

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: September 29, 2022

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

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

and

DELOITTE RESTRUCTURING INC.
Monitor

BIDDING PROCEDURES ORDER

J.N.S.

- [1] **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 "**Application**"), and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Pre-Filing Report of the Monitor dated September 29, 2022;
- [3] **CONSIDERING** the submissions of counsel and the testimony of the witnesses heard;
- [4] **GIVEN** the initial order rendered on September 29, 2022 (as amended from time to time, the "**Initial Order**");
- [5] **GIVEN** the provisions of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended;

THE COURT HEREBY:

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

Definitions

- [7] **DECLARES** that all capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures (as defined below).

Service

- [8] **ORDERS** that any prior delay for presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.
- [9] **PERMITS** the service of the present Order (this "**Order**") at any time and place and by any means whatsoever, including by email.

SISP Approval

- [10] **APPROVES** and **RATIFIES** the Sale and Investment Solicitation Process (the "**SISP**") set forth in the Procedures for the Sale and Investment Solicitation Process attached as Schedule A hereto (the "**Bidding Procedures**").
- [11] **AUTHORIZES** and **DIRECTS** the Monitor, the Petitioners and NBF (as defined herein) to implement the SISP and to take such steps and execute such

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documentation as may be necessary or incidental thereto, the whole in accordance with the Bidding Procedures.

- [12] **ORDERS** that the Monitor, the Petitioners and NBF are authorized and permitted under applicable law to disclose and transfer to Potential Bidders and to their advisors personal information in the custody or control of the Petitioners relating to the operation of the business being sold pursuant to the SISP, including human resources and payroll information, records pertaining to the Petitioners' past and current employees, and information about any consumer, website visitor or other individual (collectively, "**Personal Information**"), but only to the extent necessary to negotiate, determine whether to proceed with, and attempt to complete a transaction in accordance with the SISP (a "**Transaction**"). Each Potential Bidder to whom any Personal Information is disclosed shall maintain and protect the Personal Information with security safeguards appropriate to the sensitivity of the Personal Information and as may otherwise be required by applicable federal or provincial privacy legislation and limit the use of such information to its evaluation of a Transaction, and if it does not complete a Transaction with the Petitioners, shall return all such information to the Petitioners, or in the alternative permanently destroy all such information.
- [13] **ORDERS** that the Monitor, the Petitioners and NBF, and each of their respective affiliates, partners, directors, employees, agents, controlling persons, lenders, legal counsel and advisors shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the conduct of the SISP or the performance of their duties under the SISP, except to the extent of such losses, claims, damages or liabilities resulting from gross negligence or willful misconduct of any such person or entity, as applicable, as determined by this Court.

NBF Engagement Approval and Transaction Charge

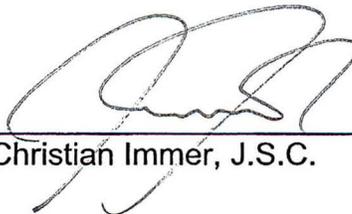
- [14] **APPROVES** and **RATIFIES** the engagement letter (the "**Engagement Letter**") entered into between National Bank Financial Inc. ("**NBF**") and Xebec Adsorption Inc. dated September 27, 2022 (Exhibit P-3 filed in support of the Application).
- [15] **AUTHORIZES** the Petitioners to perform any obligations under the Engagement Letter and to take any action that could be necessary or useful to give full effect to the terms of the Engagement Letter.
- [16] **AUTHORIZES** NBF to act as Financial Advisor in the context of the SISP in accordance with the SISP Procedures.
- [17] **DECLARES** that all of the Property (as such term is defined in the Initial Order) of the Petitioners is hereby subject to a charge, hypothec and security for an

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aggregate amount of \$975,000 (the "**Transaction Charge**") in favour of NBF as security for the payment of the Transaction Fee (as defined in the Engagement Letter). The Transaction Charge shall rank in accordance with the priorities set out in the Initial Order.

General

- [18] **ORDERS** that the Petitioners and the Monitor may from time to time apply to this Court for advice and directions in respect of the SISF and the discharge of their respective powers and duties hereunder or under the SISF.
- [19] **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 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 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, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.
- [20] **DECLARES** that Xebec Adsorption Inc., as foreign representative of the Petitioners, shall be authorized to apply, before the United States Bankruptcy Court for the District of Delaware, for an order recognizing this Order and any further relief that may be required in respect of the Petitioners under Chapter 15 of the United States Bankruptcy Code.
- [21] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.
- [22] **THE WHOLE WITHOUT COSTS.**


Christian Immer, J.S.C.

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

COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR

Personne désignée par le greffier

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**Schedule A
Bidding Procedures**

See attached.

PROCEDURES FOR THE SALE AND INVESTMENT SOLICITATION PROCESS

Preamble

- A. On September 29, 2022, Xebec Adsorption Inc. (“**Xebec**”), Xebec RNG Holdings Inc., Applied Compression Systems Ltd., Compressed Air International Inc., Xebec Holding USA Inc., Enerphase Industrial Solutions, Inc., California Compression, LLC, CDA Systems, LLC, Xebec Adsorption USA Inc., The Titus Company, Nortekbelair Corporation, Xebec Systems USA, LLC and XBC Flow Services – Wisconsin Inc. (collectively, the “**Petitioners**”) commenced proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) before the Superior Court of Québec (Commercial Division) in the District of Montréal (the “**Court**”) pursuant to an initial order granted by the Court on the same day (collectively, as further amended or restated from time to time, the “**Initial Order**”). On the same day, the Court also issued a Bidding Procedures Order (the “**Bidding Procedures Order**”) that, among other things, authorized Xebec to implement a sale and investment solicitation process (“**SISP**”) in accordance with the terms hereof.
- B. This SISP sets out the manner in which (i) binding bids for executable transaction alternatives involving the shares and/or the business, property and assets of Xebec and of any of its affiliates (collectively, the “**Business**”) will be solicited from interested parties, (ii) any such bids received will be addressed, (iii) any Successful Bid (as defined below) will be selected, and (iv) Court approval of any Successful Bid will be sought. Such transactions may include, among other things, a sale of some or all of the Business’s shares, assets and/or business and/or an investment in the Business, each of which shall be subject to all terms set forth in this SISP.
- C. The SISP shall be conducted by Xebec under the oversight of Deloitte Restructuring Inc., in its capacity as court-appointed monitor (the “**Monitor**”), with the assistance of National Bank Financial Inc. (the “**Financial Advisor**”).
- D. Parties who wish to have their bids considered shall be expected to participate in the SISP as conducted by Xebec and the Financial Advisor in accordance with the present bidding procedures set out herein (the “**Bidding Procedures**”) governing the solicitation of offers or proposals for the acquisition of the Business or some portion thereof.

Defined Terms

1. Capitalized terms used in this SISP have the meanings given thereto in Appendix A.

Bidding Procedures

Opportunity

2. The SISP is intended to solicit interest in, and opportunities for: (i) one or more sales or partial sales of all, substantially all, or certain portions of the Business; and/or (ii) for an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Petitioners or their Business. Bids considered pursuant to the SISP may include one or more of an investment, restructuring, recapitalization, refinancing or other form of

reorganization of the business and affairs of the Petitioners as a going concern or a sale (or partial sales) of all, substantially all, or certain of the Business, or a combination thereof (the “**Opportunity**”).

3. The Bidding Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning the Petitioners and the Business, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder and the requisite approvals to be sought from the Court in connection therewith. The Petitioners and the Financial Advisor shall conduct the SISP in the manner set forth herein.

The Petitioners, in consultation with the Monitor, may at any time and from time to time, modify, amend, vary or supplement the SISP or the Bidding Procedures, without the need for obtaining an order of the Court, provided that the Monitor determines that such modification, amendment, variation or supplement are useful in order to give effect to the substance of the SISP, the Bidding Procedures, the Bidding Procedures Order and the Initial Order.

The Monitor shall post on the Monitor’s website, as soon as practicable, any such modification, amendment, variation or supplement to the Bidding Procedures and Xebec or the Financial Advisor shall inform the bidders impacted by such modifications.

In the event of a dispute as to the interpretation or application of the SISP or Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute.

As more particularly set out herein, a summary of the key dates pursuant to the SISP are as follows:¹

<u>Event</u>	<u>Date</u>
1. <u>Approval of Bidding Procedures</u>	September 29, 2022
Phase 1	
2. <u>Solicitation Letter</u> Financial Advisor to distribute Solicitation Letter, to potentially interested parties	Starting on September 29, 2022
3. <u>CIM and VDR</u> Petitioners to prepare and have available for parties having executed the NDA (Potential Bidders) the CIM and VDR	By no later than October 6, 2022
4. <u>Phase 1 Qualified Bidders & Bid Deadline</u> Phase 1 Bid Deadline (for delivery of non-binding LOIs by Phase 1 Qualified Bidders in accordance with the requirement of paragraph 11 of the Bidding Procedures)	By no later than November 11, 2022, at 5:00 p.m. (prevailing Eastern Time)

¹ All capitalized terms not already defined are defined further below. Titles in the chart are for presentation purposes only.

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<u>Event</u>	<u>Date</u>
5. <u>Phase 1 Satisfactory Bid</u> Financial Advisor to notify each Phase 1 Qualified Bidder in writing as to whether its bid constituted a Phase 1 Satisfactory Bid	By no later than November 18, 2022, at 5:00 p.m. (prevailing Eastern Time)
Phase 2	
6. <u>Phase 2 Bid Deadline & Qualified Bidders</u> Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the requirement of paragraph 19 of the Bidding Procedures)	By no later than January 6, 2023, at 5:00 p.m. (prevailing Eastern Time)
7. <u>Auction(s)</u> Auction(s) (if needed)	Week of January 9, 2023
8. <u>Selection of final Successful Bid(s)</u> Deadline for selection of final Successful Bid(s)	By no later than January 13, 2023, at 5:00 p.m. (prevailing Eastern Time)
9. <u>Definitive Documentation</u> Deadline for completion of definitive documentation in respect of Successful Bid(s)	By no later than January 27, 2023
10. <u>Approval Application – Successful Bid(s)</u> Deadline for filing of Approval Application in respect of Successful Bid(s)	Week of January 30, 2023
11. <u>Closing – Successful Bid(s)</u> Anticipated deadline for closing of Successful Bid(s)	January 31, 2023 or such earlier date as is achievable.
12. <u>Outside Date – Closing</u> Outside Date by which the Successful Bid must close	February 7, 2023

Solicitation of Interest: Notice of the SISP

4. As soon as reasonably practicable after the granting of the Bidding Procedures Order:
 - (a) a notice of the SISP and such other relevant information which Xebec, in consultation with the Monitor, considers appropriate shall be published in *La Presse+* and *The Globe & Mail* and such other publications as may be considered appropriate; and
 - (b) a press release setting out the notice and such other relevant information regarding the Opportunity as may be considered appropriate, shall be issued with *Canada Newswire* designating dissemination in Canada.

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5. The Financial Advisor shall send to potential bidders, as soon as practical after the granting of the Bidding Procedures Order, a letter describing the Opportunity (a "**Solicitation Letter**"), outlining the salient elements of the SISP and inviting recipients of the Solicitation Letter to express their interest pursuant to the SISP.

Virtual Data Room

6. As soon as practicable, a confidential virtual data room (the "**VDR**") in relation to the Opportunity will be made available by Xebec or the Financial Advisor to Potential Bidders that have executed the NDA (as defined below) in accordance with paragraph 7 herein. Following the completion of "Phase 1", but prior to the completion of "Phase 2", additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect of the Petitioners and the Opportunity. The Petitioners, in consultation with the Monitor, may establish or cause the Financial Advisor to establish separate VDRs (including "clean rooms"), if the Petitioners reasonably determine that doing so would further the Petitioners' and any Potential Bidders' compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information. The Petitioners, in consultation with the Monitor, may also limit the access of any Potential Bidder to any confidential information in the VDR where the Petitioners reasonably determine that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Business or its value.

PHASE 1: NON-BINDING LOIs

Phase 1 Qualified Bidders and Delivery of Confidential Information Memorandum

7. In order to participate in the SISP, and prior to the distribution of any confidential information to an interested party (including access to the VDR), such interested party must deliver to the Financial Advisor an executed non-disclosure agreement in form and substance satisfactory to the Petitioners, in consultation with the Monitor and the Financial Advisor (each, an "**NDA**"), which shall enure to the benefit of any Successful Bidder that closes a transaction contemplated by its Successful Bid. Pursuant to the terms of the NDA to be signed by a potential bidder (each potential bidder who has executed an NDA with the Petitioners, a "**Potential Bidder**"), each Potential Bidder will be prohibited from communicating with any other Potential Bidder regarding the Opportunity during the term of the SISP, without the consent of the Monitor, in consultation with the Petitioners. Prior to the Petitioners executing an NDA with any potential bidder, any potential bidder may be required to provide evidence, reasonably satisfactory to the Petitioners, in consultation with the Financial Advisor, of its financial wherewithal to complete a transaction in respect of the Opportunity (either with existing capital or with capital reasonably anticipated to be raised prior to closing) and/or to disclose details of their ownership and/or investors. For the avoidance of doubt, a party who has executed an NDA or a joinder with a Potential Bidder for the purpose of providing financing to a Potential Bidder in connection with the Opportunity (such party a "**Financing Party**") shall not be deemed a Potential Bidder for purposes of the SISP, provided that such Financing Party undertakes to inform the Petitioners in the event that it elects to act as a Potential Bidder.

8. A Potential Bidder that has executed an NDA and provided any additional information required pursuant to paragraph 7, will be deemed a “**Phase 1 Qualified Bidder**” and will be promptly notified of such classification by the Financial Advisor.
9. The Petitioners and the Financial Advisor will prepare (with the oversight of the Monitor) and send to each Phase 1 Qualified Bidder a confidential information memorandum providing additional information considered relevant to the Opportunity (a “**CIM**”) as soon as practicable. The Petitioners, the Financial Advisor, the Monitor and their respective advisors make no representation or warranty as to the information contained in the CIM or otherwise made available pursuant to the SISP.
10. The Financial Advisor shall provide any person deemed to be a Phase 1 Qualified Bidder with access to the VDR. The Petitioners, the Financial Advisor and the Monitor and their respective advisors make no representation or warranty as to the information contained in the VDR.
11. If a Phase 1 Qualified Bidder wishes to submit a bid, it must deliver a non-binding letter of intent (an “**LOI**”) (each such LOI, provided in accordance with paragraph 12 below, a “**Phase 1 Qualified Bid**”), to the Financial Advisor at the address specified in Appendix B hereto (including by email) so as to be received by the Financial Advisor not later than 5:00 p.m. (prevailing Eastern Time) on November [11], 2022 or such other date or time as may be agreed by the Petitioners, with the consent of the Monitor (the “**Phase 1 Bid Deadline**”).
12. An LOI submitted by a Phase 1 Qualified Bidder will only be considered a “**Phase 1 Qualified Bid**” if the LOI complies at a minimum with the following:
 - (a) it has been duly executed by all required parties;
 - (b) it is received by the Phase 1 Bid Deadline;
 - (c) it contains an agreement by the Phase 1 Qualified Bidder to be bound by the terms of the SISP;
 - (d) it provides written evidence, satisfactory to the Monitor, in consultation with the Petitioners, of the ability to fully fund and consummate the transaction within the timeframe contemplated by the SISP and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital and;
 - (e) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such approvals, along with information sufficient for the Monitor, in consultation with the Petitioners, to determine that these conditions are reasonable in relation to the Phase 1 Qualified Bidder,

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- (f) it (i) identifies the Qualified Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Qualified Phase 1 Bidder for all purposes regarding the contemplated transaction, and (ii) fully discloses the identity of each entity or person that will be sponsoring, participating in or benefiting from the transaction contemplated by the LOI;
- (g) an outline of the due diligence completed to the date of submission of the LOI and any additional due diligence required to be conducted in order to submit a binding offer;
- (h) it clearly indicates:
 - (i) that the Phase 1 Qualified Bidder is seeking to acquire all or substantially all of the Business, whether through an asset purchase, a share purchase or a combination thereof (either one being, a “**Sale Proposal**”) or some other portion of the Business (a “**Partial Sale Proposal**”); and/or
 - (ii) whether the Phase 1 Qualified Bidder is offering to make an investment in, restructure, recapitalize, reorganize or refinance the Petitioners or their business (an “**Investment Proposal**”); and
- (i) it contains such other information as may be reasonably requested by the Petitioners, in consultation with the Financial Advisor and the Monitor;
- (j) in the case of a Sale Proposal, it identifies or contains the following:
 - (i) the purchase price or price range and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;
 - (ii) any contemplated purchase price adjustment;
 - (iii) a description of the specific assets that are expected to be subject to the transaction and any assets expected to be excluded;
 - (iv) a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
 - (v) a description of the anticipated tax planning, if any;
 - (vi) information sufficient for the Monitor, in consultation with the Petitioners, to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above; and
 - (vii) any other terms or conditions of the Sale Proposal or Partial Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction; and

- (k) in the case of an Investment Proposal, it identifies the following:
- (i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization;
 - (ii) the aggregate amount of the equity and/or debt investment to be made in the Petitioners or their business;
 - (iii) the underlying assumptions regarding the *pro forma* capital structure;
 - (iv) a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume;
 - (v) information sufficient for the Monitor, in consultation with the Petitioners, to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above; and
 - (vi) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction.

13. The Petitioners, with the consent of the Monitor, may waive compliance with any one or more of the requirements specified in paragraph 12 and deem any such non-compliant LOI to be a Phase 1 Qualified Bid.

Assessment of Phase 1 Qualified Bids and Subsequent Process

14. The Petitioners, in consultation with the Monitor and the Financial Advisor, may, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid or a Phase 1 Satisfactory Bid (as defined below).
15. Following the Phase 1 Bid Deadline, the Petitioners shall determine, in accordance with the requirements of paragraph 12 and in consultation and with the Monitor, the LOI(s) that are selected as the most favourable Phase 1 Qualified Bid(s), which Phase 1 Qualified Bid(s) shall be deemed a “**Phase 1 Satisfactory Bid(s)**” and which Phase 1 Qualified Bidder(s) accordingly shall be deemed a “**Phase 2 Qualified Bidder(s)**”, if any. For greater certainty, there can be more than one Phase 1 Qualified Bid that may be determined as being a Phase 1 Satisfactory Bid, and more than one Phase 1 Qualified Bidder that may be determined as being a Phase 2 Qualified Bidder.
16. Only Phase 2 Qualified Bidders – being those that have submitted a Phase 1 Satisfactory Bid – shall be permitted to proceed to Phase 2 of the SISF.
17. The Financial Advisor shall notify each Phase 1 Qualified Bidder in writing as to whether its Phase 1 Qualified Bid constituted a Phase 1 Satisfactory Bid – such that it is a Phase 2

Qualified Bidder – within five (5) Business Days of the Phase 1 Bid Deadline, or at such later time as the Petitioners deem appropriate, in consultation with the Monitor and the Financial Advisor.

18. In the event that no Phase 1 Satisfactory Bid is selected, the Petitioners may, with the approval of the Monitor, and in consultation with the Financial Advisor, terminate the SISP.

PHASE 2: FORMAL OFFERS AND REMOVAL OF CONDITIONS

Formal Binding Offers

19. Any Phase 2 Qualified Bidder that wishes to make a formal offer with respect to its Sale Proposal or Investment Proposal shall submit a binding offer (a “**Binding Offer**”) comprising: (a) in the case of a Sale Proposal, a purchase agreement; or (b) in the case of an Investment Proposal, a plan or restructuring support agreement in form and substance satisfactory to the Petitioners, in consultation with the Monitor (each, such Binding Offer submitted in accordance with paragraph 20 below, a “**Phase 2 Qualified Bid**”) in each case to the Financial Advisor, so as to be received by the Financial Advisor not later than 5:00 p.m. (prevailing Eastern Standard Time) on January 6, 2023, or such other date or time as may be agreed by the Petitioners, with the consent of the Monitor (as may be extended the “**Phase 2 Bid Deadline**”).
20. A Binding Offer will only be considered as a Phase 2 Qualified Bid if the Binding Offer if it:
 - (a) has been received by the Phase 2 Bid Deadline;
 - (b) is a Binding Offer: (i) to purchase all, substantially all, or a portion of the Business; and/or (ii) to make an investment in, restructure, recapitalize, reorganize or refinance the Petitioners or their business, on terms and conditions reasonably acceptable to the Petitioners;
 - (c) identifies all executory contracts of the Petitioners that the Phase 2 Qualified Bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and non-monetary defaults will be remedied, as applicable;
 - (d) is not subject to any due diligence or financing condition;
 - (e) contains evidence of authorization and approval from the Phase 2 Qualified Bidder’s board of directors (or comparable governing body) and, if necessary to complete the transaction, Phase 2 Qualified Bidder’s equityholder(s);
 - (f) is unconditional, other than upon the receipt of the Approval Order(s) (as defined below) and satisfaction of any other conditions expressly set forth in the Binding Offer;
 - (g) includes acknowledgments and representations of the Phase 2 Qualified Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own

independent review, investigation and/or inspection of any documents and/or the Business in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities;

- (h) the Binding Offer must be accompanied by a letter that confirms that the Binding Offer: (i) may be accepted by the Petitioners by countersigning the Binding Offer, and (ii) is irrevocable and capable of acceptance until the earlier of (A) two Business Days after the date of closing of the Successful Bid; and (B) the Outside Date;
- (i) does not provide for any break fee, expense reimbursement or similar type of payment;
- (j) is accompanied by a cash deposit in the amount of not less than 10% of the cash purchase price payable on closing or total new investment contemplated, as the case may be (the “**Deposit**”), along with acknowledgement that if the Phase 2 Qualified Bidder is selected as the Successful Bidder (as defined below), that the Deposit will be non-refundable subject to approval of the Successful Bid (as defined below) by the Court and the terms described in paragraph 29 below;
- (k) contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on or before January 31, 2023, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing (the “**Target Closing Date**”) and in any event no later than February 7, 2023 (the “**Outside Date**”);
- (l) contemplates that the Phase 2 Qualified Bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid, is agreeing to refrain from and waive any assertion or request for reimbursement on any basis.

Selection of Successful Bid(s)

- 21. The Petitioners, in consultation with the Monitor and the Financial Advisor, may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered a Phase 2 Qualified Bid.
- 22. The Petitioners and the Financial Advisor, in consultation with the Monitor, will: (a) review and evaluate each Phase 2 Qualified Bid with respect of, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or waiver of liabilities not

otherwise accounted for in item (i) above; (iii) the likelihood of the Phase 2 Qualified Bidder's ability to close a transaction and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; financial wherewithal to meet all commitments; and required governmental or other approvals), (iv) the likelihood of the Court's approval of the Phase 2 Qualified Bid as a Successful Bid, (v) the net benefit to the Petitioners and its stakeholders, and (vi) any other factors the Petitioners may deem relevant; and (b) identify the highest or otherwise best non-overlapping bids (the "**Successful Bid(s)**"), and the Phase 2 Qualified Bidder(s) making such Successful Bid(s), the "**Successful Bidder(s)**"). Any Successful Bid shall be subject to approval by the Court.

23. In the alternative, the Petitioners, in consultation with the Financial Advisor and the Monitor, may: (a) continue negotiations with a selected number of Phase 2 Qualified Bidders (collectively, the "**Selected Bidders**") with a view to finalizing an agreement with one or more of the Selected Bidders and declaring such bids to constitute Successful Bids, or (b) conduct one or more auctions (the "**Auction(s)**") to determine the highest or otherwise best non-overlapping Sale Proposals, Partial Sale Proposals or Investment Proposals, pursuant to Auction rules to be determined by the Petitioners, in consultation with the Financial Advisor and the Monitor.
24. In an event that an Auction or Auctions will be held, all Phase 2 Qualified Bidders who submitted a Phase 2 Qualified Bid that the Petitioners determine, in consultation with the Financial Advisor and the Monitor, entitles such Phase 2 Qualified Bidder to participate in the Auction, will be promptly advised by the Financial Advisor of such determination, and informed of the procedures applicable to such Auction.
25. In the event no Phase 2 Qualified Bidder submits a Phase 2 Qualified Bid, the Petitioners may, with the approval of the Monitor, and in consultation with the Financial Advisor, terminate the SISP.
26. The final Successful Bid(s) shall be selected by no later than January [13], 2023 and the definitive documentation in respect of the Successful Bid must be finalized and executed no later than January [27], 2023, which definitive documentation shall be conditional only upon the receipt of the Approval Order(s) and the express conditions set out therein and shall provide that the Successful Bidder shall use all reasonable efforts to close the proposed transaction by no later than the Target Closing Date, or such longer period as shall be agreed to by the Petitioners in consultation with the Monitor, and the Successful Bidder. In any event, the Successful Bid must be closed by no later than the Outside Date.

Approval of Successful Bid(s)

27. The Petitioners shall apply to the Court (the "**Approval Application**") for one or more orders: (i) approving the Successful Bid(s) and authorizing the taking of such steps and actions and completing such transactions as are set out therein or required thereby; and (ii) granting a vesting order and/or reverse vesting order to the extent that such relief is contemplated by the Successful Bid(s), as applicable, so as to vest title to any purchased assets in the name of the Successful Bidder(s) and/or vesting unwanted liabilities out of one or more of the Petitioners (collectively, the "**Approval Order(s)**"). The Approval Application will be held on a date to be scheduled by the Petitioners and confirmed by the

TAX

Court upon application by the Petitioners, who shall use their best efforts to schedule the Approval Application during the week of January 30, 2022, subject to Court availability. With the consent of the Monitor and the Successful Bidder(s), the Approval Application may be adjourned or rescheduled by the Petitioners without further notice, by an announcement of the adjourned date at the Approval Application or in a notice to the service list of the CCAA Proceedings prior to the Approval Application. The Petitioners shall consult with the Monitor, the Successful Bidder regarding the application material to be filed by the Petitioners for the Approval Application.

28. Any Phase 2 Qualified Bid (other than a Successful Bid as the case may be) shall be deemed rejected on and as of the date of the closing of an overlapping Successful Bid, with no further or continuing obligation of the Petitioners to such unsuccessful Phase 2 Qualified Bidder.

Deposits

29. The Deposit(s):
- (a) shall, upon receipt from the Phase 2 Qualified Bidder(s), be retained by the Monitor and deposited in a non-interest-bearing trust account;
 - (b) received from the Successful Bidder(s), shall:
 - (i) be applied to the purchase price to be paid by the applicable Successful Bidder whose Successful Bid is the subject of an Approval Order, upon closing of the approved transaction; and
 - (ii) shall otherwise be held and refundable in accordance with the terms of the definitive documentation in respect of any Successful Bid, provided that all such documentation shall provide that the Deposit shall be retained by the Petitioners and forfeited by the Successful Bidder, if the Successful Bid fails to close by the Outside Date, and such failure is attributable to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of the Successful Bid; and
 - (c) received from a Phase 2 Qualified Bidder that is not an overlapping Successful Bidder shall be fully refunded, to the Phase 2 Qualified Bidder that paid the Deposit as soon as practical following the closing of the transaction contemplated by the Successful Bid of such Successful Bidder and in any event no later than February 7, 2023.

“As is, Where is”

30. Any sale(s) or investment(s) made pursuant to this SISF will be on an “as is, where is” basis except for representations and warranties that are customarily provided in purchase agreements for a company subject to CCAA proceedings. Any such representations and warranties provided for in the definitive documents shall not survive closing.

J.A.S.

Further Orders

31. At any time during the SISP, the Petitioners, or the Monitor may apply to the Court for advice and directions with respect to any aspect of this SISP and the Bidding Procedures including, but not limited to, the continuation of the SISP or with respect to the discharge of their powers and duties hereunder.

Additional Terms

32. In addition to any other requirement of these Bidding Procedures:
- (a) The Petitioners and the Financial Advisor, as applicable, shall at all times prior to the selection of a Successful Bid use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without limitation, by actively soliciting participation by all persons who would be customarily identified as high potential bidders in a process of this kind or who may be reasonably proposed by any the Petitioners' stakeholders as a high potential bidder.
 - (b) Any consent, approval or confirmation to be provided by the Petitioners and/or the Monitor is ineffective unless provided in writing and any approval required pursuant to the terms hereof is in addition to, and not in substitution for, any other approvals required by the CCAA or as otherwise required at law in order to implement a Successful Bid. For the avoidance of doubt, a consent, approval or confirmation provided by email shall be deemed to have been provided in writing for the purposes of this paragraph.
 - (c) Nothing in this SISP shall require that a Successful Bid or any other bid must be approved by the Court. The Court at all times retains the discretion to direct the clarification, termination, extension or modification of the SISP and Bidding Procedures on application of any interested party.
 - (d) Prior to the seeking of Court approval for any transaction or bid contemplated by this SISP, the Monitor will provide a report to the Court on the SISP process, parts of which may be filed under seal, including in respect of any and all bids received.

J.T.S.

**APPENDIX A
DEFINED TERMS**

- “**Approval Application**” shall have the meaning set forth in paragraph 27.
- “**Approval Order(s)**” shall have the meaning set forth in paragraph 27.
- “**Auction(s)**” shall have the meaning set forth in paragraph 23.
- “**Bidding Procedures**” shall have the meaning set forth in the preamble.
- “**Bidding Procedures Order**” shall have the meaning set forth in the preamble.
- “**Binding Offer**” shall have the meaning set forth in paragraph 19.
- “**Business**” shall have the meaning set forth in the preamble.
- “**Business Day**” means a day on which banks are open for business in Montréal but does not include a Saturday, Sunday or statutory holiday in the Province of Québec.
- “**CCAA**” shall have the meaning set forth in the preamble.
- “**CCAA Proceedings**” shall have the meaning set forth in the preamble.
- “**CIM**” shall have the meaning set forth in paragraph 9.
- “**Court**” shall have the meaning set forth in the preamble.
- “**Deposit**” shall have the meaning set forth in paragraph 20(j).
- “**Financing Party**” shall have the meaning set forth in paragraph 7.
- “**Initial Order**” shall have the meaning set forth in the preamble.
- “**Investment Proposal**” shall have the meaning set forth in paragraph 12(h)(i).
- “**LOI**” shall have the meaning set forth in paragraph 11.
- “**Monitor**” shall have the meaning set forth in the preamble.
- “**NDA**” shall have the meaning set forth in paragraph 7.
- “**Opportunity**” shall have the meaning set forth in paragraph 2.
- “**Outside Date**” shall have the meaning set forth in paragraph 20(k).
- “**Partial Sale Proposal**” shall have the meaning set forth in paragraph 12(h)(i).
- “**Petitioners**” shall have the meaning set forth in the preamble.
- “**Phase 1 Bid Deadline**” shall have the meaning set forth in paragraph 11.

“**Phase 1 Qualified Bid**” shall have the meaning set forth in paragraph 11.

“**Phase 1 Qualified Bidder**” shall have the meaning set forth in paragraph 8.

“**Phase 1 Satisfactory Bid**” shall have the meaning set forth in paragraph 15.

“**Phase 2 Bid Deadline**” shall have the meaning set forth in paragraph 19.

“**Phase 2 Qualified Bid**” shall have the meaning set forth in paragraph 19.

“**Phase 2 Qualified Bidder**” shall have the meaning set forth in paragraph 15.

“**Potential Bidder**” shall have the meaning set forth in paragraph 7.

“**Sale Proposal**” shall have the meaning set forth in paragraph 12(h)(i).

“**Selected Bidders**” shall have the meaning set forth in paragraph 23.

“**SISP**” shall have the meaning set forth in the preamble.

“**Solicitation Letter**” shall have the meaning set forth in paragraph 5.

“**Successful Bid**” shall have the meaning set forth in paragraph 22.

“**Successful Bidder**” shall have the meaning set forth in paragraph 22.

“**Target Closing Date**” shall have the meaning set forth in paragraph 20(k).

“**VDR**” shall have the meaning set forth in paragraph 6.

J.W.K.