

**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

**MOTION FOR RECOGNITION OF FOREIGN MAIN
PROCEEDING AND REQUEST FOR CERTAIN RELATED RELIEF**

Xebec Adsorption Inc., in its capacity as the duly-appointed foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”), subject of the proceeding (the “**Canadian Proceeding**”) currently pending before the Superior Court of Québec, in the Province of Québec, District of Montréal (the “**Canadian Court**”), initiated pursuant to the Companies’ Creditors Arrangement Act, R.S.C. 1985, C-36 (as amended, the “**CCAA**”), has commenced the above-captioned chapter 15 cases (the “**Chapter 15 Cases**”) ancillary to the Canadian Proceeding, and submits this motion (this “**Motion**”), together with the *Voluntary Chapter 15 Petitions* (the “**Chapter 15 Petitions**”) filed contemporaneously herewith), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), recognizing the Canadian Proceeding and for certain related relief.

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.

PRELIMINARY STATEMENT²

1. The Foreign Representative has commenced the Chapter 15 Cases on behalf of the Debtors to ensure the success of a comprehensive restructuring. Through the Canadian Proceeding and these Chapter 15 Cases, the restructuring will seek, among other things, to preserve jobs in Canada and the United States.

2. Pursuant to this Motion, the Foreign Representative requests recognition and enforcement of the relief obtained from the Canadian Court pursuant to which the Debtors will be in a position to, among other options, pursue a potential “plan of compromise or arrangement” (the “**Plan of Arrangement**”) in accordance with the CCAA.

3. The Foreign Representative respectfully submits that the substantive purpose of chapter 15 will be fulfilled here by granting recognition to the rulings of the Canadian Court as requested herein. *See* 11 U.S.C. § 1501(a)(1). As set forth in the Vounassis Declaration, all stakeholder recoveries would likely be substantially reduced, and the Debtors’ viability as a going concern put into jeopardy, if the relief requested herein is not granted. Accordingly, and consistent with the objectives of chapter 15 of the Bankruptcy Code, the Foreign Representative commenced the Chapter 15 Cases to obtain recognition of the Canadian Proceeding and to give full recognition and enforcement to the Canadian Orders.

RELIEF REQUESTED

4. By this Motion, the Foreign Representative requests entry of the Proposed Order, pursuant to sections 105(a), 1504, 1507, 1510, 1515, 1517, 1520, 1521, and 1522 of title 11 of the United States Code (the “**Bankruptcy Code**”) (a) granting recognition of the Canadian Proceeding

² Capitalized terms used but not otherwise defined in this Preliminary Statement shall have the meaning ascribed to such terms elsewhere in this Motion.

as a “foreign main proceeding” pursuant to chapter 15 of the Bankruptcy Code; (b) granting recognition of the Foreign Representative as the “foreign representative,” as defined in section 101(24) of the Bankruptcy Code, in respect of the Canadian Proceeding; (c) recognizing, granting comity to, and giving full force and effect in the United States to the Canadian Proceeding and the orders entered therein (collectively, the “**Canadian Orders**”); and (d) affording the Debtors the protection of the automatic stay under section 362 of the Bankruptcy Code. The relief requested in this Motion is without prejudice to any additional relief the Foreign Representative may request.

5. In support of this Motion, the Foreign Representative refers the Bankruptcy Court to (a) the *Declaration of Jim Vounassis in Support of Motion for Recognition of Foreign Main Proceeding and Request for Certain Related Relief* [Docket No. 3] (the “**Vounassis Declaration**”) and (b) the *Declaration of Sandra Abitan as Canadian Counsel to the Debtors in Support of Motion for Recognition of Foreign Main Proceeding and Request for Certain Related Relief* [Docket No. 4] (the “**Abitan Declaration**”) filed contemporaneously herewith and incorporated herein by reference.

JURISDICTION

6. The Bankruptcy 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 February 29, 2012.

7. Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code are core matters under 28 U.S.C. § 157(b)(2)(P).

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

9. The Foreign Representative consents to the entry of final orders or judgments by the Bankruptcy Court if it is determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

10. Venue is proper before the Bankruptcy Court pursuant to 28 U.S.C. § 1410.

BACKGROUND

I. Overview of the Debtors' Business

Products and Services Offered by the Debtors

11. 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.

12. The Xebec Group’s business is divided into three key segments: a cleantech solutions segment, an industrial service and support segment (including the Cleantech Service Network, as defined below), and a renewable gas infrastructure segment.

(a) Cleantech Solutions Segment (Equipment/Systems)

(i) PSA Systems

13. Key to the Xebec Group’s business in these three segments is its proprietary pressure swing adsorption technology (the “**PSA**”), which is used to remove targeted impurities or

separate bulk mixtures of gases, and to efficiently upgrade hydrogen-containing reformat, petrochemical process gas streams and refinery off-gas streams to pure and ultra-pure hydrogen.

14. The Xebec Group's PSA system is among the most compact, cost-effective, and reliable on the market. It is used in several products manufactured by the Xebec Group, including the Biostream (as defined below), industrial gas recycling systems, and its industrial gas purification systems. The Xebec Group also supplies its PSA system to customers around the world. To date, the Xebec Group has supplied more than 10,000 PSA systems to more than 1,500 customers for a wide variety of industrial applications such as manufacturing, food processing, as well as medical, pharmaceutical and petrochemical industries.

15. The PSA system is manufactured in the Xebec Group's facility in Blainville, Québec, Canada.

(ii) Biogas Conversion to Renewable Natural Gas

16. The Xebec Group deploys systems to convert biogas to renewable and low-emission natural gas from agricultural digesters, source separated organics facilities, landfills and wastewater treatment plants. The Xebec Group is also implementing a shift towards standardized biogas upgrading products for the renewable and low-emission natural gas market. In 2020, it launched its proprietary fully containerized and standardized unit for small-scale biogas upgrading applications (the "**Biostream**").

17. The Biostreams are manufactured in the Xebec Systems facility in Colorado for the U.S. market and in the Xebec Group's facility in Blainville, Québec for the Canadian market. The Xebec Group's research and development activities related to biogas conversion to renewable and to carbon capture are located in Blainville, Québec.

(iii) Hydrogen (Purification, Generation and Distribution)

18. The Xebec Group provides systems for on-site hydrogen generation (the “**Hy.Gen Systems**”), which are manufactured at the HyGear Entities’ (as defined below) facility located in Arnhem, The Netherlands. The Hy.Gen Systems are built inside shipping containers, which makes them easy to transport and small in environmental footprint. Hy.Gen Systems are based on steam methane reforming technology, a process by which hydrogen is created out of water and natural gas. PSA Systems operate autonomously. The Xebec Group also supplies hydrogen to its clients by way of on-site generation technologies and conventional gas distribution methods, in addition to producing containerized electrolysis systems.

(iv) On-site Oxygen and Nitrogen Generation

19. The Xebec Group offers several products for the on-site generation of oxygen and nitrogen, including compact generators. These products are produced at their manufacturing facility in Herrsching am Ammersee, Germany. On-site generators of oxygen and nitrogen allow customers to avoid delivery issues and costs and to support the protection of the climate and the environment by reducing emissions. On-site oxygen generators are used in multiple applications, including notably for medical oxygen supply, aquatic farming, industrial applications and the production of biogas and renewable and low-emission natural gas. On-site Nitrogen generators are used in food processing, metal hardening and other industrial processes.

(v) Carbon Capture and Sequestration

20. Carbon capture and sequestration is an emerging segment for the Xebec Group, with demand from customers to assist them in further reducing the carbon emissions from their equipment and to build new cleantech solutions. The Xebec Group is utilizing its PSA system for new applications in separating associated gas streams, and is now accelerating its efforts to gain

more exposure in this market. The Xebec Group's extensive experience in compressing gases has also allowed it to gain traction in the CO₂ sequestration market by providing compression technology to pipeline builders and operators.

(b) Industrial Service and Support Segment

21. The Xebec Group historically has been involved in the manufacturing and servicing of industrial equipment for compressed air and gas dehydration, separation, purification and filtration worldwide. This business segment is the core segment of the Xebec Group. In this context, the Xebec Group supplies energy-efficient compressed air dryers and compressed air and gas filters for a broad range of industrial applications, as well as industrial purification systems, dryers and chillers from air and gas streams. This equipment is manufactured in the Xebec Group's facilities in Blainville, Québec and Maryville, Tennessee. The Company also assembles compressor packages in Cranbrook, British Columbia and in Henderson, Colorado.

22. The Xebec Group also provides customers with parts, service, operations and maintenance through a long-term initiative to build a service footprint to support customers, create a competitive advantage and capture aftermarket value (the "**Cleantech Service Network**"). The Cleantech Service Network is primarily North American-based and composed of a network of seventeen cleantech service centers. Company technicians service industrial compressed air equipment and cleantech equipment for renewable and low-emission natural gas, hydrogen and carbon capture.

23. This historically high margin business segment provides a recurring revenue base with 60% to 70% of revenues recurring from sales of parts and service.

(c) Renewable Gas Infrastructure Segment

24. The Xebec Group has entered into a partnership in Québec with the Fonds de solidarité des travailleurs du Québec (F.T.Q.) (“FSTQ”), with the goal of accelerating the development of projects generating renewable gas. Xebec Adsorption Inc. holds directly and indirectly a 50% interest in this partnership, known as GNR Québec Capital L.P. To achieve this objective, the partnership actively participates in renewable gas projects and acts as an active investor through strategic partnerships to support the growth of companies developing renewable energy and waste recovery projects. To date, the partnership has evaluated 34 projects and is actively engaged with 18 projects in agriculture, municipal, landfill, mixed use, and industrial waste applications and has successfully executed several letters of intent for projects in Québec, Canada.

Facilities and Employees

(a) Facilities

25. The Xebec Group does not own any real estate and operates out of leased facilities and offices.

26. Headquartered in Montréal, Québec, the Xebec Group operates 5 manufacturing facilities, 15 cleantech service centers, and 2 research and development facilities in North America.

27. The Xebec Group also operates three manufacturing facilities, two cleantech service centers and three sales offices in Europe, as well as one research and development facility in the Netherlands, one sales office in Singapore, and one in the United Arab Emirates.

(b) Employees

28. As of the date hereof, the Xebec Group employs close to 600 employees globally. The distribution of the Company’s employees is as follows, as of September 15, 2022:

Entity (Location)	Number of Employees
Canada	
Xebec Adsorption Inc. (Québec)	157
Applied (British Columbia)	27
Compressed (Ontario)	14
<i>Total (Canada)</i>	<i>198</i>
United States	
Enerphase (North Carolina)	28
CDA (California)	10
Xebec USA (North Carolina)	17
Titus (Pennsylvania)	24
Nortekbelair (Tennessee)	21
XBC Wisconsin (Wisconsin)	10
California Compression (California)	18
Xebec Systems (Colorado)	77
<i>Total (United States)</i>	<i>205</i>
Europe	
Tiger Filtration Limited (United Kingdom)	23
Xebec Italy SRL (Italy)	6
HyGear Entities (as defined below, but excluding Xebec Adsorption Asia PTE LTD) (The Netherlands)	82
Inmatec Entities (as defined below, but excluding Inmatec Gas Technology FZC RAK) (Germany)	53
<i>Total (Europe)</i>	<i>164</i>
Other	
Xebec Adsorption (Shanghai) Co. Ltd. (China)	4

Entity (Location)	Number of Employees
Xebec Adsorption Asia PTE LTD (Singapore)	10
Inmatec Gas Technology FZC RAK (United Arab Emirates)	5
<i>Total (overall)</i>	<i>586</i>

II. The Debtors' Corporate Structure

29. Xebec Adsorption Inc. is the ultimate parent company of the Xebec Group and the other Debtors are all wholly owned, direct or indirect subsidiaries of Xebec Adsorption Inc.

30. The Xebec Group has grown considerably through strategic acquisitions in recent years.

31. An organizational chart showing the corporate structure of the Xebec Group as of the date hereof is attached hereto as **Exhibit B**.

Xebec Adsorption Inc.

32. Xebec Adsorption Inc. is a corporation incorporated under the Canada Business Corporations Act, RSC 1985, c C-44 and a reporting issuer in each of the provinces and territories of Canada. The Common Shares (as defined below) of Xebec Adsorption Inc. are listed on the Toronto Stock Exchange (the "TSX") and are trading under the ticker symbol "XBC". They are also trading on the OTCQX International, a marketplace for over-the-counter trading of securities, under the ticker symbol "XEBEF".

33. The executive offices and senior management team of the Xebec Group operate out of 1130 Sherbrooke West, Suite 700, Montréal, Québec. Xebec Adsorption Inc. operates a 41,753 square foot leased manufacturing facility located at 730 Industriel Boulevard, Blainville, Québec.

Canadian Subsidiaries

34. The wholly-owned Canadian subsidiaries of Xebec Adsorption Inc. are set out below:

- a. *Compressed Air International Inc. (“Compressed”)*: Compressed operates two facilities in the Greater Toronto area, and is responsible for sales and servicing of compressed air products, while supporting all Xebec products in Ontario.
- b. *Applied Compression Systems Ltd. (“Applied”)*: Applied offers a single source solution for air and gas compression requirements and focuses on custom designed and fabricated compressor packages for specialized applications in the industrial sector. It operates a facility in Cranbrook, British Columbia.
- c. *Xebec RNG Holdings Inc.*: Xebec RNG Holdings Inc. holds the shares of:
 - i. GNR Québec Capital Management Inc., the general partner of GNR Québec Capital L.P., which is a limited partnership with FSTQ. The partnership was formed for the primary purpose of investing in the development, design, construction and operation of renewable natural gas projects (see the Renewable Gas Infrastructure Segment detailed in the section above); and
 - ii. GNR Bromont Management Inc., the general partner of GNR Bromont L.P. This entity and the partnership have not assets or operations.

Holding USA and U.S. Subsidiaries

35. Xebec Holding USA Inc. (“**Holding USA**”) is a direct and wholly owned subsidiary of Xebec Adsorption Inc. In turn, Holding USA directly and wholly owns the U.S. subsidiaries set out below:

- a. *CDA Systems, LLC (“CDA”)*: CDA is part of the Cleantech Service Network of the Xebec Group. It is responsible for sales, rentals and services of compressed air products and also supports all of Xebec Group’s products in California.
- b. *Xebec Adsorption USA Inc. (“Xebec USA”)*: Xebec USA leases and operates an administrative office Mooresville, North Carolina.
- c. *Enerphase Industrial Solutions, Inc. (“Enerphase”)*: Enerphase is part of the Cleantech Service Network of the Xebec Group, with a focus on preventative maintenance solutions, air energy system audits and analysis, timely machine

rentals and parts and service. It also sells compressed air products. It leases and operates facilities in Greensboro, Woodleaf and Rocky Mount, North Carolina.

- d. *The Titus Company (“Titus”)*: Titus is a supplier of compressed air services and a part of the Cleantech Service Network. It notably supplies nitrogen generators and membrane products to the United States Navy. It leases a facility in Morgantown, Pennsylvania.
- e. *Nortekbelair Corporation (“Nortekbelair”)*: Nortekbelair operates a 18,500 square foot facility in Maryville, Tennessee, which is a “Center of Excellence” for the Xebec Group’s dehydration products comprised of compressed air dryers, renewable and low-emission natural gas dryers and hydrogen dryers and supports its Cleantech Service Network as well as other third party customers.
- f. *California Compression, LLC (“California Compression”)*: A part of the Cleantech Service Network, California Compression is a compressed air distributor and provides the Xebec Group with distribution and service capabilities for customers located in Northern California.
- g. *XBC Flow Services – Wisconsin Inc. (“XBC Wisconsin”)*: A part of the Cleantech Service Network, XBC Wisconsin supplies U.S. customers with high-quality compressed air products from the industry’s top manufacturers, in addition to providing service and support.
- h. *Xebec Systems USA, LLC (“Xebec Systems”)*: Xebec Systems operates a 100,000 square foot facility located in Henderson, Colorado, which manufactures containerized Biostream systems and hydrogen units. Xebec Systems also designs and manufactures air and gas processing systems with references in landfill gas, natural gas, biogas, hydrogen and carbon dioxide compression. Xebec Systems also provides services as part of the Cleantech Service Network.

Overseas Subsidiaries

36. The overseas subsidiaries of Xebec Adsorption Inc. are set out below (collectively the “**Overseas Subsidiaries**”):

- a. *Xebec Holding UK Limited*: Xebec Holding UK Limited has no active operations and is the sole shareholder of Tiger Filtration Limited, which operates a facility located in Sunderland, United Kingdom, focused on the manufacturing of elements and filters. This business was acquired by the Xebec Group in June 2021 in order to vertically integrate into the valuable aftermarket business for filters and elements.
- b. *Xebec Italy SRL*: This Italian-based entity services all Xebec legacy RNG systems sold in Europe.

- c. *Xebec Europe B.V.*: Xebec Europe B.V. has no active operations, and is the sole shareholder of two subsidiaries, Xebec Deutschland GmbH and Green Vision Holding B.V.:
- i. Xebec Deutschland GmbH, which in turn has three wholly owned subsidiaries: Xebec Komplementär GmbH, Inmatec Gase Technologie GmbH & Co. KG (collectively, “**Inmatec Germany**”) and Inmatec Gas Technology FZC LLC (“**Inmatec RAK**”, and , collectively with Inmatec Germany, the “**Inmatec Entities**”). Inmatec Germany manufactures, sells and services on-site nitrogen and oxygen generators. Inmatec RAK is responsible for sales of the Inmatec Entities’ systems in the Middle East and Africa and is located in Ras Al Khaimah, United Arab Emirates. The Inmatec Entities were acquired by the Xebec Group in February 2021 to position the Xebec Group as a worldwide leader in on-site nitrogen and oxygen generation products and leverage cross-selling opportunities.
 - ii. Green Vision Holding B.V., which owns HyGear Technologies and Services B.V., which in turn has six subsidiaries: HyGear Operations B.V., HyGear B.V., Xebec Adsorption Asia PTE LTD, HyGear Fuel Cell B.V. and HyGear Hydrogen Plant B.V., which are wholly owned, and Buse HyGear LTD which is 50% owned (collectively, the “**HyGear Entities**”). Mainly based in the Netherlands, the HyGear Entities combine on-site generation technologies of the Hy.Gen Systems which generate hydrogen from natural gas, renewable natural gas or water and electricity with conventional gas distribution methods. The HyGear Entities were acquired by the Xebec Group in December 2020 with the strategic support of Caisse de dépôt et de placement du Québec, in the context of the Company’s global hydrogen strategy. Xebec Adsorption Asia PTE LTD is responsible for sales of the Xebec Group in Asia and the Middle East.
- d. *Xebec Adsorption (Shanghai) Co. Ltd.*: Xebec Adsorption (Shanghai) Co. Ltd. in which Xebec Adsorption Inc. has a 60% equity interest, is a joint venture with the Shanghai-based Shenergy Group. This joint venture operates a 20,451 square foot manufacturing facility in the Songjiang district of Shanghai, China. It is responsible for engineering, supply chain, product assembly, marketing, sales, technical service and after sales support for the Chinese, South East Asian and Middle Eastern markets. The Xebec Group supplies multiple products to the joint venture, including most importantly PSA systems.

III. The Debtors' Assets, Indebtedness and Obligations

A. Assets

37. The Q2 2022 Financial Statement of Xebec Adsorption Inc. (as defined below) reflected assets of \$503 million, summarized as follows:

- a. Inventory: \$65 million;
- b. Net book value of property and equipment: \$38 million;
- c. Net book value of intangible assets (primarily intellectual property): \$86 million;
- d. Net book value of goodwill: \$151 million;
- e. Investment in associates and joint ventures: \$22 million; and
- f. Other assets (primarily cash, accounts receivable and prepaid expenses): \$201 million.

B. Secured Indebtedness

National Bank of Canada

38. Xebec Adsorption Inc. is party to a Credit Agreement dated as of February 23, 2021 with National Bank of Canada (“NBC”), as amended from time to time, pursuant to which NBC provides an operating line of credit in an initial amount of up to \$30,000,000 (the “**Operating Facility**”) and a letter of credit facility in an amount of \$16,500,000 (the “**LOC Facility**”) and, collectively with the Operating Facility, the “**NBC Loan**”).

39. The Operating Facility is used by Xebec Adsorption Inc. to finance its operating requirements, general purposes, and historically, to finance certain acquisitions as permitted thereunder.

40. The obligations of Xebec Adsorption Inc. under the NBC Loan have been guaranteed by the following subsidiaries (the “**NBC Guarantors**”):

- a. Applied;
- b. XBC Wisconsin;
- c. Xebec USA;

- d. Holding USA;
- e. CDA;
- f. Enerphase;
- g. Titus;
- h. Compressed;
- i. Tiger Filtration Limited;
- j. California Compression;
- k. Nortekbelair;
- l. Holding UK; and
- m. Xebec Systems.

41. The obligations of Xebec Adsorption Inc. under the NBC Loan are secured by first ranking hypothecs and liens on its assets, as well as those of the NBC Guarantors (the “**NBC Security**”), subject to:

- a. in the case of California Compression, Xebec Systems, Nortekbelair and XBC Wisconsin only, prior ranking security granted by these entities in favor of EDC (as defined below); and
- b. in the case of Holding USA, prior ranking security over shares held in Nortekbelair, Xebec Systems, California Compression and XBC Wisconsin granted in favor of EDC.

42. As of September 26, 2022, the outstanding aggregate indebtedness owing to NBC under the Operating Facility totalled approximately \$7,000,000, excluding interest, costs, fees and expenses.

43. This amount is in addition to all amount relating to outstanding letters of credit issued under the LOC Facility totalling in excess of \$7,000,000.

44. EDC (as defined below) has guaranteed in favor of NBC the reimbursement of substantially all amounts owed under the LOC Facility.

45. As a result of certain events of default that occurred under the NBC Loan, on July 7, 2022, Xebec Adsorption Inc., the NBC Guarantors, and NBC entered into a Forbearance Agreement (the “**NBC Forbearance Agreement**”) with NBC.

46. The NBC Forbearance Agreement was disclosed by Xebec Adsorption Inc. in the Q2 2022 MD&A (as defined below).

47. The NBC Forbearance Agreement sets out the terms and conditions under which NBC agreed to tolerate the various defaults under the NBC Loan and to continue to finance Xebec Adsorption Inc.’s operations. The tolerance period under the NBC Forbearance Agreement was set to expire on September 30, 2022.

48. In the context of the ongoing discussions with NBC and in order to ensure that the Debtors would continue to have access to their banking facilities, the tolerance period under the NBC Forbearance Agreement was extended to October 11, 2022 (subject to further extensions as may be agreed to by the parties), pursuant to the terms of a First Amendment to the NBC Forbearance Agreement dated September 28, 2022. In this context, the Debtors have agreed that NBC shall be treated as an unaffected creditor in the Canadian Proceeding and in any plan resulting therefrom and have waived the delays required under the notices of intention to enforce security pursuant to section 244 of the Bankruptcy and Insolvency Act.

Export Development Canada

49. Holding USA is party to a Loan Agreement dated as of July 16, 2021 with Export Development Canada (“**EDC**”), as amended from time to time, pursuant to which EDC provided a loan in the aggregate principal amount of USD 15,000,000 (the “**EDC Loan**”).

50. The purpose of the EDC Loan was to allow Holding USA to fund the acquisitions of certain U.S.-based businesses.

51. The obligations of Holding USA under the EDC Loan have been guaranteed by Xebec Adsorption Inc. and by the following subsidiaries (the “**EDC Guarantors**”):

- a. CDA;
- b. Nortekbelair;
- c. Xebec Systems;
- d. California Compression; and
- e. XBC Wisconsin.

52. The obligations of Holding USA under the EDC Loan are secured by (the “**EDC Security**”):

- a. first ranking security over the shares held by Holding USA in the EDC Guarantors Nortekbelair, Xebec Systems, California Compression and XBC Wisconsin (collectively, the “**TargetCo Shares**”);
- b. first ranking hypothecs and liens on same EDC Guarantors’ assets (except for CDA and Xebec Adsorption Inc.);
- c. second ranking hypothecs and liens on the assets of Xebec Adsorption Inc.;
- and
- d. second ranking hypothecs and liens on the assets of Holding USA, except for TargetCo Shares.

53. As of September 18, 2022, the outstanding aggregate indebtedness owing to EDC under the EDC Loan totaled approximately \$13,269,478, excluding interest, costs, fees and expenses. This amount excludes any obligations which may arise under the letters of credit issued by NBC, in respect of which EDC has provided a guarantee to NBC, as mentioned above.

54. A snapshot of the borrowers and guarantors under the NBC Loan and the EDC Loan, respectively is set out below for convenience purposes:

NBC Loan (aggregate indebtedness as of September 26, 2022: approx. \$7,000,000)	
Borrower	Xebec Adsorption Inc.
Guarantors	Applied; XBC Wisconsin; Xebec USA; Holding USA; CDA; Enerphase; Titus; Compressed; Tiger Filtration Limited; California Compression; Nortekbelair; Holding UK; and Xebec Systems.
Security	First ranking hypothecs and liens on the assets of Xebec Adsorption Inc., as well as those of the NBC Guarantors, subject to any prior ranking EDC Security, as applicable.
EDC Loan (aggregate indebtedness as of September 18, 2022: approx. USD \$13,269,478)	
Borrower	Holding USA
Guarantors	Xebec Adsorption Inc.; CDA; Nortekbelair; Xebec Systems; California Compression; and XBC Wisconsin.
Security	- First ranking security on the TargetCo Shares; - First ranking hypothecs and liens on same EDC Guarantors' assets (except for CDA and Xebec Adsorption Inc.), - Second ranking hypothecs and liens on the assets of Xebec Adsorption Inc.; and - Second ranking hypothecs and liens on the assets of Holding USA, except; for TargetCo Shares.

C. FSTQ Loan

55. Xebec Adsorption Inc. is party to an Amended and Restated Unsecured Loan Agreement dated as of November 9, 2021, with FSTQ, pursuant to which FSTQ provided to Xebec

Adsorption Inc. with a financing facility in the aggregate principal amount up to \$25,000,000 (the “FSTQ Loan”).

56. The FSTQ Loan was used by Xebec Adsorption Inc. for working capital purposes, operational and investment activities and acquisitions.

57. The FSTQ Loan is unsecured, bears interest at the rate of 8.5% per annum, subject to adjustment as per the FSTQ Loan agreement, and matures on May 5, 2025.

58. As of September 19, 2022, the outstanding aggregate indebtedness owing to FSTQ under the FSTQ Loan totaled approximately \$15,000,000, excluding interest, costs, fees and expenses.

D. Other Unsecured Indebtedness

59. As of August 31, 2022, the Debtors had accounts payable and accrued liabilities in an aggregate amount of approximately \$162,600,000 including to suppliers and landlords.

E. Contingent Liabilities

60. Certain Debtors are also defendants in various pending litigation proceedings, including two proposed class actions against Xebec Adsorption Inc., alleging misrepresentations in its disclosure documents with respect to revenue accounting practices and internal controls, all of which are contested.

F. Employee Entitlements

61. As of the date hereof, the Debtors are current in their payroll obligations. In addition, except for a deferred profit sharing plan, there are no pension plans in place.

62. The Debtors intend to continue to pay their employees in the normal course of business.

G. Tax Liabilities

63. All amounts owed to tax authorities by the Debtors are paid in the normal course of business and there is no known past due amount owing to tax authorities exists as of the date hereof.

64. As of the date hereof, the Debtors are current in their source deductions and sales tax obligations including GST/QST/HST, in jurisdictions where they apply.

H. Equity

65. Xebec Adsorption Inc.'s authorized share capital consists of an unlimited number of Common Shares and an unlimited number of preferred shares ("**Preferred Shares**"), without par value. As at August 31, 2022, there were 154,727,549 Common Shares issued and outstanding (the "**Common Shares**") and nil Preferred Shares issued and outstanding. As indicated above, the Common Shares are listed on the TSX and are also listed on the OTCQX International.

IV. Events Leading to Restructuring

66. The latest consolidated audited financial statements for the years ended on December 31, 2020 and 2021 indicate that Xebec Adsorption Inc. realized successive material operating losses in 2020 and 2021. The latest financial results for the six month period ending on June 30, 2022, indicate that Xebec Adsorption Inc. continued to incur material losses, incurring a net loss of \$41.997 million , as appears from a copy of the Condensed Interim Consolidated Financial Statements (Unaudited) for the three-month and six-month periods ended June 30, 2022, and 2021 ("**Q2 2022 Financial Statements**").

67. The Xebec Group's financial difficulties arise from a number of factors, including its inability to raise additional capital, supply chain constraints, impact of the COVID-19 pandemic, the geopolitical factors and increasing selling, general and administrative expenses, resulting from the number of acquisitions completed over the last two years, and the completion

costs of legacy renewable natural gas (“RNG”) contracts and the costs associated with discontinuing such product line, the whole as described more fully below.

A. Inability to Raise Additional Capital and the State of Capital Markets

68. The challenging state of the capital markets commenced in late 2021 and has resulted in lower share price performance for many companies, including those in the clean energy solutions market segment. Xebec Adsorption Inc.’s share price was negatively impacted, by, among other things, this market trend, which in turn adversely affected Xebec Adsorption Inc.’s ability to source and secure the critical financing it requires. This phenomenon was further exacerbated by the decrease of equity capital interest for unprofitable growth companies in general. As a result, execution of the Xebec Group’s business plan, including its ability to appropriately capitalize its business, was seriously compromised.

B. Supply Chain Constraints and Other Market Conditions

69. In addition to the inability to secure required financing, the Xebec Group also faced worldwide supply chain issues and increased costs resulting, *inter alia*, from the COVID-19 pandemic and geopolitical factors.

70. As appears from Xebec Adsorption Inc.’s Management’s Discussion and Analysis for the Second Quarter ended June 30, 2022 (the “**Q2 2022 MD&A**”), while 2022 started off with strong sales quoting activity in the RNG business, quotes were slow to book into Xebec Adsorption Inc.’s backlog, due to a combination of factors including economic uncertainty, low carbon fuel credits’ volatility and the early adopter nature of Xebec Adsorption Inc.’s second-generation Biostream product.

71. The second quarter of 2022 also saw a slowdown in Xebec Adsorption Inc.’s oxygen business, as the strong demand generated by the COVID-19 pandemic subsided. Xebec

Adsorption Inc.'s oxygen and nitrogen generation businesses operate on a cash neutral basis and their ability to produce material positive cash flows depends on the resolution of supply chain issues and increasing the nitrogen portion of the business in the face of declining oxygen demand triggered by declining intensity of the COVID-19 pandemic.

72. Furthermore, the geopolitical situation resulting from the Russo-Ukrainian War brought significant pressure on the nitrogen market, where customers had to reduce their capital expenditures in light of significantly higher energy costs.

73. In 2022, Xebec Adsorption Inc. noted a lower level of sales in Europe, primarily attributable to supply chain constraints and reduced sales of oxygen and hydrogen generators. In addition, while the Xebec Group's hydrogen business continued to develop, significant capital is still required to support this business which continues to suffer losses.

C. Selling and Administrative Expenses

74. As indicated above, the Xebec Group grew significantly through acquisitions, investments and joint ventures.

75. According to the Q2 2022 Financial Statements, Xebec Adsorption Inc. incurred \$33.6 million in SG&A, an increase of \$10.7 million, compared to \$22.9 million for the same six months of 2021. The increase was associated to SG&A relating to newly acquired companies.

D. Legacy RNG Contracts

76. In addition, the Xebec Group incurred significant costs in connection with finalizing its legacy RNG contracts and discontinuing this product line. The impact of the COVID-19 pandemic, the supply chain constraints and the inflation described above further affected these costs.

77. As appears from the Q2 2022 MD&A, the Xebec Group encompassed the impact of such legacy RNG contracts in a special charge resulting in a net loss impact of \$11.9 million and a gross margin impact of \$8.3 million, representing remaining costs on projects, potential penalties, an inventory obsolescence provision, potential warranty claims, and legal settlement and related costs. In summary, volatile market conditions, inability to raise capital, lower sales volumes, ongoing supply chain constraints, material increase of SG&A, and the completion costs of legacy RNG contracts and the costs associated with discontinuing the product line had a direct negative impact on the Debtors' cash flow.

V. Pre-Filing Restructuring Efforts

A. Company's Efforts to Improve Financial Performance

78. Given the capital intensive nature of the business of the Xebec Group, particularly in light of the recent acquisition of the HyGear Entities, the Xebec Group initiated various attempts to raise additional capital, including via private placements, equity offerings or subordinated debt. Such efforts were assisted by two leading financial advisory firms. Potential convertible debt transactions and equity offerings were contemplated in the fall of 2021 and the spring of 2022, but based on overall market conditions, and advice from the Xebec Group's financial advisors, such transactions could not be launched. Notwithstanding all of its efforts, the Xebec Group was as a result unable to secure additional capital.

79. In light of the foregoing, in the spring of 2022, the Xebec Group initiated a comprehensive review of all of the activities of the Xebec Group to improve margins and increase cash from operations, focusing on production rationalization, and workforce and supply chain synergies to streamline and simplify the organization (the "**Operational Review**").

80. In the context of the Operational Review, Xebec Adsorption Inc. implemented a number of cost-reduction measures, including the discontinuance of certain business activities,

primarily relating to its RNG segment, to focus on products and services that had the potential for yielding higher margins on a long-term basis, the whole as appears from the Q2 2022 MD&A.

81. Furthermore, in July, 2022, in the context of the Operational Review, Xebec Adsorption Inc. announced the reduction of its full-time workforce by 51 employees, representing approximately 13% of its North American employee base, resulting in approximately \$4.0 million in annual cost savings, as appears from the Q2 2022 MD&A.

82. The Xebec Group continued to evaluate its business revolving around three levers: 1) core vs. non-core activities, 2) product rationalization, and 3) workforce and supply chain synergies, all of which aim to pursue operational efficiencies and focus the company's efforts across the business. Unfortunately, the above-noted measures alone proved to be insufficient in addressing the Debtors' urgent liquidity concerns.

B. Strategic Review

83. As appears from the Q2 2022 MD&A, in addition to, and in parallel with the Operational Review, the Xebec Group initiated a process to identify and evaluate a variety of potential strategic alternatives to enhance stakeholder value, including via potential asset divestitures or joint ventures (the "**Strategic Review**").

84. In this context, a special committee of the board of Xebec Adsorption Inc., comprised of independent directors (the "**Special Committee**") was established to review and consider any strategic alternatives (including potential asset divestitures or joint ventures) and make recommendations to the Xebec Adsorption Inc. board with respect thereto.

85. On June 3, 2022, further to a recommendation of the Special Committee, Xebec Adsorption Inc. engaged National Bank Financial Inc. ("**NBF**") as financial advisor in connection

with the Strategic Review. NBF had not been involved as financial advisor in the Xebec Group's prior financing efforts.

86. Further to its engagement, NBF conducted a broad solicitation of expressions of interest targeting institutional investors and well capitalized, strategic acquirers that had either previously expressed interest in a combination with the Xebec Group and/or were believed to have a strong strategic rationale to consider a potential transaction (collectively, the "**Market Check**").

87. In the context of the Market Check:

- a. 76 potential targets were solicited and received a teaser letter, including 47 potential investors and 29 potential strategic acquirers; and
- b. 14 potential targets signed a confidentiality agreement giving them access to the virtual data room to advance their due diligence process;

88. The Market Check resulted in the receipt by Xebec of only one non-binding letter of intent for the purchase of XBC Flow Services, the brand encompassing the Xebec Group's U.S. Cleantech Service Network and industrial product sales and distribution activities (the "**LOI**").

89. Xebec Adsorption Inc., with the assistance of NBF and its other advisors, determined that the LOI was not a viable solution, given that:

- a. the time needed to execute the transaction contemplated by the LOI and the inherent uncertainty would not provide a solution for Xebec Adsorption Inc.'s liquidity needs;
 - b. the complexity of the transaction, including isolating the subject assets and undertakings, would take considerable effort and time;
 - c. the assets in question are integral to the core business of the Xebec Group;
- and

- d. the transaction would negatively impact the overall future cash flow of the Xebec Group.

90. Throughout all of its financing efforts, from the fall of 2021 until September 2022, the Xebec Group, directly and through its financial advisors (including NBF during the Strategic Review), remained in close communication with key stakeholders in order to assess whether they may have an interest in an investment or transaction with the Company in some capacity. Certain key stakeholders engaged in ongoing due diligence and discussions with management and NBF, but recently confirmed that they would not be prepared to proceed at this time.

VI. Restructuring Objectives

91. Despite all the efforts enumerated above and following extensive analysis and consideration, in light of their financial situation, the Debtors concluded that their only alternative was to engage in a formal restructuring process in order to achieve the best possible outcome for their stakeholders.

92. With the assistance of their advisors and upon the recommendation of the Special Committee, the Debtors determined that the best course of action in the current circumstances includes the implementation of a sale and investment solicitation process in order to maximize value of the Debtors' business while maintaining going concern operations, a further streamlining of their operations, and a divestiture of their non-core assets.

93. In order to achieve their objectives, the Debtors initiated the Canadian Proceeding.

VII. The Canadian Proceeding

94. Pursuant to an application made by the Debtors, which is attached hereto as **Exhibit C**, on September 29, 2022, the Canadian Court issued, an Initial Order pursuant to the CCAA, which is attached hereto as **Exhibit D** (the "Initial Order"), which authorizes the Debtors:

to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement 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.

Initial Order at ¶ 66.

95. In accordance with the Initial Order and the CCAA, the Monitor shall send a notice to all known creditors with claims amount to \$1,000 or more. Initial Order at ¶ 40(a). In addition, the list of such creditors shall be published on the Monitor’s website. *Id.*

96. The Debtors acknowledged that the Debtors have several stakeholders in the United States, and that, accordingly, they have contemplated that recognition of the Canadian Proceeding may be sought in the United States “pursuant to Chapter 15 of the US Bankruptcy Code.” Thus, the Debtors are seeking orders that are “customary in the circumstances.”

97. The Foreign Representative has caused the Debtors to commence the Chapter 15 Cases. The Foreign Representative respectfully submits that recognition is necessary to facilitate the restructuring and to achieve the more fundamental objectives of chapter 15 itself, including: (a) protecting the interests of creditors by facilitating completion of the proposed restructuring; (b) preserving the Debtors’ operations as a going concern; (c) preserving the jobs of employees; (d) providing certainty for the creditors who have agreed to support the Debtors through their own undertakings and commitments; and (e) facilitating cooperation through established principles of comity recognizing the efficacy of Canadian CCAA proceedings under United States law.

98. The Initial Order authorizes the Debtors, among other provisions, to “file with [the Canadian] Court and to submit to their creditors one or more Plans in accordance with the CCAA.” Initial Order at ¶ 15.

99. In addition, the Initial Order provides relief similar to and consistent with the relief provided by the Bankruptcy Code, including:

- permitting the Debtors to file with the Canadian Court and to submit to their creditors one or more plans of compromise or arrangement in accordance with the CCAA;
- ordering a stay of proceedings against the Debtors until October 9, 2022 (which stay may be extended);
- ordering counterparties who have verbal or written agreements with the Debtors to continue providing services to the Debtors and forbidding them from discontinuing those services until allowed by the Canadian Court;
- appointing the Monitor to, among other responsibilities: (a) continue providing notice to creditors; (b) assist the Debtors in dealing with their creditors; (c) review the Debtors’ business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies; and (d) otherwise assist the Debtors with the restructuring.

Initial Order at ¶¶ 15, 16, 30, and 40.

BASIS FOR RELIEF REQUESTED

I. The Debtors Are Eligible for Chapter 15

A. Each of the Debtors Meet the requirements for United States “Debtors” Under Section 109(a) of the Bankruptcy Code

100. Certain courts in this district have held that the requirements of section 109(a) of the Bankruptcy Code do not apply to debtors seeking chapter 15 relief. *See, e.g.*, Hr’g Tr. 8:19-9:10, *In re Bemarmara Consulting A.S.*, Case No. 13-13037 (Bankr. D. Del. Dec. 17, 2013), Docket No. 38 (holding section 109(a) did not apply to chapter 15 proceeding); *In re Metinvest B.V.*, Case No. 17-10130 (LSS) (Bankr. D. Del. Feb. 8, 2017), Docket No. 19 (same). Admittedly, the United States Court of Appeals for the Second Circuit has taken a different approach. *See*

Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet), 737 F.3d 238, 251 (2d Cir. 2013) (holding that section 109(a) applies in the chapter 15 context).

101. To the extent section 109(a) of the Bankruptcy Code applies in chapter 15, the requirements set forth therein are satisfied here. Under section 109(a) of the Bankruptcy Code, a corporate entity is eligible to be a “debtor” under the Bankruptcy Code where it has “property in the United States.” Section 109(a) does not require a specific quantum of property in the United States, nor does it impose a minimum on how long such property must have had situs in the United States. *See, e.g., In re Glob. Ocean Carriers Ltd.*, 251 B.R. 31, 39 (Bankr. D. Del. 2000) (“Therefore, the Court concludes that . . . the language of § 109(a) is clear, and the Court does not have discretion to look behind the language and declare that the quantity of property in the United States will be decisive of eligibility to be a debtor under the Code.”).

102. Four of the Debtor entities—Xebec Holding USA Inc., Xebec Adsorption USA, Inc., XBC Flow Services – Wisconsin Inc., and Xebec Systems USA LLC—are Delaware entities. Thus, the Debtors have assets in the United States by virtue of those United States subsidiaries. Further, the Debtors have an interest in certain funds deposited with McDonald Hopkins LLC and Bielli & Klauder, LLC, as United States counsel to the Debtors in connection with the Chapter 15 Cases, which funds are held in accounts in the United States.

103. Professional retainers on deposit in bank accounts located in the United States are “property in the United States” under section 109(a) of the Bankruptcy Code. *See e.g., In re Northshore Mainland Servs., Inc.*, 537 B.R. 192, 200 (Bankr. D. Del. 2015); *In re Glob. Ocean Carriers Ltd.*, 251 B.R. at 39; *In re B.C.I. Fins. Pty Ltd.*, 583 B.R. 288, 293–96 (Bankr. S.D.N.Y. 2018). Accordingly, the Debtors constitute eligible debtors under section 109(a) of the Bankruptcy Code.

B. Section 1517(a) of the Bankruptcy Code Is Satisfied

104. Section 1517(a) of the Bankruptcy Code provides that, after notice and a hearing, “an order recognizing a foreign proceeding shall be entered if . . . (1) such foreign proceeding for which recognition is sought is a foreign main proceeding . . . within the meaning of section 1502; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515.” 11 U.S.C. § 1517. Each requirement is met here.

1. The Canadian Proceeding Is a “Foreign Proceeding” under Section 1502 of the Bankruptcy Code

105. The Canadian Proceeding is a “foreign proceeding” under section 101(23) of the Bankruptcy Code and, as such, satisfies the first condition for entry of an order recognizing such proceeding under section 1517(a) of the Bankruptcy Code. Section 101(23) of the Bankruptcy Code defines a “foreign proceeding” as “a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.” 11 U.S.C. § 101(23); *see In re ABC Learning Centres Ltd.*, 728 F.3d 301, 308 (3d Cir. 2013) (delineating the elements of the definition of “foreign proceeding” per section 101(23)). Section 1502(3) of the Bankruptcy Code defines “foreign court” as “a judicial or other authority competent to control or supervise a foreign proceeding.”

106. Courts in this jurisdiction and across the United States have uniformly recognized Canadian CCAA proceedings as “foreign proceedings” under chapter 15 of the Bankruptcy Code. *See, e.g., In re Motorcycle Tires & Accessories LLC*, No. 19-12706 (KBO) (Bankr. D. Del. Jan. 22, 2020) [Docket No. 38]; *In re Unique Broadband Systems Ltd.*, No. 19-11321 (BLS) (Bankr. D. Del. July 8, 2019) [Docket No. 18]; *In re Sino-Forest Corp.*, 501 B.R. 655 (Bankr. S.D.N.Y.

2013); *In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685 (Bankr. S.D.N.Y. 2010); *Collins v. Oilsands Quest Inc.*, 484 B.R. 593 (S.D.N.Y. 2012).

i. The Canadian Proceeding Is a “Proceeding”

107. The hallmark of a “proceeding” is a “statutory framework that contains [sic] a company’s actions and that regulates the final distribution of a company’s assets” and includes “acts and formalities set down in law so that courts, merchants and creditors can know them in advance, and apply them evenly in practice.” *Flynn v. Wallace (In re Irish Bank Resolution Corp.)*, 538 B.R. 692, 697 (D. Del. 2015) (quoting *In re Betcorp Ltd.*, 400 B.R. 266, 278 (Bankr. D. Nev. 2009)). The Canadian Proceeding is governed by the statutory framework set forth in the CCAA. As detailed in the Abitan Declaration, the CCAA specifies the acceptable procedures for implementing a Canadian restructuring, including commencing the restructuring, designating classes of creditors, holding meetings, and voting. The CCAA also sets forth the standards for approval of Canadian restructuring proposals. Here, the Initial Order provided that Deloitte Restructuring Inc. (the “**Monitor**”) be appointed to monitor the business and financial affairs of the Debtors, and required the Monitor to “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.” Initial Order at ¶ 40(a). The Monitor is also required to “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.” *Id.* The Canadian Proceeding is, therefore, a “proceeding.” *See, e.g., In re Irish*

Bank Resolution Corp. Ltd., No. 13-12159 (CSS), 2014 WL 9953792, at *12–13 (Bankr. D. Del. Apr. 30, 2014), *aff'd*, 538 B.R. 692 (D. Del. 2015).

ii. The Canadian Proceeding Is Judicial in Character

108. In assessing whether a foreign bankruptcy proceeding is judicial in character, a United States Bankruptcy Court reviewed the following elements:

There are two mandatory court appearances, the first, on the *ex parte* summons to convene the class meetings and the second, on the sanctioning of the scheme. . . . Both hearings required the court to review the materials submitted and evaluate them. . . . With regard to the second hearing, . . . the court plays a significant role in that it must assure itself that the scheme is in the best interests of creditors and members. Lastly, creditors and members had a plethora of opportunities to object to the scheme before it was sanctioned

In re Petition of Bd. of Dirs. of Hopewell Int'l Ins. Ltd., 238 B.R. 25, 52 (Bankr. S.D.N.Y. 1999), *aff'd*, 275 B.R. 699 (S.D.N.Y. 2002).

109. Similarly, here, the Canadian Court, a Canadian judicial body, has issued the Initial Order, in which the Canadian Court states that the Debtors may submit to their creditors one or more plans of compromise or arrangement in accordance with the CCAA. Likewise, and as described herein, the Canadian Court appointed the Monitor and ordered the Monitor to give notice of the proceedings to the creditors. The creditors will have the opportunity to provide input on a proposed restructuring plan, and raise objections before the Canadian Court, such that the rights of the creditors are protected.

iii. The Canadian Proceeding Is Collective in Nature

110. A proceeding is “collective” if it considers the rights and obligations of all creditors. *See In re ABC Learning Centres Ltd.*, 445 B.R. 318, 328 (Bankr. D. Del. 2010), *aff'd*, 728 F.3d 301, 308 (3d Cir. 2013) (finding an Australian liquidation proceeding collective in nature because the liquidator was required to “consider the rights of all the creditors in distributing assets” and “distribute assets according to priorities on a pro rata basis”); *see also In re ENNIA Caribe Holding*

N.V., 594 B.R. 631, 638–39 (Bankr. S.D.N.Y. 2018) (finding a foreign proceeding “collective” in nature where the plain language of the applicable statute required findings that it was in the interest of the joint creditors).

111. There is no serious debate in the case law or practice that Canadian CCAA proceedings are “collective” in nature. Like the Australian proceeding discussed herein, the Canadian Proceeding will “consider the rights of all the creditors in distributing assets.” Creditors have the opportunity to attend and vote in favor of a restructuring plan. The Canadian Proceeding is, therefore, collective in nature.

iv. The Canadian Proceeding Is Located in a Foreign Country

112. The Initial Order was issued by the Canadian Court in Canada, any creditor meetings will take place in Canada, and the required hearings will be held before the Canadian Court in Canada. Therefore, there can be no doubt that the Canadian Proceeding is located in Canada, a foreign country.

v. The Canadian Proceeding Subjects the Debtors to Supervision of a Foreign Court

113. “[T]he requirement that the debtor’s assets be subject to the control and supervision of a foreign court does not require that the foreign proceedings play out entirely in a judicial context like cases under the Bankruptcy Code. *The ability of a party to ask for court assistance concerning the proceeding is sufficient to satisfy this element.*” 8 Richard Levin & Henry J. Sommer, *Collier on Bankruptcy* ¶ 1501.03(1) (16th ed. Rev. 2019) (emphasis added); see *ABC Learning Centres*, 445 B.R. at 332 (finding a “proceeding” to be subject to supervision of a foreign court where provisions allow interested parties to seek relief from the court).

114. The Canadian Proceeding clearly meets this minimal standard. The entire CCAA proceeding is court supervised. Upon a vote by the creditors approving any proposed plan of

reorganization, the Canadian Court must then approve the plan as a final step. Upon Canadian Court approval, the company subject to a CCAA proceeding continues forward under the plan until it has satisfied the plan's requirements.

vi. The Canadian Proceeding Is Intended to Facilitate a Reorganization

115. The Canadian Proceeding is an essential component of a restructuring by which the Debtors will reorganize their capital structure, preserve the jobs of their employees, and reorganize as a going concern. There can be no reasonable dispute that the Foreign Proceeding is a proceeding for the purposes of reorganization.

C. The Canadian Proceeding Is a “Foreign Main Proceeding”

116. Section 1502(4) defines a “foreign main proceeding” as “a foreign proceeding pending in the country where the debtor has the center of its main interests.” *See* 11 U.S.C. § 1502(4). The Bankruptcy Code does not define the term “center of main interests” (“COMI”) but section 1516 establishes the presumption that COMI is the place of the debtor’s registered office. 11 U.S.C. § 1516(c) (“In the absence of evidence to the contrary, the debtor’s registered office . . . is presumed to be the center of the debtor’s main interests.”). Where this statutory presumption does not apply, courts have generally considered a number of factors to determine COMI, including: (a) the location of the debtor’s headquarters; (b) the location of those who actually manage the debtor (which, conceivably, could be the headquarters of a holding company); (c) the location of the debtor’s primary assets; (d) the location of the majority of the debtor’s creditors or of a majority of the creditors who would be affected by the case; and (e) the jurisdiction whose law would apply to most disputes. *See In re Irish Bank Resolution Corp. Ltd.*, No. 13-12159 (CSS), 2014 WL 9953792, at *16 (Bankr. D. Del. Apr. 30, 2014); *ABC Learning Centres*, 445 B.R. at 333 (citing *In re Bear Stearns*, 389 B.R. 325 (S.D.N.Y. 2008)).

117. Here, there are thirteen debtors. Four of the thirteen debtors are organized under the laws of Canada and are located in Québec, Ontario and British Columbia, including the direct or indirect owner of each of the United States subsidiaries. The Debtors' headquarters are in Canada. A large number of the Debtors' employees are located in Canada. The Bankruptcy Court may, therefore, presume the Debtors' COMI is Canada. *See* 11 U.S.C. § 1516(c). Furthermore, in its Initial Order, the Canadian Court already has ruled that the Debtors' COMI is located in Montréal, Québec, Canada. Accordingly, the Canadian Proceeding qualifies as a foreign main proceeding and, thus, the first element of section 1517(a) of the Bankruptcy Code is satisfied.

D. The Chapter 15 Cases Were Commenced by a Duly-Authorized “Foreign Representative”

118. For a recognition motion to be granted, a foreign debtor's application for recognition must be made by a “foreign representative” who is a person or body. *See* 11 U.S.C. §§ 1515(a), 1517(a)(2). Section 101(24) then defines “foreign representative” as follows:

The term “foreign representative” means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24). Section 1516(a) of the Bankruptcy Code provides that “[i]f the decision [commencing the foreign proceeding] . . . indicates . . . that the person or body is a foreign representative, the court is entitled to so presume.”

119. Under section 101(41) of the Bankruptcy Code, the term “person” includes a corporation. Here, the Canadian Court has authorized Xebec Adsorption Inc., a corporation, to act as foreign representative and to apply for recognition of the CCAA Proceeding in the Bankruptcy Court pursuant to the Initial Order. Accordingly, Xebec Adsorption Inc. is qualified to be the foreign representative.

E. The Chapter 15 Petitions and Accompanying Documents Satisfy Section 1515 and Bankruptcy Rule 1007(a)(4)

120. The Foreign Representative properly commenced the Chapter 15 Cases by filing the Chapter 15 Petitions in accordance with section 1515(a) of the Bankruptcy Code, accompanied by all documents and information required by Bankruptcy Rule 1007(a)(4) and sections 1515(b) and (c) of the Bankruptcy Code, including this Motion. Under sections 1515(b) and (c) of the Bankruptcy Code:

(b) A petition for recognition shall be accompanied by—

(1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;

(2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or

(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

11 U.S.C. § 1515(b)–(c). Bankruptcy Rule 1007(a)(4) requires that a chapter 15 petition include:

(a) a corporate ownership statement containing the information described in Bankruptcy Rule 7007.1 and (b) a list containing (i) the names and addresses of all persons or bodies authorized to administer foreign proceedings of the debtor, (ii) all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and (iii) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code.

121. In accordance with section 1515(b) of the Bankruptcy Code, the Foreign Representative annexed to the Chapter 15 Petitions and the Abitan Declaration a copy of the Initial

Order, confirming the commencement of the Canadian Proceeding, the Chapter 15 Cases, and the appointment of the Foreign Representative. In addition, the Chapter 15 Petitions and accompanying documents include all documents and information required by the Bankruptcy Code, and the Bankruptcy Rules. Accordingly, the Foreign Representative has satisfied the requirements of sections 1515(b) and (c) of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4).

II. The Relief Requested by this Motion Achieves the Bankruptcy Code’s Objectives and Policy

122. The purpose of chapter 15 is set forth in section 1501 of the Bankruptcy Code and includes:

(1) cooperation between (A) courts of the United States, the United States trustees, trustees, examiners, debtors, and debtors in possession; and (B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases; (2) greater legal certainty for trade and investment; (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor; (4) protection and maximization of the value of the debtor’s assets; and (5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

11 U.S.C. § 1501.

123. The relief requested in this Motion achieves these objectives. Recognizing the Canadian Proceeding promotes the fair and efficient administration of a cross-border reorganization procedure that protects the interests of all affected parties. Recognition will centralize the process of resolving any residual claims against the Debtors in Canada. Claims will be treated in accordance with the CCAA, which comports with Canadian law and is similar to comparable United States laws, and any disputes will be subject to the uniform jurisdiction of one tribunal—the Canadian Court.

124. In particular, recognition will further promote the “protection and maximization of the debtor’s assets” and facilitate the “rescue of troubled businesses.” *Cf.* 11 U.S.C. § 1501(a)(4)–

(5). The Foreign Representative believes that commencing a CCAA proceeding and taking steps towards a potential plan thereunder is the value-maximizing path forward for the Debtors' stakeholders. *Cf.* 11 U.S.C. § 1501(a)(2).

125. More fundamentally, recognition will facilitate cooperation between courts in Canada and the United States—nations that share a longstanding common law tradition of cooperation and comity, as well as long standing precedent by which Canadian reorganizations are recognized as a matter of United States law.

III. The Debtors Should Receive the Protection of the Automatic Stay

126. If a United States Bankruptcy Court recognizes a foreign main proceeding under chapter 15, section 1520(a)(1) of the Bankruptcy Code provides that actions against the foreign debtor or “property of the debtor that is within the territorial jurisdiction of the United States” are stayed under section 362—the Bankruptcy Code’s “automatic stay.”

127. The Debtors currently are parties to litigation commenced against them, including two proposed class actions against Xebec Adsorption Inc., among other litigation or potential litigation.

128. If the Bankruptcy Court recognizes the foreign main proceeding, to preserve the value of the Xebec Group and the Debtors' assets, the Bankruptcy Court should recognize and apply the automatic stay under section 362 of the Bankruptcy Code.

NOTICE

129. Notice of this Motion and related documents will be provided in accordance with the procedures set forth in the *Motion for Entry of Order (A) Scheduling Recognition Hearing and Specifying Form and Manner of Service of Notice and (B) Granting Related Relief* (the “**Scheduling Motion**”) filed contemporaneously herewith. The Foreign Representative respectfully submits that no further notice is required.

NO PRIOR REQUEST

130. No previous request for the relief sought herein has been made by the Foreign Representative to this or any other court.

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WHEREFORE, the Foreign Representative respectfully requests that the Bankruptcy Court grant this Motion and enter the Proposed Order, (a) granting recognition of the Canadian Proceeding as a “foreign main proceeding” pursuant to chapter 15 of the Bankruptcy Code, (b) granting recognition of the Foreign Representative as the “foreign representative” in respect of the Canadian Proceeding, (c) recognizing, granting comity to, and giving full force and effect in the United States to the Canadian Proceeding and the Canadian Orders, (d) affording the Debtors the protection of the automatic stay under section 362 of the Bankruptcy Code, and (e) granting such other and further relief as is appropriate under the circumstances.

Dated: September 30, 2022
Wilmington, Delaware

BIELLI & KLAUDER, LLC

/s/ David M. Klauder

David M. Klauder, Esquire (No. 5769)
1204 N. King Street
Wilmington, Delaware 19801
Phone: (302) 803-4600
Facsimile: (302) 397-2557
Email: dklauder@bk-legal.com

- and -

MCDONALD HOPKINS LLC

David A. Agay (*pro hac vice* admission pending)
Joshua A. Gadharf (*pro hac vice* admission pending)
Ashley J. Jericho (*pro hac vice* admission pending)
300 North LaSalle Street
Suite 1400
Chicago, Illinois 60654
Telephone: (312) 280-0111
Facsimile: (312) 280-8232
Email: dagay@mcdonaldhopkins.com
jgadharf@mcdonaldhopkins.com
ajericho@mcdonaldhopkins.com

Counsel for the Foreign Representative

EXHIBIT A
Proposed 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 RECOGNITION OF
FOREIGN MAIN PROCEEDING AND CERTAIN RELATED RELIEF**

Upon the motion (the “**Motion**”)² of Xebec Adsorption Inc., in its capacity as the duly-appointed foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (the “**Debtors**”), for entry of an order pursuant to sections 105(a), 1504, 1507, 1510, 1515, 1517, 1520, 1521, and 1522 of the Bankruptcy Code: (a) granting recognition of the Canadian Proceeding as a “foreign main proceeding” pursuant to chapter 15 of the Bankruptcy Code; (b) granting recognition of the Foreign Representative as the “foreign representative,” as defined in section 101(24) of the Bankruptcy Code, in respect of the Canadian Proceeding; (c) recognizing, granting comity to, and giving full force and effect in the United States to the Canadian Proceeding and the Canadian Orders; and (d) affording the Debtors the protection of the automatic stay under section 362 of the Bankruptcy Code; and the Bankruptcy Court having held a hearing to consider the relief requested in the Chapter 15 Petitions (the “**Hearing**”); and upon the Vounassis Declaration and the

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.

² Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

Abitan Declaration, the record of the Hearing, and all of the proceedings had before the Bankruptcy Court; and after due deliberation and sufficient cause appearing therefor,

THE COURT HEREBY FINDS AND CONCLUDES THAT:

A. The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, 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. The Bankruptcy Court has jurisdiction over 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 February 29, 2012.

C. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Bankruptcy Court may enter a final order consistent with Article III of the United States Constitution.

D. Venue is proper in this district pursuant to 28 U.S.C. § 1410.

E. The Debtors have property in the United States, and the Debtors are eligible to be debtors in a chapter 15 case pursuant to, as applicable, 11 U.S.C. §§ 109 and 1501.

F. This case was properly commenced pursuant to 11 U.S.C. §§ 1504, 1509, and 1515.

G. The Foreign Representative is a duly appointed "foreign representative" of the Debtors as such term is defined in 11 U.S.C. § 101(24).

H. The Foreign Representative is a corporation and, thus, an "entity" as such term is defined in 11 U.S.C. § 101(41).

I. The Foreign Representative has satisfied the requirements of 11 U.S.C. § 1515 and Bankruptcy Rule 1007(a)(4).

J. The Canadian Proceeding is a “foreign proceeding” within the meaning of 11 U.S.C. § 101(23).

K. The Canadian Proceeding is pending before the Canadian Court in Canada, where the Debtors have their “center of its main interests” as referred to in 11 U.S.C. § 1517(b)(1) and, as such, the Canadian Proceeding is entitled to recognition as a “foreign main proceeding” pursuant to 11 U.S.C. §§ 1502(4) and 1517(b)(1).

L. The Canadian Proceeding is entitled to recognition by the Bankruptcy Court pursuant to 11 U.S.C. §§ 1515 and 1517(a).

M. The Debtors and the Foreign Representative are entitled to all of the relief set forth in 11 U.S.C. § 1520, without limitation.

N. The Debtors and the Foreign Representative are entitled to all of the relief set forth herein under 11 U.S.C. §§ 1507 and 1521(a).

O. The relief granted hereby is necessary and appropriate to effectuate the objectives of chapter 15, to protect the Debtors and the interests of its creditors and other parties in interest, and is consistent with the laws of the United States, international comity, public policy, and the policies of the Bankruptcy Code.

P. Absent the requested granted herein, the efforts of the Debtors, the Canadian Court, the Foreign Representative in conducting the Canadian Proceeding and effectuating the restructuring, and Canadian law all may be frustrated by the actions of individual creditors, a result contrary to the purposes of chapter 15.

Q. Good, sufficient, appropriate, and timely notice of the filing of, and the hearing on, the Chapter 15 Petitions was given, which notice was deemed adequate for all purposes, and no further notice need be given.

R. All creditors and other parties in interest, including the Debtors, are sufficiently protected by the grant of relief ordered hereby in accordance with section 1522(a) of the Bankruptcy Code.

For all of the foregoing reasons, and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Chapter 15 Petitions are granted.
3. The Canadian Proceeding is granted recognition as a foreign main proceeding as defined in 11 U.S.C. § 101(23) pursuant to 11 U.S.C. § 1517(a).
4. The Canadian Proceeding is a collective, court-supervised proceeding governed in accordance with applicable Canadian law, as it may be amended from time to time, and is granted recognition as a foreign main proceeding pursuant to 11 U.S.C. § 1517(b)(1) and is entitled to the protections of 11 U.S.C. § 1520(a), including, without limitation, the application of the protection afforded by the automatic stay under 11 U.S.C. § 362 to the Debtors and to the Debtors' property that is within the territorial jurisdiction of the United States.
5. Xebec Adsorption Inc. is the duly appointed foreign representative of the Debtors within the meaning of 11 U.S.C. § 101(24), is authorized to act on behalf of the Debtors in the Chapter 15 Cases, and is established as the exclusive representative of the Debtors in the United States.

6. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to the Bankruptcy Court at the Hearing, or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits.

7. All persons and entities subject to the jurisdiction of the United States are permanently enjoined and restrained from taking any actions inconsistent with the Canadian Orders or this order, including, without limitation, commencing, continuing, or enforcing any action or legal proceeding against the Debtors based on any claims, liabilities, and/or causes of actions against the Debtors, including, without limitation:

a. taking or continuing any act to obtain possession of, or exercise control over, including, without limitation, attaching, repossessing, seizing, or disposing of, as applicable, the Debtors, or any of their property (including intangible property or any proceeds thereof, collectively, the “**Property**”);

b. transferring, encumbering, relinquishing or disposing of any Property other than to the Foreign Representative;

c. commencing, continuing, or enforcing any action or legal proceeding (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever), including, without limitation, by way of counterclaim (each individually, an “**Action**”) against the Debtors or any of the Property;

d. any judgment, wherever and whenever obtained, to the extent such judgment is a determination of a liability of the Debtors with respect to any debt or liability cancelled, discharged, or restructured as a result of Canadian law, is unenforceable in the United States;

e. commencing or continuing any act or Action to create, perfect, or enforce any lien, set-off, or other claim against the Debtors or the Property, including, without limitation, rights under any contracts with the Debtors;

f. commencing any suit, action, or proceeding against the Debtors, the Foreign Representative, or any of their respective successors, directors, officers, agents, employees, representatives, advisors, or attorneys in respect of any claim or cause of action, in law or in equity, arising out of or relating to any action taken or omitted to be taken in connection with the Chapter 15 Cases or the Canadian Proceeding;

g. declaring or considering the filing of the Canadian Proceeding or the Chapter 15 Cases a default or event of default under any agreement, contract, or arrangement; and taking any action in contravention to or inconsistent with the Canadian Orders, including, without limitation, against the Debtors, or any of the Property; provided, however, for the avoidance of doubt, this order shall enjoin persons and entities subject to the jurisdiction of the United States from taking any actions, including, without limitation, the actions enumerated in (a) through (g) above, only to the extent such actions are inconsistent with the Canadian Orders or would otherwise interfere with the enforcement or implementation of the Canadian Orders.

8. The administration, realization, and distribution of all or part of the assets of the Debtors within the territorial jurisdiction of the United States is entrusted to the Foreign Representative, and the Foreign Representative is established as the exclusive representative of the Debtors in the United States.

9. The Foreign Representative, the Debtors, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), or orders of the Bankruptcy Court.

10. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the Canadian Proceeding, this order, the Chapter 15 Cases, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the rights or benefits afforded to such persons under 11 U.S.C. §§ 306 and 1510.

11. No later than five (5) business days after its entry or as soon as practicable thereafter, the Foreign Representative shall serve, or cause to be served, this order on the Notice Parties (as defined in the Scheduling Order) in accordance with the procedures set forth in the *Order (A) Scheduling Hearing on Chapter 15 Petitions and recognition and (B) Specifying*

Form and Manner of Service of Notice (the “**Scheduling Order**”). Such service and notice is good and sufficient service and adequate notice for all purposes.

12. This order is without prejudice to the Foreign Representative requesting any additional relief in the Chapter 15 Case, including seeking recognition and enforcement by the Bankruptcy Court of any further orders of the Canadian Court.

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

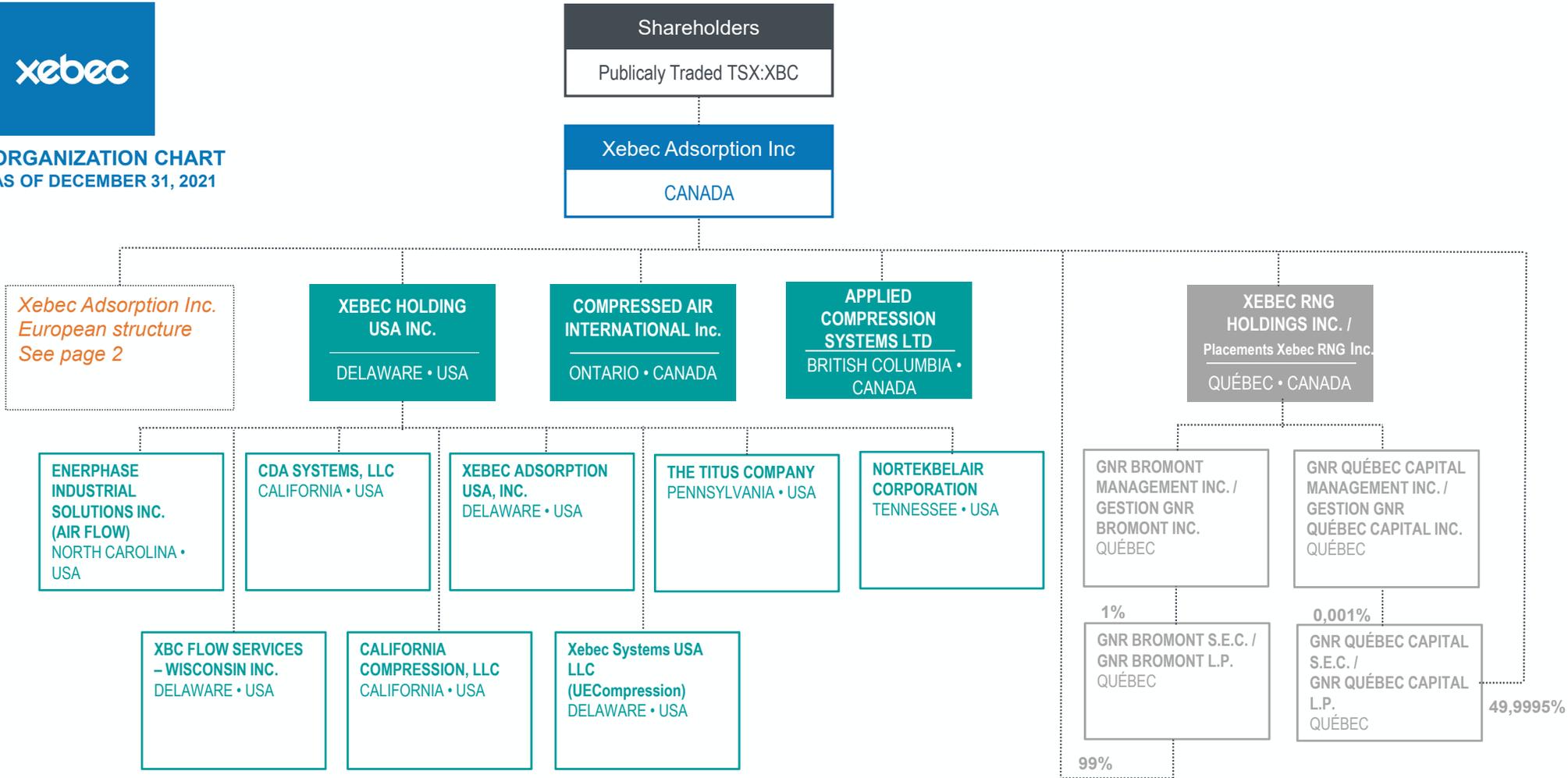
14. The Bankruptcy Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this order.

15. Notwithstanding any applicability of any Bankruptcy Rules or Local Rules, the terms and conditions of this order shall be immediately effective and enforceable upon its entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

EXHIBIT B
Organizational Chart



ORGANIZATION CHART
AS OF DECEMBER 31, 2021

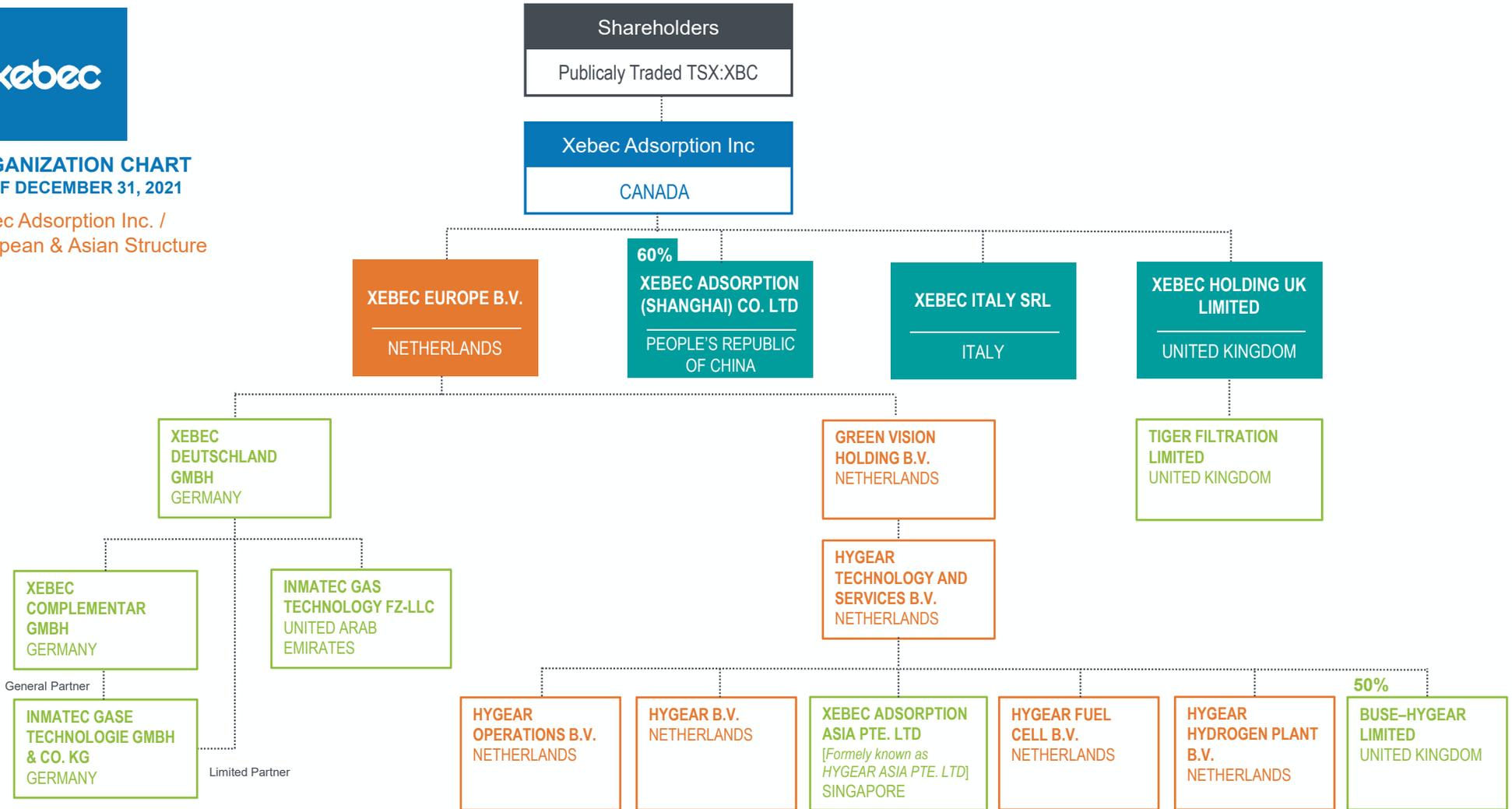


Unless otherwise indicated, all participations are at 100%.



**ORGANIZATION CHART
AS OF DECEMBER 31, 2021**

Xebec Adsorption Inc. /
European & Asian Structure



Unless otherwise indicated, all participations are at 100%.

EXHIBIT C

Canadian 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-

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

XEBEC ADSORPTION INC., a legal person having its
elected domicile at 700-1130 Sherbrooke Street
West, in the city and judicial district of Montréal,
Québec, H3A 2M8

-and-

XEBEC RNG HOLDINGS INC., a legal person having
its registered office at 730 Industriel Boulevard, in the
city and judicial district of Terrebonne, Québec, J7C
3V4

-and-

APPLIED COMPRESSION SYSTEMS LTD., a legal
person having its registered office at 900 West
Hastings Street, 9th Floor, in the city of Vancouver,
British Columbia, V6C 1E5

-and-

COMPRESSED AIR INTERNATIONAL INC., a legal
person having a place of business at 60 Haist Ave,
Unit #1 in the city of Woodbridge, Ontario, L4L 5V4

-and-

XEBEC HOLDING USA INC., a legal person having
its registered office at 532 Patterson Avenue, Suite
180, in the town of Mooresville, North Carolina,
28115-2173, United States

-and-

ENERPHASE INDUSTRIAL SOLUTIONS, INC., a
legal person having its registered office at 532
Patterson Avenue, Suite 180, in the town of

- 2 -

Mooresville, North Carolina, 28115-2173, United States

-and-

CDA SYSTEMS, LLC, a legal person having its registered office at 532 Patterson Avenue, Suite 180, in the town of Mooresville, North Carolina, 28115-2173, United States

-and-

XEBEC ADSORPTION USA INC., a legal person having its registered office at 532 Patterson Avenue, Suite 180, in the town of Mooresville, North Carolina, 28115-2173, United States

-and-

THE TITUS COMPANY, a legal person having a place of business at 36 Mountain View Rd, in the city of Morgantown, Pennsylvania, 19543, United States

-and-

NORTEKBELAIR CORPORATION, a legal person having a place of business at 1713 Henry G Ln St, in the city of Maryville, Tennessee, 37801, United States

-and-

XBC FLOW SERVICES – WISCONSIN INC., a legal person having its registered office at 532 Patterson Avenue, Suite 180, in the town of Mooresville, North Carolina, 28115-2173, United States

-and-

CALIFORNIA COMPRESSION, LLC, a legal person having its registered office at 532 Patterson Avenue, Suite 180, in the town of Mooresville, North Carolina, 28115-2173, United States

-and-

XEBEC SYSTEMS USA, LLC, a legal person having its registered office at 532 Patterson Avenue, Suite

180, in the town of Mooresville, North Carolina,
28115-2173, United States

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC., a legal person
having a place of business at 500-1190
des Canadiens-de-Montréal Avenue, in the city and
judicial district of Montréal, Québec, H3B 0G7

Proposed Monitor

**APPLICATION FOR THE ISSUANCE OF A FIRST DAY INITIAL
ORDER, A DEEMED EXTENSION OF THE STAY PERIOD AND A
BIDDING PROCEDURES ORDER**

**(Sections 4, 9, 10, 11, 11.02, 11.03, 11.51, 11.52, 11.7 and 23 of
the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION, IN THE JUDICIAL DISTRICT OF MONTRÉAL, THE
DEBTORS / PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:**

I. INTRODUCTION

1. The Debtors / Petitioners Xebec Adsorption Inc. ("**Xebec Inc.**"), Xebec RNG Holdings Inc. ("**RNG Holdings**"), Applied Compression Systems Ltd. ("**Applied**"), Compressed Air International Inc. ("**Compressed**"), Xebec Holding USA Inc. ("**Holding USA**"), Enerphase Industrial Solutions, Inc. ("**Enerphase**"), California Compression, LLC ("**California Compression**"), CDA Systems, LLC ("**CDA**"), Xebec Adsorption USA Inc. ("**Xebec USA**"), The Titus Company ("**Titus**"), Nortekbelair Corporation ("**Nortekbelair**"), Xebec Systems USA, LLC ("**Xebec Systems**"), XBC Flow Services – Wisconsin Inc. ("**XBC Wisconsin**", collectively, the "**Petitioners**") hereby seek relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**").
2. The Petitioners and the various overseas subsidiaries of Xebec Inc. are collectively defined herein as the "**Xebec Group**" or the "**Company**".
3. Headquartered in Montréal, Québec and established in 1967, Xebec Group operates in the energy transition space. As described herein, the Xebec Group is a global provider of sustainable gas solutions used in energy, mobility and industry applications.

4. The Company specializes in (i) deploying a portfolio of proprietary technologies for the distributed production of hydrogen, renewable and low-emission natural gas, oxygen and nitrogen and (ii) the manufacturing and servicing industrial equipment for compressed air, gas dehydration, sequestration, purification and filtration.
5. By the present Application, the Petitioners are seeking the issuance of the following orders by this court:
 - (a) At the first day hearing, a first-day initial order (the “**Initial Order**”), a draft copy of which is communicated herewith as **Exhibit P-1**:
 - i) declaring that the Petitioners are corporations to which the CCAA applies;
 - ii) staying all proceedings and remedies taken or that might be taken in respect of the Petitioners and their respective Directors and Officers (as defined below), or any of their property, except as otherwise set forth in the Initial Order or as otherwise permitted by law (the “**Stay**”), for an initial period of ten (10) days in accordance with the CCAA (the “**Stay Period**”);
 - iii) ordering that unless any contestation is served and filed on, or prior to, October 5, 2022, the Stay Period be deemed to have been extended to October 11, 2022;
 - iv) appointing Deloitte Restructuring Inc. (“**Deloitte**” or the “**Proposed Monitor**”) as the monitor of the Petitioners in these proceedings (the “**Monitor**”);
 - v) granting an Administration Charge and a D&O Charge (as such terms are defined below) in amounts sufficient to cover the potential exposure of the beneficiaries of such charges for the initial Stay Period and the deemed extension thereof;
 - vi) authorizing 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;
 - vii) declaring that Québec is the “*center of main interest*” of the Petitioners and, accordingly, authorizing 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**”);

- viii) suspending any and all continuous disclosure, reporting and filing obligations of, and audit committee requirements applicable to Xebec Inc. as a result of its status as a reporting issuer in each of the provinces and territories of Canada subject to Canadian securities laws, rules, regulations and policy statements;
- ix) ordering the sealing of certain confidential exhibits which may be filed in support of this Application; and
- x) granting other relevant first day relief.

A comparison of draft Initial Order (Exhibit P-1) and the Model CCAA Initial Order issued by the Bar of Montréal is communicated herewith as **Exhibit P-1A**.

- (b) at the first day hearing, an order (the “**Bidding Procedures Order**”), a draft copy of which is communicated herewith as **Exhibit P-2**:
 - i) approving the proposed Sale and Investment Solicitation Process (the “**SISP**”);
 - ii) approving the engagement of NBF (as defined below) to assist in the implementation of the SISP in accordance with the terms of the engagement letter dated September 27, 2022 (the “**Engagement Letter**”), communicated herewith, under seal, as **Exhibit P-3**; and
 - iii) approving the Transaction Fee Charge (as defined below).
- 6. At the “*comeback*” hearing, the Petitioners intend to seek an amended and restated initial order (the “**ARIO**”), to be communicated in due course and providing for, *inter alia*, the following additional relief:
 - i) extending the Stay Period until on or about November 26, 2022;
 - ii) increasing the authorization for 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 \$1,000,000;
 - iii) approving the KERP and the KERP Charge (as such terms are defined below);
 - iv) increasing the quantum of the Administration Charge and the D&O Charge previously granted in the Initial Order in amounts sufficient to cover the potential exposure of the beneficiaries of such charges during the Stay Period; and
 - v) granting other relevant relief sought by the Petitioners.

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II. COMPANY OVERVIEW

A. Xebec's Business

Products and Services Offered by the Xebec Group

7. The Company primarily supplies a wide range of renewable and low-emission gas products and services sold globally through several channels including direct sales, channel partners, project developers, and e-commerce.
8. The Company's 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.
9. The Company's operations include manufacturing, research and development, service and sales. It operates in North America, Europe, the Middle East and Asia.
10. The Xebec Group's business is divided into three key segments: a cleantech solutions segment, an industrial service and support segment (including the Cleantech Service Network, as defined below) and a renewable gas infrastructure segment.

(a) Cleantech Solutions Segment (Equipment/Systems)

(i) PSA Systems

11. Key to the Xebec Group's business in the three segments mentioned above is its proprietary pressure swing adsorption technology (the "**PSA**"), which is used to remove targeted impurities or separate bulk mixtures of gases and to efficiently upgrade hydrogen-containing reformat, petrochemical process gas streams and refinery off-gas streams to pure and ultra-pure hydrogen.
12. The Xebec Group's PSA system is among the most compact, cost-effective and reliable available on the market. It is used in several products manufactured by the Xebec Group, including the Biostream (as defined below), industrial gas recycling systems and its industrial gas purification systems. The Xebec Group also supplies its PSA system to customers around the world.
13. To date, the Company has supplied more than 10,000 PSA systems to more than 1,500 customers for a wide variety of industrial applications such as manufacturing, food processing, as well as medical, pharmaceutical and petrochemical industries.
14. The PSA system is manufactured in the Xebec Group's facility in Blainville, Québec.

(ii) Biogas Conversion to Renewable Natural Gas

15. The Company deploys systems to convert biogas to renewable and low-emission natural gas from agricultural digesters, source separated organics facilities, landfills and wastewater treatment plants.
16. The Xebec Group is also implementing a shift towards standardized biogas upgrading products for the renewable and low-emission natural gas market. In 2020, it launched its proprietary fully containerized and standardized unit for small-scale biogas upgrading applications (the “**Biostream**”).
17. The Biostreams are manufactured in the Xebec Systems facility in Colorado for the U.S. market and in the Xebec Group’s facility in Blainville, Québec for the Canadian market.
18. The Xebec Group’s research and development activities related to biogas conversion to renewable and to carbon capture are located in Blainville, Québec.

(iii) Hydrogen (Purification, Generation and Distribution)

19. The Company provides systems for on-site hydrogen generation (the “**Hy.Gen Systems**”), which are manufactured at the HyGear Entities’ (as defined below) facility located in Arnhem, The Netherlands.
20. They are built inside shipping containers, which makes them easy to transport and small in environmental footprint. Hy.Gen Systems are based on steam methane reforming technology, a process by which hydrogen is created out of water and natural gas. PSA Systems operate autonomously.
21. The Company also supplies hydrogen to its clients by way of on-site generation technologies and conventional gas distribution methods, in addition to producing containerized electrolysis systems.

(iv) On-site Oxygen and Nitrogen Generation

22. The Xebec Group offers several products for the on-site generation of oxygen and nitrogen, including compact generators. These products are produced at their manufacturing facility in Herrsching am Ammersee, Germany.
23. On-site generators of oxygen and nitrogen allow customers to avoid delivery issues and costs and to support the protection of the climate and the environment by reducing emissions.
24. On-site oxygen generators are used in multiple applications, including notably in for medical oxygen supply, aquatic farming, industrial applications and the production of biogas and renewable and low-emission natural gas.
25. On-site Nitrogen generators are used in food processing, metal hardening and other industrial processes.

(v) Carbon Capture and Sequestration

26. Carbon capture and sequestration is an emerging segment for the Xebec Group, with demand from customers to assist them in further reducing the carbon emissions from their equipment and to build new cleantech solutions.
27. The Company is utilizing its PSA system for new applications in separating associated gas streams, and is now accelerating its efforts to gain more exposure in this market.
28. The Company's extensive experience in compressing gases has also allowed it to gain traction in the CO₂ sequestration market by providing compression technology to pipeline builders and operators.

(b) Industrial Service and Support Segment

29. The Xebec Group has historically been involved in the manufacturing and servicing of industrial equipment for compressed air and gas dehydration, separation, purification and filtration worldwide. This business segment is the core segment of the Xebec Group.
30. In this context, the Company supplies energy-efficient compressed air dryers and compressed air and gas filters for a broad range of industrial applications, as well as industrial purification systems, dryers and chillers from air and gas streams. This equipment is manufactured in the Xebec Group's facilities in Blainville, Québec and Maryville, Tennessee. The Company also assembles compressor packages in Cranbrook, British Columbia and in Henderson, Colorado.
31. The Xebec Group also provides customers with parts, service, operations and maintenance through a long-term initiative to build a service footprint to support customers, create a competitive advantage and capture aftermarket value (the "**Cleantech Service Network**").
32. The Cleantech Service Network is primarily North American-based and composed of a network of seventeen cleantech service centers. Company technicians service industrial compressed air equipment and cleantech equipment for renewable and low-emission natural gas, hydrogen and carbon capture.
33. This historically high margin business segment provides a recurring revenue base with 60% to 70% of revenues recurring from sales of parts and service.

(c) Renewable Gas Infrastructure Segment

34. The Xebec Group has entered into a partnership in Québec with the Fonds de solidarité des travailleurs du Québec (F.T.Q.) ("**FSTQ**") with the goal of accelerating the development of projects generating renewable gas. Xebec Inc. holds directly and indirectly a 50% interest in this partnership, known as GNR Québec Capital L.P.

35. To achieve this objective, the partnership actively participates in renewable gas projects and acts as an active investor through strategic partnerships to support the growth of companies developing renewable energy and waste recovery projects.
36. To date, the partnership has evaluated 34 projects and is actively engaged with 18 projects in agriculture, municipal, landfill, mixed use, and industrial waste applications and has successfully executed several letters of intent for projects in Québec, Canada.

Facilities and Employees

(a) Facilities

37. The Xebec Group does not own any real estate and operates out of leased facilities and offices.
38. Headquartered in Montréal, Québec, the Xebec Group operates 5 manufacturing facilities, 15 cleantech service centers, and two research and development facilities in North America.
39. The Company also operates three manufacturing facilities, two cleantech service centers and three sales offices in Europe, as well as one research and development facility in the Netherlands, one sales office in Singapore, and one in the United Arab Emirates.

(b) Employees and Employee Benefits

40. As of the date hereof, the Xebec Group employs close to 600 employees globally. The distribution of the Company's employees is as follows, as of September 15, 2022:

Entity (Location)	Number of Employees
Canada	
Xebec Inc. (Québec)	157
Applied (British Columbia)	27
Compressed (Ontario)	14
<i>Total (Canada)</i>	<i>198</i>
United States	
Enerphase (North Carolina)	28
CDA (California)	10
Xebec USA (North Carolina)	17

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Entity (Location)	Number of Employees
Titus (Pennsylvania)	24
Nortekbelair (Tennessee)	21
XBC Wisconsin	10
California Compression (California)	18
Xebec Systems (Colorado)	77
<i>Total (United States)</i>	<i>205</i>
Europe	
Tiger Filtration Limited (United Kingdom)	23
Xebec Italy SRL (Italy)	6
HyGear Entities (as defined below, but excluding Xebec Adsorption Asia PTE LTD) (The Netherlands)	82
Inmatec Entities (as defined below, but excluding Inmatec Gas Technology FZC RAK) (Germany)	53
<i>Total (Europe)</i>	<i>164</i>
Other	
Xebec Adsorption (Shanghai) Co. Ltd. (China)	4
Xebec Adsorption Asia PTE LTD (Singapore)	10
Inmatec Gas Technology FZC RAK (United Arab Emirates)	5
<i>Total (overall)</i>	<i>586</i>

41. None of the employees of the Petitioners are unionized.

(c) Stock-Based Compensation Plans

42. Stock-based compensation plans currently maintained by Xebec Inc. for certain of the employees of the Xebec Group are described below.

i) Employee Share Ownership Program

43. Certain employees of the Xebec Group are eligible to participate in the Employee Share Ownership Program (“**ESOP**”) that awards Common Shares (as defined below), subject to the terms and conditions of the ESOP.
44. Pursuant to the ESOP, the Company has undertaken to contribute an amount representing 35% of each participating employee’s contribution as follows:
 - (i) an amount equal to 20% of the participating employee’s contribution made in a given calendar year to be credited to the participating employee on January 31st of the first year following such year; and
 - (ii) an amount equal to 15% of the participating employee’s contribution made in a given calendar year to be credited to the participating employee on January 31st of the second year following such year
45. As at July 31, 2022, 52 employees, located in Canada and in the U.S., were participating to the ESOP Plan.
46. The administrative agent for the ESOP is the TSX Trust Company.

ii) Long Term Incentive Plan

47. The Company’s Long Term Incentive Plan (the “**LTIP**”) was adopted on April 14, 2020 and provides for the issuance of Restricted Share Units (the “**RSUs**”), options (the “**LTIP Options**”) and Deferred Share Units (the “**DSUs**”).
48. Prior to the adoption of the LTIP, the Company’s former stock option plan provided for issuance of stock options (the “**Legacy Options**”).
49. As of August 31, 2022, there were 295,801 RSUs, 787,000 Legacy Options, 50,000 LTIP Options and 351,965 DSUs issued.
50. Furthermore, certain employees were granted DSUs as their 2021 bonus in lieu of cash and RSUs and LTIP Options pursuant to their 2022 LTIP entitlements. However, due to the ongoing blackout period, these RSUs, DSUs and LTIP Options were never issued to the relevant employees.

(d) Deferred Profit Sharing Plan

51. Certain full-time employees are entitled to participate in the deferred profit sharing plan (“**DPS Plan**”) maintained by the Xebec Group.
52. Full time Canadian employees that contribute to the Company group RRSP, are entitled to participate in the DPS Plan. The Xebec Group contributes to the DPS Plan in an amount equal to half or the totality of the RRSP contribution of the

participating employee, up to an amount of 3 or 6 percent of any DPS Plan registered-employee's yearly salary, excluding overtime and bonuses.

53. DPS Plan funds are vested to the participating employee only if such employee remains at the employment of the Company for at least two years. DPS Plan funds are held in trust and administered by a trustee. Upon retirement or death, the value of the DPS Plan of the registered-employee's account is paid out in the form of a cash refund or transferred to a qualified registered retirement plan.
54. If the DPS Plan-registered employee is terminated prior to retirement after two years of continuous membership in the DPS Plan, he or she is entitled to receive a cash refund equal to the value of his or her account, or to transfer the funds to a qualified registered retirement plan.

Banking and Cash Management

55. The cash of the Xebec Group is managed and tracked weekly by the finance team of Xebec Inc.
56. Xebec Inc. and its operating subsidiaries each have their own bank accounts for daily operations and collection of client payments.

B. Corporate Structure

57. Xebec Inc. is the ultimate parent company of the Xebec Group and the other Petitioners are all wholly owned, direct or indirect subsidiaries of Xebec Inc.
58. The Xebec Group has grown considerably through strategic acquisitions in recent years.
59. An organizational chart showing the corporate structure of the Xebec Group as of the date hereof is communicated herewith as **Exhibit P-4**.

Xebec Inc.

60. Xebec Inc. is a corporation incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44 and a reporting issuer in each of the provinces and territories of Canada.
61. The Common Shares (as defined below) of Xebec Inc. are listed on the Toronto Stock Exchange (the "**TSX**") and are trading under the ticker symbol "**XBC**". They are also trading on the OTCQX International, a marketplace for over-the-counter trading of securities, under the ticker symbol "**XEBEF**".
62. The executive offices and senior management team of the Xebec Group operate out of premises located at 1130 Sherbrooke West, Suite 700, Montréal, Québec.

63. Xebec Inc. operates a 41,753 square foot leased manufacturing facility located at 730 Industriel Boulevard, Blainville, Québec.

Canadian Subsidiaries

64. The wholly-owned Canadian subsidiaries of Xebec Inc. are set out below:
- (a) *Compressed*: operates two facilities in the Greater Toronto area, and is responsible for sales and servicing of compressed air products, while supporting all Xebec products in Ontario.
 - (b) *Applied*: offers a single source solution for air and gas compression requirements and focuses on custom designed and fabricated compressor packages for specialized applications in the industry sector. It operates a facility in Cranbrook, British Columbia.
 - (c) *RNG Holdings*: holds the shares of:
 - (a) GNR Québec Capital Management Inc., the general partner of GNR Québec Capital L.P., which is a limited partnership with FSTQ. The partnership was formed for the primary purpose of investing in the development, design, construction and operation of renewable natural gas projects (see the Renewable Gas Infrastructure Segment detailed in the section above); and
 - (b) GNR Bromont Management Inc., the general partner of GNR Bromont L.P. This entity and the partnership have no assets or operations.

Holding USA and U.S. Subsidiaries

65. Holding USA is a direct and wholly owned subsidiary of Xebec Inc. In turn, Holding USA directly and wholly owns the U.S. subsidiaries set out below:
- (a) *CDA*: is part of the Cleantech Service Network of the Xebec Group. It is responsible for sales, rentals and services of compressed air products and also supports all of Xebec Group's products in California.
 - (b) *Xebec USA*: leases and operates an administrative office in Mooresville, North Carolina.
 - (c) *Enerphase*: is part of the Cleantech Service Network of the Xebec Group, with a focus on preventative maintenance solutions, air energy system audits and analysis, timely machine rentals and parts and service. It also sells compressed air products. It leases and operates facilities in Greensboro, Woodleaf and Rocky Mount, North Carolina.

- (d) *Titus*: is a supplier of compressed air services and a part of the Cleantech Service Network. It notably supplies nitrogen generators and membrane products to the United States Navy. It leases a facility in Morgantown, Pennsylvania.
- (e) *Nortekbelair*: operates a 18,500 square foot facility in Maryville, Tennessee, which is a “Center of Excellence” for the Xebec Group’s dehydration products comprised of compressed air dryers, renewable and low-emission natural gas dryers and hydrogen dryers and supports its Cleantech Service Network as well as other third party customers.
- (f) *California Compression*: A part of the Cleantech Service Network, California Compression is a compressed air distributor and provides the Xebec Group with distribution and service capabilities for customers located in Northern California.
- (g) *XBC Wisconsin*: A part of the Cleantech Service Network, XBC Wisconsin supplies U.S. customers with high-quality compressed air products from the industry’s top manufacturers, in addition to providing service and support.
- (h) *Xebec Systems*: operates a 100,000 square foot facility located in Henderson, Colorado, which manufactures containerized Biostream systems and hydrogen units. Xebec Systems also designs and manufactures air and gas processing systems with references in landfill gas, natural gas, biogas, hydrogen and carbon dioxide compression. Xebec Systems also provides services as part of the Cleantech Service Network.

Overseas Subsidiaries

66. The overseas subsidiaries of Xebec Inc. are set out below (collectively the “**Overseas Subsidiaries**”):
- (a) *Xebec Holding UK Limited*: has no active operations and is the sole shareholder of Tiger Filtration Limited, which operates a facility located in Sunderland, United Kingdom, focused on the manufacturing of elements and filters. This business was acquired by the Xebec Group in June 2021 in order to vertically integrate into the valuable aftermarket business for filters and elements.
 - (b) *Xebec Italy SRL*: an Italian-based entity services all Xebec legacy RNG systems sold in Europe.
 - (c) *Xebec Europe B.V.*: has no active operations, and is the sole shareholder of two subsidiaries, Xebec Deutschland GmbH and Green Vision Holding B.V.:
 - (i) Xebec Deutschland GmbH, which in turn has three wholly owned subsidiaries: Xebec Komplementär GmbH, Inmatec Gase

Technologie GmbH & Co. KG (collectively, “**Inmatec Germany**”) and Inmatec Gas Technology FZC-LLC (“**Inmatec RAK**”, collectively with Inmatec Germany, the “**Inmatec Entities**”).

Inmatec Germany manufactures, sell and services on-site nitrogen and oxygen generators.

Inmatec RAK is responsible for sales of the Inmatec Entities’ systems in the Middle East and Africa and is located in Ras Al Khaimah, United Arab Emirates.

The Inmatec Entities were acquired by the Xebec Group in February 2021 to position the Xebec Group as a worldwide leader in on-site nitrogen and oxygen generation products and leverage cross-selling opportunities.

- (ii) Green Vision Holding B.V. which owns HyGear Technologies and Services B.V., which in turn has six subsidiaries: HyGear Operations B.V., HyGear B.V., Xebec Adsorption Asia PTE LTD, HyGear Fuel Cell B.V. and HyGear Hydrogen Plant B.V., which are wholly owned, and Buse HyGear LTD which is 50% owned (collectively, the “**HyGear Entities**”). Mainly based in the Netherlands, the HyGear Entities combine on-site generation technologies of the Hy.Gen Systems which generate hydrogen from natural gas, renewable natural gas or water and electricity with conventional gas distribution methods. The HyGear Entities were acquired by the Xebec Group in December 2020 with the strategic support of Caisse de dépôt et de placement du Québec, in the context of the Company’s global hydrogen strategy. Xebec Adsorption Asia PTE LTD is responsible for sales of the Xebec Group in Asia and the Middle East.

- (d) *Xebec Adsorption (Shanghai) Co. Ltd.*: in which Xebec Inc. has a 60% equity interest, is a joint venture with the Shanghai-based Shenergy Group. This joint venture operates a 20,451 square foot manufacturing facility in the Songjiang district of Shanghai, China. It is responsible for engineering, supply chain, product assembly, marketing, sales, technical service and after sales support for the Chinese, South East Asian and Middle Eastern markets. The Xebec Group supplies multiple products to the joint venture, including most importantly PSA systems.

III. ASSETS, INDEBTEDNESS AND OBLIGATIONS

A. Assets

- 67. The Q2 2022 Financial Statement of Xebec Inc. (as defined below) reflected assets of \$503 million, summarized as follows:

- (a) Inventory: \$65 million;
- (b) Net book value of property and equipment: \$38 million;
- (c) Net book value of intangible assets (primarily intellectual property): \$86 million;
- (d) Net book value of goodwill: \$151 million;
- (e) Investment in associates and joint ventures: \$22 million; and
- (f) Other assets (primarily cash, accounts receivable and prepaid expenses): \$201 million.

B. Secured Indebtedness

National Bank of Canada

- 68. Xebec Inc. is party to a Credit Agreement dated as of February 23, 2021 with NBC, as amended from time to time, pursuant to which NBC provides an operating line of credit in an initial amount of up to \$30,000,000 (the “**Operating Facility**”) and a letter of credit facility in an amount of \$16,500,000 (the “**LOC Facility**”, collectively with the Operating Facility, the “**NBC Loan**”).
- 69. The Operating Facility is used by Xebec Inc. to finance its operating requirements, general purposes, and historically, to finance certain acquisitions as permitted thereunder.
- 70. The obligations of Xebec Inc. under the NBC Loan have been guaranteed by the following subsidiaries (the “**NBC Guarantors**”):
 - (a) Applied;
 - (b) XBC Wisconsin;
 - (c) Xebec USA;
 - (d) Holding USA;
 - (e) CDA;
 - (f) Enerphase;
 - (g) Titus;
 - (h) Compressed;
 - (i) Tiger;

- (j) California Compression;
 - (k) Nortekbelair;
 - (l) Holding UK; and
 - (m) Xebec Systems.
71. The obligations of Xebec Inc. under the NBC Loan are secured by first ranking hypothecs and liens on its assets, as well as those of the NBC Guarantors (the “**NBC Security**”), subject to:
- (a) in the case of California Compression, Xebec Systems, Nortekbelair and XBC Wisconsin only, prior ranking security granted by these entities in favor of EDC (as defined below); and
 - (b) in the case of Holding USA, prior ranking security over shares held in Nortekbelair, Xebec Systems, California Compression and XBC Wisconsin granted in favor of EDC.
72. As of September 26, 2022 the outstanding aggregate indebtedness owing to NBC under the Operating Facility totalled approximately \$7,000,000, excluding interest, costs, fees and expenses.
73. This amount is in addition to all amount relating to outstanding letters of credit issued under the LOC Facility totalling in excess of \$7,000,000.
74. EDC (as defined below) has guaranteed in favor of NBC the reimbursement of substantially all amounts owed under the LOC Facility.
75. As a result of certain events of default that occurred under the NBC Loan, on July 7, 2022, Xebec Inc. the NBC Guarantors and NBC entered into a Forbearance Agreement (the “**NBC Forbearance Agreement**”) with NBC.
76. The NBC Forbearance Agreement was disclosed by Xebec Inc. in the Q2 2022 MD&A (as defined below).
77. The NBC Forbearance Agreement sets out the terms and conditions under which NBC has agreed to tolerate the various defaults under the NBC Loan and to continue to finance Xebec Inc.’s operations. The tolerance period under the NBC Forbearance Agreement was set to expire on September 30, 2022.
78. In the context of the ongoing discussions with NBC and in order to ensure that the Petitioners would continue to have access to their banking facilities, the tolerance period under the NBC Forbearance Agreement was extended to October 11, 2022 (subject to further extensions as may be agreed to by the parties), pursuant to the terms of a First Amendment to the NBC Forbearance Agreement dated September 28, 2022. In this context, the Petitioners have agreed that NBC shall be treated as

an unaffected creditor in these CCAA proceedings and in any plan resulting therefrom and have waived the delays required under the notices of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act*.

Export Development Canada

79. Holding USA is party to a Loan Agreement dated as of July 16, 2021 with Export Development Canada (“**EDC**”), as amended from time to time, pursuant to which EDC provided a loan in the aggregate principal amount of USD 15,000,000 (the “**EDC Loan**”).
80. The purpose of the EDC Loan was to allow Holding USA to fund the acquisitions of certain U.S.-based businesses.
81. The obligations of Holding USA under the EDC Loan have been guaranteed by Xebec Inc. and by the following subsidiaries (the “**EDC Guarantors**”):
 - (a) CDA;
 - (b) Nortekbelair;
 - (c) Xebec Systems;
 - (d) California Compression; and
 - (e) XBC Wisconsin.
82. The obligations of Holding USA under the EDC Loan are secured by (the “**EDC Security**”):
 - (a) first ranking security over the shares held by Holding USA in the EDC Guarantors Nortekbelair, Xebec Systems, California Compression and XBC Wisconsin (collectively, the “**TargetCo Shares**”);
 - (b) first ranking hypothecs and liens on same EDC Guarantors’ assets (except for CDA and Xebec Inc.);
 - (c) second ranking hypothecs and liens on the assets of Xebec Inc.; and
 - (d) second ranking hypothecs and liens on the assets of Holding USA, except for TargetCo Shares.
83. As of September 18, 2022, the outstanding aggregate indebtedness owing to EDC under the EDC Loan totalled approximately USD \$13,269,478, excluding interest, costs, fees and expenses. This amount excludes any obligations which may arise under the letters of credit issued by NBC, in respect of which EDC has provided a guarantee to NBC, as mentioned above.

84. A snapshot of the borrowers and guarantors under the NBC Loan and the EDC Loan, respectively is set out below for convenience purposes:

NBC Loan (aggregate indebtedness as of September 26: approx. \$7,000,000)	
Borrower	Xebec Inc.
Guarantors	Applied; XBC Wisconsin; Xebec USA; Holding USA; CDA; Enerphase; Titus; Compressed; Tiger; California Compression; Nortekbelair; Holding UK; and Xebec Systems.
Security	First ranking hypothecs and liens on the assets of Xebec Inc., as well as those of the NBC Guarantors, subject to any prior ranking EDC Security, as applicable.
EDC Loan (aggregate indebtedness as of September 18, 2022: approx. USD \$13,269,478)	
Borrower	Holding USA
Guarantors	Xebec Inc.; CDA; Nortekbelair; Xebec Systems; California Compression; and XBC Wisconsin.
Security	- First ranking security on TargetCo Shares;

	<ul style="list-style-type: none"> - First ranking hypothecs and liens on same EDC Guarantors' assets (except for CDA and Xebec Inc.; - second ranking hypothecs and liens on the assets of Xebec Inc.; and - second ranking hypothecs and liens on the assets of Holding USA, except; for TargetCo Shares.
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85. As appears from the Pre-Filing Report of the Proposed Monitor (the "**Pre-Filing Report**"), communicated herewith as **Exhibit P-5**, the Proposed Monitor has retained independent legal counsel, which is to conduct a review of the NBC Security and the EDC Security, in order to confirm the validity and opposability of same.

C. FSTQ Loan

86. Xebec Inc. is party to an Amended and Restated Unsecured Loan Agreement dated as of November 9, 2021 with FSTQ, pursuant to which FSTQ provided Xebec Inc. with a financing facility in the aggregate principal amount up to \$25,000,000 (the "**FSTQ Loan**").
87. The FSTQ Loan was used by Xebec Inc. for working capital purposes, operational and investment activities and acquisitions.
88. The FSTQ Loan is unsecured, bears interest at the rate of 8.5% per annum, subject to adjustment as per the FSTQ Loan agreement, and matures on May 5, 2025.
89. As of September 19, 2022, the outstanding aggregate indebtedness owing to FSTQ under the FSTQ Loan totalled approximately \$15,000,000, excluding interest, costs, fees and expenses.

D. Other Unsecured Indebtedness

90. As of August 31, 2022, the Petitioners had accounts payable and accrued liabilities in an aggregate amount of approximately \$162,600,000 including to suppliers and landlords.
91. The Petitioners intend to pay in the normal course of business the trade obligations in connection with services to be rendered and products to be supplied after the issuance of the Initial Order.
92. Certain suppliers and customers are the beneficiaries of letters of credit issued by NBC pursuant to the NBC Loan Agreement.

E. Contingent Liabilities

93. Certain Petitioners are also defendants in various litigation proceedings, including two proposed class actions pending before the Superior Court of Québec and the

Ontario Superior Court of Justice against Xebec Inc. and other defendants, alleging misrepresentations in its disclosure documents with respect to revenue accounting practices and internal controls, all of which are denied and contested.

F. Employee Entitlements

94. As of the date hereof, the Petitioners are current in their payroll obligations. In addition, except for the DPS Plan described above, there are no pension plans in place.
95. The Petitioners intend to continue to pay their employees in the normal course of business.

G. Tax Liabilities

96. All amounts owed to tax authorities by the Petitioners are paid in the normal course of business and there is therefore no known past due amount owing to tax authorities as of the date hereof.
97. As of the date hereof, the Petitioners are current in their source deductions and sales tax obligations including GST/QST/HST, in jurisdictions where they apply.
98. Source deductions and GST/QST/HST obligations in connection with services to be rendered/products supplied after the issuance of the Initial Order are expected to be paid in the normal course of business.

H. Equity

99. Xebec Inc.'s authorized share capital consists of an unlimited number of Common Shares and an unlimited number of preferred shares ("**Preferred Shares**"), without par value. As at August 31, 2022, there were 154,727,549 Common Shares issued and outstanding (the "**Common Shares**") and nil Preferred Shares issued and outstanding. As indicated above, the Common Shares are listed on the TSX and are also listed on the OTCQX International.

IV. FINANCIAL DIFFICULTIES

100. The latest consolidated audited financial statements, for the years ended on December 31, 2021 and 2020 a copy of which is communicated herewith as **Exhibit P-6** indicate that Xebec Inc. realized successive material operating losses in 2021 and 2020.
101. The latest financial results for the six month period ending on June 30, 2022, indicate that Xebec Inc. continued to incur material losses, incurring a net loss of \$41.997 million, as appears from a copy of the Condensed Interim Consolidated Financial Statements (Unaudited) for the three-month and six-month periods ended June 30, 2022, and 2021 ("**Q2 2022 Financial Statements**") communicated herewith as **Exhibit P-7**.

102. The Xebec Group's financial difficulties were attributable to a number of factors, including its inability to raise additional capital given the state of capital markets, supply chain constraints, impact of the COVID-19 pandemic, the geopolitical factors and increasing selling, general and administrative expenses ("**SG&A**") resulting from the number of acquisitions completed over the last two years and the completion costs of legacy renewable natural gas ("**RNG**") contracts and the costs associated with discontinuing such product line, the whole as described more fully below.

A. Inability to Raise Additional Capital and the State of Capital Markets

103. The challenging state of the capital markets which commenced in late 2021 and has been ongoing and has resulted in lower share price performance for many companies, including those in the clean energy solutions market segment.

104. Xebec Inc.'s share price was negatively impacted, *inter alia*, by this market trend, which in turn adversely affected Xebec Inc.'s ability to source and secure the critical financing it requires.

105. This phenomenon was further exacerbated by the decrease of equity capital interest for unprofitable growth companies in general.

106. As a result, the execution of the Company's business plan, including its ability to appropriately capitalize its business, was seriously compromised.

B. Supply Chain Constraints and Other Market Conditions

107. In addition to the inability to secure required financing, the Company also faced worldwide supply chain issues and increased costs resulting, *inter alia*, from the COVID-19 pandemic and geopolitical factors.

108. As appears from Xebec Inc.'s Management's Discussion and Analysis for the Second Quarter ended June 30, 2022 (the "**Q2 2022 MD&A**"), while 2022 started off with strong sales quoting activity in the RNG business, quotes were slow to book into Xebec Inc.'s backlog, due to a combination of factors including economic uncertainty, low carbon fuel credits' volatility and the early adopter nature of Xebec Inc.'s second-generation Biostream product.

109. The second quarter of year 2022 also saw a slowdown in Xebec Inc.'s oxygen business as the strong demand generated by the COVID-19 pandemic subsided.

110. Xebec Inc.'s oxygen and nitrogen generation businesses operate on a cash-neutral basis and their ability to produce material positive cash flows depends on the resolution of supply chain issues and increasing the nitrogen portion of the business in the face of declining oxygen demand triggered by declining intensity of the COVID-19 pandemic.

111. Furthermore, the geopolitical situation resulting from the Russo-Ukrainian War brought significant pressure on the nitrogen market, where customers had to reduce their capital expenditures in light of significantly higher energy costs.
112. In 2022, Xebec Inc. noted a lower level of sales in Europe, primarily attributable to supply chain constraints and reduced sales of oxygen and hydrogen generators. In addition, while the Company's hydrogen business continued to develop, significant capital is still required to support this business which continues to suffer losses.

C. Selling and Administrative Expenses

113. As indicated above, the Company grew significantly through acquisitions, investments and joint ventures.
114. According to the Q2 2022 Financial Statements, Xebec Inc. incurred \$33.6 million in SG&A, an increase of \$10.7 million, compared to \$22.9 million for the same six months of 2021. The increase was associated to SG&A relating to newly acquired companies.

D. Legacy RNG Contracts

115. In addition, the Company incurred significant costs in connection with finalizing its legacy RNG contracts and discontinuing this product line. The impact of the COVID-19 pandemic, the supply chain constraints and the inflation described above further affected these costs.
116. As appears from the Q2 2022 MD&A, the Company encompassed the impact of such legacy RNG contracts in a special charge resulting in a net loss impact of \$11.9 million and a gross margin impact of \$8.3 million, representing remaining costs on projects, potential penalties, an inventory obsolescence provision, potential warranty claims, and legal settlement and related costs.
117. In summary, volatile market conditions and inability to raise capital, lower sales volumes, ongoing supply chain constraints, material increase of SG&A and the completion costs of legacy RNG contracts and the costs associated with discontinuing the product line had a direct negative impact on the Petitioners' cash flow.

V. PRE-FILING RESTRUCTURING EFFORTS

A. Company's Efforts to Improve Financial Performance

118. Given the capital intensive nature of the business of the Xebec Group, particularly in light of the recent acquisition of the HyGear Entities, the Company initiated various attempts to raise additional capital, including via private placements, equity offerings or subordinated debt. Such efforts were assisted by two leading financial advisory firms. Potential convertible debt transactions and equity offerings were

contemplated in the fall of 2021 and the spring of 2022, but based on overall market conditions, and advice from the Company's financial advisors, such transactions could not be launched. Notwithstanding all of its efforts, the Company was as a result unable to secure additional capital.

119. In light of the foregoing, in the spring of 2022, the Company initiated a comprehensive review of all of the activities of the Xebec Group to improve margins and increase cash from operations, focusing on production rationalization, workforce and supply chain synergies to streamline and simplify the organization (the "**Operational Review**").
120. In the context of the Operational Review, Xebec Inc. implemented a number of cost-reduction measures, including the discontinuance of certain business activities, primarily relating to its RNG segment, to focus on products and services that had the potential for yielding higher margins on a long-term basis, the whole as appears from the Q2 2022 MD&A.
121. Furthermore, in July 2022, in the context of the Operational Review, Xebec Inc. announced the reduction of its full-time workforce by 51 employees, representing approximately 13% of its North American employee base, resulting in approximately \$4.0 million in annual cost savings, as appears from the Q2 2022 MD&A.
122. The Company continued to evaluate its business revolving around three levers: 1) core vs. non-core activities, 2) product rationalization, and 3) workforce and supply chain synergies, all of which aim to pursue operational efficiencies and focus its efforts across the business.
123. Unfortunately, the above-noted measures alone proved to be insufficient in addressing the Petitioners' urgent liquidity concerns.

B. Strategic Review

124. As appears from the Q2 2022 MD&A, in addition to, and in parallel with the Operational Review, the Company initiated a process to identify and evaluate a variety of potential strategic alternatives to enhance shareholder value, including via potential asset divestitures or joint ventures (the "**Strategic Review**").
125. In this context, a special committee of the board of Xebec Inc., comprised of independent directors (the "**Special Committee**") was established to review and consider any strategic alternatives (including potential asset divestitures or joint ventures) and make recommendations to the Xebec Inc. board with respect thereto.
126. On June 3, 2022, further to a recommendation of the Special Committee, Xebec Inc. engaged National Bank Financial Inc. ("**NBF**") as financial advisor in connection with the Strategic Review. NBF had not been involved as financial advisor in the Company's prior financing efforts, as appears from a redacted

version of an engagement letter dated June 6, 2022, communicated herewith under seal as **Exhibit P-8**.

127. Further to its engagement, NBF conducted a broad solicitation of expressions of interest targeting institutional investors and well capitalized, strategic acquirers that had either previously expressed an interest in a combination with the Company and/or were believed to have a strong strategic rationale to consider a potential transaction (collectively, the “**Market Check**”).
128. In the context of the Market Check:
 - (a) 76 potential targets were solicited and received a teaser letter, including 47 potential investors and 29 potential strategic acquirers; and
 - (b) 14 potential targets signed a confidentiality agreement giving them access to the virtual data room to advance their due diligence process;
129. The Market Check resulted in the receipt by Xebec of only one non-binding letter of intent for the purchase of XBC Flow Services, the brand encompassing the Company’s U.S. Cleantech Service Network and industrial product sales and distribution activities (the “**LOI**”).
130. Xebec Inc., with the assistance of NBF and its other advisors, determined that the LOI was not a viable solution, given that:
 - (a) the time needed to execute the transaction contemplated by the LOI and the inherent uncertainty would not provide a solution for Xebec Inc.’s liquidity needs;
 - (b) the complexity of the transaction, including isolating the subject assets and undertakings, would take considerable effort and time;
 - (c) the assets in question are integral to the core business of the Xebec Group; and
 - (d) the transaction would negatively impact the overall future cash flow of the Xebec Group.
131. Throughout all of its financing efforts, from the fall of 2021 until September 2022, the Company, directly and through its financial advisors (including NBF during the Strategic Review), remained in close communication with key stakeholders in order to assess whether they may have an interest in an investment or transaction with the Company in some capacity. Certain key stakeholders engaged in ongoing due diligence and discussions with management and NBF, but recently confirmed that they would not be prepared to proceed at this time.

VI. RESTRUCTURING OBJECTIVES

132. Despite all of the efforts enumerated above and following extensive analysis and consideration, in light of their financial situation, the Petitioners concluded that their only alternative was to engage in a formal restructuring process in order to achieve the best possible outcome for their stakeholders.
133. With the assistance of their advisors and upon the recommendation of the Special Committee, the Petitioners determined that the best course of action in the current circumstances includes the implementation of the SISP in order to maximize value of the Petitioners' business while maintaining going concern operations, a further streamlining of their operations, and a divestiture of their non-core assets.
134. In order to achieve their objectives, the Petitioners, with this Court's approval, are seeking the relief more fully described below.

VII. APPLICATION OF THE CCAA AND RELIEF SOUGHT

135. As set out above, the Petitioners are affiliated debtor companies indebted towards various creditors in an aggregate amount that well exceeds the \$5 million requirement of the CCAA.
136. Furthermore, as outlined in greater detail in the Pre-Filing Report (Exhibit P-5), the Petitioners are, or will become within reasonable proximity of time as compared with the time reasonably required to implement a restructuring, unable to meet their obligations as they become due given the ongoing liquidity crisis.
137. In light of the foregoing, each of the Petitioners clearly qualifies as a "debtor company" under the CCAA and together are affiliated debtor companies.
138. As more fully set out below, the "*center of main interest*" of each of the Petitioners is Montréal, Québec.

A. General CCAA Relief

139. The Petitioners submit that the orders sought herein are appropriate and necessary, as they are insolvent, and require a stay of proceedings for the benefit of their creditors and other stakeholders.
140. The Petitioners are concerned that unless the Stay is granted, certain suppliers, creditors and other stakeholders may take steps that will deplete their estates to the detriment of all stakeholders.
141. The CCAA proceedings are therefore necessary to preserve the value of the Xebec Group's business with minimal disruption while it continues its restructuring process and to provide the Petitioners with the various restructuring tools available under the CCAA to implement restructuring measures and facilitate any potential transaction resulting from the SISP, the whole with a view to restructuring the

Xebec Group in an orderly manner and maximizing the value of the Petitioners' business.

142. The Petitioners hereby seek a Stay until October 9, 2022 (subject to a deemed extension to October 11, 2022 as requested herein) and, at the comeback hearing, intend to seek a Stay until on or about November 26, 2022.
143. Given the requirement that the initial Stay Period be limited to a maximum duration of 10 days and the fact that the expiry of such 10 day period falls on a non-judicial day and the day before Thanksgiving Day, the Petitioners seek an order declaring that unless any contestation is served and filed on or prior to October 5, 2022, that the Stay Period be deemed to have been extended to October 11, 2022.
144. The Stay will preserve the status quo and prevent creditors and others from taking steps to try to improve their positions to the detriment of other creditors. All stakeholders generally, including creditors, will benefit from the relief sought herein.
145. As of the date hereof, no CCAA relief or other insolvency filing is being sought or pursued in respect of the Overseas Subsidiaries.

B. Appointment of the Monitor

146. Deloitte has consented to act as Monitor of the Petitioners under the CCAA proceedings and to assist the Petitioners with all aspects of their restructuring pursuant to and subject to Orders of the Court and the statutory provisions of the CCAA, as appears from a consent letter, communicated herewith as **Exhibit P-9**.
147. Deloitte is a licensed trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
148. Deloitte has provided various advisory services to the Xebec Group over the past two years, including valuation and purchase price allocation of some acquired entities, conducting impairment tests, assisting with respect to pre-acquisition due diligence analyses for some acquired entities, and assisting with refining Xebec Group's four-month cash flow forecast, including the related assumptions.
149. Furthermore, Deloitte has been assisting the Petitioners in connection with the Market Check and in its financial analysis and restructuring considerations, including in respect of these proceedings under the CCAA. In this context, Deloitte has become familiar with the Petitioners' assets, businesses and restructuring efforts.
150. Such knowledge will be useful and will enable Deloitte to assume the role of the Monitor in these CCAA proceedings without delay.

151. Furthermore, Deloitte has offices in all the countries where the Xebec Group has subsidiaries and therefore will be able to draw upon its own network for assistance with local issues as required.

C. DIP Financing

152. In light of their current liquidity challenges, and as demonstrated in the Pre-Filing Report (Exhibit P-5), the Petitioners require interim financing to provide the stability required to continue all of their operations on a going concern basis, while pursuing their restructuring efforts under these CCAA proceedings, including the SISF.
153. As soon as the Company was advised by NBF that, in the context of discussions referred-to above, certain key stakeholders were not prepared to proceed with an investment or transaction with the Company, it immediately mandated NBF to initiate a targeted solicitation process to identify parties interested in providing immediate superpriority interim funding to the Company (the “**DIP Process**”).
154. 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.
155. Given the tight timelines and complex corporate structure and activities, all third parties contacted by NBF were unable to complete their diligence and internal processes prior to the filing of these CCAA proceedings.
156. The Petitioners have been engaged in discussions and exchanges of information with NBC and EDC and their respective financial advisors in connection with their interim financing requirements. Both NBC and EDC are continuing their analysis of the interim financing needs of the Petitioners.
157. The Petitioners are hopeful that NBC and/or EDC will determine that it is appropriate to provide interim financing in the circumstances and that they will be in a position to seek approval thereof before the Court at the comeback hearing.
158. In the absence of interim financing, the Petitioners intend to continue their restructuring proceedings and the SISF, but may be required to take further operational measures to preserve liquidity.

D. Employee, Vice-President and Executive Retention Plans

159. The contribution of certain employees is essential to the success of these CCAA proceedings. Therefore, with a view of 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-10**.

160. 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 stakeholders.
161. 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.
162. The KERPs are ventilated as follows:

Group	Approximate Number of Employees	Approximate Estimated Cost
Executives	4	550,000
VPs	4	285,000
Other Key Employees	7	195,000
Total	15	1,030,000

163. In addition to the executives, the KERPs include employees in human resources, legal, finance, operations, research and development, and product management groups of the Petitioners.
164. The KERP payments will be made in 3 instalments payable as follows: (i) 30 percent payable two months following the filing date of these CCAA Proceedings; (ii) 30 percent payable 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-10)).
165. The total KERP payments range from 20 percent to 40 percent of the base salary of the relevant employees.
166. The Petitioners intend to seek approval of the KERPs at the comeback hearing in the context of the ARIO.
167. In addition, in order to secure the payment owed to the above mentioned key employees in accordance with the KERPs, the Petitioners intend to seek an order from this Court at the comeback 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 \$1,030,000 (the “**KERP Charge**”).

E. Engagement of NBF and SISP Approval

168. The Petitioners, in consultation with NBF the Proposed Monitor, have determined that it is appropriate to conduct the SISP as a means of seeking to maximize the value of the Petitioners’ assets, on a going concern basis.

Engagement of NBF

169. For the purpose of conducting the SISP, the Petitioners hereby seek the formal appointment of NBF as sale advisor, in order to provide consultation and assistance in the conduct of the SISP pursuant to the terms of the Engagement Letter (Exhibit P-3).
170. It is in the Petitioners’ best interest to retain the services of NBF in the context of the SISP, given its knowledge of the business of the Xebec Group and its familiarity with potential strategic partners, purchasers and investors, acquired in the context of the Market Check.
171. NBF will be able to leverage and expand the scope of the Market Check in order to conduct the SISP in a timely and cost-efficient manner, the whole with a view to maximize the value of the Petitioners’ assets on a going concern basis in the context of these CCAA proceedings.
172. NBF has extensive experience in acting as sales and investment advisor to significant actors in the manufacturing and energy sectors as well as experience in court-supervised CCAA sales and investment solicitation processes.
173. NBF’s role, which is essentially to assist in conducting a sales process and concluding one or more transactions, will be distinct from and complimentary to the role of the Monitor.
174. As appears from the Engagement Letter, NBF’s fee structure negotiated by the Petitioners contemplates a fixed work fee payable on a monthly basis (the “**Work Fee**”), a percentage-based commission payable upon the closing of a designated financing transaction (the “**Financing Advisory Fee**”), and a percentage-based commission payable upon the closing of a designated transaction (the “**Transaction Fee**”).
175. The Petitioners are of the view that this fee structure is reasonable in light of the prevailing market conditions.
176. The engagement of NBF is conditional upon the Court’s approval thereof, and the approval of the Engagement Letter.

177. The Engagement Letter provides that the payment of the Work Fee (whether incurred before or after the date of any order approving this agreement) is to be secured by the Administrative Charge (as defined below), and that the Transaction Fee and the Financing Advisory Fee (in the maximum amount of \$975,000) is to be secured by a charge (the “**Transaction Fee Charge**”), such charge having priority over all other security interests, hypothecs, charges and liens, except the Administration Charge and the D&O Charge (as such terms are defined below), but before the KERP Charge and the DIP Charge.
178. The Proposed Monitor has advised the Petitioners that it supports the engagement of NBF pursuant to the terms set out of the Engagement Letter.

SISP Approval

179. The Petitioners, in consultation with NBF and the Proposed Monitor, have developed the SISP, and are seeking the approval thereof by this Court.
180. The SISP, if approved by the Court, is to be conducted in accordance with the proposed bidding procedures (the “**Bidding Procedures**”) and is intended to solicit interest in, and opportunities for: (i) sales in respect of the Xebec Group’s businesses; and/or (ii) an investment, restructuring, recapitalization, refinancing or other form of reorganization transaction(s), in respect of the Petitioners, as appears from a copy of the Procedures for the Sale and Investment Solicitation Process dated September 28, 2022, communicated as Schedule A to the Bidding Procedures Order (Exhibit P-2).
181. The SISP is to be conducted by NBF, with the oversight of the Monitor, in accordance with the Bidding Procedures. It is contemplated to be deployed in the briefest of delays and, subject to the Order of this Court, by no later than September 29, 2022.
182. The SISP contemplates a two-phase bidding process according to the following timeline (subject to any extensions and modifications that may be made pursuant to the Bidding Procedures):

Event	Date
1. Approval of the SISP and Bidding Procedures by the Court	September 29, 2022
<u>Phase 1</u>	
2. Distribution of Solicitation Letter to potentially interested parties	Starting on September 29, 2022
3. Access granted to CIM and VDR	By no later than October 6, 2022
4. Phase 1 Bid Deadline (non-binding LOI)	By no later than November 11, 2022

5. Identification and notification in respect of Phase 1 Successful Bid(s)	By no later than November 18, 2022
<u>Phase 2</u>	
6. Phase 2 Bid Deadline (definitive offers)	January 6, 2023
7. Auction (if multiple Phase 2 Qualified Bids)	Week of January 9, 2023
8. Selection of Successful Bid	By no later than January 13, 2023
9. Definitive Documentation (Successful Bid retained)	By no later than January 27, 2023
10. Approval Application	On or about January 30, 2023
11. Closing	On or about January 31, 2023

183. As noted above, the Petitioners have consulted with the Proposed Monitor in developing the SISF and the Bidding Procedures, which they consider to be in line with those used in other recent comparable insolvency proceedings.
184. As appears from the Pre-Filing Report (Exhibit P-5), the Proposed Monitor is of the view that the SISF and the Bidding Procedures are reasonable and appropriate in the circumstances.

F. Charges

185. The Petitioners respectfully request that this Court grant the following superpriority charges on all of their present and future assets, property and undertakings, ranking ahead of all other secured and unsecured creditors, in the following order of priority:
- (a) A charge to benefit of the Proposed Monitor and its counsel and counsel to the Petitioners as security for their respective fees and disbursements relating to services rendered in respect of the Petitioners up to a maximum amount of \$250,000 (the “**Administration Charge**”);
 - (b) A charge to the benefit of the Directors and Officers (as defined below) in the amount of \$2,200,000 (the “**D&O Charge**”); and
 - (c) The Transaction Fee Charge, as described above, in a maximum amount of \$975,000.
186. At the comeback hearing, the Petitioners intend to seek the ARIO, providing for the following superpriority charges on all of their present and future assets,

property and undertakings, ranking ahead of all other secured and unsecured creditors, in the following order of priority:

- (a) The Administration Charge, increased to a maximum amount of \$900,000;
- (b) The D&O Charge, increased to a maximum amount of \$2,300,000;
- (c) The Transaction Fee Charge, as described above, in a maximum amount of \$975,000; and
- (d) The KERP Charge, as described above, in a maximum amount of \$1,030,000.

Administration Charge

- 187. The support of the Proposed Monitor, its counsel and the Petitioners' counsel (collectively, the "**Professionals**") is essential to the Petitioners' restructuring. As such, the Professionals have requested that their respective fees and disbursements be secured by the Administration Charge.

D&O Charge

- 188. The Petitioners will only be able to bring the current proceedings to fruition with the continued participation of the Petitioners' respective directors and officers (the "**Directors and Officers**"). They are essential to the viability of the restructuring efforts, especially in the context of the SISP.
- 189. The Petitioners maintain a primary directors' and officers' liability insurance policy for the Directors and Officers (the "**D&O Insurance**"). Prior to the filing of this Application, the Petitioners obtained an extended reporting period of one year under the D&O Insurance, applying to potential claims arising within the original policy period.
- 190. The D&O Insurance contains limits and exclusions that could potentially affect the total amount of insurance available to the Directors and Officers.
- 191. In addition, the D&O Insurance is written on a claims-made basis and is currently set to expire on December 1, 2022, with an extended reporting period until December 1, 2023. Considering the Petitioners' financial situation and the difficult market for such insurance, there is no certainty that the D&O Insurance can be extended or renewed. It is to be noted that the D&O Charge would only apply to the extent that the D&O insurance does not cover a liability, as the case may be.
- 192. Although the Petitioners intend to comply with all applicable laws and regulations, including the timely remittance of deductions at source and federal and provincial sales tax, the Directors and Officers have expressed concern with respect to potential personal liability if they continue in their current capacities through this restructuring process. The Petitioners submit that it is essential for the Initial Order

sought herein to grant a charge as security for the Petitioners' obligations to their Directors and Officers.

193. The amount of the D&O Charge has been calculated with the assistance of the Proposed Monitor and takes into account payroll obligations, vacation pay obligations, employee source deduction obligations and sales tax obligations that may arise during these proceedings. It is expected that all these amounts will be paid by the Petitioners in the normal course.
194. The Petitioners believe that the amount of the D&O Charge is fair and reasonable in the circumstances.
195. The D&O Charge is intended to allow the Directors and Officers to focus their efforts on these restructuring proceedings, for the benefit of all stakeholders.
196. As appears from the Pre-Filing Report (Exhibit P-5), the Proposed Monitor is supportive of the Administrative Charge and the D&O Charge.

G. Critical Suppliers and Post-Filing Payments

197. During the course of this CCAA proceeding, the Petitioners intend to make payments for goods and services supplied post-filing in the ordinary course as set out in the Pre-Filing Report and as permitted by the Initial Order.
198. Moreover, given that certain suppliers may be highly dependent on continuous payment from the Company and in order to ensure uninterrupted business operations during the CCAA proceeding, the Petitioners are proposing in the Initial Order that they be authorized, with the consent of the Monitor, in consultation with NBC, to make certain payments, including payments owing in arrears, to certain third parties that are critical to the Xebec Group's business and ongoing operations.
199. The Company therefore seeks to be authorized to pay, with the consent of the Monitor or the Court, any pre-filing unpaid claims of third parties it deems critical, up to an initial aggregate amount of \$700,000, to be increased to an aggregate amount of \$1,000,000 at the comeback hearing.

H. Chapter 15 Case

200. As indicated above, the Xebec Group has operations, assets and valuable business and trade relationships with a number of parties in the U.S.
201. Contemporaneously with commencement of these CCAA proceedings, the Petitioners intend to initiate a case under Chapter 15 of the U.S. Bankruptcy Code, seeking an order to recognize and enforce these CCAA proceedings in the U.S. as foreign main proceedings and grant protection against any potential adverse action taken by the Xebec Group's U.S. creditors and stakeholders (the "**Chapter 15 Case**").

202. The Petitioners intend to file the Chapter 15 Case in the United States Bankruptcy Court for the District of Delaware, where several U.S. Subsidiaries are incorporated. Xebec Inc. intends to act as foreign representative of the Petitioners in the Chapter 15 Case.
203. The Xebec Group is a consolidated business, with offices and operations in Canada, the United States and overseas, which is operationally and functionally integrated in many respects. However, the Petitioners' center of main interest is in Canada given that, *inter alia*:
- (a) All strategic decisions for the Petitioners are made in Canada by the senior management of Xebec Inc.;
 - (b) All U.S. Subsidiaries report to Xebec Inc. and its senior management;
 - (c) As described above, certain U.S. Subsidiaries are guarantors of the NBC Indebtedness or the EDC Indebtedness, for which respective loan agreements are governed by the laws of Québec;
 - (d) Xebec Inc. is the ultimate parent, and sole beneficial owner of all U.S. Subsidiaries;
 - (e) 50% or more of the directors of each of the U.S. Subsidiaries are residents of Canada;
 - (f) Xebec Inc. acts as a centralized entity providing operational and administrative functions for the Xebec Group as a whole. These functions are performed by Canadian employees and include, among other things:
 - i) Operational oversight;
 - ii) Sales, communications and marketing support;
 - iii) Most enterprise-wide information technology services;
 - iv) Enterprise-wide support for finance functions, including working capital management, credit management, payment processing, financial reconciliations, managing business expenses, insurance, and taxation;
 - v) Oversight for the legal, regulatory and compliance functions across the entire Xebec Group;
 - vi) Certain enterprise-wide human resources functions;
 - vii) Enterprise-wide health and safety functions and oversight;
 - viii) Financial planning and analysis services;

- ix) Supply planning services; and
- x) Internal audit services.

I. Exemptions From Certain Reporting Obligations, Trading Halt and Potential Delisting of Common Shares

- 204. Xebec Inc. is a public company and is required to, *inter alia*, prepare and file interim financial statements, management's discussions & analysis and other continuous disclosure documents under the *Securities Act* (Québec) 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 (the "**ICFS, MD&A and Other Documents**").
- 205. Xebec Inc. is presently devoting all its efforts to stabilize its business in the present circumstances, and implement its restructuring efforts, including the SISF, the whole for the benefit of all its stakeholders.
- 206. Preparing and filing its ICFS, MD&A and Other Documents would divert the attention of senior management away from such tasks, would require significant resources and could impede Xebec Inc.'s ability to achieve its restructuring under the CCAA.
- 207. In addition, it is neither necessary nor desirable to provide fragmented information to shareholders.
- 208. Under these circumstances, the Petitioners respectfully submit that it is both impracticable and unnecessary for Xebec Inc. to prepare and publish its ICFS, MD&A and Other Documents during these CCAA proceedings. Accordingly, Xebec Inc. is seeking a suspension of its ordinary course obligation to publish the ICFS, MD&A or Other Documents.
- 209. In addition, on the morning of the initial hearing on this Application, before the opening of the markets, Xebec Inc. will ask the Investment Industry Regulatory Organization of Canada to issue a trading halt.
- 210. If an Initial Order is rendered by the Court, Xebec Inc. will issue thereafter a press release announcing that it has obtained creditor protection under the CCAA.
- 211. Based on the recent experiences of issuers listed on the TSX which have commenced proceedings under the CCAA, upon Xebec Inc. announcing that it is obtained an initial order under the CCAA, the TSX is expected to halt trading of the Common Shares until a review is undertaken by the TSX regarding the suitability of the Xebec Inc. for listing on the TSX, which may possibly lead to a delisting of the Common Shares.

J. Sealing of Confidential Documents

212. The Petitioners are seeking an order declaring that Exhibits P-3, P-8 and P-10 be kept strictly confidential and shall be filed under seal, considering that:
- (a) the summaries of the KERPs (Exhibit P-10) contain sensitive personal information of the Petitioners' employees; and
 - (b) the NBF engagement letters (Exhibits P-3 and P-8) contain commercially sensitive information.

K. Execution Notwithstanding Appeal

213. Given the urgency and severity of the circumstances confronting the Petitioners, it is essential that execution of the order sought herein be granted notwithstanding appeal.
214. Considering the urgency of the situation, the Petitioners respectfully submit that the notices given of this Application for the purposes of all orders sought herein are proper and sufficient.

VIII. CONCLUSION

215. 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 restructure their business and affairs and maximize long-term value for the benefit of all stakeholders.
216. The Proposed Monitor has informed the Petitioners that it supports this Application and the issuance of the orders sought herein, as appears from a copy of the Pre-Filing Report (Exhibit P-5).

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

GRANT the present *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the "**Application**");

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

ISSUE an order substantially in the form of the draft Bidding Procedures Order communicated in support of the Application as **Exhibit P-2**;

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

MONTREAL, September 28, 2022

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP

Mtre. Sandra Abitan | Mtre. Julien Morissette |

Mtre. Iliia Kravtsov

Attorneys for Debtors / Petitioners

1000 de La Gauchetière Street West, Suite 2100

Montréal, Québec H3B 4W5

Telephone: (514) 904-8100

Fax: (514) 904-8101

Email: sabitan@osler.com | jmorissette@osler.com

| ikravtsov@osler.com

Email notification: notificationosler@osler.com

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 a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures 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 IN
MONTREAL, QUEBEC, ON SEPTEMBER
28, 2022.

Lyne St-Amour
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 a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in room 16.04, of the Montréal Courthouse, at the virtual calling of the roll on **September 29, 2022, at a time to be determined by the Court.**

HOW TO CONNECT TO THE VIRTUAL ROLL CALL

The coordinates for you to join the virtual calling of the roll in room 16.04 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

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.

MONTRÉAL, September 28, 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-

**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.

Proposed Monitor

LIST OF EXHIBITS

- P-1: Draft Initial Order
- P-1A: Comparison of Draft Initial Order with Model CCAA Initial Order issued by the Bar of Montréal
- P-2: Draft Bidding Procedures Order
- P-3: Engagement Letter of National Bank Financial Inc., dated September 27, 2022, under seal
- P-4: Organizational Chart of the Corporate Structure of the Xebec Group as of December 15, 2021
- P-5: Pre-Filing Report of the Proposed Monitor
- P-6: Consolidated Financial Statements for the years ended December 31, 2021 and 2020
- P-7: Condensed Interim Consolidated Financial Statements for the three-month and six-month periods ended June 30, 2022 and 2021
- P-8: Engagement Letter of National Bank Financial Inc., dated June 6, 2022, under seal
- P-9: Consent Letter of Deloitte Restructuring Inc., dated September 27, 2022

P-10: Summaries of the KERPs, *en liasse* and under seal

MONTRÉAL, September 28, 2022

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Attorneys for Debtors / Petitioners

LEGAL_1:75886394.13

No:

**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 A FIRST
DAY INITIAL ORDER, A DEEMED EXTENSION
OF THE STAY PERIOD AND A BIDDING
PROCEDURES ORDER, AFFIDAVIT, NOTICE OF
PRESENTATION, LIST OF EXHIBITS, EXHIBITS
P-1, P-1A, P-2, P-4, P-5, P-6, P-7, P-9 (Sections
4, 9, 10, 11, 11.02, 11.03, 11.51, 11.52, 11.7 and
23 of the *Companies' Creditors Arrangement
Act*, RSC 1985, c C-36)**

ORIGINAL

Osler, Hoskin & Harcourt LLP

M^e Sandra Abitan / M^e Julien Morissette /

M^e Ilia Kravtsov

1000 de La Gauchetière St. West, Suite 2100

Montréal, Québec H3B 4W5

Tél: 514.904.8100 Téléc.: 514.904.8101

sabitan@osler.com; jmorissette@osler.com;

ikravtsov@osler.com; / notificationosler@osler.com

Code : BO 0323

Our file: 1233913

EXHIBIT D

Initial Order

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: September 29, 2022

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

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

and

DELOITTE RESTRUCTURING INC.
Monitor

FIRST DAY INITIAL ORDER

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- [1] **CONSIDERING** the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the "**Application**") 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**");
- [3] **CONSIDERING** the Pre-Filing Report of the Monitor dated September 29, 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) Extension of the Stay Period;
 - (i) Possession of Property and Operations;

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- (j) No Exercise of Rights or Remedies;
- (k) No Interference with Rights;
- (l) Continuation of Services;
- (m) Non-Derogation of Rights;
- (n) Directors' and Officers' Indemnification and Charge;
- (o) Restructuring;
- (p) Powers of the Monitor;
- (q) Priorities and General Provisions Relating to CCAA Charges;
- (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 (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.

[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

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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, 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] 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.

[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.

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g. Stay of Proceedings against Directors and Officers

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

h. 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

[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 [37] hereof.

[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:

- (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

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the Monitor, the supplier is critical to the business and ongoing operations of the Petitioners.

[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.

[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.

[26] **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.

j. No Exercise of Rights or Remedies

[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

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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.

- [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.

k. No Interference with Rights

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

l. Continuation of Services

- [30] **ORDERS** that during the Stay Period and subject to paragraphs [31] and [32] 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

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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.

- [31] **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.
- [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.

m. Non-Derogation of Rights

- [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.

n. Directors' and Officers' Indemnification and Charge

- [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

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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.

[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 \$2,200,000 (the "**Directors' Charge**"), as security for the indemnity provided in paragraph [34] of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs [49] and [50] of this Order.

[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' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' 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 [34] of this Order.

o. Restructuring

[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) 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;
- (c) 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

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failing such agreement, to make provision for the consequences thereof in a Plan; and

(d) subject to section 11.3 CCAA, assign any rights and obligations of Petitioners.

[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.

[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.

p. 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

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prescribed manner, a notice to all known creditors having a claim against the Petitioners of more than \$1,000, advising them that this Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;

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

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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.

- [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.
- [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.
- [43] **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.
- [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.

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- [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.
- [46] **DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.
- [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.
- [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-11 in support of the 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 \$250,000 (the "**Administration Charge**"), having the priority established by paragraphs [49] and [50] of this Order.

q. Priorities and General Provisions Relating to CCAA Charges

- [49] **DECLARES** that the priorities of the Administration Charge and the Directors' 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' Charge;
 - (c) third, the Transaction Charge (as defined in the Bidding Procedures Order dated September 29, 2022).

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- [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 only, the question with respect to its priority ranking 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 and time.
- [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.
- [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.
- [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.
- [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

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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.

- [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.

r. General

- [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.
- [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.
- [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.
- [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.

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- [60] **ORDERS** that Exhibits-P-3, P-8 and P-10 to the Application shall be filed under seal and kept confidential until further order of this Court.
- [61] **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.
- [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, 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.
- [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.
- [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.
- [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

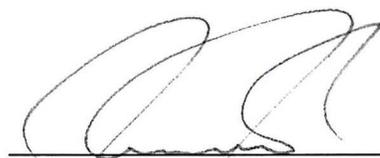
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as "Foreign Main Proceedings" in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, for which Xebec Adsorption Inc., shall be the foreign representative of the Petitioners. All courts and administrative bodies of all such 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.

- [67] **DECLARES** that, for the purposes of any applications authorized by paragraph [66] of this Order, Petitioners' centre of main interest is located in Montréal, Québec, Canada.
- [68] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.
- [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 29, 2022

COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR

Personne désignée par le greffier

J.N.S.