

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

XEBEC HOLDING USA INC., *et al.*,

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 22- 10934 (KBO)

Joint Administration Requested

**FOREIGN REPRESENTATIVE’S MOTION FOR INTERIM AND FINAL
RELIEF RECOGNIZING AND ENFORCING DIP FINANCING AUTHORIZED UNDER
AMENDED AND RESTATED CCAA ORDER**

Xebec Adsorption Inc., in its capacity as the authorized foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”) in a proceeding (the “**Canadian Proceeding**”) commenced under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and pending before the Superior Court of Québec, in the Province of Québec, District of Montréal (the “**Canadian Court**”), respectfully submits this motion (this “**Motion**”), pursuant to sections 105, 364, 1519, and 1521 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), for entry of an interim order on an emergency basis substantially in the form attached hereto as Exhibit A (the “**Interim Order**”) and, after notice and a hearing, a final order (a “**Final Order**”): (i) recognizing and enforcing the terms, conditions, and provisions of that certain Amended and Restated Initial Order, entered by the Canadian Court on October 20, 2022 (as may be amended from time to time, the “**Amended and Restated CCAA Order**”), a copy of

¹ The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: Xebec Adsorption Inc. (0228), Xebec RNG Holdings Inc. (N/A), Applied Compression Systems Ltd. (N/A), Compressed Air International Inc. (N/A), Xebec Holding USA Inc. (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), Xebec Adsorption USA, Inc. (0821), The Titus Company (9757), Nortekbelair Corporation (1897), XBC Flow Services – Wisconsin Inc. (7493), California Compression, LLC (4752), and Xebec Systems USA LLC (4156). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 700-1130 Sherbrooke Street West, Montréal, Québec H3A 2M8.

which is attached hereto as Exhibit B, which authorized, among other things, the Debtors to obtain debtor-in-possession financing and grant a charge and security (the “**DIP Charge**”) to the Interim Lenders (as defined below); (ii) granting the Interim Lenders certain protections afforded by the Bankruptcy Code, including those protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, pursuant to section 1519(a)(3) (if this order shall have been entered prior to the order approving the Recognition Motion (defined below) (the “**Recognition Order**”)) or section 1521(a)(7) (if this order shall have been entered after the Recognition Order) of the Bankruptcy Code; and (iii) granting such other and further relief as the Court deems just and proper. In connection with the Interim Order, the Debtors request that the Court schedule a hearing to consider entry of a Final Order that grants the relief requested in this Motion on a final basis, and that if no objections to the relief requested herein being granted on a final basis are received by the Objection Deadline (as defined in the Interim Order) that the Interim Order shall become final and non-appealable without the need for such a hearing, or further order the Court.

In support of this Motion, the Foreign Representative refers the Court to: (a) the *Declaration of Dimitrios “Jim” Vounassis in Support of Motion for Recognition of Foreign Main Proceeding* (the “**Vounassis Declaration**”) [Docket No. 3], filed on September 30, 2022 (the “**Petition Date**”); (b) the *Motion for Recognition of Foreign Main proceeding and Request for Certain Related Relief* [Docket No. 7] (the “**Recognition Motion**”), filed on the Petition Date; and (c) the *Declaration of Dimitrios “Jim” Vounassis in Support of Foreign Representative’s Motion for Interim and Final Relief Recognizing and Enforcing DIP Financing Authorized Under Amended and Restated CCAA Order* (the “**Vounassis DIP Declaration**”) filed contemporaneously herewith. The Vounassis Declaration, the Recognition Motion, and the Vounassis DIP Declaration each are incorporated herein by reference.

In further support of the relief requested herein, the Foreign Representative respectfully represents as follows:

JURISDICTION

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

3. The Foreign Representative, in its capacity as authorized foreign representative, has properly commenced these chapter 15 cases pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code and Bankruptcy Rules 2002 and 9007.

4. The statutory predicates for the relief requested herein are sections 105, 364, 1519, and 1521 of the Bankruptcy Code and Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

5. The Debtors and certain non-U.S. based subsidiaries and affiliates of the Debtors (the “**Xebec Group**”) primarily supply a wide range of renewable and low-emission gas products and services globally through several channels, including direct sales, channel partners, project developers, and e-commerce. The Xebec Group portfolio includes proprietary technologies for the on-site and distributed production of hydrogen, renewable and low-emission natural gas, oxygen and nitrogen, and proprietary technologies that transform raw gases into clean sources of renewable energy. The Xebec Group’s operations include manufacturing, research and development, service, and sales. The Xebec Group operates in North America,

Europe, the Middle East, and Asia.²

I. Commencement of the Canadian Proceeding

6. On September 29, 2022, pursuant to an application made by the Debtors in the Canadian Proceeding, the Canadian Court issued that certain First Day Initial Order (the “**Initial Canadian Order**”) pursuant to the CCAA. A copy of the Initial Canadian Order was attached to the Recognition Motion as Exhibit D.

7. Pursuant to the Initial Canadian Order, the Canadian Court, among other things: (a) ordered a broad stay of proceedings in respect of the Debtors and their directors and officers (the “**Canadian Stay**”) until October 9, 2022; (b) approved a Directors’ and Officers’ indemnification and charge in the amount of CAD\$2,200,000 (as modified by the Amended and Restated CCAA Order, the “**D&O Charge**”); (c) approved an Administrative Charge in the amount of CAD\$250,000 (as modified by the Amended and Restated CCAA Order, the “**Administrative Charge**”); and (d) authorized the Debtors to apply to any other court, tribunal, regulatory, administrative, or other body, wherever located, for orders to recognize and assist in carrying out the terms of the Initial Canadian Order and any subsequent orders rendered by the Canadian Court in the context of the Canadian Proceeding, including orders under chapter 15 of the Bankruptcy Code. (See Initial Canadian Order at ¶¶ 16-20, 34-35, 48, 65.)

8. On October 7, 2022, the Canadian Court entered that certain Order Extending the Stay of Proceedings, a copy of which is attached hereto as Exhibit C, which, among other things extended the Canadian Stay until October 20, 2022.

² Detailed information about the Debtors’ business and operations, the events leading to the filing of these chapter 15 cases, and the facts and circumstances surrounding the Canadian Proceeding, are set forth in the Vounassis Declaration.

II. The Chapter 15 Cases

9. On the Petition Date, the Foreign Representative commenced these chapter 15 cases by filing, among other things, verified chapter 15 petitions seeking recognition by this Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

10. On the Petition Date, this Court entered that certain Order (A) Directing Joint Administration of Cases Under Chapter 15 of the Bankruptcy Code and (B) Authorizing the Filing of a Consolidated List Under Bankruptcy Rule 1007 [Docket No. 8].

11. Also on the Petition Date, the Foreign Representative filed the Recognition Motion, which seeks an order from this Court granting recognition of the Canadian Proceeding as a “foreign main proceeding” pursuant to chapter 15 of the Bankruptcy Code. The Recognition Motion also seeks recognition of the Foreign Representative as the “foreign representative” in respect of the Canadian Proceeding, along with recognizing, granting comity to, and giving full force and effect in the United States to the Canadian Proceeding and the orders entered in the Canadian Proceeding (collectively, the “**Canadian Orders**”), including enforcing the automatic stay in the United States.

12. The Court set a hearing on the Recognition Motion for November 1, 2022, at 9:30 a.m. (eastern).

III. Status of the Canadian Proceeding and Approval of the DIP Loan

13. After entry of the Initial Canadian Order and the filing of the Recognition Motion, the Debtors negotiated and entered into that certain Interim Financing Term Sheet (the “**DIP Term Sheet**”) with their prepetition lenders, National Bank of Canada (“**NBC**”) and Export

Development Canada (“**EDC**,” and together with NBC, the “**Interim Lenders**”).³ Under the DIP Term Sheet, the Interim Lenders will loan, on a *pari passu* basis, up to CAD\$3,000,000 during the Canadian Proceeding (the “**DIP Facility**”).

14. On October 18, 2022, the Xebec Group submitted an Application for the Issuance of an Amended and Restated Initial Order in the Canadian Proceeding (the “**DIP Application**”), which sought, among other relief, approval of the DIP Facility. A copy of the DIP Application is attached hereto as Exhibit D.

15. In accordance with Canadian law and practice, the Debtors filed the DIP Term Sheet under seal with the Canadian Court, but provided the following details on the DIP Facility in the DIP Application:

- a. National Bank Financial Inc. (“**NBF**”), the Debtors’ Canadian Court-approved investment banker, completed a targeted solicitation to identify parties interested in providing interim funding to the Debtors.
- b. NBF solicited bids from fifteen potential interim lenders, including existing stakeholders and alternative lenders. Eight potential lenders signed confidentiality agreements giving them access to the virtual data room for due diligence purposes.
- c. Only the Interim Lenders agreed to support the Debtors’ restructuring efforts by providing debtor-in-possession financing.
- d. The DIP Facility is a revolving multiple draw credit facility up to a maximum principal amount of CAD\$3,000,000 (the “**Facility Amount**”).
- e. The DIP Facility will terminate on February 3, 2023, unless the maturity date of the DIP Facility is extended by agreement of the Interim Lenders.
- f. The DIP Facility is secured by the liens created by the DIP Charge, which constitute liens on all of the Debtors’ present and future assets, up to a maximum amount of CAD\$3,600,000, which DIP Charge will have priority over all other security interests, hypothecs, charges, and liens, except the D&O Charge and Administrative Charge.

³ As detailed further in the Recognition Motion and the Vounassis Declaration, prepetition, NBC had a senior lien on the Xebec Group’s Canadian assets and a junior lien on the U.S. assets, while EDC had a senior lien on U.S. assets and a junior lien on Canadian assets.

- g. The Interim Lenders were not prepared to provide financing without the DIP Charge.
- h. The DIP Facility will allow the Debtors to continue operating their businesses during the Canadian Proceeding.
- i. Without the DIP Facility, the Debtors believe they would have no alternative but to implement drastic cost-reducing measures to safeguard liquidity and continue the sale process, which could include layoffs of up to 60% of the Debtors' North American workforce and the suspension of operations in multiple of the Debtors' facilities. The Debtors believe that such measures would greatly impair the sale process and the value of the Debtors' business and assets, to the detriment of their creditors and other stakeholders.

(DIP Application ¶¶ 12-22.)

16. On October 20, 2022, the Canadian Court entered the Amended and Restated CCAA Order, which, among other things, reaffirmed the Initial Canadian Order and approved the DIP Facility, including: (a) authorizing the Debtors to execute and perform all obligations under the DIP Term Sheet and any other documents and instruments in connection with the DIP Facility and the DIP Term Sheet (collectively, the “**Interim Financing Documents**”); (b) authorizing the Debtors to pay the Interim Lenders all principal, fees, and expenses under the Interim Financing Documents; (c) approving the DIP Charge as senior to all prepetition and postpetition liens and security interests other than the D&O Charge and Administrative Charge; (d) authorized the Interim Lenders to register, record, or perfect the DIP Charge and the Interim Financing Documents in any jurisdictions deemed appropriate.⁴ (Amended and Restated CCAA Order ¶¶ 36-43.)

17. On October 24, 2022, the Canadian Court issued its Reasons for Issuing the Amended Restated Initial Order Dated October 20, 2022 (the “**ARIO Reasons**”). A copy of the

⁴ The Amended and Restated CCAA Order also increased the D&O Charge to \$3,700,000 (Amended and Restated CCAA Order ¶ 45), increased the Administrative Charge to \$900,000 (*id.* at ¶ 58), and extended the Canadian Stay to November 28, 2022 (*id.* at ¶ 16). (*See also* ARIO Reasons (as defined below) ¶ 24.)

ARIO Reasons is attached hereto as Exhibit E.

18. In the ARIO Reasons, the Canadian Court stated that “Xebec also needed DIP financing to meet its liquidity challenges, in the absence of which it would have to carry out deep cost-cutting measures.” (ARIO Reasons ¶ 18.) The Canadian Court went on to state that the monitor appointed in the Canadian Proceeding, Deloitte Restructuring Inc. (the “**Monitor**”), found the terms of the DIP Facility satisfactory. (*Id.* at ¶ 25.) Furthermore, the Court stated:

Despite the efforts that were deployed, no other lender was willing to provide [debtor-in-possession] financing. The DIP financing will significantly improve Xebec’s cash flow and will prevent extensive cost-cutting measures which would have undesired effects on the [sale] process. It will also provide much needed comfort to employees who are a key component in the success of the [sale] process and any future compromise or arrangement. The Court therefore agreed to declare a \$3.6M DIP charge which would rank after the Administration and D&O charges, but before the Transaction Charge.

(*Id.*)

19. In connection with entry of the Amended and Restated CCAA Order, the Interim Lenders have required formal and explicit recognition of the DIP Facility and the DIP Charge in the United States by the filing of this Motion and all the relief requested herein. To that end, the Debtors have worked diligently with the Interim Lenders and have obtained their agreement on the Initial Order and a Final Order.

RELIEF REQUESTED

20. By this Motion, the Foreign Representative seeks entry of the Interim Order and a Final Order specifically in relation to the DIP Facility: (a) recognizing and enforcing the terms, conditions, and provisions of the Amended and Restated CCAA Order; (b) granting the Interim Lenders certain protections afforded by the Bankruptcy Code, including under sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, pursuant to sections 1519(a)(3) (if the Interim Order shall have been entered before the Recognition Order) and 1521(a)(7) (if the Interim Order shall

have been entered after the Recognition Order) of the Bankruptcy Code; and (c) granting such other and further relief as the Court deems just and proper. The Debtors also request that the Court schedule a hearing to consider entry of a Final Order.

BASIS FOR RELIEF

I. Sections 1519 and 1521 of the Bankruptcy Code Authorize the Requested Interim Relief

21. Section 1519(a)(3) of the Bankruptcy Code expressly authorizes the Court to enter interim (i.e., “provisional”) relief available under section 1521(a)(7) of the Bankruptcy Code prior to the recognition of a foreign proceeding under section 1517 of the Bankruptcy Code where such relief is “urgently needed.” With limited exceptions not applicable here, “where necessary to effectuate the purpose of [chapter 15],” section 1521(a)(7) of the Bankruptcy Code provides that the Bankruptcy Court may upon recognition of a foreign proceeding, authorize “any additional relief that may be available to a trustee,” which includes relief under section 364 of the Bankruptcy Code. *See also* 11 U.S.C. § 1522(a) (court may grant relief under section 1521 only if the interests of “the creditors and the other interested entities, including the debtor, are sufficiently protected”).

22. Here, specifically with respect to section 364 of the Bankruptcy Code, the Debtors seek for the Interim Lenders the super-priority liens and security interests and good faith protections of sections 364(c), 364(d), and 364(e).

23. The DIP Facility and the DIP Charge under the Amended and Restated CCAA Order, along with the solicitation and application process followed by the Xebec Group in Canada, as required by the Canadian Court, all generally align with the U.S. process for obtaining debtor-in-possession financing under section 364. On notice to creditors, the Canadian Court reviewed the DIP Application, held a hearing, and approved the DIP Facility and DIP

Charge. By granting the relief requested herein, the Court would allow the Xebec Group (including the Debtors) to continue their restructuring efforts, which certainly fulfills the requirements of section 1521(a)(7). Furthermore, the Debtors respectfully submit, that by following a two-step process for interim and final relief akin to a chapter 11 bankruptcy case, along with the notice provided to creditors, the Debtors have fulfilled the requirements of section 1522(a).

II. The Requested Provisional Relief is Under Section 1519 is Justified

24. If the Interim Order is entered prior to the Recognition Order, the relief requested herein is requested pursuant to section 1519 of the Bankruptcy Code. For provisional relief under section 1519, the Third Circuit has required satisfaction of an injunctive relief standard. 11 U.S.C. § 1519(e); *In re Innua Can. Ltd.*, 2009 WL 1025088, at *3 (Bankr. D.N.J. Mar. 25, 2009). Specifically, the Foreign Representative must show likelihood of success on the merits, irreparable harm from denial, granting preliminary relief will not result in even greater harm to a nonmoving party, and the public interest favors entry. *See U.S. v. Bell*, 414 F.3d 474, 478 n.4 (3d Cir. 2005) (citing *ACLU of N.J. v. Black Horse Pike Reg'l Bd. of Educ.*, 84 F.3d 1471, 1477 n.2 (3d Cir. 1996)); *see also Rogers v. Corbett*, 468 F.3d 188, 192 (3d Cir. 2006) (citations omitted); *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004) (citations omitted). The Foreign Representative believes it has met this standard.

(A) Substantial Likelihood of Success on the Merits

25. By its Recognition Motion, the Foreign Representative has set forth a compelling case for recognition of the Canadian Proceeding as a foreign main proceeding. Indeed, no creditors or other parties in interest have objected. (*See* Certification of Counsel [Docket No. 23].) Accordingly, the Court should grant the Recognition Motion and recognize and enforce all

Canadian Orders in the United States, which includes the Amended and Restated CCAA Order approving the DIP Facility and the DIP Charge.

26. Furthermore, by expressly recognizing and enforcing the DIP Facility and the DIP Charge in the U.S., as mandated by the Interim Lenders, the Court will enable the Xebec Group and the Debtors to continue their restructuring efforts, which more than fulfills the requirements for extending the protections of section 364 to the Debtors under section 1521(a)(7) of the Bankruptcy Code. The Debtors also respectfully submit that the Court should take comfort from the debtor-in-possession financing process followed in the Canadian Court. As demonstrated by the DIP Application, the Vounassis DIP Declaration, the Amended and Restated CCAA Order, and the ARIO Reasons, the Xebec Group and the Canadian Court abided by a rigorous protocol in approval of the DIP Facility and the DIP Charge.

(B) The Debtors Will Suffer Irreparable Harm if the Request for Provisional Relief is Denied

27. The Debtors will suffer immediate and irreparable harm if they cannot access the DIP Loan. As described in the Vounassis DIP Declaration, the Debtors continue to operate under significant liquidity constraints and require access to the DIP Loan to fund working capital requirements, capital expenditures, general corporate expenses, and the costs of administering their bankruptcy cases.

28. In addition to providing the Debtors with the liquidity necessary to operate and consummate a potential sale process, the DIP Loan will help to preserve the Debtors' business by providing assurance to their employees, suppliers, and customers that they can maintain their business operations and satisfy their obligations pending the outcome of the Canadian Proceeding and these chapter 15 cases.

29. Absent entry of the Interim Order with the protections under section 364 of the

Bankruptcy Code, as required by the Interim Lenders, the Debtors cannot obtain the financing for a successful restructuring. For similar reasons, the Bankruptcy Court has granted similar relief in other chapter 15 cases. *See, e.g., Yatsen Grp. of Cos. Inc.*, Case No. 21-10073 (BLS) (Bankr. D. Del. Jan. 27, 2021) (order granting provisional DIP relief in chapter 15 case); *In re Hematite Holdings Inc.*, No. 20-12387 (Bankr. D. Del. Oct. 15, 2020) (same); *In re The Aldo Grp. Inc.*, No. 20-11060 (Bankr. D. Del. June 3, 2020) (same); *In re Cinram Int'l Inc.*, No. 12-11882 (Bankr. D. Del. July 25, 2012); *In re Arctic Glacier Int'l Inc.*, Case No. 12-10605 (KG) (Bankr. D. Del. Feb. 23, 2012) (same).

30. Accordingly, should the Interim Order be entered prior to the Recognition Order, the Foreign Representative requests that the Court, pursuant to section 1519 of the Bankruptcy Code, recognize, on a provisional basis, the liens and charges negotiated in connection with the DIP Loan and approved by the Canadian Court, and afford the Interim Lenders the protections available pursuant to section 364 of the Bankruptcy Code.

(C) Creditors Will Suffer No Greater Harm From the Provisional Relief

31. The Debtors' creditors will not suffer any significant harm by the requested provisional relief, as entry of the Interim Order on a provisional basis pursuant to section 1519 of the Bankruptcy Code will merely preserve the *status quo* and enable the Debtors to continue to finance their operations during the short time necessary for the Court to rule on a final basis. In fact, the Foreign Representative believes granting the request for provisional relief will benefit the Debtors' creditors, as it will ensure preservation and maximization of the value of the Debtors' assets for the benefit of the Debtors' stakeholders.

(D) The Public Interest Favors Granting the Provisional Relief

32. As noted above, the requested interim relief aligns with the policy underlying the Bankruptcy Code and serves the public interest in facilitating the Debtors' efforts to complete a

court-supervised sale process, which ultimately will benefit the Debtors' creditors and other stakeholders. *See, e.g., Rehabworks, Inc. v. Lee (In re Integrated Health Servs., Inc.)*, 281 B.R. 231, 239 (Bankr. D. Del. 2002) ("In the context of a bankruptcy case, promoting a successful reorganization is one of the most important public interests."); *In re Lazarus Burman Assocs.*, 161 B.R. 891, 901 (Bankr. E.D.N.Y. 1993) ("The public interest, in the context of a bankruptcy proceeding, is in promoting a successful reorganization."); *see also In re Adelpia Commc'ns Corp.*, 368 B.R. 140, 284 (Bankr. S.D.N.Y. 2007) ("The public interest requires bankruptcy courts to consider the good of the case as a whole."); *Am. Film Techs, Inc. v. Taritero (In re Am. Film Techs., Inc.)*, 175 B.R. 847, 849 (Bankr. D. Del. 1994) ("It is 'one of the paramount interests' of this court to assist the Debtor in its reorganization efforts.") (quoting *Gathering Rest., Inc. v. First Nat'l Bank of Valparaiso (In re Gathering Rest., Inc.)*, 79 B.R. 992, 1001 (Bankr. N.D. Ind. 1986)).

33. In addition, granting the interim relief will promote cooperation between jurisdictions in cross-border insolvencies, an express purpose of chapter 15 of the Bankruptcy Code. *See* 11 U.S.C. § 1501(a).

34. For these reasons, courts in this district have frequently granted requests for similar provisional relief in chapter 15 cases. *See, e.g., In re Groupe Dynamite Inc.*, No. 20-12085 (CSS) (Bankr. D. Del. Sept. 9, 2020) (order granting provisional relief, including application of sections 362 and 365(e)); *In re CDS U.S. Holdings, Inc.*, No. 20-11719 (CSS) (Bankr. D. Del. July 2, 2020) (same); *In re The Aldo Grp., Inc.*, No. 20-11060 (KBO) (Bankr. D. Del. May 8, 2020) (order granting provisional relief, including and application of sections 362, 364(e) and 365(e)); *In re Elpida Memory, Inc.*, Case No. 12-10947 (CSS) (Bankr. D. Del. Mar. 21, 2012) (order granting provisional relief, including protections of automatic stay); *In re Arctic*

Glacier Int'l Inc., Case No. 12-10605 (KG) (Bankr. D. Del. Feb. 23, 2012) (order granting provisional relief, including DIP relief and the protections of automatic stay and section 365(e) of the Bankruptcy Code).

IV. Section 1521 of the Bankruptcy Code Supports Entry a Final Order

35. For all the foregoing reasons, granting the relief requested herein on a final basis, and affording the protections of sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, is consistent with the purposes of chapter 15 of the Bankruptcy Code and public policy of the United States. Moreover, as noted above, the Debtors' restructuring efforts cannot succeed without the support of the Interim Lenders, who will not loan the full Facility Amount absent entry of a Final Order. Therefore, the Foreign Representative respectfully requests that, upon notice and a hearing, the Court grant a Final Order under section 1521(a)(7) of the Bankruptcy Code, and such other and further relief as the Court may deem just and proper.

NOTICE

36. Notice of this Motion will be provided to the following parties or their counsel: (a) the Office of the United States Trustee for the District of Delaware; (b) all parties to litigation in which any Debtor is a party and that is pending in the United States as of the date that the Chapter 15 Petitions were filed; (c) the Interim Lenders; (d) all entities against whom interim relief is sought; (e) the 20 largest unsecured creditors of the Debtors in these cases; (f) the Debtors' counsel in the Canadian Proceeding; (g) all other parties that have requested notice in these cases. In light of the relief requested herein, the Foreign Representative respectfully submits that no other or further notice of this Motion is necessary under the circumstances.

NO PRIOR REQUEST

37. No previous request for the relief requested herein has been made to this or any

other court.

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CONCLUSION

WHEREFORE, the Foreign Representative respectfully requests that the Court: (a) enter the Interim Order, substantially in the form attached hereto as Exhibit A, (b) enter a Final Order, upon notice and a hearing, and (c) grant such other and further relief as may be just and proper.

Dated: October 26, 2022
Wilmington, Delaware

BIELLI & KLAUDER, LLC

/s/ David M. Klauder

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Counsel for the Foreign Representative



Exhibit A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

XEBEC HOLDING USA INC., *et al.*,

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 22-10934 (KBO)

Joint Administration Requested

**ORDER GRANTING INTERIM RELIEF RECOGNIZING
AND ENFORCING DIP FINANCING AUTHORIZED UNDER AMENDED
AND RESTATED CCAA ORDER**

Upon the motion (the “**Motion**”)² of Xebec Adsorption Inc., in its capacity as authorized foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”), in a proceeding (the “**Canadian Proceedings**”) commenced under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and pending before the Superior Court of Québec, in the Province of Québec, District of Montréal (the “**Canadian Court**”), seeking entry of an order granting additional relief (this “**Order**”) pursuant to sections 105(a), 364, and 1521 of title 11 of the United States Code, as amended from time to time (the “**Bankruptcy Code**”): (a) recognizing and enforcing in the United States, on an interim basis, the terms, conditions, and provisions of that certain Amended and Restated Initial Order of the Canadian Court dated October 20, 2022 (the “**Amended and Restated CCAA Order**”), a copy of which is attached as Exhibit B to the Motion, (b) granting certain

¹ The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: Xebec Adsorption Inc. (0228), Xebec RNG Holdings Inc. (N/A), Applied Compression Systems Ltd. (N/A), Compressed Air International Inc. (N/A), Xebec Holding USA Inc. (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), Xebec Adsorption USA, Inc. (0821), The Titus Company (9757), Nortekbelair Corporation (1897), XBC Flow Services – Wisconsin Inc. (7493), California Compression, LLC (4752), and Xebec Systems USA LLC (4156). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 700-1130 Sherbrooke Street West, Montreal, Quebec H3A 2M8.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Amended and Restated CCAA Order (as defined herein), as applicable.

protections afforded by the Bankruptcy Code, including under section 364(c), 364(d), and 364(e) of the Bankruptcy Code, (c) granting such other and further relief as this Court deems just and proper, and (d) scheduling a final hearing on the Motion (the “**Final Hearing**”) to consider entry of a final order that grants the relief requested in the Motion on a final basis, which final order shall be in form and substance acceptable to the Interim Lenders (the “**Final Order**”), and setting a deadline by which parties in interest shall respond to the Motion (the “**Objection Deadline**”); and it appearing that this Court has jurisdiction to consider the Motion pursuant to sections 157 and 1334 of title 28 of the United States Code; venue being proper before the Court pursuant to 28 U.S.C. § 1410; and this Court having reviewed the Motion and having considered the statements of counsel with respect to the Motion at a hearing before this Court (the “**Hearing**”); and appropriate and timely notice of the filing of the Motion and the Hearing having been given; it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and no other or further notice being necessary or required; and this Court having determined that the legal and factual bases set forth in the Motion, and all other pleadings and papers in these cases establish just cause to grant the relief ordered herein, and no objections or other responses having been filed that have not been overruled, withdrawn, or otherwise resolved, and after due deliberation therefor;

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to rule 7052 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Foreign Representative is the duly appointed “foreign representative” of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.

D. This Court entered an order on November __, 2022 recognizing, among other things, that the Canadian Proceedings constitute “foreign main proceedings” as defined in section 1502(4) of the Bankruptcy Code (the “**Recognition Order**”).

E. The Amended and Restated CCAA Order, including Paragraphs 36-43 of the Amended and Restated CCAA Order, authorizes entry into the Interim Financing Documents, pursuant to which, among other things: (i) the Debtors may borrow from the Interim Lenders amounts not exceeding CAD\$3,000,000.00 (the “**DIP Loans**”); (ii) all Property³ of the Debtors shall be subject to a charge and security for an aggregate amount of \$3,600,000.00 in favor of the Interim Lenders (the “**DIP Charge**”);⁴ and (iii) the Debtors shall pay all amounts due and owing to the Interim Lenders, including the Interim Lender Expenses, and shall otherwise perform all obligations due and owing to the Interim Lenders under the Interim Financing Documents.

F. On or about September 29, 2022, the Canadian Court executed that certain First Day Initial Order (the “**Initial Canadian Order**”) providing, among other things, for a Directors and

³ “Property” means the Debtors’ present and future assets, right, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof. *See* Amended and Restated CCAA Order, ¶ 20.

⁴ The DIP Charge “shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established in paragraphs 61 and 62” of the Amended and Restated CCAA Order. *See* Amended and Restated CCAA Order, ¶ 39.

Officers' indemnification and charge in the amount of CAD\$2,200,000.00 (the "**Initial D&O Charge**"), which the Canadian Court increased to CAD\$3,700,000.00 by the Amended and Restated CCAA Order.

G. The Initial Canadian Order also provided for the Administration Charge in the amount of CAD\$250,000.00 (collectively with the Initial D&O Charge, the "**Initial Canadian Post-Petition Secured Claims**"), which the Canadian Court increased to CAD\$900,000.00 by the Amended and Restated CCAA Order.

H. The Initial Canadian Post-Petition Secured Claims were recognized and given full force and effect in the United States pursuant to the Recognition Order.

I. The Foreign Representative has demonstrated that the incurrence of indebtedness under the Interim Financing Documents, as authorized by the Amended and Restated CCAA Order, is necessary to prevent irreparable harm to the Debtors and their affiliates because, without such financing, they will be unable to continue operations, which will significantly impair the value of the Debtors' assets.

J. The Foreign Representative has demonstrated that the terms of the Interim Financing Documents, as approved in the Amended and Restated CCAA Order, are fair and reasonable and were entered into in good faith by the Debtors and the Interim Lenders and that the Interim Lenders would not have extended financing without the protections provided by sections 364 of the Bankruptcy Code, made applicable by section 1521(a)(7) of the Bankruptcy Code. The Foreign Representative has demonstrated that the terms of the Interim Financing Documents are reasonable under the circumstances.

K. The Foreign Representative is further entitled to the discretionary relief expressly set forth in section 1521(a) of the Bankruptcy Code.

L. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to section 1521 of the Bankruptcy Code.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is Granted as set forth herein.
2. The terms of the Interim Financing Documents and DIP Loans as approved in the Amended and Restated CCAA Order shall be given full force and effect as to the Debtors and their property in the United States on an interim basis (as may automatically be approved on a final basis in accordance with paragraph 16 hereof).
3. Pursuant to section 1521 of the Bankruptcy Code, the Amended and Restated CCAA Order, and the transactions consummated or to be consummated thereunder, including without limitation, entry into and performance under the Interim Financing Documents and DIP Loans, shall be granted and given full force and effect in the United States to the same extent that they are given effect in Canada, and each is binding on all creditors of the Debtors and any of their successors or assigns.
4. Pursuant to sections 1521 and 364 of the Bankruptcy Code, to the extent authorized under the Amended and Restated CCAA Order, the Court grants, on an interim basis, the DIP Charge on all of the Debtors' Property located in the United States on the same priority set forth in the Amended and Restated CCAA Order.
5. Upon entry of this Order, the Foreign Representative and the Debtors, as applicable, shall comply with the terms, conditions, and provisions of the Amended and Restated CCAA Order

including, without limitation, the provisions relating to the Interim Financing Documents, DIP Loans and the DIP Charge.

6. Without further order of this Court, to the extent authorized under the Amended and Restated CCAA Order, and to promote cooperation between jurisdictions in cross-border insolvencies, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, and other documents and filings, and to pay all fees and expenses, including the Interim Lender Expenses, and to perform all other obligations, under the Interim Financing Documents.

7. The Interim Financing Documents and the DIP Facility have been negotiated in good faith between the Debtors and the Interim Lenders. Any financial accommodations made to the Debtors by the Interim Lenders pursuant to the Amended and Restated CCAA Order and the Interim Financing Documents shall be deemed to have been made by the Interim Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Accordingly, pursuant to sections 364(e), 1521(a)(7), and 105(a) of the Bankruptcy Code, section 364(e) of the Bankruptcy Code hereby applies for the benefit of the Interim Lenders, and the validity of the indebtedness, and the priority of the liens in respect of the DIP Charge authorized by the Amended and Restated CCAA Order made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying recognition of the CCAA Proceeding pursuant to section 1517 of the Bankruptcy Code.

8. This Order shall be sufficient and conclusive notice and evidence of the grant, validity, perfection, and priority of the liens granted to the Interim Lenders in the Amended and Restated CCAA Order without the necessity of filing or recording this Order or any financing statement, mortgage, or other instrument or document which may otherwise be required under the

law of any jurisdiction; provided that the Debtors are authorized to execute, and the Interim Lenders under the DIP Facility may file or record, any financing statements, mortgages, other instruments or any other Interim Financing Documents to further evidence the liens authorized, granted, and perfected hereby and by the Amended and Restated CCAA Order.

9. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) neither the Foreign Representative nor the Interim Lenders are subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Foreign Representative is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

10. Notwithstanding any stay, injunction or similar relief granted in these chapter 15 cases, the Interim Lenders are authorized to exercise all remedies and take any and all enforcement steps permitted under the Amended and Restated CCAA Order, subject to the provisions of the Amended and Restated CCAA Order, including paragraph 42 thereof.

11. Notice of this Order will be provided to: (a) the Office of the United States Trustee; (b) the United States Attorney's Office for the District of Delaware; (c) all persons or bodies authorized to administer the Canadian Proceedings; and (d) any other parties of which the Foreign Representative is becomes aware that are required to receive notice pursuant to Bankruptcy Rule 2002(q); and (e) such other entities as this Court may direct (collectively, the "**Notice Parties**"), which satisfies the requirements of Bankruptcy Rule 2002(q). In light of the nature of the relief requested, no other or further notice is required.

12. Service in accordance with this Order shall be deemed good and sufficient service and adequate notice for all purposes. The Foreign Representative, the Debtors, and their respective agents are authorized to serve or provide any notices required under the Local Rules.

13. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

14. This Court shall communicate directly with, or request information or assistance directly from, the Canadian Court or the Foreign Representative, subject to the rights of a party in interest to notice and participation.

15. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any requests for additional relief or any adversary proceeding or contested matter brought in and through the chapter 15 case, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

16. The Motion is set for a final hearing before this Court at [____] [a.m. / p.m.] (prevailing Eastern Time) on November ___, 2022. Notwithstanding the foregoing, this Order shall become a Final Order and the relief granted herein shall become final and non-appealable without the need for further notice, hearing, or further order the Court if no objections are properly raised by **4:00 p.m. (prevailing Eastern Time) on November ___, 2022** (the “**Objection Deadline**”).



Exhibit B

Amended and Restated CCAA Order

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: October 20, 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

AMENDED AND RESTATED INITIAL ORDER

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- [1] **CONSIDERING** the *Application for the Issuance of an Amended and Restated Initial Order* (the "**Application**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**") and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the "**Initial Application**") pursuant to the CCAA;
- [3] **CONSIDERING** the Third Report of the Monitor dated October 19, 2022;
- [4] **CONSIDERING** the submissions of counsel and the testimony of the witnesses heard;
- [5] **GIVEN** the provisions of the CCAA;
- [6] **GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

THE COURT HEREBY:

- [7] **GRANTS** the Application, for reasons to follow:
- [8] **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:
 - (a) Service;
 - (b) Application of the CCAA;
 - (c) Effective Time;
 - (d) Administrative Consolidation;
 - (e) Plan of Arrangement;
 - (f) Stay of Proceedings against the Petitioners and the Property;
 - (g) Stay of Proceedings against the Directors and Officers;
 - (h) Possession of Property and Operations;
 - (i) No Exercise of Rights or Remedies;

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

a. Service

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

b. Application of the CCAA

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

c. Effective Time

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

d. Administrative Consolidation

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

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

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

e. Plan of Arrangement

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

f. Stay of Proceedings against the Petitioners and the Property

- [16] **ORDERS** that, until and including November 28, 2022 (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Petitioners, or affecting the Petitioners' business operations and activities (the "**Business**") or the Property (as defined herein), including as provided in paragraph [29] herein except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.
- [17] **ORDERS** that the rights of His Majesty in right of Canada and His Majesty in right of a Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.
- [18] **ORDERS** and **DECLARES** that the National Bank of Canada ("**NBC**") is an unaffected creditor in these CCAA proceedings and is not subject to the stay of proceedings, including the Stay Period and any renewal or extension thereof, or any other limitations of creditors' right or recourses under this Order. Nothing in this Order shall prevent NBC from enforcing its security against the Petitioners' Property in conformity with its contractual rights, subject only to NBC providing advance notice of its intention to do so.

g. Stay of Proceedings against Directors and Officers

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

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the Directors is under any law liable in such capacity for the payment of such obligation.

h. Possession of Property and Operations

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

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

- [24] **ORDERS** that, subject to the consent of the Monitor, each of the Petitioners is authorized to complete outstanding transactions and engage in new transactions with other Petitioners or their affiliates, including, without limitation, (a) intercompany funding transactions, (b) purchase and sale transactions for goods or services in the ordinary course of the Business, (c) allocation and payments of costs, expenses and other amounts for the benefit of the Petitioners, including, without limitation, debt repayments and interest costs, head office, shared services and restructuring costs (collectively, "**Intercompany Transactions**"), and to continue, on and after the date of this Order, to effect Intercompany Transactions. All Intercompany Transactions among the Petitioners shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures as the Monitor may require, or subject to this Order or further Order of this Court.
- [25] **ORDERS** that, in conformity with the DIP Term Sheet, the Petitioners shall notify, at least two (2) days in advance, the Interim Lenders of any monetary payment from a Petitioner to another Petitioner or their affiliates, and that the Monitor shall continue to report from time to time to the Court on such monetary payments constituting Intercompany Transactions.
- [26] **ORDERS** that prior to the distribution of any net sale proceeds resulting from the sale or divestiture of any Business or Property (but excluding any distribution made in respect of any amounts owing under the CCAA Charges (as defined herein), as the case may, it being understood that in each such case, said distribution may in itself constitute an Intercompany Transaction to form part of a subsequent Intercompany Transactions Report, as defined herein), the Monitor shall prepare and file with the Court a report (each, an "**Intercompany Transactions Report**") detailing all Intercompany Transactions which occurred on or after the date of the Initial Order with respect to the applicable Petitioner(s), which Intercompany Transactions Report shall include the Monitor's proposed allocation of the net amount to be attributed to each Petitioner as a result of the applicable

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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**").

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

i. No Exercise of Rights or Remedies

- [29] **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the Petitioners is a party as a result of the insolvency of the Petitioners and/or these CCAA proceedings, any events of default or non-performance by the Petitioners or any admissions or evidence in these CCAA proceedings, of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof are hereby stayed and suspended except with leave of this Court.
- [30] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods including, without limitation, to file grievances relating to the Petitioners or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioners, or any of them, become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") is appointed in respect of the Petitioners, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioners in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

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j. No Interference with Rights

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

k. Continuation of Services

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

[33] **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioners on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to make further advance of money or otherwise extend any credit to the Petitioners.

[34] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any Petitioners with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of this Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall

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not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by a Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into a Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

I. Non-Derogation of Rights

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

m. Interim Financing (DIP)

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

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

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

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shall perform all of their other obligations owed to the Interim Lenders pursuant to the DIP Term Sheet, the Interim Financing Documents and the Order.

- [39] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,600,000 (the "**DIP Charge**") in favour of the Interim Lenders as security for all obligations of the Petitioners to the Interim Lenders with respect to the payment of the DIP Facility (including principal, interest and the Interim Lender Expenses) owing to the Interim Lenders under or in connection with the DIP Term Sheet and the Interim Financing Documents. Such Interim Lender Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs [61] and [62] of this Order.
- [40] **ORDERS** that the claims of the Interim Lenders pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lenders, in that capacity, shall be treated as unaffected creditors in these proceedings and in any Plan.
- [41] **ORDERS** that the Interim Lenders may:
- (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the DIP Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
 - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Petitioners if the Petitioners fail to meet the provisions of the DIP Term Sheet and the Interim Financing Documents.
- [42] **ORDERS** that the Interim Lenders shall not take any enforcement steps under the DIP Term Sheet, the Interim Financing Documents or the DIP Charge without providing at least 3 business days written notice (the "**Notice Period**") of a default thereunder to the Petitioners, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lenders shall be entitled to take any and all steps, the DIP Term Sheet, the Interim Financing Documents, the DIP Charge and otherwise permitted at law, but without having to send any additional demands under Section 244 of the BIA, under the Civil Code of Quebec or any other similar legislation.
- [43] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [68] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [36] to [43] of this Order unless either (a) notice of a motion for such order is served on the Interim Lenders by the moving party within at least seven

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(7) days prior to the presentation thereof or (b) the Interim Lenders apply for or consents to such order.

n. Directors' and Officers' Indemnification and Charge

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

o. Restructuring

- [47] **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioners, subject to prior approval of the Monitor or further order of the Court, as the case may be, shall have the right to:
- (a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate;
 - (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
 - (c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part,

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provided that the price in each case does not exceed \$750,000 or \$1,500,000 in the aggregate;

- (d) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioners and such employee, or failing such agreement, make provision to deal with, any consequences thereof in a Plan, as the Petitioners may determine;
- (e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the relevant Petitioner, as applicable, and the relevant party, or failing such agreement, to make provision for the consequences thereof in a Plan; and
- (f) subject to section 11.3 CCAA, assign any rights and obligations of Petitioners.

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

[49] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, C 5, and equivalent provisions of the *Act Respecting the Protection of Personal Information in the Private Sector*, RSQ, c P-39.1, the Petitioners are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of a Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of a Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal

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information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

p. Powers of the Monitor & Administration Charge

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

- (a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, in La Presse (French version) and the Globe and Mail National Edition (English version) and (ii) within four (4) business days after the date of this Order (A) post on the Monitor's website a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioners of more than \$1,000, advising them that this Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;
- (b) shall monitor the Petitioners' receipts and disbursements;
- (c) shall assist the Petitioners, to the extent required by the Petitioners, in dealing with their creditors and other interested Persons during the Stay Period;
- (d) shall assist the Petitioners, to the extent required by the Petitioners, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (e) shall advise and assist the Petitioners, to the extent required by the Petitioners, to review the Petitioners' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (f) shall assist the Petitioners, to the extent required by the Petitioners, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider a Plan;
- (g) shall report to the Court on the state of the business and financial affairs of the Petitioners or developments in these proceedings or any related

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proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated reports for the Petitioners;

- (h) shall report to this Court and interested parties, including but not limited to creditors affected by a Plan, with respect to the Monitor's assessment of, and recommendations with respect to, a Plan;
- (i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under this Order or under the CCAA;
- (k) may give any consent or approval as may be contemplated by this Order or the CCAA;
- (l) may hold and administer funds in connection with arrangements made among the Petitioners, any counter-parties and the Monitor, or by Order of this Court; and
- (m) may perform such other duties as are required by this Order or the CCAA or by this Court from time to time.

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

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

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

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all other documents of the Petitioners in connection with the Monitor's duties and responsibilities hereunder.

- [53] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioners with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioners' counsel. In the case of information that the Monitor has been advised by the Petitioners is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioners unless otherwise directed by this Court.
- [54] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioners or continues the employment of the Petitioners' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
- [55] **DECLARES** that Section 215 of the BIA applies *mutatis mutandis* and that no action or other proceedings shall be commenced against the Monitor or its representatives relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least seven (7) days' notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor and their representatives shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [56] **DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.
- [57] **ORDERS** that the Petitioners shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
- [58] **DECLARES** that the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel, as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, any Plan and the Restructuring, as well as National Bank Financial Inc. ("**NBF**"), as security for the Engagement Fee and the Fairness Opinion Fee (as such terms are defined in the engagement letter filed as Exhibit P-3 in support of the Initial Application, the "**Engagement Letter**") and all disbursements incurred by NBF pursuant to the Engagement Letter, be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate

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amount of \$900,000 (the "**Administration Charge**"), having the priority established by paragraphs [61] and [62] of this Order.

q. KERPs and KERP Charge

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

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

r. Priorities and General Provisions Relating to CCAA Charges

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

- (a) first, the Administration Charge;
- (b) second, the D&O Charge;
- (c) third, the DIP Charge;
- (d) fourth, the Transaction Charge (as defined in the Bidding Procedures Order dated September 29, 2022);
- (e) fifth, the KERP Charge.

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

[63] **ORDERS** that, except as otherwise expressly provided for herein, the Petitioners shall not grant any Encumbrances in or against any Property that rank in priority

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to, or *pari passu* with, any of the CCAA Charges unless the Petitioner, as applicable, obtains the prior written consent of the Monitor and the prior approval of the Court.

- [64] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
- [65] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease or other arrangement which binds the Petitioners (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:
- (a) the creation of any of the CCAA Charges shall not create nor be deemed to constitute a breach by the Petitioners of any Third Party Agreement to which any of the Petitioners is a party; and
 - (b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.
- [66] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any Petitioners pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances, preferential payments, transfers at undervalue or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.
- [67] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners and against all Persons, including, without limitation,

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any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners.

s. Hearing Scheduling and Details

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

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t. General

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

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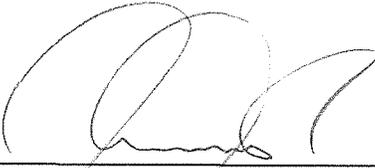
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rights hereunder or in respect of the proper execution of this Order on notice only to each other.

- [80] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [81] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Petitioners in any foreign proceeding, to assist the Petitioners, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.
- [82] **AUTHORIZES** the Monitor or the Petitioners to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the U.S. Bankruptcy Code, including an order for recognition of these CCAA proceedings as "Foreign Main Proceedings" in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, for which Xebec Adsorption Inc., shall be the foreign representative of the Petitioners. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be deemed necessary or appropriate for that purpose.
- [83] **DECLARES** that, for the purposes of any applications authorized by paragraph [82] of this Order, Petitioners' centre of main interest is located in Montréal, Québec, Canada.
- [84] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.
- [85] **THE WHOLE WITHOUT COSTS.**

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Christian Immer, J.S.C.

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

Hearing date: October 20, 2022



Exhibit C

Order Extending the Stay of Proceedings

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: October 7, 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

ORDER EXTENDING THE STAY OF PROCEEDINGS

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- [1] **CONSIDERING** the *Application for an Extension of the Stay of Proceedings* (the "**Application**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**") and the exhibit and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Second Report of the Monitor dated October 6, 2022;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **GIVEN** the provisions of the CCAA
- [5] **GIVEN** the interpretation of section 11.001 CCAA by the honourable Justice Geoffrey B. Morawetz in *Lydian International Limited (Re)*, 2020 ONSC 34 which the Court shares, and given that the reasons which led Mr. Justice Morawetz to extend the stay period of the initial order are also present in this matter, namely: as appears from paragraph 11 of the affidavit of Mr. Vounassis, clear benefits will derive from extending the stay period and the Monitor supports extending the stay period for the reasons more fully set out in his Second Report, inter alia, at sections VIII and IX thereof;
- [6] **GIVEN** that no interested party has contested this stay extension, and several parties interested parties were represented by counsel at the hearing of this stay extension;

THE COURT HEREBY:

- [7] **GRANTS** the Application.
- [8] **ORDERS** that the time for service of the Application is hereby abridged and validated so that the Application is properly returnable today mad hereby **DISPENSES** with further service thereof.
- [9] **EXTENDS** the Stay Period (as defined in the First Day Initial Order rendered by the Court on September 29, 2022) to and including **October 20, 2022**.
- [10] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [11] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body

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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.

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

[13] **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

Hearing date: October 7, 2022



Exhibit D

DIP Application

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
(Commercial Division)

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

No.: 500-11-061483-224

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

XEBEC ADSORPTION INC.

-and-

XEBEC RNG HOLDINGS INC.

-and-

APPLIED COMPRESSION SYSTEMS LTD.

-and-

COMPRESSED AIR INTERNATIONAL INC.

-and-

XEBEC HOLDING USA INC.

-and-

ENERPHASE INDUSTRIAL SOLUTIONS, INC.

-and-

CDA SYSTEMS, LLC

-and-

XEBEC ADSORPTION USA INC.

-and-

THE TITUS COMPANY

-and-

NORTEKBELAIR CORPORATION

-and-

XBC FLOW SERVICES – WISCONSIN INC.

-and-

CALIFORNIA COMPRESSION, LLC

-and-

XEBEC SYSTEMS USA, LLC

Debtors / Petitioners

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-and-

DELOITTE RESTRUCTURING INC.

Monitor

**APPLICATION FOR THE ISSUANCE OF AN AMENDED AND
RESTATED INITIAL ORDER**
**(Sections 4, 9, 10, 11, 11.02, 11.03, 11.2, 11.51, 11.52, 11.7 and 23
of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-
36)**

TO THE HONOURABLE JUSTICE CHRISTIAN IMMER OR TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN THE JUDICIAL DISTRICT OF MONTRÉAL, THE DEBTORS / PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:

I. INTRODUCTION AND BACKGROUND

1. The Debtors / Petitioners Xebec Adsorption Inc., Xebec RNG Holdings Inc., Applied Compression Systems Ltd., Compressed Air International Inc., Xebec Holding USA Inc., Enerphase Industrial Solutions, Inc., California Compression, LLC, CDA Systems, LLC, Xebec Adsorption USA Inc., The Titus Company, Nortekbelair Corporation, Xebec Systems USA, LLC, XBC Flow Services – Wisconsin Inc. (collectively, the “**Petitioners**”) form part of a global provider of sustainable gas solutions used in energy, mobility and industry applications, headquartered in Montréal, Québec (along with various overseas subsidiaries, the “**Xebec Group**”).
2. On September 29, 2022, at the Petitioners’ request, the Court issued a First Day Initial Order (the “**FDIO**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36 (“**CCAA**”) and a Bidding Procedures Order (the “**Bidding Procedures Order**” collectively with the FDIO, the “**First Day Orders**”), as appears from the Court record.
3. The FDIO, *inter alia*:
 - (a) appointed Deloitte Restructuring Inc. as monitor of the Petitioners’ CCAA proceedings (the “**Monitor**”);
 - (b) ordered a stay of proceedings in respect of the Petitioners and their directors and officers until October 7, 2022 (the “**Stay Period**”);
 - (c) granted an Administration Charge and a D&O Charge (as such terms are defined in the FDIO);

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- (d) authorized the Petitioners to pay, with the consent of the Monitor or the Court, any pre-filing unpaid claims of suppliers it deems critical, up to an aggregate amount of \$700,000; and
 - (e) 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 (the “**U.S. Bankruptcy Code**”).
4. The Bidding Procedures Order, *inter alia*:
- (a) approved the proposed Sale and Investment Solicitation Process (the “**SISP**”);
 - (b) approved the engagement of National Bank Financial Inc. (“**NBF**”) to assist in the implementation of the SISP; and
 - (c) approved the Transaction Fee Charge (as defined in the Bidding Procedures Order).
5. On October 7, 2022, at the Petitioners’ request, the Court issued an Order extending the Stay Period until October 20, 2022, as appears from the Court record.

II. ORDER SOUGHT

6. By the present Application, the Petitioners are seeking the issuance of an amended and restated initial order (the “**ARIO**”), substantially in the form of the draft ARIO communicated herewith as **Exhibit P-1**:
- (a) approving the DIP Facility (as defined below) to be provided to the Petitioners pursuant to a DIP Term Sheet (as defined below) dated as of October 20, 2022, negotiated between the Petitioners and NBC (as defined below, the “**DIP Lender**”) pursuant to which, and subject to the terms thereof, the DIP Lender agrees to provide interim financing to the Petitioners, and granting a DIP Charge (as defined below) in an amount sufficient to cover the potential exposure of the DIP Lender under the DIP Facility;
 - (b) approving the KERPs and the KERP Charge (as such terms are defined below);
 - (c) increasing the quantum of the Administration Charge and the D&O Charge (as such terms are defined in the FDIO) in amounts sufficient to cover the

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potential exposure of the beneficiaries of such charges during these CCAA Proceedings;

- (d) extending the Stay Period until on or about November 28, 2022 (the “**Extension Date**”); and
- (e) granting other relevant relief sought herein by the Petitioners.

A comparison of draft ARIO (Exhibit P-1) and the FDIO is communicated herewith as **Exhibit P-1A**.

III. STATUS OF RESTRUCTURING EFFORTS AND THE SISP

7. Since the Stay Period was extended on October 7, 2022, the Petitioners, under the supervision of the Monitor, have:

- (a) continued to operate the Xebec Group in the ordinary course;
- (b) worked to wind up operations of Xebec Italy SRL;
- (c) communicated with the employees, customers and suppliers of the Xebec Group in order to maintain their operations and ensure a continued supply of goods;
- (d) negotiated the DIP Term Sheet with the DIP Lender, as more fully described below;
- (e) continued ongoing discussions with certain of their key customers with a view to of negotiating an adjustment of certain contractual terms to allow for the continued performance of the contracts and alleviate the pressure on the Petitioners’ liquidity requirements through these CCAA proceedings;
- (f) negotiated an extension of the forbearance agreement with NBC until November 28, 2022;
- (g) continued the conduct of SISP with the assistance of NBF, as more fully described below; and
- (h) worked on a revised and updated cash flow statement covering the period until the Extension Date, in consultation with the Monitor.

8. As of the date hereof, in accordance with the timeline set out in the bidding procedures (Schedule A to the Bidding Procedures Order), NBF has distributed a solicitation letter to approximately 477 potential targets, including potential investors and strategic acquirers.

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9. 44 parties have executed nondisclosure agreements and have received access to the virtual data room and the confidential information memorandum.
10. 18 additional parties are in the process of negotiating nondisclosure agreements, and are expected to receive access to the virtual data room and the confidential information memorandum shortly.
11. Interested parties will have until November 11, 2022, to deliver non-binding letters of intent, the whole as further provided for in the Bidding Procedures Order.

IV. RELIEF SOUGHT

A. Approval of the DIP Facility

12. As was previously reported to the Court, following confirmation that certain key stakeholders were not prepared to proceed with an investment or transaction with the Petitioners, NBF was mandated to initiate a targeted solicitation process to identify parties interested in providing immediate superpriority interim funding to the Petitioners (the "**DIP Process**").
13. In the context of the DIP Process:
 - (a) 15 potential interim lenders were solicited, including existing stakeholders and alternative lenders;
 - (b) 8 potential interim lenders signed a confidentiality agreement giving them access to the virtual data room to advance their due diligence process.
14. Given the tight timelines and complex corporate structure and activities, all parties contacted by NBF, other than its secured lenders, National Bank of Canada ("**NBC**") and Export Development Canada, were not able to complete their diligence and internal processes in the timeline required by the Petitioners.
15. Following the DIP Process, subject to certain terms and conditions, NBC has agreed to continue to support the Petitioners through their restructuring efforts, with a view to maximizing recoveries for all stakeholders, including employees, customers and suppliers, and to provide the Petitioners with a debtor-in-possession facility (the "**DIP Facility**"). The related term sheet (the "**DIP Term Sheet**") will be filed, under seal, as **Exhibit P-2**, prior to the hearing on the present Application.
16. The DIP Facility includes the following commercial terms:
 - (a) Facility size: a revolving multiple draw credit facility up to a maximum principal amount of \$3,000,000, subject to the terms and conditions DIP Term Sheet; and
 - (b) Term: February 3, 2023.

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17. The DIP Facility is proposed to be secured by a Court-ordered charge (the "**DIP Charge**") on all of the present and future assets, property and undertaking of the Petitioners up to a maximum amount of \$3,600,000. The DIP Charge will have priority over all other security interests, hypothecs, charges and liens, except the Administration Charge and the D&O Charge.
18. The DIP Lender has indicated that the DIP Charge is a key condition of the DIP Term Sheet, and that it is not prepared to provide interim financing to the Petitioners without the DIP Charge.
19. The DIP Facility will allow the Petitioners to generally continue operating their businesses during the conduct of the SISP, the whole for the benefit of all stakeholders.
20. Without interim financing, the Petitioners would have no alternative but to implement drastic cost-reducing measures to safeguard liquidity and continue the SISP. Such measures could include the lay-off of up to 60% of their North American workforce (which represents in excess of 200 employees) and the suspension of operations in multiple facilities.
21. The Petitioners believe that the consequential effects of such measures could greatly impair the outcome of the SISP and as a result, the value of their business and assets, to the detriment of their creditors and other stakeholders.
22. The Petitioners respectfully submit that it is in the interest of all stakeholders including its employees, suppliers and customers that the DIP Facility and related DIP Charge be approved by this Court.

B. Approval of the KERP and the KERP Charge

23. As was previously reported to the Court, the contribution of certain employees is essential to the success of these CCAA proceedings. Therefore, with a view to securing their ongoing support, the Petitioners are seeking approval of a key employee retention plan, a key vice-president retention plan and a key executive incentive plan (collectively, the "**KERPs**"). Summaries of the KERPs are communicated herewith, *en liasse*, under seal, as **Exhibit P-3**.
24. The KERPs were developed by the Petitioners, with the oversight of the Monitor, to facilitate and encourage the continued participation of the executive, senior management and other key employees of the Petitioners who are required to guide the business through the restructuring and preserve value for all stakeholders.
25. The KERPs will provide participants with additional payments as an incentive to continue their employment through the CCAA proceedings. These employees have significant experience and specialized expertise that cannot be easily replicated or replaced. Further, these key employees will likely have other, more certain employment opportunities and will be faced with a significantly increased workload during the restructuring process.

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26. The KERPs are ventilated as follows:

Group	Approximate Number of Employees	Approximate Estimated Cost
Executives	4	550,000
VPs	5	356,000
Other Key Employees	6	174,000
Total	15	1,080,000

27. In addition to the executives, the KERPs include employees in human resources, legal, finance, operations, supply chain, research and development, and product management groups of the Petitioners.
28. The KERP payments will be made in 3 instalments payable as follows: (i) 30 percent payable no later than two months following the filing date of these CCAA proceedings; (ii) 30 percent payable no later than four months following the filing date of these CCAA Proceedings; and (iii) 40 percent payable on the earlier of eight months following the filing date of these CCAA proceedings or a Successful Restructuring (as defined in the Summaries of the KERPs (Exhibit P-3)).
29. The total KERP payments range from 20 percent to 40 percent of the base salary of the relevant employees.
30. In addition, in order to secure the payment owed to the above-mentioned key employees in accordance with the KERPs, the Petitioners seek an order granting to such employees a superpriority charge on all of their present and future assets, property and undertakings, ranking ahead of all other secured and unsecured creditors up to a maximum amount of \$1,080,000 (the "**KERP Charge**").
31. Given the uncertainty surrounding the availability of interim financing and the resulting implications on the next steps of the restructuring, the Petitioners were unable to seek approval of the KERPs and of the KERP Charge in the context of previous applications before the Court.
32. The Petitioners submit that the approval of the KERPs and the KERP Charge are essential to the success of their restructuring efforts. Since the beginning of these CCAA proceedings, certain key employees have resigned to move on to new positions. The Petitioners are hopeful that the KERPs and the KERP Charge will help secure the ongoing support of their remaining key employees.
- C. Increase of the Quantum of the Administration Charge and the D&O Charge**
33. The Petitioners seek the increase of the Administration Charge to a maximum amount of \$900,000 and the increase of the D&O Charge to a maximum amount of \$3,700,000.

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34. The increase of the Administration Charge and of the D&O Charge is justified by the extension of the Stay Period sought herein and the resulting increased exposure for both the beneficiaries of these respective charges.
35. The Petitioners believe that the increased amounts of the Administration Charge and the D&O Charge are fair and reasonable in the circumstances, and are essential to the viability of the Petitioners' restructuring efforts.

D. Extension of the Stay Period

36. Since the issuance of the First Day Orders, the Petitioners have acted, and continue to act in good faith and with due diligence.
37. The Stay Period currently expires on October 20, 2022.
38. It is respectfully submitted that the extension of the Stay Period to the Extension Date is required to provide the Petitioners with sufficient time to, *inter alia*:
 - (a) continue the conduct of the SISP, with the assistance of NBF and under the supervision of the Monitor;
 - (b) continue the discussions with its key customers; and
 - (c) obtain the recognition of the orders issued in these CCAA proceedings in the United States pursuant to Chapter 15 of the U.S. Bankruptcy Code.
39. The Petitioners have paid their suppliers, employees and other creditors for the sums due from the date of the First Day Orders in the ordinary course of business and intend to continue doing so.
40. The Petitioners' cash flow is sufficient to continue operations up to and until the Extension Date, as will appear from the Monitor's report to be filed with the Court on or about the date hereof.
41. No creditor will be unduly prejudiced by the extension sought.

E. Other Relief

Sealing of Confidential Documents

42. The Petitioners are seeking an order declaring that Exhibits P-2 and P-3 be kept strictly confidential and shall be filed under seal, considering that notably:
 - (a) Exhibit P-2 contains commercially sensitive information; and
 - (b) Exhibit P-3 contains sensitive personal information of the Petitioners' employees as well as commercially sensitive information.

Execution Notwithstanding Appeal

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

V. CONCLUSION

44. For the reasons set forth above, the Petitioners believe that it is both appropriate and necessary that the relief being sought herein be granted. With such relief, the Petitioners will be able to continue their efforts to restructure their business and affairs and maximize value for the benefit of all stakeholders.

45. The Monitor, has informed the Petitioners that it supports the present Application.

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

GRANT the present *Application for the Issuance of an Amended and Restated Initial Order* (the "**Application**");

ISSUE an order substantially in the form of the draft Amended and Restated Initial Order communicated in support of the Application as **Exhibit P-1**;

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

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

MONTREAL, October 18, 2022

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP

Mtre. Sandra Abitan | Mtre. Julien Morissette |

Mtre. Iliia Kravtsov

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Our file: 1233913

AFFIDAVIT

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

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

AND I HAVE SIGNED:



Dimitrios Vounassis

SOLEMNLY DECLARED BEFORE ME BY
TECHNOLOGICAL MEANS IN
MONTREAL, QUEBEC, ON OCTOBER 18,
2022.

 #115,222

Sylvie Nadeau
Commissioner for Oaths for the Province of
Québec

**NOTICE OF PRESENTATION
COMMERCIAL DIVISION**

TO: SERVICE LIST (See attached)

PRESENTATION OF THE PROCEEDING

TAKE NOTICE that the *Application for the Issuance of an Amended and Restated Initial Order* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in room 16.07, of the Montréal Courthouse, at the virtual calling of the roll on **October 20, 2022, at 9:30 am.**

HOW TO CONNECT TO THE VIRTUAL ROLL CALL

The coordinates for you to join the virtual calling of the roll in room 16.07 are 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 fill in your name and click on «Join now» («*Rejoindre maintenant*»). To facilitate the process, we invite you to fill in your name as follows:

Lawyers: M^e First name, Last name (Name of the party you represent)

Trustees: First name, Last name (Trustee)

Superintendent: First name, Last name (Superintendent)

Parties not represented by a lawyer: First name, Last name (specify: Plaintiff, Defendant, Petitioner, Respondent, Creditor, Opponent or Other)

For individuals attending a public hearing: the mention can be limited to: (public)

By telephone:

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

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

Conference ID: 820 742 874#

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

Videoconference ID: 11973653703

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In person: If and only if you do not have access to one of the above-mentioned technological means of connecting, you may then attend in room 16.10 of the Montréal Courthouse located at: 1, Notre-Dame Street East, Montréal, Québec.

DEFAULT TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL

TAKE NOTICE that if you wish to contest the proceeding, you must inform the initiator of the said proceeding in writing at the coordinates mentioned in the present Notice of Presentation at least 48 hours before the date of presentation 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.

OBLIGATIONS

Cooperation

TAKE NOTICE 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*).

Dispute prevention and resolution processes

TAKE NOTICE 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.

MONTREAL, October 18, 2022

Osler, Hoskin & Harcourt LLP

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

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT
(Commercial Division)**

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

No.: 500-11-061483-224

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

XEBEC ADSORPTION INC.

-and-

XEBEC RNG HOLDINGS INC.

-and-

APPLIED COMPRESSION SYSTEMS LTD.

-and-

COMPRESSED AIR INTERNATIONAL INC.

-and-

XEBEC HOLDING USA INC.

-and-

ENERPHASE INDUSTRIAL SOLUTIONS, INC.

-and-

CDA SYSTEMS, LLC

-and-

XEBEC ADSORPTION USA INC.

-and-

THE TITUS COMPANY

-and-

NORTEKBELAIR CORPORATION

-and-

XBC FLOW SERVICES – WISCONSIN INC.

-and-

CALIFORNIA COMPRESSION, LLC

-and-

XEBEC SYSTEMS USA, LLC

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

LIST OF EXHIBITS

- P-1: Draft Amended and Restated Initial Order
- P-1A: Comparison of draft ARIO and the FDIO
- P-2: DIP Term Sheet, under seal
- P-3: Summaries of the KERPs, *en liasse*, under seal

MONTREAL, October 18, 2022

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

Exhibit P-1

Draft Amended and Restated Initial Order

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: October 20, 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

AMENDED AND RESTATED INITIAL ORDER

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- [1] **CONSIDERING** the *Application for the Issuance of an Amended and Restated Initial Order* (the "**Application**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**") and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the "**Initial Application**") pursuant to the CCAA;
- [3] **CONSIDERING** the Third Report of the Monitor dated October 19, 2022;
- [4] **CONSIDERING** the submissions of counsel and the testimony of the witnesses heard;
- [5] **GIVEN** the provisions of the CCAA;
- [6] **GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

THE COURT HEREBY:

- [7] **GRANTS** the Application.
- [8] **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:
 - (a) Service;
 - (b) Application of the CCAA;
 - (c) Effective Time;
 - (d) Administrative Consolidation;
 - (e) Plan of Arrangement;
 - (f) Stay of Proceedings against the Petitioners and the Property;
 - (g) Stay of Proceedings against the Directors and Officers;
 - (h) Possession of Property and Operations;
 - (i) No Exercise of Rights or Remedies;

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

a. Service

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

b. Application of the CCAA

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

c. Effective Time

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

d. Administrative Consolidation

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

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

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

e. Plan of Arrangement

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

f. Stay of Proceedings against the Petitioners and the Property

- [16] **ORDERS** that, until and including November 28, 2022 (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Petitioners, or affecting the Petitioners’ business operations and activities (the “**Business**”) or the Property (as defined herein), including as provided in paragraph [25] herein except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.
- [17] **ORDERS** that the rights of His Majesty in right of Canada and His Majesty in right of a Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.
- [18] **ORDERS** and **DECLARES** that the National Bank of Canada (“**NBC**”) is an unaffected creditor in these CCAA proceedings and is not subject to the stay of proceedings, including the Stay Period and any renewal or extension thereof, or any other limitations of creditors’ right or recourses under this Order. Nothing in this Order shall prevent NBC from enforcing its security against the Petitioners’ Property in conformity with its contractual rights, subject only to NBC providing advance notice of its intention to do so.

g. Stay of Proceedings against Directors and Officers

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

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the Directors is under any law liable in such capacity for the payment of such obligation.

h. Possession of Property and Operations

- [20] **ORDERS** that the Petitioners shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph [43] hereof.
- [21] **ORDERS** that the Petitioners shall be entitled, but not required to pay the following expenses with the prior consent of the Monitor or further order of the Court, as the case may be, whether incurred prior to or after this Order:
- (a) outstanding and future wages, salaries, expenses and, benefits payable prior to or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
 - (b) the fees and disbursements of any counsel, advisors and agents retained or employed by the Petitioners directly related to these proceedings, at their standard rates and charges; and
 - (c) amounts owing for goods or services actually supplied to the Petitioners prior to the date of this Order by third party suppliers up to a maximum aggregate amount of \$700,000, if, in the opinion of the Petitioners and of the Monitor, the supplier is critical to the business and ongoing operations of the Petitioners.
- [22] **ORDERS** that except as otherwise provided to the contrary herein, the Petitioners shall be entitled to pay all reasonable expenses incurred by the Petitioners in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business; and
 - (b) payment for goods or services actually supplied to the Petitioners following the date of this Order.
- [23] **ORDERS** that the Petitioners shall remit, in accordance with legal requirements, or pay:

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

[24] **ORDERS** that, subject to the consent of the Monitor, each of the Petitioners is authorized to complete outstanding transactions and engage in new transactions with other Petitioners or their parent or affiliated companies (collectively, "**Intercompany Transactions**"), and to continue, on and after the date of this Order, to effect Intercompany Transactions in the ordinary course of the Business. All ordinary course 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.

i. No Exercise of Rights or Remedies

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

[26] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods including, without limitation, to file grievances relating to the Petitioners or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioners, or any

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of them, become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") is appointed in respect of the Petitioners, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioners in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

j. No Interference with Rights

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

k. Continuation of Services

[28] **ORDERS** that during the Stay Period and subject to paragraphs [29] and [30] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioners or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioners, are hereby restrained until further order of this Court from discontinuing, altering, failing to renew (when contractually provided), interfering with or terminating the supply or, as the case may be, interrupting, delaying or stopping the transit of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Petitioners, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners, as applicable, with the consent of the Monitor, or as may be ordered by this Court.

[29] **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioners on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to make further advance of money or otherwise extend any credit to the Petitioners.

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

I. Non-Derogation of Rights

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

m. Interim Financing (DIP)

- [32] **ORDERS** that the Petitioners be and are hereby authorized to borrow from NBC (the "**Interim Lender**") such amounts from time to time as the Petitioners may consider necessary or desirable, up to an aggregate principal amount not exceeding \$3,000,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed under seal as Exhibit P-2 in support of the Application (the "**DIP Term Sheet**") and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioners and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents (as defined hereinafter) (the "**DIP Facility**").
- [33] **ORDERS** that the Petitioners are hereby authorized to execute and deliver the DIP Term Sheet and other security documents and ancillary documents as may be required by the Interim Lender in connection with the DIP Facility and the DIP Term Sheet (collectively, the "**Interim Financing Documents**"), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to with the Interim Lender, but only with the consent of the Monitor, and the Petitioners are hereby authorized to perform all of its obligations under the DIP Term Sheet and the Interim Financing Documents.

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- [34] **ORDERS** that Petitioners shall pay to the Interim Lender, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other reasonably required advisors to or agents of the Interim Lender on a full indemnity basis (the “**Interim Lender Expenses**”)) under the DIP Term Sheet and the Interim Financing Documents and shall perform all of their other obligations owed to the Interim Lender pursuant to the DIP Term Sheet, the Interim Financing Documents and the Order.
- [35] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,600,000 (the “**DIP Charge**”) in favour of the Interim Lender as security for all obligations of the Petitioners to the Interim Lender with respect to the payment of the DIP Facility (including principal, interest and the Interim Lender Expenses) owing to the Interim Lender under or in connection with the DIP Term Sheet and the Interim Financing Documents. Such Interim Lender Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs [57] and [58] of this Order.
- [36] **ORDERS** that the claims of the Interim Lender pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lender, in that capacity, shall be treated as unaffected creditors in these proceedings and in any Plan.
- [37] **ORDERS** that the Interim Lender may:
- (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the DIP Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
 - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Petitioners if the Petitioners fail to meet the provisions of the DIP Term Sheet and the Interim Financing Documents.
- [38] **ORDERS** that the Interim Lender shall not take any enforcement steps under the DIP Term Sheet, the Interim Financing Documents or the DIP Charge without providing at least 3 business days written notice (the “**Notice Period**”) of a default thereunder to the Petitioners, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lender shall be entitled to take any and all steps, the DIP Term Sheet, the Interim Financing Documents, the DIP Charge and otherwise permitted at law, but without having to send any additional demands under Section 244 of the BIA, under the Civil Code of Quebec or any other similar legislation.

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[39] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [64] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [32] to [39] of this Order unless either (a) notice of a motion for such order is served on the Interim Lender by the moving party within at least seven (7) days prior to the presentation thereof or (b) the Interim Lender applies for or consents to such order.

n. Directors' and Officers' Indemnification and Charge

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

[41] **ORDERS** that the Directors of the Petitioners shall be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$3,700,000 (the "**D&O Charge**"), as security for the indemnity provided in paragraph [40] of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The D&O Charge shall have the priority set out in paragraphs [57] and [58] of this Order.

[42] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Directors shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph [40] of this Order.

o. Restructuring

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

- (a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate;
- (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part,

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subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);

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

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

[45] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, C 5, and equivalent provisions of the *Act Respecting the Protection of Personal Information in the Private Sector*, RSQ, c P-39.1, the Petitioners are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a “**Third Party**”), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of a Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited

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purpose set out herein, the personal information shall be returned to the Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of a Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

p. Powers of the Monitor & Administration Charge

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

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

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interested Persons and with the holding and administering of any meetings held to consider a Plan;

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

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

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

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

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are defined in the engagement letter filed as Exhibit P-3 in support of the Initial Application, the “**Engagement Letter**”) and all disbursements incurred by NBF pursuant to the Engagement Letter, be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$900,000 (the “**Administration Charge**”), having the priority established by paragraphs [57] and [58] of this Order.

g. KERPs and KERP Charge

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

[56] **ORDERS** that the employees designated in the KERPs shall be entitled to the benefit of and are hereby granted a charge and security in the on the Property, to the extent of the aggregate amount of \$1,080,000 (the “**KERP Charge**”), having the priority established by paragraphs [57] and [58] of this Order.

r. Priorities and General Provisions Relating to CCAA Charges

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

- (a) first, the Administration Charge;
- (b) second, the D&O Charge;
- (c) third, the DIP Charge;
- (d) fourth, the Transaction Charge (as defined in the Bidding Procedures Order dated September 29, 2022);
- (e) fifth, the KERP Charge.

[58] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Property whether or not charged by such Encumbrances, save that, as regards the Transaction Charge and the KERP Charge only, the question with respect to its priority ranking as regards any

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amounts owing by the Petitioners pursuant to paragraph [23](a) of this Order shall be determined by the Court at a later date and time.

- [59] **ORDERS** that, except as otherwise expressly provided for herein, the Petitioners shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioner, as applicable, obtains the prior written consent of the Monitor and the prior approval of the Court.
- [60] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
- [61] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease or other arrangement which binds the Petitioners (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:
- (a) the creation of any of the CCAA Charges shall not create nor be deemed to constitute a breach by the Petitioners of any Third Party Agreement to which any of the Petitioners is a party; and
 - (b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.
- [62] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any Petitioners pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances, preferential payments, transfers at undervalue or other challengeable or

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reviewable transactions or conduct meriting an oppression remedy under any applicable law.

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

s. Hearing Scheduling and Details

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

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Return Date and at the Initial Return Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested application and such other matters, including interim relief, as the Court may direct.

t. General

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

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- [75] **DECLARES** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.
- [76] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [77] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Petitioners in any foreign proceeding, to assist the Petitioners, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.
- [78] **AUTHORIZES** the Monitor or the Petitioners to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the U.S. Bankruptcy Code, including an order for recognition of these CCAA proceedings as “Foreign Main Proceedings” in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, for which Xebec Adsorption Inc., shall be the foreign representative of the Petitioners. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be deemed necessary or appropriate for that purpose.
- [79] **DECLARES** that, for the purposes of any applications authorized by paragraph [78] of this Order, Petitioners’ centre of main interest is located in Montréal, Québec, Canada.
- [80] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.
- [81] **THE WHOLE WITHOUT COSTS.**

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Christian Immer, J.S.C.

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

Hearing date: October 20, 2022

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Exhibit P-1A

Comparison of draft ARIO and
the FDIO

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: ~~September~~October 29⁰, 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

FIRST DAY AMENDED AND RESTATED INITIAL ORDER

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-
- [1] **CONSIDERING** the *Application for the Issuance of a ~~First Day~~ Amended and Restated Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the "**Application**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**") and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the ~~consent of Deloitte Restructuring Inc. to act as monitor (the "Monitor")~~ Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order (the "Initial Application") pursuant to the CCAA;
- [3] **CONSIDERING** the ~~Pre-Filing~~ Third Report of the Monitor dated ~~September 2~~ October 19, 2022;
- [4] **CONSIDERING** the submissions of counsel and the testimony of the witnesses heard;
- [5] **GIVEN** the provisions of the CCAA;
- [6] **GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

THE COURT HEREBY:

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

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~~(h)~~ ~~Extension of the Stay Period;~~

(h) ~~(i)~~ Possession of Property and Operations;

(i) ~~(j)~~ No Exercise of Rights or Remedies;

(j) ~~(k)~~ No Interference with Rights;

(k) ~~(l)~~ Continuation of Services;

(l) ~~(m)~~ Non-Derogation of Rights;

(m) Interim Financing (DIP);

(n) Directors' and Officers' Indemnification and Charge;

(o) Restructuring;

(p) Powers of the Monitor;

(q) KERPs and KERP Charge;

(r) ~~(s)~~ Priorities and General Provisions Relating to CCAA Charges;

(s) Hearing Scheduling and Details;

(t) ~~(r)~~ General.

a. Service

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

b. Application of the CCAA

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

c. Effective Time

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

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d. Administrative Consolidation

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

e. Plan of Arrangement

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

f. Stay of Proceedings against the Petitioners and the Property

- [16] **ORDERS** that, until and including ~~October 9~~November 28, 2022 (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Petitioners, or affecting the Petitioners’ business operations and activities (the “**Business**”) or the Property (as defined herein), including as provided in paragraph ~~27~~5 herein except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.
- [17] **ORDERS** that the rights of His Majesty in right of Canada and His Majesty in right of a Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.
- [18] **ORDERS** and **DECLARES** that the National Bank of Canada (“**NBC**”) is an unaffected creditor in these CCAA proceedings and is not subject to the stay of proceedings, including the Stay Period and any renewal or extension thereof, or any other limitations of creditors’ right or recourses under this Order. Nothing in this Order shall prevent NBC from enforcing its security against the Petitioners’ Property in conformity with its contractual rights, subject only to NBC providing advance notice of its intention to do so.

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~~[19] ORDERS that during the Stay Period, the Petitioners are relieved from any and all continuous disclosure, reporting and filing obligations (including with respect to the preparation and mailing of interim financial statements, management's discussions & analysis and other continuous disclosure documents) and of audit committee requirements applicable to Xebec Adsorption Inc. as a result of its status as a reporting issuer in each of the provinces and territories of Canada, pursuant to the Securities Act, CQLR c V-1.1, and the regulations promulgated thereunder and comparable statutes enacted by other provinces of Canada, the TSX Company Manual and other rules, regulations and policies of the Toronto Stock Exchange.~~

g. Stay of Proceedings against Directors and Officers

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

h. Extension of the Stay Period

~~[21] ORDERS that a hearing on the extension of the Stay Period shall take place on October 7, 2022, at a time and in a room of the Montréal Courthouse to be determined, or at any other date determined by the Court and to be communicated to the service list prepared by the Monitor or counsel for the Monitor in connection with these CCAA proceedings (the "Service List").~~

i. Possession of Property and Operations

[20] ~~[22]~~ ORDERS that the Petitioners shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "Property"), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph ~~[437]~~ hereof.

[21] ~~[23]~~ ORDERS that the Petitioners shall be entitled, but not required to pay the following expenses with the prior consent of the Monitor or further order of the Court, as the case may be, whether incurred prior to or after this Order:

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

[22] ~~[24]~~ **ORDERS** that except as otherwise provided to the contrary herein, the Petitioners shall be entitled to pay all reasonable expenses incurred by the Petitioners in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

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

[23] ~~[25]~~ **ORDERS** that the Petitioners shall remit, in accordance with legal requirements, or pay:

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

[24] ~~[26]~~ **ORDERS** that, subject to the consent of the Monitor, each of the Petitioners is authorized to complete outstanding transactions and engage in new

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transactions with other Petitioners or their parent or affiliated companies (collectively, “**Intercompany Transactions**”), and to continue, on and after the date of this Order, to effect Intercompany Transactions in the ordinary course of the Business. All ordinary course 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.

ji. No Exercise of Rights or Remedies

[25] ~~[27]~~ **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the Petitioners is a party as a result of the insolvency of the Petitioners and/or these CCAA proceedings, any events of default or non-performance by the Petitioners or any admissions or evidence in these CCAA proceedings, of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof are hereby stayed and suspended except with leave of this Court.

[26] ~~[28]~~ **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods including, without limitation, to file grievances relating to the Petitioners or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioners, or any of them, become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) is appointed in respect of the Petitioners, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioners in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

kj. No Interference with Rights

[27] ~~[29]~~ **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, fail to renew (when contractually provided), alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners

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except with the written consent of the Petitioners and the Monitor, or with leave of this Court.

k. Continuation of Services

[28] ~~[30]~~ **ORDERS** that during the Stay Period and subject to paragraphs ~~[31]~~[29] and ~~[32]~~[20] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioners or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioners, are hereby restrained until further order of this Court from discontinuing, altering, failing to renew (when contractually provided), interfering with or terminating the supply or, as the case may be, interrupting, delaying or stopping the transit of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Petitioners, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners, as applicable, with the consent of the Monitor, or as may be ordered by this Court.

[29] ~~[34]~~ **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioners on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to make further advance of money or otherwise extend any credit to the Petitioners.

[30] ~~[32]~~ **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any Petitioners with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of this Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by a Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into a Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

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m. **Non-Derogation of Rights**

[31] ~~**[33]**~~ **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Petitioners shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of this Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

m. **Interim Financing (DIP)**

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

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

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

[35] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,600,000 (the "**DIP Charge**") in favour

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of the Interim Lender as security for all obligations of the Petitioners to the Interim Lender with respect to the payment of the DIP Facility (including principal, interest and the Interim Lender Expenses) owing to the Interim Lender under or in connection with the DIP Term Sheet and the Interim Financing Documents. Such Interim Lender Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs [57] and [58] of this Order.

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

[37] **ORDERS** that the Interim Lender may:

(a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the DIP Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and

(b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Petitioners if the Petitioners fail to meet the provisions of the DIP Term Sheet and the Interim Financing Documents.

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

[39] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [64] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [32] to [39] of this Order unless either (a) notice of a motion for such order is served on the Interim Lender by the moving party within at least seven (7) days prior to the presentation thereof or (b) the Interim Lender applies for or consents to such order.

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n. Directors' and Officers' Indemnification and Charge

[40] ~~[34]~~ **ORDERS** that the Petitioners shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioners after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.

[41] ~~[35]~~ **ORDERS** that the Directors of the Petitioners shall be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$23,270,000 (the "**Directors' D&O Charge**"), as security for the indemnity provided in paragraph [340] of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The **Directors' D&O Charge** shall have the priority set out in paragraphs [4957] and [508] of this Order.

[42] ~~[36]~~ **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the **Directors' D&O Charge**, and (b) the Directors shall only be entitled to the benefit of the **Directors' D&O Charge** to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph [340] of this Order.

o. Restructuring

[43] ~~[37]~~ **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioners, subject to prior approval of the Monitor or further order of the Court, as the case may be, shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate;
- (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
- (c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$750,000 or \$1,500,000 in the aggregate;

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- (d) ~~(b)~~ terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioners and such employee, or failing such agreement, make provision to deal with, any consequences thereof in a Plan, as the Petitioners may determine;
- (e) ~~(e)~~ subject to the provisions of section 32 CCAA, disclaim or resiliate, any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the relevant Petitioner, as applicable, and the relevant party, or failing such agreement, to make provision for the consequences thereof in a Plan; and
- (f) ~~(d)~~ subject to section 11.3 CCAA, assign any rights and obligations of Petitioners.

[44] ~~[38]~~ **DECLARES** that, in order to facilitate the Restructuring, the Petitioners may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.

[45] ~~[39]~~ **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, C 5, and equivalent provisions of the *Act Respecting the Protection of Personal Information in the Private Sector*, RSQ, c P-39.1, the Petitioners are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of a Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of a Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

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40 **Powers of the Monitor & Administration Charge**

~~40~~ ~~ORDERS~~ that *Deloitte Restructuring Inc.* is hereby appointed to monitor the business and financial affairs of the Petitioners as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

- (a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, in La Presse (French version) and the Globe and Mail National Edition (English version) and (ii) within four (4) business days after the date of this Order (A) post on the Monitor's website ~~(the "Website")~~ a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioners of more than \$1,000, advising them that this Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;
- (b) shall monitor the Petitioners' receipts and disbursements;
- (c) shall assist the Petitioners, to the extent required by the Petitioners, in dealing with their creditors and other interested Persons during the Stay Period;
- (d) shall assist the Petitioners, to the extent required by the Petitioners, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (e) shall advise and assist the Petitioners, to the extent required by the Petitioners, to review the Petitioners' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (f) shall assist the Petitioners, to the extent required by the Petitioners, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider a Plan;
- (g) shall report to the Court on the state of the business and financial affairs of the Petitioners or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated reports for the Petitioners;

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- (h) shall report to this Court and interested parties, including but not limited to creditors affected by a Plan, with respect to the Monitor's assessment of, and recommendations with respect to, a Plan;
- (i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under this Order or under the CCAA;
- (k) may give any consent or approval as may be contemplated by this Order or the CCAA;
- (l) may hold and administer funds in connection with arrangements made among the Petitioners, any counter-parties and the Monitor, or by Order of this Court; and
- (m) may perform such other duties as are required by this Order or the CCAA or by this Court from time to time.

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

[47] ~~[41]~~ **ORDERS** that the Petitioners and their current and former shareholders, Directors, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties, rights and obligations as provided and set out in this Order.

[48] ~~[42]~~ **ORDERS** that, without limiting the generality of anything herein, the Petitioners and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of this Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioners in connection with the Monitor's duties and responsibilities hereunder.

[49] ~~[43]~~ **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioners with information in response to requests made by

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them in writing addressed to the Monitor and copied to the Petitioners' counsel. In the case of information that the Monitor has been advised by the Petitioners is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioners unless otherwise directed by this Court.

[50] ~~[44]~~ **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioners or continues the employment of the Petitioners' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.

[51] ~~[45]~~ **DECLARES** that Section 215 of the BIA applies *mutatis mutandis* and that no action or other proceedings shall be commenced against the Monitor or its representatives relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least seven (7) days' notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor and their representatives shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.

[52] ~~[46]~~ **DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.

[53] ~~[47]~~ **ORDERS** that the Petitioners shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

[54] ~~[48]~~ **DECLARES** that the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel, as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, any Plan and the Restructuring, as well as National Bank Financial Inc. ("NBF"), as security for the Engagement Fee and the Fairness Opinion Fee (as such terms are defined in the engagement letter filed as Exhibit P-~~44~~3 in support of the Initial Application, the "**Engagement Letter**") and all disbursements incurred by NBF pursuant to the Engagement Letter, be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$~~25~~900,000 (the "**Administration Charge**"), having the priority established by paragraphs ~~[49~~57] and ~~[50~~8] of this Order.

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q. KERPs and KERP Charge

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

[56] ORDERS that the employees designated in the KERPs shall be entitled to the benefit of and are hereby granted a charge and security in the on the Property, to the extent of the aggregate amount of \$1,080,000 (the “KERP Charge”), having the priority established by paragraphs [57] and [58] of this Order.

r. Priorities and General Provisions Relating to CCAA Charges

[57] ~~[49]~~ **DECLARES** that the priorities of the Administration Charge and the ~~Directors’~~D&O Charge (collectively, the “**CCAA Charges**”), as between them with respect to any Property to which they apply, shall be as follows:

- (a) first, the Administration Charge;
- (b) second, the ~~Directors’~~D&O Charge;
- (c) third, the DIP Charge;
- (d) fourth, the Transaction Charge (as defined in the Bidding Procedures Order dated September 29, 2022);
- (e) fifth, the KERP Charge.

[58] ~~[50]~~ **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Property whether or not charged by such Encumbrances, save that, as regards the Transaction Charge and the KERP Charge only, the question with respect to its priority ranking as regards any amounts owing by the Petitioners pursuant to paragraph ~~[253]~~(a) of this Order shall be determined by the Court at a later date and time.

[59] ~~[51]~~ **ORDERS** that, except as otherwise expressly provided for herein, the Petitioners shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioner, as applicable, obtains the prior written consent of the Monitor and the prior approval of the Court.

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[60] ~~[52]~~ **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

[61] ~~[53]~~ **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease or other arrangement which binds the Petitioners (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

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

[62] ~~[54]~~ **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any Petitioners pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances, preferential payments, transfers at undervalue or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

[63] ~~[55]~~ **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners.

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F. Hearing Scheduling and Details

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

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t. General

[69] ~~[56]~~ **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, representatives, legal counsel or financial advisers of the Petitioners or of the Monitor in relation to the Business or Property of the Petitioners, without first obtaining leave of this Court, upon ten (10) calendar days' written notice to the Petitioners' counsel, the Monitor's counsel, and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.

[70] ~~[57]~~ **DECLARES** that this Order and any proceeding or affidavit leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioners under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.

[71] ~~[58]~~ **DECLARES** that, except as otherwise specified herein, the Petitioners and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery, electronic mail, or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioners and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.

[72] ~~[59]~~ **DECLARES** that the Petitioners and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses.

[73] ~~[60]~~ **ORDERS** that Exhibits-P-3, P-8 and P-10 to the [Initial Application and Exhibits P-2 and P-3 to the](#) Application shall be filed under seal and kept confidential until further order of this Court.

[74] ~~[64]~~ **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served an Answer on the counsel for the Petitioners and the Monitor and has filed such notice with this Court, or appears on the Service List, save and except when an order is sought against a Person not previously involved in these proceedings.

[75] ~~[62]~~ **DECLARES** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers,

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duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.

~~[63] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon two (2) days' notice to the Petitioners, the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, such application or motion shall be filed during the Stay Period ordered by this Order, unless otherwise ordered by this Court.~~

[76] ~~[64]~~ **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

[77] ~~[65]~~ **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Petitioners in any foreign proceeding, to assist the Petitioners, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

[78] ~~[66]~~ **AUTHORIZES** the Monitor or the Petitioners to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the U.S. Bankruptcy Code, including an order for recognition of these CCAA proceedings as "Foreign Main Proceedings" in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, for which Xebec Adsorption Inc., shall be the foreign representative of the Petitioners. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be deemed necessary or appropriate for that purpose.

[79] ~~[67]~~ **DECLARES** that, for the purposes of any applications authorized by paragraph ~~[66]~~[78] of this Order, Petitioners' centre of main interest is located in Montréal, Québec, Canada.

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| [80] ~~[68]~~ **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.

| [81] ~~[69]~~ **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

| Hearing date: ~~September~~ October 29⁰, 2022

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:**

XEBEC ABSORPTION INC. & AL

Debtors / Petitioners

and.

DELOITTE RESTRUCTURING INC.,

Proposed Monitor

**APPLICATION FOR THE ISSUANCE OF AN
AMENDED AND RESTATED INITIAL ORDER,
AFFIDAVIT, NOTICE OF PRESENTATION, LIST
OF EXHIBITS, EXHIBITS P-1 and P-1A (Sections
4, 9, 10, 11, 11.02, 11.03, 11.2, 11.51, 11.52, 11.7
and 23 of the *Companies' Creditors
Arrangement Act*, RSC 1985, c C-36)**

ORIGINAL

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Code : BO 0323

Our file: 1233913



Exhibit E

ARIO Reasons

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: October 24, 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

**REASONS FOR ISSUING THE AMENDED RESTATED INITIAL ORDER
DATED OCTOBER 20, 2022**

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[1] On September 29, 2022, the Court, relying on the powers conferred to it by the *Companies' Creditors Arrangement Act* ("CCAA"),¹ issued an Initial First Day Order ("IFO")² as well as a Bidding Procedures Order.³ It then extended this initial ten day stay of proceedings period to October 20, 2022, at which time it held a "come-back hearing" to determine whether it would issue an Amended and Restated Initial Order ("ARIO").

[2] At the end of this October 20, 2022 hearing, it issued the requested ARIO with reasons to follow. These are the Court's reasons for issuing the ARIO.⁴

CONTEXT

[3] The Debtors (collectively "**Xebec Group**") primarily supply a wide range of renewable and low-emission gas products and services. Xebec Adsorption Inc. ("**XIA**") is Xebec Group's parent company while the other twelve Debtors are direct or indirect subsidiaries.

[4] XIA is headquartered in Montréal, Québec, but the Xebec Group operates across Canada, the USA, the Middle East and Asia in the following three business segments:

4.1. Cleantech solutions: the company manufactures equipment the following equipment:

4.1.1. *PSA systems*: In Blainville, Québec, it manufactures PSA systems, e.g., proprietary pressure swing adsorption systems ("PSA") which remove targeted impurities or separate bulk mixtures of gases. To date, 10,000 PSA systems have been sold to over 1,500 customers.

4.1.2. *Biogas conversion*: It manufactures biogas conversion to renewable natural gas solutions, including the containerized Biostream units. They are manufactured in facilities in Colorado and Blainville.

4.1.3. *Hydrogen purification, generation and distribution*: Amongst other activities in this sector, it manufactures portable hydrogen generation units which creates hydrogen from water and natural gas. These units are manufactured in the Netherlands.

¹ R.S.C. (1985), c. C-36.

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

³ *Arrangement relatif à Xebec Adsorption Inc.*, 2022 QCCS 3595.

⁴ The Court renders its decision in English, so that it can be easily understood by foreign courts and litigants. For all interested parties' reference, the Court does stress that testimony, proceedings and pleadings are carried out mainly in French and that no simultaneous translation services are provided by the Superior Court.

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4.1.4. *On site Oxygen and Nitrogen Generation systems*: the products allow customers to generate oxygen and nitrogen with on-site generators. These generators are manufactured in a facility situated in Germany.

4.1.5. *Carbon capture and sequestration*: it is trying to develop this emerging segment with its PSA systems.

4.2. Industrial service and support: this core segment of the Xebec Group supplies compressed air-dryers and compressed air and gas filters and provides customers with parts, service, operations and maintenance, including a network of fifteen cleantech service centers.⁵ The equipment is manufactured in facilities in Blainville, and Tennessee. Assembly of compressors is also carried out in British Columbia and Colorado. This segment provides a recurring revenue base.

4.3. Renewable gas infrastructure: XIA holds, directly or indirectly, a 50% interest in GNR Québec Capital L.P. ("Partnership"). The Fonds de solidarité des travailleurs du Québec F.T.Q. ("FSTQ") is the other partner. The Partnership's mission is to accelerate the development of renewable gas generation. It is actively engaged with 18 projects in agriculture, municipal, landfill, mixed use, and industrial waste applications.

[5] Aside from the aforementioned manufacturing facilities and cleantech service centers, there are two R&D facilities.

[6] The Xebec group employs close to 600 employees globally, 198 of which are situated in Canada (157 in Québec), 205 in the USA, 164 in Europe and 19 in the Middle and Far East.

[7] Xebec's operations are financed by two secured creditors, the National Bank of Canada ("NBC") and Export Development Canada ("EDC"). NBC and EDC hold security on different Xebec entities.

[8] From 2019 to 2021, Xebec Group made numerous acquisitions. In order to finance some of these acquisitions, Xebec initiated a public offering in December 2020. Since then, and up to the IFO, XIA's shares were listed on the TSX.

⁵ The application for the IFO mentions both 15 (par. 38) and 17 (par. 32) such cleantech service centers.

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[9] The latest financial statements for the six month period ending on June 30, 2022 show a net loss of \$42M. At the time of filing the hearing of the IFO, Xebec Group owes the following amounts to secured and unsecured creditors :

9.1. Secured debts;

- Canadian entities: \$7M excluding interest, costs, fees and expenses; there are also outstanding letters of credit (“L/C”), totalling \$7.5M. Xebec’s true exposure under this L/C facility is still being precisely assessed.
- US entities: CDN\$17,633M.

9.2. Unsecured debt:

- Canadian entities: \$91.6M.
- US entities: CDN \$166,2M.

[10] As explained by the Monitor in his first report, Xebec, at the time of filing for the IFO, was witnessing significant cash outflows and cash flow strains. These were the result, *inter alia*, of optimizing integration of all acquired business units, legacy RNG contracts, unforeseen supply chain issues and higher capital investments required to support the decentralized production hub strategy, declining oxygen demand to the declining COVID-19 pandemic and increased supply chain and logistical costs.

[11] Throughout the summer of 2022, with the assistance of National Bank Financial (“NBF”), Xebec undertook a structured process to raise additional funds or otherwise effect a beneficial transaction, but to no avail.

[12] Xebec therefore concluded that a restructuring process was called for. This would be carried out via a Sales and Investment Solicitation Process (“SISP”) within a short and critical timeframe, with the assistance of NBF.

[13] The Application for the issuance of the IFO was therefore presented at 14:00 on September 29, 2022 to ensure that this SISP be carried out.

THE IFO HEARING AND THE IFO

[14] The Court granted the initial stay of proceedings in the IFO. Applying the criteria which the Supreme Court of Canada mandates, it held that Xebec was in good faith, that it was acting with due diligence and that an order was appropriate as it would further the policy and remedial objectives of the CCAA.⁶

⁶ See *Canada v. Canada North Group Inc.*, 2021 SCC 30, par. 21 [“*Canada North Group*”].

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[15] At the IFO hearing, the Debtors asked the Court and the Court did indeed grant the following super-priority charges as permitted amongst other by sections 11.51 of the 11.52 CCAA:

- 15.1. Administration Charge: this \$250,000 charge would serve to cover the costs of the Monitor, its legal advisors and those of the debtor companies and the first fixed term \$150,000 monthly instalment under the NFB engagement letter during the initial stay period.
- 15.2. D & O Charge: this \$2,2M charge protects the Directors and officers from any liability which may accrue during the initial stay period. It was set at an amount equivalent to the aggregate of 1.5 weeks of wages, vacation and fringe benefits of all Xebec employees and 2 months of sales taxes remittances.
- 15.3. A Transaction Charge: this charge of \$975,000 secures the payment of the variable remuneration provided for in NFB's engagement letter which was approved on the same day as the IFO.

[16] The Court found these charges to be appropriate and accepted that they shall rank in priority to any and all other hypothecs, mortgages, liens, security interest, priorities, charges, options, encumbrances or security of any kind. However, the federal and provincial authorities argued that these charges should not rank prior to their statutory rights. At the time of the hearing, it appeared that there were no outstanding remittances.

[17] After having heard the parties, the Court was of the opinion that on the basis of the exercise of its wide discretion as recognized by the Supreme Court of Canada in *Canada North Group*, it was appropriate for the Administration Charge and the D & O charge to rank in priority to the federal or provincial authorities statutory rights. The Court entertained certain doubts as to the appropriateness of having the Transaction Charge also rank in priority. However, given the late hour of the day and the complexity of the issue to be decided, all parties agreed that the debate would be postponed to another day, if necessary. The following clause was therefore inserted in the IFO to deal with the matter:

[50] DECLARES that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interest, priorities, charges, options, encumbrances or security of any kind (collectively, the "**Encumbrances**") affecting the Property whether or not charged by such Encumbrances, save that, as regards any amounts owing by the Petitioners pursuant to paragraph [25] (a) of this Order shall be determined by the Court at a later date in time.

[18] Xebec also needed DIP financing to meet its liquidity challenges, in the absence of which it would have to carry out deep cost-cutting measures. However, by September 29, 2022, Xebec had not yet secured such DIP financing, despite being in contact with

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15 potential lenders. Furthermore, Xebec needed to ensure key employee loyalty in order to carry out its restructuring process. However, the modalities of a Key Employee Retention Plan were not yet fleshed out.

[19] Xebec asked the Court to approve the SISP and the terms of the NBF confidential engagement letter. The Court did so through the Bidding Procedures Order also rendered on September 29, 2022. Given the urgency to launch the complex and multi-phased SISP process, including preparing the virtual data room, the Court also allowed this process to go forward immediately. The Monitor will report, and has indeed reported in his second and third reports, on the SISP's progress. This allows any interested party to make their views known to the Court on any envisaged course of action, in due course.

THE ARIO

[20] In its application for the issuance of the ARIO, Xebec seeks an extension of the stay to November 28, 2022.

[21] The Court read the Monitor's third report and heard his testimony as to the significant work that is being carried out in earnest. The milestones set out in the SISP are being met. Actual cash flow is somewhat better than projected in the first Monitor's report. Relationships have been maintained with clients and suppliers. The employees have in large part been retained.

[22] All this shows that the CCAA process is indeed being used for its intended purpose and it militates for the stays extension to November 28, 2022. On that date, the Phase I of the SISP will have run its course and Xebec should be set on the further course of action.

[23] The secured creditors support the plan. No unsecured creditor has manifested any objection.

[24] Convincing evidence was also tendered to show that it is necessary to increase the Administration and D&O Charge which the Court declared in the IFO, as follows:

- 24.1. Given the extensive work that is being carried out by the Monitor and the Monitor's and Debtor's legal counsel and NFB's ongoing work, the Administration Charge must be increased to \$900,000.
- 24.2. In light of the new stay period, the D&Os are exposed to an eventual claim for 2.5 weeks of salary, vacation and fringe benefits as well as for 2 months of sales taxes. As is more fully set out in Appendix A to the Monitor's Third Report, the Charge must be increased to \$3.7M.

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[25] Xebec has been able to negotiate DIP financing at terms which the Monitor finds satisfactory. It is the secured creditors, the NBC and EDC, which will provide this DIP financing. Despite the efforts that were deployed, no other lender was willing to provide such interim financing. The DIP financing will significantly improve Xebec's cash flow and will prevent extensive cost-cutting measures which would have undesired effects on the SISP process. It will also provide much needed comfort to employees who are a key component in the success of the SISP process and any future compromise or arrangement. The Court therefore agreed to declare a \$3.6M DIP charge which would rank after the Administration and D&O charges, but before the Transaction Charge.

[26] Furthermore, Xebec has now been able to finalize its Key Employee Retention Plan. The details thereof which the Court has agreed to keep confidential to protect Xebec's and the employees' legitimate interests, have been provided by the Monitor. As explained in par. 28 of the Application for the Issuance of the ARIO, they provide for three KERP payments: a first payment equivalent to 30% of base salary after two months, a second 30% payment after four months and a 40% payment after 8 months, date at which the SISP process should be substantially completed. The Monitor has provided convincing testimony that these payments are needed to retain key personnel which are essential to carrying out the SISP, and who would otherwise be susceptible to be hired away by competitors in the present day highly competitive labour market. A \$1.08M KERP Charge is therefore declared which will rank after the Transaction Charge.

[27] The federal and provincial authorities agree to continue to manage their potential opposition to the Transaction Charge superpriority, and now also the KERP Charge's superpriority, in the manner set forth in the IFO. Hence, par. 62 of the ARIO as worded accordingly.

SHAREHOLDERS' CONTESTATIONS

[28] Two shareholders, Maurice Leclair and Evert Schuringa, seek a limited lifting of the stay while another, Mr. Simon Arnsby, filed a letter with the Court that sets out several requests and objections. The Court will deal with each in turn.

1. The Leclair and Schuringa Request for a Limited Lifting of the Stay

[29] Leclair and Schuringa (the "Class Action Applicants") have filed an application in October 2021 to the Superior Court to be authorized to institute a class action and a statutory misrepresentation claim pursuant to art. 574 of the Civil Code of Procedure and s. 225.4 of the *Securities Act* against Xebec Adsorption Inc., underwriters and five of Xebec's directors (the "Class Action Application").

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[30] Certain preliminary measures have been argued and decided and the Class Action Application was set to be heard before Justice Donald Bisson on December 6, 2022⁷, prior to the IFO.

[31] They ask the Court to partially lift the stay so that the Class Action Application hearing can go ahead in order for Justice Bisson to decide on the matter.

[32] Ss. 11.02(2) and 11.03 of the CCAA deal with stay of proceedings for the benefit of the debtor corporation and directors and officers.

[33] The ARIO would extend the stay until November 28, 2022, amongst others, to XIA and the Directors and Officers.

[34] Justice Stephen Hamilton, when he was sitting at the Superior Court, explained in *Wabush Iron Co. (Arrangement relative à)* that stays “should be given a broad interpretation in order to achieve its goals” and that “they should only be lifted in circumstances where to do so is consistent with the goals of the stay”.⁸

[35] Justice Hamilton, citing Professor MacLaren provided a useful analysis grid to determine whether a partial lifting of the stay shall be ordered:

1. When the plan is likely to fail.
2. The applicant shows hardship (the hardship must be caused by the stay itself and be independent of any pre-existing condition of the applicant creditor).
3. The applicant shows necessity for payment (where the creditors' financial problems are created by the order or where the failure to pay the creditor would cause it to close and thus jeopardize the debtor's company's existence).
4. The applicant would be significantly prejudiced by refusal to lift the stay and there would be no resulting prejudice to the debtor company or the positions of creditors.
5. It is necessary to permit the applicant to take steps to protect a right which could be lost by the passing of time.
6. After the lapse of a significant time period, the insolvent is no closer to a proposal than at the commencement of the stay period.
7. There is a real risk that a creditor's loan will become unsecured during the stay period.

⁷ *Davarina v. Xebec Adsorption Inc.*, 2022 QCCS 1785.

⁸ *Wabush Iron Co. (Arrangement relative à)*, 2016 QCCS 6061.

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8. It is necessary to allow the applicant to perfect a right that existed prior to the commencement of the stay period.
9. It is in the interests of justice to do so

[36] Justice Hamilton also stressed that an “overriding consideration” is the impact of proceedings on the CCAA process and whether they would “seriously impair [...] the debtor’s ability to focus on the business purpose of negotiating the compromise or arrangement”.⁹

[37] Applying these principles to the case at hand, the Court will not accede to the Class Action Applicants request. Here is why.

[38] The allegations of the Class Action Application can be summarized in the following broad strokes:

- 38.1. In December 2020, Xebec acquired all the issued and outstanding shares of Green Holding B.V., which, through various HyGear entities, carried out hydrogen generation clean tech activities.
- 38.2. In order to finance this acquisition, Xebec used the proceeds of an offering which comprised a public and private component.
- 38.3. For the public component, Xebec issued a preliminary prospectus and a final prospectus (collectively “Prospectus”).
- 38.4. Desjardins Securities Inc., TD Securities Inc., National Bank Financial Inc., Canaccord Genuity Group Inc., Raymond James Ltd., Beacon Securities Limited and Stifel Nicolaus Canada Inc. all acted as underwriters for the public component (the “Underwriters”).
- 38.5. Kurt Sorschack was XIA’s President and CEO and a director and Chairman of the board of directors. Louis Dufour was its CFO until his resignation on November 10, 2020. He was replaced by Stéphane Archambault. William Beckett and Guy Saint-Jacques were Xebec directors and members of the Audit Committee.
- 38.6. Schuringa was initially holder of Green Holding B.V. shares. When Xebec acquired all of the issued and outstanding shares of Green Holding B.V. which now are integrated into Xebec’s,¹⁰ his shares were converted into 18,416 Xebec shares.
- 38.7. Leclair, who is described in the proceedings as a retail investor,

⁹ *Ibid.*, par. 35.

¹⁰ The date when this occurred is not alleged in the Re-Amended Application for Authorisation to Institute a Class Action and to Bring a Statutory Misrepresentation Claim.

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purchased 2,000 Xebec shares on March 4, 2021.

- 38.8. Leclair and Schuringa claim that the Prospectus and the 2020 Q3 Interim Financial Statements and accompanying Management's Discussion and Analysis (MD&A) overstated Xebec's revenue, misrepresented the revenue forecast and "misrepresented the fact that Xebec failed to maintain proper internal controls necessary to ensure that its financial statements were reliable and free of material representation". They allege that Xebec had long standing internal control deficiencies and execution and delivery issues with long-term production contracts. Project costs increased with ensuing reduced margins and negatively impacted revenue.
- 38.9. They allege that in breach of their duties, Xebec, the D&Os and the Underwriters "continued to include overstated revenue and provided FY 2020 revenue forecast of \$70 to \$80 million, which was a misrepresentation".
- 38.10. They claim that on March 12, 2021, Xebec announced that \$12.9M in previously recognized revenue would be corrected and that as a result the FY 2020 revenue would be 24% less than expected. Furthermore, in March, Xebec also announced that revenue reversals and adjustments would continue to negatively impact Xebec's financial results during Q1 and Q2 of 2021. According to Leclair and Schuringa, these disclosures allegedly "revealed that Xebec had improperly applied the "percentage of completion" revenue accounting method and, consequently, it had improperly recognized revenues before it was probable that the economic value of the contract would flow to Xebec". Xebec was therefore required to reverse revenues and hence the overstated revenue constituted a misrepresentation.
- 38.11. They claim that "as a result of Xebec's disclosures on March 12, 2021, the Xebec's securities share price plummeted by approximately 31% overnight on March 21, 2021" and that further declines occurred on March 25, 2021.
- 38.12. They allege that Sorschack and Dufour provided certifications of the Q3 2020 interim filings, but that they failed to fairly present Xebec's financial conditions and financial performance. Leclair and Schuringa claim that these certifications constitute a misrepresentation.
- 38.13. The Prospectus incorporated the Q3 interim filings and MD&A and the fiscal year 2019 financial statements. Sorschack, Archambault, Beckett and Saint-Jacques all signed a Certificate of the Corporation in which they attested that the Prospectus together with the documents it incorporates by reference "constitutes full, true, and plain disclosure of all material facts relating to the securities offered". Leclair and Schuringa claim that this constitutes a misrepresentation.
- 38.14. The Underwriters signed a Certificate of Underwriters making essentially the same attestation, "to the best of their knowledge". Leclair and Schuringa

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allege that “the Prospectus, the Certificate of the Corporation and of the Underwriters were false, and that they constituted misrepresentations”.

38.15. In addition, they claim D&Os would have failed to meet their obligations to act honestly and in good faith with the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstance, thereby violating s. 122 of the *Canadian Business Corporations Act*. Furthermore, they failed to take “proper care to ensure that is financial statements were free of misrepresentations”.

38.16. Leclair and Schuringa therefore want to exercise a class action on behalf of all persons and entities, wherever they may reside or may be domiciled, who purchased or otherwise acquired Xebec securities from November 10, 2020 to March 24, 2021, and who held some or all of such securities as of the close of trading on the TSX on March 11, 2021 or March 24, 2021.

[39] Class Action Applicants argue that the prejudice they would suffer from the stay weighs more heavily in the scale of the balance of convenience than the prejudice which would be suffered by Xebec were the stay to be lifted partially.

[40] They argue that, on the one hand, it is necessary for them to attempt to be declared representatives so as to advance the interests of the class of shareholders, as opposed to a situation where innumerable shareholders deal individually with the Monitor. The recognized class would be tantamount to an Equity Committee. This would allow them to make representations on the fairness of an eventual compromise or arrangement. It would also allow them to pursue indemnification under the D&O policy. They indicate that Mr. Arnsby’s distinct intervention clearly shows how a lack of concerted action by the shareholders would not provide for efficient advocacy.

[41] They argue that on the other hand, Xebec suffers no prejudice. The hearing is scheduled for one day only. It is a hearing on the face of the record, and no testimony of any Xebec employee or officer is required. The defense costs are being assumed by Xebec’s insurers. Furthermore, potentially, Mr. Justice Bisson could dismiss the Class Action Application and this could well be beneficial to Xebec.

[42] With great respect, the Court does not agree with Leclair and Schubinga’s reading of the situation.

[43] Manifestly, as Class Action Applicants admit, the claims to be pursued in the Class Action Application are “equity claims” within the meaning of ss. 2(1) of the CCAA. As a result, were these claims to be liquidated and recognized, ss. 6(8) of CCAA provides that no compromise or arrangement “can be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid”. Furthermore, as provided for in s. 6(1) CCAA, the class members

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holding equity claims could not vote on any proposal or arrangement, “unless the court orders otherwise”.

[44] The Canadian entities are burdened by secured debt in the order of \$7M, excluding the \$7.5M L/C exposure and unsecured debt in the order of \$91.6M. The US entities are burdened by secured debt in the order of \$17.6M and unsecured debt of \$166,2M.

[45] At present it is highly speculative, if not unlikely, that there would be sufficient proceeds for a compromise or arrangement to generate funds to satisfy all the secured and unsecured creditors. Hence, no payment of equity claims can be envisaged. The developments flowing from the SISP and any eventual application by the Monitor to approve a claims procedure order will provide greater insight on Xebec’s future.

[46] Therefore, at present, the Court can certainly not conclude that Plaintiffs suffer a significant prejudice by not being allowed to pursue the authorization.

[47] Also, it is far from evident when Mr. Justice Bisson will render his decision in due time. Leclair and Schubinga argue that the authorization is a fairly straightforward matter, and the fact that Mr Justice Bisson only set one day for the hearing, attests to this. The Court respectfully disagrees with their reading of the situation. The legal questions for which authorization is sought are complex and the Court is held to a higher threshold when authorizing recourses under the *Securities Act* then under the Civil Code of procedure.

[48] Be that as it may, there still appears to be some procedural wrangling ahead, as the Underwriters wish to stay the proceedings. Also, even if a decision is rendered in due time, it is still susceptible of being appealed, as of right, or by seeking leave. If a favourable decision is rendered and no appeal is lodged, then the delicate matter of notices to class members and opting out will have to be dealt with.

[49] Hence, the Court does not see any benefit, at this juncture, to allow the Class Action Application to go forward.

[50] Also, the Court does not agree that Xebec will not suffer any prejudice if the matter goes forward for authorization only:

- 50.1. Even though the debate is one “on the face of the record” and that no testimony will be given, the involvement of executives will be required to assist class action counsel.
- 50.2. Stéphane Archambault’s attention, who is a personally a party to the Class Action Application attention will be diverted away from carrying out the crucial tasks, as CFO, required of him in carrying out the SISP and providing accurate financial reporting.

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50.3. One of the issues which is the heart of the Class Action Application, namely long-term production contracts, still appears very much to be a live matter which must be managed by Xebec. The full attention of Xebec's employees must be given to provide an optimal resolution of these contracts, for the benefit of all stakeholders, unburdened by the impact their management may have on any eventual class action outcome.

[51] Clearly, it does not make any sense for Xebec to focus its attention on litigating the class authorization. Their efforts are better served on focusing on the restructuring. This "will enable creditors to maximize returns while simultaneously benefiting shareholders, employees, and other firms that do business with the debtor companies". Such a course of action embraces the CCAA simultaneous objectives of "maximizing creditor recovery, preservation of going-concern value where possible [and] preservation of jobs".¹¹

[52] It is for these reasons that, at the present time, and in the present context, the Court will not grant the partial lifting of the stay.

2. The Arnsby Letter

[53] On October 19, the Court received a letter from Simon Arnsby who claims to be "a significant, and at times the largest, shareholder in Xebec since 2012". In his letter, Mr. Arnsby makes a request for the Court to appoint an Equity Committee and lists a number of issues or grievances.

[54] Mr. Arnsby was not present before the Court when the hearing began at 10:00. At 11:59, while the Court was sitting, the undersigned's assistant received an email from him indicating that he had been placed in a waiting room and that he could not accede to the hearing by phone conference.

[55] After verification, the Court noted that the notice of presentation which was attached to the Motion and sent to the distribution list provided the correct court room and the web link to the permanent links of the Superior Court where the correct video and the telephone links were provided. Unfortunately, the notice also provided distinct information for a phone conference number of a different court room.

[56] The Court then wrote during the lunch break to Mr. Arnsby to advise him to use the web link of the Superior Court that had been provided to him. At 14:00, when the hearing resumed, he was not present, either by phone or Teams video link.

[57] The Court is not seized of any formal motion. Filing letters without affidavits and seeking the Court's intervention is not a proper course of action.

¹¹ Canada North Group, par. 20.

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[58] However, given the special circumstances arising from the notice of presentation and the short presentation delays, the Court will exceptionally address Mr. Arnsby's concerns despite not being seized of any formal motion.

[59] The issues raised by Mr. Arnsby can be summarized as follows:

- 59.1. Xebec's legal counsel, Osler, Hoskin & Harcourt LLP is in conflict of interest. Me Brian Levitt, co-chair and co-president of Osler is or was a Xebec board member.
- 59.2. The Monitor is in a conflict of interest. Peter Bowie is "Chief Executive of Deloitte China and Chairman of Deloitte Canada". He is or was a director of Xebec.
- 59.3. The "party running the SISP" is the National Bank. National Bank is a creditor of Xebec.
- 59.4. The shareholders had "absolutely no warning that Xebec was at risk of filing for bankruptcy". Nevertheless, the Xebec Board requested to increase "the compensation". Also, ties should not have been severed with two Xebec executives in May 2022, one of which being Sorschack. Mr. Arnsby calls into question compensation packages which were granted in May 2022, when the share price plummeted.
- 59.5. Since the IFO, information has been disseminated slowly by Deloitte.
- 59.6. The financial data shows that value can be salvaged for shareholders and an Equity Committee should be constituted and it should be allotted a budget.

[60] If Mr. Arnsby believes that Osler's should be removed as counsel, then he must file a formal motion with precise information, supported by an affidavit. The Court may then perhaps hold a hearing to determine if there is indeed a conflict of interest and whether the interests of justice justify Osler's removal.

[61] A motion would also be required for the Court to entertain a request to remove Deloitte. An alternate Monitor would need to be proposed. That being said, the Court must stress that Deloitte has been named as Monitor by the Court on the basis of their experience and competence, pursuant to the convincing testimony of the partner in charge, Mr. Jean-François Nadon. The Court has since then received two further reports and has heard Mr. Nadon's further testimony. The Court is favourably impressed with his team's diligence and competence. Very significant resources are being deployed and the SISP is moving along according to the milestones which were announced at the IFO hearing.

[62] In his related complaint, Mr. Arnsby complains about the timeliness of Deloitte's dissemination of information. Mr. Arnsby was not present to provide further particulars. It is unfortunate that he feels so. However, Mr. Nadon provided detailed testimony which

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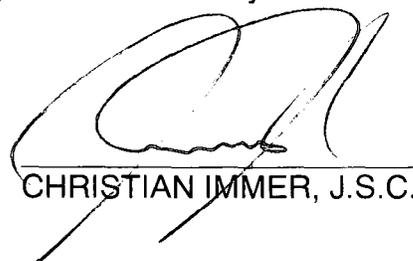
shows that there are no issues with regard to timely dissemination of information. He filed a table of the Publication dates on Deloitte's website.¹²

[63] Mr. Arnsby erroneously states that National Bank has been engaged to assist in carrying out the SISP. That is not the case. It is NBF which has been engaged. This is a different legal entity. He is also wrong when he states that "this is the first time" that NBF has been engaged by Xebec. NBF has been assisting Xebec since the summer of 2022. This has been a factor which led the Court to approve the NFB Engagement Letter at the IFO hearing. The Court also heard satisfactory evidence as to the NBF's qualifications. The third report of the Monitor shows the considerable work being carried out by NBF in the context of the SISP and the Court has no reason to doubt FBN's competence and diligence in carrying out its obligations set out in the Engagement Letter.

[64] Mr. Arnsby also appears to be mistaken as to the role of the Court in a CCAA context. It is *per se* not for the Court to question what occurred with regard to the employment of executives five months before the IFO. If Mr. Arnsby somehow believes this should have an influence the Court's supervision of the CCAA proceedings, then he will have to explain this in a Motion in which he will also set out what remedies he seeks from the Court.

[65] Finally, Mr. Arnsby believes an Equity Committee should be set up. For the Court to consider this, at a minimum, a motion would need to be presented which sets out who would sit on such Committee, how it could contribute to the questions before the Court and why it should be financed by Xebec, at the detriment of its creditors who rank prior to any equity claims, as explained above.

[66] These are therefore the reasons why the Court dismissed Leclair and Schubinga's limited contestation, what consideration it gave to Mr. Arnsby's letter and why it signed the AFIO.



CHRISTIAN IMMER, J.S.C.

Me Sandra Abitan
Me Julien Morissette
Me Ilia Kravtsov
Me Jessica Harding

¹² P-4A.

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Representing the Class Action Applicants Maurice Leclair and Evert Schuringa

Me Daniel Cantin
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