, considering that such entities are direct or indirect subsidiaries of BLA and are ultimately part of BLA's assets and do not otherwise have the capacity to repay BLA. The proceeds from the realization of the assets, shares or claims pertaining to the non-Petitioners (e.g. Xebec UK and Xebec Shanghai, and potentially Inmatec (Germany) and Xebec Italy) are for the benefit of BLA .

iii. <u>Allocation relating to Restructuring Costs, DIP Financing and Secured Debt Reimbursements</u>

73. The next step of the Proposed Allocation Method consists of allocating between the Petitioners the Restructuring Costs, the DIP Financing receipts and repayments and the Secured Debt Reimbursements, whether already paid or expected to be paid in the coming weeks and months in connection with the CCAA proceedings.

74. Prior to proceeding with the allocation *per se*, the Monitor had to consider and adjust for the source of payments of the amounts to be allocated, including (i) the disbursements funded by the cash flows of the Petitioners (principally BLA); and (ii) the payments made directly from the Net Proceeds held in the Monitor's trust accounts, as authorized by this Court pursuant to the ACS AVO ($400K for professional fees), the Ivys AVO ($1.1M for professional fees), the Monitor Payments Order (First and Second DIP Facilities, Transaction Fee, KERP), the Second Monitor Payments Order (Third DIP Facility) and the Net Proceeds Order (for costs until the end of the Extension Period).

a. *Allocation of Restructuring Costs and DIP Financing receipts and repayments using the Pro Rata Result-Based Approach*

75. As further detailed in the Proposed Allocation Method Report, the allocations presented in this section include the ones for the Restructuring Costs, being the actual restructuring

expenses and expenditures, namely (i) professional fees[2], (ii) payments under the KERPs, (iii) DIP Financing interest and fees, and (iv) the Transaction Fee of NBF, as well budgeted Restructuring Costs, which include mainly (v) known professional fees and projected professional fees until September 30, 2023[3], plus a theoretical amount of 1M$ corresponding to the current amount of the Administration Charge[4], and (vi) BLA and XSU actual and forecasted disbursements from and after the month of May 2023, as well as the allocations in respect of the DIP Financing receipts and repayments.

76. For the allocation of the Restructuring Costs and of the DIP Financing receipts and repayments, the Proposed Allocation Method consists of a "***Pro Rata* Result-Based Approach**", which allocates the amounts between Petitioners based on a *pro rata* of the Proceeds from transactions.

77. In the Monitor's view, the *Pro Rata* Result-Based Approach represents the most reasonable and fair method to allocate the Restructuring Costs and the DIP Financing receipts and repayments as between the Petitioners (including the reallocation of any shortfall in an estate which does not have sufficient proceeds to offset its allocated share to those estates having obtained a greater realization).

78. The Monitor submits that the *Pro Rata* Result-Based Approach is fair and reasonable, since the Petitioners who ultimately "benefitted" the most from the CCAA proceedings, by generating the most Proceeds from transactions, contribute proportionately to the costs and expenses incurred to fund the process necessary to generate said proceeds.

79. In order to apply the *Pro Rata* Result-Based Approach, the Monitor had to consider the impact of the transaction with respect to the shares of Tiger Filtration Limited ("**Tiger**") held by Xebec Holding UK Ltd. ("**Xebec UK**"), which occurred on or around January 27, 2023 (the "**Xebec UK Transaction**") as part of the SISP and generated Proceeds from transactions (which were remitted to NBC and not paid to the Monitor).

80. Tiger and Xebec UK, both non-Petitioners, were guarantors of the NBC debt, and they had granted security on their assets in support of their guarantees, including the shares of Tiger being sold as part of the Xebec UK Transaction. It was a condition to the closing of the Xebec UK Transaction that the NBC security on the shares of Tiger held by Xebec UK and on the assets of Tiger be released and discharged, and NBC agreed to such release and discharge on the condition that the proceeds from the Xebec UK Transaction be paid directly to NBC, in reimbursement of its debt.

81. The Proposed Allocation Method Report assumes that the amount paid by Xebec UK, subrogated in the rights of NBC as secured creditor (in light of the repayment of the secured debt that it made as guarantor from the proceeds of the Xebec UK transaction), is repaid in full. This allows for the treatment of claims at Xebec UK, which claims include an

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2 The professional fees include those of the Petitioners' counsel in Canada, the United States and foreign jurisdictions, the Monitor, the Monitor's counsel in Canada and the United States, NBC's counsel in Canada and the United States, NBC's financial advisor, EDC's counsel in Canada and the United States, EDC's financial advisor and NBF's monthly fees.

3 As per the cash flow projections included in the Tenth Monitor's Report.

4 The future professional fees included in the Proposed Allocation Method Report are subject to changes, which may be significant, depending on the evolution of the CCAA proceedings and the actual and projected cash flows to be filed at the end of the Extension Period. The figures contained in the Proposed Allocation Method Report are solely provided for indicative purposes.

intercompany claim of BLA against Xebec UK resulting in additional net proceeds to BLA (net of the amount estimated to pay the other known unsecured creditor, each on a *pro rata* basis). This remains subject to a final resolution of the claims against Xebec UK and is not submitted to the approval of the Court at this stage, such that the final amount of Proceeds from transaction relating to the Xebec UK Transaction may vary.

b. *Allocation of Secured Debt Reimbursements – NBC*

82. The Secured Debt Reimbursements include the sums paid by the Petitioners to NBC as secured creditor (and not as DIP Lender), including capital reimbursement, fees and interest, since the Filing Date, as well as amounts relating to letters of credit issued by NBC (and guaranteed by EDC) which were not covered by the reimbursements made as part of the Xebec UK Transaction.

83. While the Petitioners are all guarantors of the NBC debt and granted security on their assets in support of their guarantees, the allocation of the NBC Secured Debt Reimbursements is made only between Petitioners in respect of which NBC holds first-ranking security and on a *pro rata* basis using the Proceeds from transactions.

84. The Monitor views this approach as being fair and reasonable, namely given the fact that (i) there are insufficient proceeds to repay the EDC debt in full for the entities where EDC is first-ranking and (ii) BLA ends with a shortfall and would not have sufficient proceeds to repay the NBC debt in full.

c. *Allocation of Secured Debt Reimbursements – EDC*

85. The Secured Debt Reimbursements also include the sums paid to EDC as secured creditor (and not as DIP Lender) since the Filing Date. These payments, notwithstanding their initial qualification, were all recharacterized by the Monitor as reimbursements of capital. Indeed, the Monitor advised EDC that unless and until the debt of EDC is repaid in full, the payments made must be applied in reduction of the outstanding capital owed to EDC, and not to interest or fee accrued since the Filing Date, in accordance with the "interest stop rule".

86. The allocation of the EDC Secured Debt Reimbursements is made between those Petitioners who are guarantors of the EDC debt and who granted security to EDC, in first or second rank, on a *pro rata* basis using the Proceeds from transactions.

87. The Monitor views this approach as being fair and reasonable, namely given the fact that the EDC secured debt will not be repaid in full.

iv. <u>"Result" of the application of the Proposed Allocation Method</u>

88. The Proposed Allocation Method described in the above subsection is referred to as the "**Main Scenario**" in the Proposed Allocation Method Report, and is the one submitted to the approval of the Court.

89. The application of the Proposed Allocation Method results in the estimated net proceeds prior to distribution to creditors, subject namely to future realized proceeds and disbursements to be allocated under the Proposed Allocation Method.

90. At this time, readers are reminded that the figures used in the Proposed Allocation method include forward-looking estimates that could significantly change, notably given, *inter alia,* (i) variances in exchange rates that could impact certain sections of the Proposed Allocation Method Report, (ii) estimates included in the calculations, including namely with respect to the Restructuring Costs (a) from May 2023 to the end of the Extension Period, which could differ from the projections and (b) after the Extension Period, which have not been budgeted (other than by inserting the theoretical amount of the Administration Charge) and (iii) the final outcome and impact of the Xebec UK Transaction following the resolution of the claims against Xebec UK, and (iv) the results of the ongoing claims process, including in respect of unsecured claims arising from pre-Filing Date Intercompany Transactions.

91. Also, the Proposed Allocation Method Report is only meant to establish the methodology to allocate the net proceeds between the Petitioners, and not to determine how the final allocated amounts should be distributed between the creditors of the respective Petitioners (including EDC in the estates where it holds security).

D. THE ALTERNATE SCENARIO PRESENTED IN THE PROPOSED ALLOCATION METHOD REPORT

92. In order to provide a form of sensitivity analysis, the Monitor prepared an alternate scenario pursuant to which certain items forming part of the Proposed Allocation Method, namely the professional fees forming part of the Restructuring Costs and the BLA corporate overhead and managements costs would be allocated based on an "efforts deployed" basis during the various months and "phases" of the CCAA proceedings process (the "**Alternate Scenario**"), as further detailed below and in the Proposed Allocation Method Report.

93. For clarity, the Alternate Scenario does not affect other items forming part of the Proposed Allocation Method.

94. The Alternate Scenario takes into consideration the efforts deployed by the professional and BLA's management team over the course of the CCAA proceedings, and more particularly during the months of January, February and March, during which the Petitioners were engaged in the process of closing certain specific transactions as part of the SISP, such that the efforts of the professionals and BLA's management were more focused on certain Petitioners than others.

95. More specifically, the Alternate Scenario takes into account the fact that (i) the allocation of BLA corporate overhead and management costs should not apply to a given Petitioner after the closing of the sale transaction applicable to said Petitioner and (ii) the allocation of professional fees to a given Petitioners should apply in the month(s) leading up to and including the closing of the sale transaction applicable to said Petitioner, as further detailed and illustrated in the Proposed Allocation Method Report.

96. The findings and conclusions of the Alternate Scenario indicate only a small variance with the Main Scenario, as detailed and evidenced in the Proposed Allocation Method Report. In addition, the absence of significant variances further supports the Proposed Allocation Method developed by the Monitor and the reliability of the data forming part thereof.

97. Furthermore, it is a probative and empirical demonstration of the just and equitable nature of the Proposed Allocation Method under the Main Scenario.

98. By its nature, the Alternate Scenario is more granular and imprecise, and more complex than the Main Scenario. While theoretically defendable, it is more subjective, and it would be impossible, or at least not desirable nor cost effective, to attempt to do a strict accounting of the various costs to allocate same on a Petitioner by Petitioner basis, all of which would materially increase the overall costs of the CCAA proceedings.

99. For these reasons and given the nominal variances between the two methodologies (which have been considered on an empirical basis and not on a singular estate or creditor recovery perspective), the Monitor remains of the view that the Main Scenario is appropriate and should be used in the circumstances, and respectfully submits that the Court should approve the Proposed Allocation Method.

E. SUBSEQUENT STEPS FOLLOWING THE REQUESTED APPROVAL AND GROUNDS FOR APPROVAL

100. If approved by this Court, the Proposed Allocation Method will allow the Petitioners and their stakeholders to reach an important new milestone in the file, allowing them to move forward in the restructuring process.

i. Virtual meeting to present the Proposed Allocation Method

101. Prior to the approval sought herein, the Monitor will hold a virtual meeting with stakeholders and creditors on June 20, 2023 at 1pm EST, during which it will answer questions and receive comments on the Proposed Allocation Method, prior to presenting same for approval by the Court at the hearing scheduled on June 27, 2023.

102. The Monitor has issued notices of such meeting in French and English, filed herewith as **Exhibit M-4**, which have been notified to the service list and posted on its website. As indicated in the notices, participants must register in advance in order to attend the meeting.

103. This meeting is meant to be for information purposes only, and no vote from the creditors will be solicited or other decisions will be made as part of same.

ii. Steps following Court approval of the Proposed Allocation Method

104. To the extent that this Court issues the Allocation Order, the Petitioners will seek recognition of same by the US Court supervising the Chapter 15 proceedings. A hearing has been scheduled for July 19, 2023 for this purpose.

105. At the end of this essential exercise, the stakeholders will have a clear understanding of the methodology which will be used by the Monitor, as court-appointed officer, to determine the sums that will ultimately be available in each estate for an eventual distribution to creditors, as the case may be.

106. It should be clear however that the Proposed Allocation Method Report does not definitively determine the amounts available in each estate (given namely the estimated amounts in respect of future fees and proceeds), but rather confirms the Proposed Allocation Method and seeks to provide an illustration of its application and a reasonable estimate of the net amounts allocated in each Petitioner's estate.

107. Also, the Proposed Allocation Method Report and the Proposed Allocation Method do not determine how the final allocated amounts should be distributed between the creditors of the respective Petitioners (including EDC in the estates where it has security). This exercise will come at a later date, as part of the filing of one or more plan(s) of arrangement or otherwise, which is currently expected to be presented to the Court at the end of September, once the claims process has been completed.

108. The claims process authorized by this Court remains ongoing and will be completed by the Monitor, in consultation with the Petitioners.

109. Upon completion of the claims process, for entities where EDC does not hold any security, it is expected that one or more plan(s) of arrangement will be filed for approval by the creditors with proven claims and, in the event of a positive vote, for court sanction, following which distributions would occur in accordance with the terms thereof.

110. For entities where EDC holds valid security, the process and next steps to determine the entitlements to unsecured creditors, if any, remain to be evaluated, in light namely of the results of the claims process (including namely the impact of the various intercompany claims), the effect of the absence of perfected security in the cash balances of certain entities as of the Filing Date and the Monitor's analyses, and will be reported on subsequently, with a view to being reflected in the eventual plan or plans of arrangement to be filed.

111. In the meantime, the Monitor respectfully submits that this Court should approve the Proposed Allocation Method set forth in the Proposed Allocation Method Report.

112. The Proposed Allocation Method is the result of a rigorous analysis and significant efforts deployed by the Monitor, with the assistance of the Petitioners' management and accounting teams.

113. The Monitor submits that it is a fair, just and equitable methodology prepared based on the specifics of this particular file and is as extensive as possible in the circumstances, without being overly granular.

114. Moreover, the Alternate Scenario and its absence of significant variances with the Main Scenario further demonstrate the equitable nature of the Proposed Allocation Method

115. The approval of the Proposed Allocation Method will allow the Petitioners to reach a significant milestone in the file, with a view of progressing towards one or more plan(s) of arrangement and distributions to the Petitioners' creditors, as applicable.

V. POTENTIAL PARTIAL DISTRIBUTION TO EDC

116. Upon completing the Proposed Allocation Method Report, it has become clear to the Monitor that certain minimum amounts of Net Proceeds held by the Monitor could be distributed to EDC at this early stage, in partial payment of its secured claim.

117. At this time however, EDC has not yet filed its proof of claim (other than by providing its credit and security documents in order for the Monitor's counsel to perform a security review) and has not requested such a partial distribution. As indicated earlier herein, the

Monitor is of the view that no post-filing interest shall be paid or claimed on EDC's debt unless and until the debt of EDC is repaid in full, in application of the "interest stop rule".

VI. CONFIDENTIALITY OF TERMS OF FINANCIAL TERMS OF THE BIOSTREAMS AND WESTERN MIDSTREAM TRANSACTIONS AND SEALING ORDER

118. The Monitor respectfully submits that it is justified to file under seal the pro forma version of the extracts of the Proposed Allocation Method Report including the proceeds in relation to the Biostreams Transaction and the Western Midstream Transaction (Exhibit M-3).

119. Indeed, such information is confidential and of commercial importance to the Petitioners and to the purchasers in the Biostreams Transaction and the Western Midstream Transaction, namely given the fact that these transactions have yet to close and have interrelations with third-parties.

120. Indeed, divulging the amounts to be paid by the purchasers could be harmful to the Petitioners and to the purchasers in the Biostreams Transaction and the Western Midstream Transaction, and could jeopardize the closing of these transactions or impact their terms.

121. Such information should not be publicly disseminated and should be kept confidential at this stage and until completion of the transactions, pursuant to an order of this Court.

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

[1] **GRANT** the present *Application of the Monitor for the Approval of a Proposed Allocation Method* (the **"Application**").

[2] **DECLARE** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Application or in the Monitor's Proposed Allocation Method Report (Exhibit M-1), as applicable.

[3] **APPROVE** the proposed methodology to allocate the net proceeds held in trust by the Monitor, including namely (i) the allocation of the Proceeds from transactions since the Filing Date, (ii) the adjustments for the Intercompany Transactions since the Filing Date, and (iii) the allocation of the Restructuring Costs, the Secured Debt Reimbursements and the DIP Financing receipts and disbursements since the Filing Date (collectively, the "**Proposed Allocation Method**"), as described in the Proposed Allocation Method Report.

[4] **AUTHORIZE** the Monitor to file under seal the extracts of the Proposed Allocation Method Report including the proceeds in relation to the Biostreams Transaction and the Western Midstream Transaction (Exhibit M-3) and **ORDER** that Exhibit M-3 filed in support of the Application shall be filed under seal and kept confidential until further order of this Court.

[5] **APPROVE** the activities of the Monitor up to the date of this Order in connection with these restructuring proceedings, as described in the reports of the Monitor filed with this Court and **DECLARES** that the Monitor has fulfilled its obligations as described under the CCAA and in accordance with the orders made by this Court, including the Fifth ARIO, up to the date of this Order, in accordance with the Monitor's reports filed in the present proceedings and the testimonies adduced in the context of hearings held in the present file.

[6] **DECLARE** that this Order shall have full force and effect in all provinces and territories of Canada.

[7] **DECLARE** that the Monitor may, from time to time, apply to this Court for directions concerning the exercise of its powers, duties and rights hereunder or in respect of the proper execution of this Order.

[8] **REQUEST** 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 Monitor and its 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 Monitor as may be necessary or desirable to give effect to this Order in any foreign proceeding, to assist the Monitor and its respective agents in carrying out this Order.

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

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

[11] **THE WHOLE WITHOUT COSTS**, save and except in the event of contestation.

MONTRÉAL, June 16, 2023

McCarthy Tétrault LLP

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SOLEMN DECLARATION

I, the undersigned, **Jean-François Nadon**, CPA, CIRP, LIT, practicing my profession at Deloitte Restructuring Inc., 1190, Avenue des Canadiens-de-Montréal, Suite 500, Montreal, QC, Canada H3B 0M7, solemnly declares the following:

1. I am a duly authorized representative of Deloitte Restructuring Inc. and a duly authorized representative of the Monitor for the purposes hereof and in said capacity;

2. I have taken cognizance of the *Application of the Monitor for the Approval of a Proposed Allocation Method* (the "**Application**");

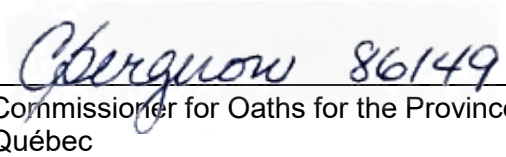
3. All of the facts alleged in the Application of which I have personal knowledge are true.

4. Where the facts alleged in the Application have been obtained from others, I believe them to be true.

AND I HAVE SIGNED:

JEAN-FRANÇOIS NADON

SOLEMNLY DECLARED BEFORE ME BY VIRTUAL MEANS IN MONTREAL, QUÉBEC, on June 16, 2023.



Commissioner for Oaths for the Province of Québec

NOTICE OF PRESENTATION

COMMERCIAL DIVISION

TO: SERVICE LIST

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the *Application of the Monitor for the Approval of a Proposed Allocation Method* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in a courtroom of the Montréal Courthouse to be communicated to the service list, on **June 27, 2023, at a time and in a room to be determined.**

2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL

The contact information to join the virtual calling of the roll 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

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 15.09 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 paragraph 76 of the Fifth 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 June 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, June 16, 2023

McCarthy Tétrault LLP

McCarthy Tétrault LLP
Attorneys for the Monitor

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

S U P E R I O R C O U R T
(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.) ET AL.**

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

LIST OF EXHIBITS

Exhibit M-1 : Proposed Allocation Method Report, including the Intercompany Transactions Report

Exhibit M-2 : Security Chart

Exhibit M-3 : Extracts of the Proposed Allocation Method Report including the proceeds from the Biostreams Transaction (under seal)

Exhibit M-4 : Notice of virtual meeting on the Proposed Allocation Method

MONTRÉAL, June 16, 2023

McCarthy Tétrault LLP

McCarthy Tétrault LLP
Attorneys for the Monitor

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. (formerly **XEBEC ADSORPTION INC.**) **ET AL.**

Debtors / Petitioners

and.

DELOITTE RESTRUCTURING INC.

Monitor

***APPLICATION OF THE MONITOR FOR THE APPROVAL OF A PROPOSED ALLOCATION* METHOD, SOLEMN DECLARATION, NOTICE OF PRESENTATION, LIST OF EXHIBITS, EXHIBITS M-1 TO M-4 (Section 11 of the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36)**

ORIGINAL

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Our file: 115185-565089