

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

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

Debtors in a foreign proceeding.<sup>1</sup>

Chapter 15

Case No. 22- 10934 (KBO)

Jointly Administered

**FOREIGN REPRESENTATIVE’S MOTION FOR ENTRY OF  
ORDER (I) RECOGNIZING AND ENFORCING THIRD AMENDED AND  
RESTATED CCAA ORDER; AND (II) AUTHORIZING JUNIOR DIP FINANCING**

Xebec Adsorption Inc., in its capacity as the authorized foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”) in a proceeding (the “**Canadian Proceeding**”) commenced under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and pending before the Superior Court of Québec, in the Province of Québec, District of Montréal (the “**Canadian Court**”), respectfully submits this motion (this “**Motion**”), pursuant to sections 105, 364, and 1521 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Order**”): (i) recognizing and enforcing the terms, conditions, and provisions of an order issued by the Canadian Court (the “**Third Amended and Restated CCAA Order**”), which authorizes the Debtors to obtain a debtor-in-possession loan (the “**Junior DIP Loan**”) from Export Development Canada (“**EDC**” or the “**Lender**”) and granting a charge and security (the “**Junior DIP Charge**”) to the Lender; (ii) authorizing the Debtors to enter into the new senior secured

---

<sup>1</sup> 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: 730 Industriel Boulevard, Blainville, Quebec, J7C 3V4, Canada.

superpriority debtor in possession financing facility (the “**Junior DIP Facility**”) and granting to the Lender the Junior DIP Charge; (iii) granting the Lender certain protections afforded by the Bankruptcy Code, including those protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, as made applicable to these chapter 15 cases by section 1521(a)(7) of the Bankruptcy Code; and (iv) granting such other and further relief as the Court deems just and proper.

In support of this Motion, the Foreign Representative refers the Court to: (a) the *Declaration of Dimitrios “Jim” Vounassis in Support of Motion for Recognition of Foreign Main Proceeding* (the “**Vounassis First Day Declaration**”) [Docket No. 3], filed on September 30, 2022 (the “**Petition Date**”); (b) the *Declaration of Dimitrios “Jim” Vounassis in Support of Foreign Representative’s Motion for Entry of Order (I) Recognizing and Enforcing Third Amended and Restated CCAA Order; and (II) Authorizing Junior DIP Financing* (the “**Vounassis DIP Declaration,**” or the “**Vounassis DIP Decl.**”), filed contemporaneously herewith; (c) the *Declaration of Sandra Abitan, as Canadian Counsel to the Debtors, in Support of Foreign Representative’s Motion for Entry of Order (I) Recognizing and Enforcing Third Amended and Restated CCAA Order; and (II) Authorizing Junior DIP Financing* (the “**Abitan Declaration,**” or the “**Abitan Decl.**”), filed contemporaneously herewith. The Vounassis First Day Declaration, the Vounassis DIP Declaration, and the Abitan Declaration each are incorporated herein by reference.

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

### **JURISDICTION**

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

for the District of Delaware dated as of February 29, 2012.

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

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

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

### **BACKGROUND**

5. The Debtors and certain non-U.S. based subsidiaries and affiliates of the Debtors (the “**Xebec Group**”) primarily supply a wide range of renewable and low-emission gas products and services globally through several channels, including direct sales, channel partners, project developers, and e-commerce. The Xebec Group portfolio includes proprietary technologies for the on-site and distributed production of 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.<sup>2</sup>

#### **I. Commencement of the Canadian Proceeding**

6. On September 29, 2022, pursuant to an application made by the Debtors in the Canadian Proceeding, the Canadian Court issued that certain First Day Initial Order (the “**Initial**

---

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

**CCAA Order**”). Pursuant to the Initial CCAA Order, the Canadian Court, among other things: (a) ordered a broad stay of proceedings in respect of the Debtors and their directors and officers (the “**Canadian Stay**”);<sup>3</sup> (b) appointed Deloitte Restructuring Inc. as monitor in the Canadian Proceeding; (c) declared that Québec is the “centre of main interest” of the Debtors, and (d) authorized the Debtors to apply to any other court, tribunal, regulatory, administrative, or other body, wherever located, for orders to recognize and assist in carrying out the terms of the Initial CCAA Order and any subsequent orders rendered by the Canadian Court in the context of the Canadian Proceeding, including orders under chapter 15 of the Bankruptcy Code. (Abitan Decl. ¶ 7; *see also* Initial CCAA Order at ¶¶ 16-20, 40-48, 65, 67.)

7. On October 20, 2022, the Canadian Court issued an Amended and Restated Initial Order (the “**Amended and Restated CCAA Order**”), pursuant to which, the Canadian Court, among other things: (a) authorized the Debtors to obtain debtor-in-possession financing in the aggregate amount not to exceed CAD\$3,000,000 (“**Original DIP Loan**”); and (b) granted a charge and security in the amount of CAD\$3,600,000 (“**Original DIP Charge**”) to National Bank of Canada (“**NBC**”) and EDC (NBC and EDC in their capacity as lenders under the Original DIP Loan, the “**Original DIP Lenders**”).

8. On February 8, 2023, the Debtors filed that certain *Application for the Issuance of a Third Amended and Restated Initial Order and Approval and Vesting Orders* (the “**Canadian Application**”) in the Canadian Proceeding, pursuant to which the Debtors seek, among other things: (a) authority to obtain the Junior DIP Loan in the aggregate amount not to exceed CAD\$2,500,000; and (b) approval of the grant of the Junior DIP Charge to the Lender in the amount of CAD\$3,000,000 that is junior only to the Original DIP Charge. A copy of the

---

<sup>3</sup> On February 3, 2023, the Canadian Court entered an order extending the Canadian Stay until February 13, 2023. The Debtors have requested an extension of the stay to March 17, 2023. (Abitan Decl. ¶ 8.)

Canadian Application is attached hereto as **Exhibit B** and incorporated herein by reference.<sup>4</sup> The Canadian Court has scheduled a hearing for February 13, 2023, to consider the Canadian Application. (Abitan Decl. ¶ 10.)

## II. The Chapter 15 Cases

9. On the Petition Date, the Foreign Representative commenced these chapter 15 cases by filing, among other things, verified chapter 15 petitions seeking recognition by the Court of the Canadian Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code. On the Petition Date, the Court entered that certain *Order (A) Directing Joint Administration of Cases Under Chapter 15 of the Bankruptcy Code and (B) Authorizing the Filing of a Consolidated List Under Bankruptcy Rule 1007* [Docket No. 8].

10. On October 27, 2022, the Court entered that certain *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* [Docket No. 36] (the “**Recognition Order**”). Pursuant to the Recognition Order, the Court recognized the Canadian Proceeding as a “foreign main proceeding,” recognized the Foreign Representative as the “foreign representative” in respect of the Canadian Proceeding, and recognized and granted comity to, and gave full force and effect in the United States to the Canadian Proceeding and the orders entered in the Canadian Proceeding, including enforcing the automatic stay in the United States.

11. On November 22, 2022, the Court entered that certain *Order Granting Final Relief Recognizing and Enforcing DIP Financing Authorized under Amended and Restated CCAA Order* [Docket No. 48] (the “**DIP Recognition Order**”). Pursuant to the DIP Recognition Order, the Court, among other things, recognized and enforced the terms, conditions, and provisions of the Amended and Restated CCAA Order, including the authority of

---

<sup>4</sup> The voluminous exhibits to the Canadian Application are available upon request to counsel for the Foreign Representative

the Debtors to obtain the Original DIP Loan and grant the Original DIP Charge, and granted certain protections to the Original DIP Lenders under section 364 the Bankruptcy Code.

12. As referenced above, the Canadian Court has scheduled a hearing for February 13, 2023, to consider the Canadian Application and approval of the Junior DIP Loan. To the extent the Canadian Court enters the Third Amended and Restated CCAA Order and authorizes the Debtors to enter into the Junior DIP Facility, the Foreign Representative will submit it to the Court in advance of the hearing on this Motion.

### **III. The Sale Process**

13. On the date hereof, the Foreign Representative filed a separate motion seeking recognition and enforcement of a Canadian Court order approving the sale of certain of the Debtors' assets, and authorizing such sale under the Bankruptcy Code (the "**Sale Motion**").<sup>5</sup> As discussed in the Sale Motion, the Debtors are continuing to engage in the Sale and Investment Solicitation Process (the "**SISP**"). (Vounassis DIP Decl. ¶ 7.) As discussed below, the Junior DIP Facility will allow the Debtors to continue the SISP. (*Id.*)

### **IV. The Junior DIP Facility**

14. The Debtors have determined that they require additional funding because they have fully drawn the Original DIP Loan and need additional liquidity to continue operations and the SISP. Accordingly, on February 8, 2023, after good faith and arm's length negotiations, the Debtors and the Lender entered into an interim financing term sheet (the "**Junior DIP Term Sheet**"), that sets forth the agreed upon terms for the Junior DIP Facility. (Vounassis DIP Decl. ¶ 8.)

---

<sup>5</sup> See Motion for Order (I) Recognizing and Enforcing CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtors' Assets Free and Clear of Any and All Liens, Claims, and Encumbrances; (III) Approving Assumption and Assignment of Certain Contracts; and (IV) Granting Related Relief.

15. In accordance with Canadian law and practice, the Debtors filed the Junior DIP Loan Term Sheet under seal with the Canadian Court. (Abitan Decl. ¶ 10.) However, as discussed in the Canadian Application, the Lender has committed to fund CAD\$2,500,000 in Junior DIP Loans, payable in two tranches of CAD\$1,250,000. The Junior DIP Loans will be secured by the Junior DIP Charge, which will be junior to the Original DIP Charge. The proceeds of the Junior DIP Facility will be used to fund the Debtors' restructuring efforts, including to continue the SISP and complete the transactions resulting therefrom. One of the conditions to closing of the Junior DIP Facility is an order of this Court recognizing and enforcing the Third Amended and Restated Canadian Order and approving the Junior DIP Loan and the Junior DIP Charge. (Vounassis DIP Decl. ¶ 9.)

#### **RELIEF REQUESTED**

16. By this Motion, the Foreign Representative seeks entry of an order: (a) recognizing and enforcing the terms of the Third Amended and Restated CCAA Order as it relates to the Junior DIP Facility and the Junior DIP Charge; (b) authorizing the Debtors to enter into the Junior DIP Facility and granting the Lender the Junior DIP Charge; (c) granting the Lender certain protections afforded by the Bankruptcy Code, including under sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, pursuant to sections 1521(a)(7) of the Bankruptcy Code; and (d) granting such other and further relief as the Court deems just and proper.

#### **BASIS FOR RELIEF**

17. As noted above, the Court entered the Recognition Order, thereby recognizing the Canadian Proceeding as a "foreign main proceeding" pursuant to chapter 15 of the Bankruptcy Code. Accordingly, pursuant to section 1521(a)(7) of the Bankruptcy Code, "where necessary to effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interest of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief,

including . . . any additional relief that may be available to a trustee[.]” 11 U.S.C. § 1521(a)(7); *see also* 11 U.S.C. § 1522(a) (court may grant relief under section 1521 only if the interests of “the creditors and the other interested entities, including the debtor, are sufficiently protected”).

18. Therefore, pursuant to section 1521(a)(7) of the Bankruptcy Code, the Foreign Representative may seek relief under section 364 of the Bankruptcy Code. Here, specifically with respect to section 364 of the Bankruptcy Code, the Debtors are required, pursuant to the terms of the Junior DIP Facility, to seek approval from this Court of the Junior DIP Facility, the Junior DIP Charge, and the good faith protections of sections 364(c), 364(d), and 364(e) of the Bankruptcy Code.

19. The Debtors have a similar requirement to obtain Canadian Court approval of the Junior DIP Loan. Accordingly, on proper notice by the Debtors under the CCAA, the Canadian Court has set a hearing on February 13, 2023, to consider the Canadian Application, including whether to authorize the Debtors to enter into the Junior DIP Facility and grant the Junior DIP Charge. (Abitan Decl. ¶ 10.) Therefore, assuming the Canadian Court approves the Junior DIP Loan, granting the relief requested herein will promote cooperation between jurisdictions in cross-border insolvencies, an express purpose of chapter 15 of the Bankruptcy Code. *See* 11 U.S.C. § 1501(a).

20. In addition, the Debtors will suffer immediate and irreparable harm if they cannot access the Junior DIP Loan. Because the Debtors have no further availability under the Original DIP Facility, they have insufficient means by which to fund operations or the SISP without the Junior DIP Loan. However, if approved by the Canadian Court and this Court, the Junior DIP Facility will allow the Debtors to fund their operations and the SISP, thereby maximizing value for their constituents, which fulfills the requirements of section 1521(a)(7) of the Bankruptcy

Code. (*See* Vounassis DIP Decl. ¶ 8.)

21. Therefore, granting the relief requested herein is consistent with the purposes of chapter 15 of the Bankruptcy Code and public policy of the United States. Moreover, as noted above, the Debtors' restructuring efforts cannot succeed without the support of the Lender, who will not fund the Junior DIP Loan absent entry of the Order.

22. Courts in this District have granted similar relief in other chapter 15 cases. *See, e.g., Yatsen Grp. of Cos. Inc.*, Case No. 21-10073 (Bankr. D. Del. Jan. 27, 2021) (order granting provisional DIP relief in chapter 15 case); *In re Hematite Holdings Inc.*, No. 20-12387 (Bankr. D. Del. Oct. 15, 2020) (same); *In re The Aldo Grp. Inc.*, No. 20-11060 (Bankr. D. Del. June 3, 2020) (same); *In re Cinram Int'l Inc.*, No. 12-11882 (Bankr. D. Del. July 25, 2012); *In re Arctic Glacier Int'l Inc.*, Case No. 12-10605 (Bankr. D. Del. Feb. 23, 2012) (same).

#### **NOTICE**

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

#### **NO PRIOR REQUEST**

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

**CONCLUSION**

WHEREFORE, the Foreign Representative respectfully requests that the Court enter the Order, substantially in the form attached hereto as Exhibit A, and grant such other and further relief as may be just and proper.

Dated: February 10, 2023  
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  
Joshua A. Gadharf  
Ashley J. Jericho  
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

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

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

Debtors in a foreign proceeding.<sup>1</sup>

Chapter 15

Case No. 22-10934 (KBO)

Jointly Administered

**ORDER (I) RECOGNIZING AND ENFORCING THIRD AMENDED AND  
RESTATED CCAA ORDER; AND (II) AUTHORIZING JUNIOR DIP FINANCING**

Upon the motion (the “**Motion**”)<sup>2</sup> of Xebec Adsorption Inc., in its capacity as authorized foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”), in a proceeding (the “**Canadian Proceedings**”) commenced under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and pending before the Superior Court of Québec, in the Province of Québec, District of Montréal (the “**Canadian Court**”), seeking entry of an order granting additional relief (this “**Order**”) pursuant to sections 105(a), 364, and 1521 of title 11 of the United States Code, as amended from time to time (the “**Bankruptcy Code**”): (a) recognizing and enforcing the terms, conditions, and provisions of an order issued by the Canadian Court (the “**Third Amended and Restated CCAA Order**”), which authorizes the Debtors to obtain a debtor-in-possession loan (the “**Junior DIP Loan**”) from Export Development Canada (“**EDC**” or the “**Lender**”) and granting a charge and security (the “**Junior DIP Charge**”) to the Lender, a copy of which is attached as

---

<sup>1</sup> 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: 730 Industriel Boulevard, Blainville, Quebec, J7C 3V4, Canada.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Exhibit B to the Motion, (b) authorizing the Debtors to enter into the new senior secured superpriority debtor in possession financing facility (the “**Junior DIP Facility**”) and granting to the Lender the Junior DIP Charge; (iii) granting the Lender certain protections afforded by the Bankruptcy Code, including those protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, as made applicable to these chapter 15 cases by section 1521(a)(7) of the Bankruptcy Code; and (iv) granting such other and further relief as the Court deems just and proper; and it appearing that this Court has jurisdiction to consider the Motion pursuant to sections 157 and 1334 of title 28 of the United States Code; venue being proper before the Court pursuant to 28 U.S.C. § 1410; and this Court having entered, on February \_\_, 2022, the *Order Approving Motion to Shorten Notice With Respect to Foreign Representative’s Motion for Entry of Order (I) Recognizing and Enforcing Third Amended and Restated CCAA Order; and (II) Authorizing Junior DIP Financing* [Docket No. \_\_] (the “**DIP Noticing Order**”), setting the deadline for filing responses, answers, or objections to the Motion for February \_\_, 2023 at \_\_:00 \_\_m. (prevailing Eastern Time) (the “**Objection Deadline**”) and setting a hearing for February 16, 2022 at 11:00 a.m. (prevailing Eastern Time) (the “**Hearing**”); and the Court having determined that appropriate and timely notice of the filing of the Motion, the Objection Deadline, and the Hearing having been given; and this Court having reviewed the Motion and having considered the statements of counsel with respect to the Motion at a hearing before this Court on February 16, 2023; and it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and no other or further notice being necessary or required; and this Court having determined that the legal and factual bases set forth in the Motion, and all other pleadings and papers in these cases establish just cause to grant the relief ordered herein, and no objections or other responses having been filed that have not been overruled, withdrawn, or otherwise resolved, and after due deliberation therefor;

**THIS COURT HEREBY FINDS AND DETERMINES THAT:**

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

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

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

D. This Court entered an order on October 27, 2022 recognizing, among other things, that the Canadian Proceedings constitute “foreign main proceedings” as defined in section 1502(4) of the Bankruptcy Code (the “**Recognition Order**”).

E. On October 20, 2022, the Canadian Court entered the *Amended and Restated Initial Order of the Canadian Court* (the “**Amended and Restated CCAA Order**”), pursuant to which the Canadian Court (i) authorized the Debtors to borrow from National Bank of Canada (“**NBC**”) and EDC (together with NBC, the “**Original DIP Lenders**”) an aggregate amount not to exceed CAD\$3,000,000.00 (the “**Original DIP Loans**”), and (iii) granted the Original DIP Charge to the Original DIP Lenders.

F. On November 2, 2022, this Court entered an order recognizing and enforcing the Amended and Restated CCAA Order and approving the Original DIP Loans and Original DIP Charge on an interim basis, *see* [Docket No. 42], and on November 22, 2022, this Court granted such approval on a final basis, *see* [Docket No. 48] (the “**Original DIP Order**”).

G. On February 8, 2023, the Debtors filed a motion with the Canadian Court (the “**Canadian Application**”) seeking approval of, among other things, a new senior secured superpriority debtor in possession financing facility authorizing the Debtors to, among other things, (i) borrow from the Lender, Export Development Canada, a total maximum principal amount of up to CAD\$2,500,000.00, and (ii) grant the Lender a superpriority charge and security on all of the Debtors’ Property in an aggregate amount of CAD\$3,000,000 that is junior only to the Original DIP Charge.

H. On February \_\_\_, 2023, the Canadian Court entered the Third Amended and Restated CCAA Order approving, among other things, the Debtors’ entry into the Junior DIP Facility and the granting of the Junior DIP Charge.

I. The Foreign Representative has demonstrated that the incurrence of indebtedness under the Junior DIP Facility, as authorized by the Third Amended and Restated CCAA Order, is necessary to prevent irreparable harm to the Debtors, because without such financing, they will be unable to continue operations or the SISP, which will significantly impair the value of the Debtors’ assets.

J. The Foreign Representative has demonstrated that the terms of the Junior DIP Facility, as approved in the Third Amended and Restated CCAA Order, are fair and reasonable and were entered into in good faith by the Debtors and the Lender and that the Lender would not have extended financing without the protections provided by sections 364 of the Bankruptcy Code, made

applicable by section 1521(a)(7) of the Bankruptcy Code. The Foreign Representative has demonstrated that the terms of the Junior DIP Facility are reasonable under the circumstances.

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

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

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

1. The Motion is Granted as set forth herein.
2. The terms of the Junior DIP Facility and the Junior DIP Loan as approved in the Third Amended and Restated CCAA Order shall be given full force and effect as to the Debtors and their property in the United States.
3. Pursuant to section 1521 of the Bankruptcy Code, the Third Amended and Restated CCAA Order, and the transactions consummated or to be consummated thereunder, including without limitation, entry into and performance under the Junior DIP Facility and Junior DIP Loans, shall be granted and given full force and effect in the United States to the same extent that they are given effect in Canada, and each is binding on all creditors of the Debtors and any of their successors or assigns.
4. Pursuant to sections 1521 and 364 of the Bankruptcy Code, to the extent authorized under the Third Amended and Restated CCAA Order, the Court grants the Junior DIP Charge on all of the Debtors' property located in the United States on the same priority set forth in the Third Amended and Restated CCAA Order.

5. Upon entry of this Order, the Foreign Representative and the Debtors, as applicable, shall comply with the terms, conditions, and provisions of the Third Amended and Restated CCAA Order including, without limitation, the provisions relating to the Junior DIP Facility, Junior DIP Loan and the DIP Charge.

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

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

8. This Order shall be sufficient and conclusive notice and evidence of the grant, validity, perfection, and priority of the liens granted to the Lender in the Third Amended and

Restated CCAA Order without the necessity of filing or recording this Order or any financing statement, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction; provided that the Debtors are authorized to execute, and the Lender under the Junior DIP Facility may file or record, any financing statements, mortgages, other instruments or any other Interim Financing Documents to further evidence the liens authorized, granted, and perfected hereby and by the Third Amended and Restated CCAA Order.

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

10. Notwithstanding any stay, injunction or similar relief granted in these chapter 15 cases, the Lender is authorized to exercise all remedies and take any and all enforcement steps permitted under the Third Amended and Restated CCAA Order.

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

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

13. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any requests for additional relief or any adversary proceeding or contested matter brought in and through these chapter 15 cases, and any request by an entity for

relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

# Exhibit B

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Commercial Division)

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

No.: 500-11-061483-224

---

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

**XEBEC ADSORPTION INC.**

-and-

**XEBEC RNG HOLDINGS INC.**

-and-

**APPLIED COMPRESSION SYSTEMS LTD.**

-and-

**COMPRESSED AIR INTERNATIONAL INC.**

-and-

**XEBEC HOLDING USA INC.**

-and-

**ENERPHASE INDUSTRIAL SOLUTIONS, INC.**

-and-

**CDA SYSTEMS, LLC**

-and-

**XEBEC ADSORPTION USA INC.**

-and-

**THE TITUS COMPANY**

-and-

**NORTEKBELAIR CORPORATION**

-and-

**XBC FLOW SERVICES – WISCONSIN INC.**

-and-

**CALIFORNIA COMPRESSION, LLC**

-and-

**XEBEC SYSTEMS USA, LLC**

Debtors / Petitioners

- 2 -

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

-and-

**IVYS ADSORPTION INC.**

-and-

**IVYS, INC.**

-and-

**SULLAIR, LLC**

-and-

**FONDS DE SOLIDARITÉ DES TRAVAILLEURS DU  
QUÉBEC (F.T.Q.)**

-and-

**THE REGISTRAR OF THE REGISTER OF  
PERSONAL AND MOVABLE REAL RIGHTS  
(QUÉBEC)**

-and-

**THE REGISTRAR OF THE PERSONAL PROPERTY  
SECURITY REGISTRATION SYSTEM (ONTARIO)**

Impleaded Parties

**APPLICATION FOR THE ISSUANCE OF A THIRD AMENDED AND  
RESTATED INITIAL ORDER AND APPROVAL AND VESTING  
ORDERS**

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

**TO THE HONOURABLE JUSTICE CHRISTIAN IMMER, 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 RNG Holdings Inc., Applied Compression Systems Ltd., Compressed Air International Inc., Xebec Holding USA Inc., Enerphase Industrial Solutions, Inc., California Compression, LLC, CDA Systems, LLC, Xebec Adsorption USA Inc., The Titus Company, Nortekbelair Corporation, Xebec Systems USA, LLC, XBC Flow Services – Wisconsin Inc. (collectively, the “**Petitioners**”) form part of a global provider of

sustainable gas solutions used in energy, mobility and industry applications, headquartered in Montréal, Québec.

2. By the present Application, the Petitioners are seeking the issuance of an order (the “**Third Amended and Restated Initial Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-1**, *inter alia*:
  - (a) extending the Stay (as defined below) until March 17, 2023 (the “**Extension Date**”);
  - (b) approving the Second DIP Facility (as defined below) and approving the execution by the Petitioners of the Second DIP Term Sheet (as defined below);
  - (c) granting the Second DIP Charge (as defined below);
  - (d) reducing the Administration Charge (as defined in the Second ARIO); and
  - (e) sealing the confidential exhibits filed in support of this Application.

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

3. The Petitioners are also seeking the issuance of:
  - (a) an approval, vesting and assignment order (the “**Ivys Approval, Vesting and Assignment Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-2**, *inter alia*:
    - i) authorizing *nunc pro tunc* the Petitioners Xebec Adsorption Inc. (“**Xebec Inc.**”) and Compressed Air International Inc. (“**Compressed**”) to have executed an asset purchase agreement dated February 8, 2023 (the “**Ivys APA**”) between Xebec Inc. and Compressed, as vendors, and Ivys, Inc. on behalf of a corporation to be incorporated and Ivys Adsorption Inc. as purchasers (collectively, “**Ivys**”) for the sale of the Ivys Purchased Assets (as defined below) (the “**Ivys Transaction**”);
    - ii) assigning all rights and obligations of Xebec Inc. and Compressed under the Assigned Contracts (as defined in the Ivys APA), upon the issuance to Xebec Inc., Compressed and Ivys of the relevant Monitor’s Certificate;
    - iii) providing for the assignment of all rights and obligations of Xebec of any Post-Closing Assigned/Assumed Contracts (as defined in the Ivys APA); and
    - iv) approving the Ivys Transaction;

- (b) an approval, vesting and assignment order (the “**Sullair Approval, Vesting and Assignment Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-3**, *inter alia*:
    - i) authorizing *nunc pro tunc* the Petitioners CDA Systems, LLC (“**CDA**”) and California Compression, LLC (“**California Compression**”) to have executed an asset purchase agreement dated February 8, 2023 (the “**Sullair APA**”) between CDA and California Compression, as vendors, and Sullair, LLC, as purchaser (“**Sullair**”) for the sale of the Sullair Purchased Assets (as defined below) (the “**Sullair Transaction**”);
    - ii) assigning all rights and obligations of CDA and California Compression under the Assigned Contracts (as defined in the Sullair APA), upon the issuance to CDA, California Compression and Sullair of the relevant Monitor’s Certificate; and
    - iii) approving the Sullair Transaction.
  - (c) an approval and vesting order (the “**FSTQ Approval and Vesting Order**”), substantially in the form of the draft order communicated herewith as **Exhibit P-4**, *inter alia*:
    - i) authorizing *nunc pro tunc* Xebec Inc. to have executed execute a final share purchase and unit repurchase agreement dated February 8, 2023 (the “**FSTQ Purchase Agreement**”) between Xebec Inc. and Xebec RNG Holdings Inc. (“**RNG Holdings**”), as vendors, and the Fonds de solidarité des travailleurs du Québec (F.T.Q.) (“**FSTQ**”) and GNR Quebec Capital L.P. as purchasers for the sale of Xebec Inc.’s limited partnership interests in the capital of GNR Québec Capital L.P. (“**GNR LP**”) and the shares of RNG Holdings in the capital of GNR Québec Capital Management Inc. (“**GNR GP**”) (the “**FSTQ Transaction**”); and
    - ii) approving the FSTQ Transaction.
4. Comparisons of the Ivys Approval, Vesting and Assignment Order, the Sullair Approval, Vesting and Assignment Order and the FSTQ Approval and Vesting Order with the model approval and vesting order published by the Barreau de Montréal are communicated herewith as **Exhibits P-2A, P-3A and P-4A**.

## II. PROCEDURAL BACKGROUND

- 5. On September 29, 2022, at the Petitioners’ request, the Court issued a First Day Initial Order (the “**FDIO**”) pursuant to the CCAA and a Bidding Procedures Order (the “**Bidding Procedures Order**”), as appears from the Court record.
- 6. The FDIO, *inter alia*:

- (a) appointed Deloitte Restructuring Inc. as monitor of the Petitioners' CCAA proceedings (the "**Monitor**");
  - (b) ordered a stay of proceedings in respect of the Petitioners and their directors and officers until October 7, 2022, as extended thereafter pursuant to the ARIO (as defined below), (the "**Stay**"); and
  - (c) declared that Québec is the "center of main interest" of the Petitioners and, accordingly, authorized the Petitioners to apply, as they may consider necessary or desirable, to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize and/or assist in carrying out the terms of the Initial Order and any subsequent Orders rendered by this Court in the context of these proceedings, including, without limitation, orders under Chapter 15 of the United States Bankruptcy Code 11 U.S.C. §§ 101-1532.
7. The Bidding Procedures Order, *inter alia*, approved the proposed Sale and Investment Solicitation Process (the "**SISP**") and its implementation in accordance with the Procedures for the Sale and Investment Solicitation Process annexed thereto as Schedule "A" (the "**Bidding Procedures**"), as appears from the Court record.
8. The Bidding Procedures Order also approved the engagement of National Bank Financial Inc. ("**NBF**") to assist in the implementation of the SISP.
9. On October 7, 2022, at the Petitioners' request, the Court issued an Order Extending the Stay until October 20, 2022, as appears from the Court record.
10. On October 20, 2022, at the Petitioners' request, the Court issued an Amended and Restated Initial Order (the "**ARIO**") pursuant to the CCAA, as appears from the Court record.
11. The ARIO, *inter alia*:
  - (a) extended the Stay until November 28, 2022;
  - (b) approved a key employee retention plan, a key vice-president retention plan and a key executive incentive plan (collectively, the "**KERPs**") and granted a Court-ordered charge to secure the payment owed to the key employees in accordance with the KERPs; and
  - (c) approved the debtor-in-possession evolving multiple draw credit facility (the "**DIP Facility**") provided by the National Bank of Canada ("**NBC**") and Export Development Canada ("**EDC**", and collectively with NBC, the "**Interim Lenders**") in accordance with the Interim Financing Term Sheet filed under seal as Exhibit P-2A in support of the Application for the Issuance of an Amended and Restated Initial Order and granted a Court-

ordered charge (the “**DIP Charge**”) in an amount sufficient to cover the potential exposure of the Interim Lenders under the DIP Facility.

12. On November 28, 2022, at the Petitioners’ request, the Court issued an Order Extending the Stay of Proceedings and Granting Ancillary Relief, which extended the Stay for a third time until February 3, 2023, as appears from the Court record.
13. On February 3, 2023, at the Petitioners’ request, the Court issued a Second Amended and Restated Initial Order (the “**Second ARIO**”), pursuant to the CCAA, as appears from the Court record.
14. On the same date, the Court also issued an Approval and Vesting Order with respect to the sale of substantially all assets of Allied Compression Systems Ltd., the whole as appears from the Court record.
15. The Second ARIO, *inter alia*:
  - (a) extended the Stay until February 13, 2023; and
  - (b) increased the Administration Charge to a maximum amount of \$3,000,000.

### III. **SISP**<sup>1</sup>

16. In accordance with the Bidding Procedures Order, the SISP was conducted in accordance with the following milestones:
  - (a) non-binding letters of intent (“**LOIs**”) were due on or before November 11, 2022;
  - (b) NBF notified each Phase 1 Qualified Bidder as to whether its bid constituted a Phase 1 Satisfactory Bid on November 18, 2022; and
  - (c) Definitive offers by Phase 2 Qualified Bidders were due on or before January 6, 2023;

the whole as further provided for in the Bidding Procedures.

17. As previously reported to the Court, NBF distributed teasers to 479 potential targets, including potential investors and strategic acquirers.
18. A confidential virtual data room (the “**VDR**”) was made available to potential targets, provided that such potential targets execute a non-disclosure agreement (“**NDA**”).

---

<sup>1</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the SISP.

19. As a result, 101 potential targets executed NDAs and were thereafter granted access to the VDR. Of those 101 potential bidders, 67 were deemed Phase 1 Qualified Bidders.
20. Of the 67 Phase 1 Qualified Bidders, 32 submitted bids in the form of non-binding LOIs.
21. The Petitioners, in consultation with the Monitor and NBF, determined that 19 Phase 1 Qualified Bidders were Phase 2 Qualified Bidders, and invited them to participate in phase 2 of the SISP.
22. On January 6, 2023 (the "**Phase 2 Bid Deadline**"), a number of Binding Offers were submitted by Phase 2 Qualified Bidders. An updated summary of the Binding Offers received in the context of the SISP will be appended (under seal) to the Monitor's report to be filed in support of the present Application (the "**Monitor's Report**").
23. Further to a review of the Binding Offers, the Petitioners, in consultation with the Monitor and NBF determined that it would be in the best interests of the stakeholders that further clarifications in respect of the Binding Offers be sought.
24. Accordingly, NBF engaged with the Phase 2 Qualified Bidders to obtain clarifications regarding their Binding Offers and provided certain Phase 2 Qualified Bidders with an "Issues List" identifying key deficiencies in their respective Binding Offers.
25. NBF also held subsequent meetings to discuss the Binding Offers with each Phase 2 Qualified Bidder and requested that each Phase 2 Qualified Bidder address the identified issues and resubmit their "best and final offer" by no later than January 16, 2023.
26. On January 16, 2023, each of the Phase 2 Qualified Bidders submitted a revised Binding Offer.
27. Following receipt of same, the Petitioners, in consultation with NBF and the Monitor, conducted numerous meetings to review and evaluate the revised Binding Offers and engaged in negotiations with certain Phase 2 Qualified Bidders with a view to entering into definitive agreements.
28. In light of the revised Binding Offers, the Petitioners, in consultation with the Monitor and NBF, determined that it was in the best interest of the Petitioners and their stakeholders to not hold an auction amongst the Phase 2 Qualified Bidders.
29. Sustained discussions are ongoing with several Phase 2 Qualified Bidders in respect of various transactions, designed to ensure that the SISP results in the highest and best transactions available in the circumstances, the whole for the benefit of all stakeholders.

#### IV. IVYS TRANSACTION<sup>2</sup>

##### A. Description of the Ivys Transaction

30. Ivys is a Delaware-based leading provider of e-mobility fuelling solutions with a portfolio of both hydrogen and electric vehicle infrastructure solutions.
31. On or prior to the Phase 2 Bid Deadline, Ivys submitted a binding offer in the context of the SISP.
32. Subsequently, the Petitioners, with the assistance of NBF, negotiated a revised and improved offer from Ivys, which was made on January 16, 2023.
33. In light of the current context and after careful consideration of all alternatives, the Petitioners determined, in consultation with the Monitor and NBF, that the revised offer from Ivys was the most advantageous to the stakeholders of Xebec Inc., Compressed and of the Xebec Group generally.
34. The Ivys Transaction represents the divestiture of substantially all Xebec Inc.'s and Compressed's assets which relate to the business carried on directly by Xebec Inc. at the Blainville facilities, including the product lines for various products (PSA, BioStream PSA, BioStream product, MicroStream product, BGX, NGX, ADX, AMX), all intellectual property assets related thereto, associated parts and services, and the parts distribution and maintenance services business carried on by Compressed, as well as the Asia Assets (as defined in the Ivys APA) (collectively, the "**Ivys Purchased Assets**").
35. The Ivys APA contemplates the sale of the Ivys Purchased Assets for a purchase price set out in section 3.1 of the Ivys APA, which should remain confidential (the "**Ivys Purchase Price**").
36. The Ivys APA also includes the following key terms:
  - (a) the Ivys Purchased Assets are being sold, and the Assumed Liabilities are being assumed, on an "as is, where is" basis;
  - (b) it is a condition of the Ivys APA that the Ivys Approval, Vesting and Assignment Order be issued by this Court;
  - (c) the Ivys APA provides that the Ivys Purchase Price is payable in full by Ivys to the Monitor at Closing;
  - (d) the Ivys Transaction must close on or before February 24, 2023.

A copy of the Ivys APA is communicated herewith under seal as **Exhibit P-5**.

---

<sup>2</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the Ivys APA.

37. The Ivys APA provides that certain contracts to which Xebec Inc. and/or Compressed are parties shall be assigned to Ivys by way of the Ivys Approval, Vesting and Assignment Order. Pursuant to the Ivys APA, any and all Cure Costs (as defined in the Ivys APA) constitute Assumed Liabilities thereunder. Cure Costs listed in Schedule C to the Ivys Approval, Vesting and Assignment Order shall be paid in full by Ivys no later than thirty (30) days following Closing (as defined in the Ivys APA), and any further liability under the assigned contracts shall be assumed by Ivys.
38. The Ivys APA also provides for a mechanism for post-closing assignment of contracts. The post-closing assignment mechanism is as follows:
- (a) Ivys shall be entitled to notify Xebec Inc., Compressed and the Monitor in writing, no later than 30 days following Closing, that it seeks the post-closing assignment of the rights, benefits and interests in the Contracts (other than the DIP Facilities (as defined below), the EDC Credit Agreement and the NBC Credit Agreement) to which Xebec Inc. or Compressed are party to and which did not form part of the Assumed Contracts as of the Closing (the “**Post-Closing Assigned/Assumed Contracts**”) to Ivys;
  - (b) within 5 days of receipt, the Monitor is to review the proposed assignment and if it approves the proposed assignment, send one or more notices of assignment to the parties to the proposed Post-Closing Assigned/Assumed Contracts, or if it does not, inform Ivys in writing;
  - (c) the parties to the proposed Post-Closing Assigned/Assumed Contracts have 15 days to notify the Monitor of their opposition following receipt of the notice of assignment sent by the Monitor, if applicable;
  - (d) if no party to a proposed Post-Closing Assigned/Assumed Contract has notified the Monitor of an opposition 15 days of the receipt of the notice of assignment sent by the Monitor, the Monitor shall issue forthwith and file with the Court a post-closing assignment certificate;
  - (e) alternatively, the Monitor (if a party to a proposed Post-Closing Assigned/Assumed Contracts has notified its opposition) or Ivys (if the Monitor has not approved the proposed assignment) shall be entitled to apply to the Court to seek the assignment of the proposed Post-Closing Assignment Contract;
  - (f) The Cure Costs associated with the Post-Closing Assigned/Assumed Contracts shall be paid by Ivys and any liability in connection with any Post-Closing Assigned/Assumed Contract shall be assumed by Ivys.
39. The Petitioners understand that Ivys will offer continued employment to a substantial number of active employees of Xebec Inc. and Compressed, other than senior management.

**B. Grounds for Approval of the Ivys Transaction**

40. Xebec Inc. and Compressed are satisfied that, should this Court grant this Application, the remaining conditions to Closing and closing mechanics should lead to the closing of the Ivys Transaction.
41. In addition, Xebec Inc. and Compressed submit that the following important factors favour the approval of the Ivys APA and Ivys Transaction:
  - (a) the Ivys Purchase Price for the sale of the Ivys Purchased Assets is reasonable and fair in the circumstances, and the highest and best transaction available resulting from the SISP;
  - (b) the Petitioners have consulted extensively with the Monitor as to the Ivys APA and Ivys Transaction and the Monitor has confirmed to the Petitioners that it supports the Ivys Transaction; and
  - (c) the Ivys Transaction is the best available option to Xebec Inc. and Compressed and will benefit their stakeholders as a whole.
42. As appears from above, the SISP was conducted in a fair and reasonable manner and in accordance with the Bidding Procedures Order.
43. Absent a transaction, Xebec Inc. and Compressed are not expected to have sufficient liquidity to continue their manufacturing, distribution and services operations in the ordinary course.
44. Considering that the Ivys Purchased Assets are in Canada, there is no requirement to obtain the approval of the U.S. Bankruptcy Court seized with the Chapter 15 Proceedings in respect of the Petitioners (the "**U.S. Bankruptcy Court**").
45. The Petitioners understand that the Interim Lenders support the Ivys Transaction.

**V. SULLAIR TRANSACTION<sup>3</sup>**

**A. Description of the Sullair Transaction**

46. California Compression is a compressed air distributor and provides the Xebec Group with distribution and service capabilities for customers located in Northern California. California Compression currently employs 14 employees.
47. CDA sells, rents and services compressed air products and supports all of Xebec Group's products in California. CDA currently employs 10 employees.

---

<sup>3</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the Sullair APA.

48. Sullair offers compressed air solutions. It was founded in Indiana in 1965 and has since expanded with a broad international network to serve customers globally. Sullair has offices in Chicago and facilities in the United States and China.
49. Prior to the Phase 2 Bid Deadline, Sullair made a binding offer to buy California Compression and CDA, which offer was conditional on the completion of certain remaining due diligence items and other conditions.
50. Subsequently, the Petitioners, with the assistance of NBF, worked with Sullair and its advisors to complete the remaining due diligence items and, ultimately, to negotiate and document a revised and improved offer from Sullair, in the form of the Sullair APA, which was executed between the parties on February 8, 2023.
51. In light of the current context and after careful consideration of all alternatives, the Petitioners determined, in consultation with the Monitor and NBF, that the revised offer from Sullair was the most advantageous to the stakeholders of California Compression, CDA and of the Xebec Group generally.
52. The Sullair Transaction contemplates the sale of substantially all assets of California Compression and CDA (collectively, the “**Sullair Purchased Assets**”).
53. The Sullair Transaction also contemplates the continuation of California Compression and CDA’s businesses by Sullair, including the continued employment of all or substantially all employees currently actively employed by California Compression and CDA.
54. The Sullair APA contemplates the sale of the Sullair Purchased Assets for a purchase price set out in section 3.1 of the Sullair APA, which should remain confidential (the “**Sullair Purchase Price**”).
55. The APA also includes the following key terms:
  - (a) the Sullair Purchased Assets are being sold on an “as is, where is” basis;
  - (b) it is a condition of the Sullair APA that the Sullair Approval, Vesting and Assignment Order be issued by this Court and that the U.S. Bankruptcy Court grant an order, among other things, recognizing the Sullair Approval, Vesting and Assignment Order and approving the Sullair Transaction (the “**U.S. Recognition Order**”);
  - (c) the Sullair APA provides that the Sullair Purchase Price is payable in full by Sullair to the Monitor at Closing, subject to (i) any potential purchase price adjustment for certain working capital items and (ii) certain payment mechanics and provisions in respect of the payment by Sullair of certain Cure Costs and other Trade Debt payable amounts;
  - (d) the Sullair Transaction must close on or before February 20, 2023.

A copy of the Sullair APA is communicated herewith *under seal* as **Exhibit P-6**.

56. The Sullair APA provides that certain contracts to which CDA and California Compression are parties shall be assigned to Sullair by way of the Sullair Approval, Vesting and Assignment Order. Any and all Cure Costs that may be associated with these assigned contracts, which are listed in Schedule 4.7 of the Disclosure Schedule of the Sullair APA, shall be paid in full by Sullair within thirty (30) days of the issuance of the Monitor's Closing Certificate, in accordance with paragraph 21 of the Sullair Approval, Vesting and Assignment Order, and any further post-closing liability under the assigned contracts shall be assumed by Sullair. However, as of the date of the Sullair APA, the parties understand that no Cure Costs are outstanding.

**B. Grounds for Approval of the Sullair Transaction**

57. California Compression and CDA are satisfied that, should this Court grant this Application, the remaining conditions to Closing and closing mechanics should lead to the closing of the Sullair Transaction.
58. Given the current circumstances, the Petitioners believe that:
- (a) the Sullair Purchase Price for the sale of the Sullair Purchased Assets is reasonable and fair in the circumstances, and the highest and best transaction available resulting from the SISP; and
  - (b) the closing of the Sullair Transaction, should this Court issue the Sullair Approval, Vesting and Assignment Order, will benefit all stakeholders including in particular the employees and customers of California Compression and CDA.
59. As appears from above, the SISP was conducted in a fair and reasonable manner and in accordance with the Bidding Procedures Order.
60. Should the Court authorize the Sullair Transaction, the Petitioners will be proceeding before the U.S. Bankruptcy Court to obtain the U.S. Recognition Order.
61. As will appear from the Monitor's Report, the Monitor supports the Sullair Transaction and the issuance of the Sullair Approval, Vesting and Assignment Order. In addition, the Petitioners understand that the Interim Lenders support the Sullair Transaction.
62. The Petitioners understand that the Interim Lenders support the Sullair Transaction.

## VI. FSTQ TRANSACTION<sup>4</sup>

### A. Description of the FSTQ Transaction

63. Xebec Inc. is a co-owner of GNR LP, a limited partnership based in Québec whose aim is to accelerate the development of projects generating renewable gas. The other co-owner is FSTQ.
64. To achieve this objective, GNR LP 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.
65. GNR GP is the general partner managing GNR LP and is overseen by a board of directors nominated by Xebec Inc. and FSTQ.
66. Xebec Inc. holds directly and indirectly a 50% interest in GNR LP, and FSTQ holds the other 50% interest in GNR LP. Xebec Inc. also holds shares in the capital of GNR GP.
67. As at the Phase 2 Bid Deadline, no offers had been made with respect to GNR LP or GNR GP.
68. On January 27, 2022, FSTQ submitted a binding offer for the acquisition of all of the limited partnership interest held by Xebec Inc. in the capital of GNR LP and the shares held by GNR Holdings in the capital of GNR GP (the “**Purchased Interest and Shares**”).
69. Founded in 1983, FSTQ channels savings of Quebecers into investments to promote all sectors of the Quebec economy. With net assets standing over \$17.8B, FSTQ is partner in more than 3,620 businesses, supports more than 295,000 quality jobs and has a strong dedicated team in the renewal natural gas portfolio.
70. A consideration to be paid by FSTQ for the Purchased Interest and Shares is payable in cash at closing to the Monitor. A copy of the FSTQ Purchase Agreement is communicated herewith *under seal* as **Exhibit P-7**.
71. It is a condition of the FSTQ Purchase Agreement that the FSTQ Transaction be approved by the Court and that the FSTQ Approval and Vesting Order be issued by this Court.

### B. Grounds for approval of the FSTQ Transaction

72. In light of the current context and after careful consideration of all alternatives, the Petitioners determined, in consultation with the Monitor and NBF, that the offer

---

<sup>4</sup> Terms in this section not otherwise defined herein have the meaning ascribed to them in the FSTQ APA.

from FSTQ was the most advantageous to the stakeholders of Xebec Inc. RNG Holdings, and of the Xebec Group generally.

73. In addition, the Petitioners submit that the following important factors favour the approval of the FSTQ Transaction:
- (a) FSTQ is an existing stakeholder in GNR LP, being the only other partner of GNR LP alongside Xebec Inc. and having a nominee on the board of GNR GP;
  - (b) The Transaction would effectively result in Xebec Inc. being released of its capital contribution commitment under the Amended and Restated Limited Partnership Agreement dated May 29, 2020, which commitment currently stands at CA \$8,700,000, including a CA \$400,000 capital call dated November 10, 2022 amended on November 21, 2022, which was not paid by Xebec Inc. due to the CCAA Proceedings;
  - (c) GNR LP and GNR GP have no material tangible assets and will in the very short term require additional capital to fund payroll and lease obligations, such that the FSTQ Transaction is the highest and best transaction available to the Petitioners.
74. As will appear from the Monitor's Report, the Monitor supports the FSTQ Transaction and the issuance of the FSTQ Approval and Vesting Order.

75. In addition, the Petitioners understand that the Interim Lenders support the FSTQ Transaction.

## **VII. D&O RELEASES**

### **A. Releases Generally**

76. Since the commencement of these CCAA Proceedings, the D&Os of each of the entities of the Xebec Group have continuously worked towards maximizing the value of the Xebec Group's assets and, in turn, the recovery of its creditors.
77. Given the outcome of the SISP, it is not anticipated that there will be sufficient funds to finance a plan of arrangement or compromise, including one that would provide for customary releases in favour of the D&Os.
78. It is appropriate and fair in the circumstances that the D&Os benefit from a release which they would customarily receive as part of a plan in consideration for their involvement throughout these CCAA Proceedings, so as to enable them to turn the page once these CCAA Proceedings will have been completed.
79. The board of directors of Xebec Inc. is composed of independent directors (with the exception of the CEO), who have been meeting on a no-less-than-weekly basis throughout these CCAA Proceedings, fully engaged with management and

providing continuous support in connection with the ongoing operations and the SISP and whose involvement has been instrumental in maximizing the value of the assets of the Xebec Group.

80. Similarly, the officers of the various entities of the Xebec Group have worked tirelessly throughout these CCAA Proceedings, the whole for the benefit of all stakeholders, including notably the employees.
81. Accordingly, the draft approval and vesting orders for the Ivys Transaction and the Sullair Transaction (Exhibits P-2 and P-3) sought herein contain releases in favour of the D&Os of each respective seller therein with respect to any and all claims, liabilities or obligations relating directly or indirectly to such seller, including with respect to its business, affairs or operations, its assets and liabilities, its proceedings initiated and conducted under the CCAA, but excluding any claim or obligation that is not permitted to be released pursuant to section 5.1 (2) of the CCAA (the “**D&O Releases**”).
82. The proposed approval and vesting orders provide that the D&O Releases become effective upon the issuance by the Monitor of a certificate, in each case, confirming that the relevant transaction has closed.
83. The D&O Releases contained in the draft approval and vesting orders (Exhibits P-2 and P-3) are in line with releases granted by Courts across Canada in similar CCAA proceedings.

#### **B. Channelling Injunction**

84. As appears from the Ivys Approval and Vesting Order, the Petitioners are also seeking a “channelling injunction”, the purpose of which is to allow for the pursuit of any D&O claims as against the D&Os insurance policies.
85. Notwithstanding the D&O Releases and effective as at the issuance of the Monitor’s closing certificate in the Ivys Transaction, parties alleging a D&O claim shall be entitled to enforce their rights to be paid by the applicable insurer(s) from the proceeds of the applicable D&O insurance policies.

#### **VIII. HYGEAR TRANSACTION**

86. As further appears from the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* dated September 28, 2022, in the Court record, Xebec Inc. is the sole shareholder of Xebec Europe B.V. (“**Xebec Europe**”) This is a holding company which has no operations and is, *inter alia*, the sole shareholder of Green Vision Holding B.V. (“**Green Vision**”).
87. In turn, Green Vision is the sole shareholder of HyGear Technologies and Services B.V., which itself has six subsidiaries: HyGear Operations B.V., HyGear B.V., Xebec Adsorption Asia Pte Ltd. (“**Xebec Asia**”), HyGear Fuel Cell B.V. and

HyGear Hydrogen Plant B.V., which are wholly owned, and Buse HyGear Ltd. (“**Buse**”) which is 50% owned. (Collectively, all entities named in this paragraph are referred to as the “**HyGear Entities**”.)

88. The HyGear Entities are based in the Netherlands, save for Xebec Asia which operates in Singapore and Buse which operates in the United Kingdom. Their primary business is manufacturing and marketing of 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.
89. As of early February 2023, in the aggregate, the HyGear Entities had approximately 80 employees.
90. As at the Phase 2 Bid Deadline, no offers had been made with respect to the HyGear Entities.
91. The going concern viability of the HyGear Entities was in serious jeopardy and the trustee representing the unsecured bondholders of the HyGear Entities (the “**Bond Trustee**”) had sent a notice of default and demanded repayment of the bonds, in the approximate amount of €13.2M.
92. The HyGear entities were also indebted to Rabobank as a secured lender.
93. Concurrently, HoSt Group, a Netherlands-based business specialized in small-scale on-site industrial biomass generation systems, as well as the Bond Trustee, approached Xebec Inc. regarding a possible purchase of Green Vision for a nominal consideration.
94. With the assistance of its advisors, Xebec Inc. entered into accelerated and complex multi-party negotiations with notably the HoSt Group, the Bond Trustee, the worker’s council representing the employees of the HyGear Entities in accordance with Dutch law and a client of the HyGear Entities holding a € 404,000 (approximately CAD 580,000) letter of credit issued by NBC (and guaranteed by EDC) (the “**HyGear LC**”).
95. The Monitor and the Interim Lenders were regularly updated on the status of discussions.
96. On February 6, 2023, an agreement was concluded (the “**HyGear Agreement**”) whereby:
  - (a) Hydrogen Solutions B.V. (“**Hydrogen Solutions**”), an affiliate of HoSt Group, purchases all issued and outstanding shares of Green Vision for nominal consideration;

- (b) Funded various settlements with employees of HyGear, with HoSt Group contemplating the continued employment of the other employees of the HyGear Entities;
  - (c) The Xebec Group (other than the HyGear Entities) waived intercompany claims against the HyGear Entities;
  - (d) The continued employment of substantially all employees of the HyGear Entities will be preserved;
  - (e) The HyGear LC will be replaced by HoSt Group; and
  - (f) The bondholders, represented by the Bond Trustee, consented to the HyGear Agreement and agreed to a partial compromise of their claims against the HyGear Entities.
97. The only alternative to the HyGear Agreement would have been bankruptcy and the termination of operations of the HyGear Entities in the very near term, with minimal liquidation value and very likely no recovery for Xebec Europe, Xebec Inc. or their stakeholders.
98. Absent the HyGear Agreement, the HyGear LC would have been drawn, resulting in a secured claim in an equal amount of NBC (and EDC as guarantor) against Xebec Inc. and other Xebec Group guarantors.
99. After due consideration, and consultation with the Monitor and the Interim Lenders, Xebec Inc. concluded that the HyGear Agreement was in the best interest of its stakeholders.
100. Accordingly, the HyGear Workout Agreement was fair and reasonable to the stakeholders of the Xebec Group in the circumstances.

## **IX. GROUNDS FOR THE ISSUANCE OF THE THIRD AMENDED AND RESTATED INITIAL ORDER**

### **A. Extension of the Stay**

101. Since the issuance of the Second ARIIO, the Petitioners have acted, and continue to act in good faith and with due diligence.
102. The Petitioners, with the assistance of NBF and under the supervision of the Monitor, have continued to diligently advance the SISP.
103. The Stay currently expires on February 13, 2023.
104. The Petitioners are seeking to extend the Stay to the Extension Date, which will provide the Petitioners with the sufficient time to notably:

- (a) close the Ivys Transaction, the Sullair Transaction and the FSTQ Transaction;
  - (b) conduct post-closing assignments of the Post-Closing Assigned/Assumed Contracts in the context of the Ivys Transaction, if required;
  - (c) seek approval of the Sullair Transaction by the U.S. Bankruptcy Court;
  - (d) proceed to the closing of such transaction(s); and
  - (e) advance and, if possible, complete negotiations with other Phase 2 Qualified Bidders determined to be Successful Bidders pursuant to the SISP.
105. Should this Honourable Court not extend the Stay, the Petitioners will not be able to complete the SISP, nor close the transactions resulting therefrom, to the detriment of their stakeholders.
106. Should the Court determine it appropriate to approve the second DIP Facility and Second DIP Charge as described below and to issue the Third Amended and Restated Initial Order substantially in the form of the Draft Third Amended and Restated Initial Order, the Petitioners' cash flow will be sufficient to continue operations up to and until the Extension Date, as will appear from the Monitor's report to be filed with the Court on or about the date hereof.
107. No creditor will be unduly prejudiced by the extension sought.

**B. Second DIP Facility and Second DIP Charge**

108. Pursuant to the DIP Facility approved by the ARIO, the Petitioners have been authorized to borrow from the Interim Lenders up to a maximum principal amount of \$3,000,000. As at the date hereof, the DIP Facility has been fully drawn by the Petitioners.
109. The DIP Facility is secured by the DIP Charge for an aggregate amount of \$3,600,000 in favour of the Interim Lenders. Provided that the orders sought herein are issued by this Court, the Petitioners anticipate that the maturity of the DIP Facility will be extended to March 10, 2023.
110. The Petitioners' current liquidity position does not allow them to continue operations up to and until the Extension Date without additional financing, as will appear from the Monitor's report to be filed with the Court.
111. In these circumstances, the Petitioners require additional interim financing to continue the SISP and complete the transactions resulting therefrom, for the benefit of their stakeholders.

112. In this context, EDC has agreed to continue to support the Petitioners through their restructuring efforts, with a view to maximizing recoveries and to provide the Petitioners with an additional debtor-in-possession facility (the “**Second DIP Facility**” and with the DIP Facility, the “**DIP Facilities**”). The related term sheet (the “**Second DIP Term Sheet**”) is communicated herewith *under seal* as **Exhibit P-8**.
113. The Second DIP Facility includes the following commercial terms:
- (a) Facility size: \$2,500,000, payable in two tranches of \$1,250,000, payable in accordance with the terms set out therein;
  - (b) Term: March 10, 2023; and
  - (c) Administration Charge: reduction of the Administration Charge in the amount of \$750,000 concurrently with the disbursement of the first tranche and a further reduction of the Administration Charge in the amount of \$750,000 concurrently with the disbursement of the second tranche, the whole in accordance with the terms set out in the Second DIP Term Sheet.
114. The Second DIP Facility is proposed to be secured by a Court-ordered charge (the “**Second DIP Charge**”) to a maximum amount of \$3,000,000, ranking behind the DIP Charge but before the Transaction Charge and the KERP Charge (as defined in the Second ARIO).
115. The Petitioners respectfully submit that it is essential to the viability of the Petitioners’ restructuring efforts and in the interest of all stakeholders including its employees, suppliers and customers that the Second DIP Facility and related Second DIP Charge be approved by this Court.

**C. Sealing of Confidential Documents**

116. The Petitioners are seeking an order declaring that the following be kept strictly confidential and under seal:
- (a) Second DIP Term Sheet (Exhibit P-8);
  - (b) the FSTQ Purchase Agreement (Exhibit P-7); and
  - (c) the Ivys APA and Sullair APA (Exhibits P-5 and P-6).
117. The Second DIP Term Sheet (Exhibit P-8) should be kept confidential and under seal as it contains commercially sensitive information.
118. The FSTQ Purchase Agreement should be kept confidential and under seal as the FSTQ Transaction concerns the interests of private parties that are not party to the CCAA Proceedings. In addition, the limited partnership agreement between Xebec

Inc. and FSTQ contains a confidentiality undertaking, which needs to be respected in the circumstances.

119. The Ivys APA and Sullair APA should be kept confidential and under seal considering that:
- (a) the SISP has not been completed, and disclosing the Purchase Price may affect negotiations with Phase 2 Qualified Bidders interested in other assets of the Xebec Group;
  - (b) the Ivys APA and Sullair APA contain individualized information on the compensation of employees. In the current competitive employment market, such information could be highly prejudicial to the Ivys Group and Sullair, allowing competitors to “poach” employees; and
  - (c) the Ivys APA and Sullair APA contains commercially sensitive information regarding trade payables, which can give an unfair advantage to the competitors of Ivys and Sullair, if disclosed.

**D. Execution Notwithstanding Appeal**

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

**X. CONCLUSION**

121. The Monitor has informed the Petitioners that it supports the present Application.
122. For the reasons set forth above, the Petitioners respectfully submit that it is both appropriate and necessary that this Honourable Court render the order sought herein. With such relief, the Petitioners will be able to continue going concern operations and pursue the ongoing SISP to maximize value for the benefit of stakeholders.

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

**GRANT** the present *Application for the Issuance of a Third Amended and Restated Initial Order and Approval and Vesting Orders* (the “**Application**”);

**ISSUE** orders substantially in the form of the draft orders communicated in support of the Application as **Exhibits P-1, P-2, P-3 and P-4**;

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

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

MONTREAL, February 8, 2023

*Osler, Hoskin & Harcourt LLP*

---

**Osler, Hoskin & Harcourt LLP**

Mtre. Sandra Abitan | Mtre. Julien Morissette |

Mtre. Ilia Kravtsov | Mtre. Sophie Courville

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](mailto:sabitan@osler.com) | [jmorissette@osler.com](mailto:jmorissette@osler.com)

| [ikravtsov@osler.com](mailto:ikravtsov@osler.com) | [scourville@osler.com](mailto:scourville@osler.com)

Email notification: [notificationosler@osler.com](mailto:notificationosler@osler.com)

Our file: 1233913

**AFFIDAVIT**

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

1. I am the President and CEO of Xebec Adsorption Inc. and a duly authorized representative of the Debtors / Petitioners for the purposes hereof.

I have taken cognizance of the attached *Application for the Issuance of a Third Amended and Restated Initial Order and Approval and Vesting Orders* (the "**Application**").

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

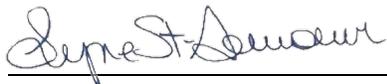
Where the facts alleged in the Application have been obtained from others, I believe them to be true.

AND I HAVE SIGNED:



**Dimitrios Vounassis**

SOLEMNLY DECLARED BEFORE ME BY  
VIRTUAL MEANS IN MONTRÉAL,  
QUÉBEC, ON FEBRUARY 8, 2023.



Lyne St-Amour  
Commissioner for Oaths for the Province of  
Québec

**NOTICE OF PRESENTATION  
COMMERCIAL DIVISION**

**TO: SERVICE LIST** (See attached)

**AND TO:**

<b>Konica Minolta</b>	<b>Attention: Camille Béchade</b> 8555 Route Transcanadienne, bureau #102 Saint-Laurent, QC, H4S 1Z6 Email: <a href="mailto:camille.bechade@bt.konicaminolta.ca">camille.bechade@bt.konicaminolta.ca</a>
<b>Colony Ford-Lincoln Sales Inc.</b>	<b>Attention: Michael Panetta</b> 300 Queen St. East Brampton, ON, L6V 1C2 Email: <a href="mailto:michael@colonyfordlincoln.com">michael@colonyfordlincoln.com</a>
<b>HumberviewGroup Leasing Inc.</b>	<b>Attention: Ernie Rasetta</b> 1900 Victori Park Avenue Toronto, ON, M1R 1T6 Email: <a href="mailto:erasetta@hgleasing.ca">erasetta@hgleasing.ca</a>
<b>Cominar Real Estate Investment Trust</b>	<b>Attention: Roberto Buzzetti / Michael Racine</b> 455 Du Marais Street Québec, QC G1M 3A2
<b>Alliance Hepyx Inc.</b>	<b>Attention: Vital Dumais</b> 48 rue des Pins Boisbriand, QC J7G 2T8 Email : <a href="mailto:vital.dumais@alliancehepyx.com">vital.dumais@alliancehepyx.com</a>
<b>AP International Inc.</b>	<b>Attention: Claude Dauphinais</b> 28 Chemin de la Côte Saint Louis Ouest Suite 207, Blainville, QC J7C 1B8 Email : <a href="mailto:CDauphinais@apinternational.ca">CDauphinais@apinternational.ca</a>
<b>N.E. Locicero Holdings Inc.</b>	<b>Attention: Nick Locicero</b>

	61 Sharer Road, Unit 1 Woodbridge, ON, L4L 8Z3 Email: <a href="mailto:n.locicero@greycresthomes.com">n.locicero@greycresthomes.com</a>
<b>Newlife and Hall</b>	<b>Attention: Don Beam</b> Yollesdee Holding Inc. (Hall Communications) 5477 RR#5, HWY 6 North Guelph, ON, N1H 6J2 Email: <a href="mailto:djbeam@halltel.com">djbeam@halltel.com</a>
<b>Les Systèmes NWD (Montréal) Inc (d/b/a MicroAge)</b>	<b>Attention: Phil Palmieri</b> 4209, Autoroute des Laurentides Laval, QC H7L 5W5 Email: <a href="mailto:Phil.Palmieri@nwd-microage.com">Phil.Palmieri@nwd-microage.com</a>
<b>Shanghai Shenergy Energy Innovation &amp; Development Co., Ltd.</b>	<b>Attention: Yao Zhijian / Chuhua Ye</b> 1 <sup>st</sup> Floor, Building 2, No.35, Lane 181, Donghuanlong Road Pudong District, Shanghai, China 200127 Email: <a href="mailto:yechuhua@icy-capital.com">yechuhua@icy-capital.com</a> Fax: 86-021-63900801
<b>Shanghai Liuhuan Investment Co., Ltd.</b>	<b>Attention: Peter Peng Cheng</b> Room H-1, Level 2, Block 14, No. 2 Songmi Road, Songjiang District, Shanghai, China 201613 Email: <a href="mailto:peterpcheng@outlook.com">peterpcheng@outlook.com</a> Fax: 8621-3352-8725
<b>Shanghai Chengyi New Energy Venture Capital Co., Ltd.</b>	<b>Attention: Song Xuefeng</b> Room 2502C, No. 958, Lujiuzui Ring Road Pudong District, Shanghai, China 200120
<b>Shanghai Zhiyi Enterprise Management Consulting Co., Ltd.</b>	<b>Attention: Wang Yuxin</b> Room 709A, No. 1, Middle Fuxing Road Huangpu District, Shanghai, China, 200021
<b>Enbridge Gas Inc.</b>	<b>Attention: Roddi Bassermann</b> 500 Consumers Road North York, ONT M2J 1P8

- 25 -

	Email: <a href="mailto:Roddi.Bassermann@enbridge.com">Roddi.Bassermann@enbridge.com</a>
<b>Air Liquide Advanced Technology US LLC</b>	<b>Attention: Vikalp Singh and Paul Therrien</b> Air Liquide Global Markets & Technology US 9811 Katy Freeway Houston, TX 77024 Email: <a href="mailto:vikalp.singh@airliquide.com">vikalp.singh@airliquide.com</a> / <a href="mailto:paul.therrien@airliquide.com">paul.therrien@airliquide.com</a>
<b>NextWatts, Inc. (d/b/a CarbonQuest)</b>	<b>Attention: Shane Johnson</b> 1314 S Grand Blvd, Suite 2-106 Spokane, WA 99202 Email: <a href="mailto:shane@carbonquest.com">shane@carbonquest.com</a>
<b>Teichert Aggregates</b>	<b>Attention: Mike Goss</b> Teichert Aggregates - Tracy Vernalis Plant 36314 S. Bird Rd. Tracy, CA 95304
<b>Criterion Catalysts</b>	<b>Attention: Rick Speck</b> 2840 Willow Pass Rd Bay Point, CA 94566
<b>Earthbound Farm C/O Taylor Farms</b>	<b>Attention: Ricardo Nova</b> 1721 San Juan Hwy San Juan Bautista CA 95045
<b>Schnitzer Steel Industries Inc.</b>	<b>Attention: Patrick Lamos</b> 1101 Embarcadero West Oakland, CA 94604
<b>Cargill Salt</b>	<b>Attention: Michael Cannon</b> 7220 Central Ave Newark CA 94560
<b>Gallo Glass Company</b>	<b>Attention: Dan McDonald/Dan Silva</b> Santa Cruz Avenue Modesto, CA 95354
<b>Sonoco Exeter</b>	<b>Attention: Brian Shea</b> 1030 N. Anderson Road Exeter, CA 93221

<b>Coherent IOS</b>	<b>Attention: Bert DelCarmen</b> 4040 Lakeside Drive Richmond CA 94806
<b>Wadham Energy LP</b>	<b>Attention: Jim Fierce</b> 6247 Meyers Road Williams CA 95987
<b>Livermore Airway Business Park</b>	<b>Attention: Thomas S. Siewert</b> 3375 Scott Blvd., Suite 308 Santa Clara, CA 95054 Telephone: 408-496-1234 Facsimile: 408-988-4768
<b>Modified Motorsports, LLC</b>	<b>Colliers Parrish International, Inc.</b> <b>Attention: Steve Tovani and Mike Lloyd</b> 4301 Hacienda Drive, Suite 430 Pleasanton, CA 94588 Phone: 925-227-6231 Fax: 925-463-0747 Email: <a href="mailto:steve.tovani@colliers.com">steve.tovani@colliers.com</a>
<b>Arroyo/Livermore Business Park, L.P.</b>	<b>Arroyo/Livermore Business Park, L.P.</b> <b>c/o Pell Development Company</b> <b>Attention: Karen Pell</b> 100 Smith Ranch Road, Suite 325 San Rafael, CA 94903 Email: <a href="mailto:Karen@pelldev.com">Karen@pelldev.com</a>
<b>Rogers Machinery Company, Inc.</b>	<b>Attention: Lane D. Hawkinson</b> 14650 S.W. 72nd Avenue 97224-7943 P.O. Box 230429 Portland, Oregon 97281-0429 Phone : 503.639.0808 Fax: 503.639.0111
<b>SPX Flow Technology USA, Inc.</b>	<b>SPX Flow, Inc.</b>

	<b>Attention: General Counsel</b> 13320 Ballantyne Corporate Place Charlotte, NC 28277 Email: <a href="mailto:corp.legal.department@spxflow.com">corp.legal.department@spxflow.com</a>
<b>US Pipe</b>	<b>Attention: Monica Goulart</b> 1295, Whippie Road Union City, California 94587
<b>Zymergen, Inc.</b>	<b>5980 Horton Street, Suite 105</b> Emeryville, CA 94608
<b>Ardagh Metal Beverage USA</b>	<b>Attention: Royce Bradley</b> 2433 Crocker Circle Fairfield, CA 94533
<b>Northern California Power Agency</b>	<b>Attention: Chris Du Bose</b> Geo Thermal 12000 Ridge Road Middletown, CA 95461
<b>DJ Smith Family Partnership</b>	<b>DJ Smith Family Partnership</b> 4208 Chaboya Road San Jose, CA 95148 Email: <a href="mailto:smithpropmanagement@mail.com">smithpropmanagement@mail.com</a>
<b>5360 Gateway Plaza LLC</b>	<b>5360 Gateway Plaza</b> Benecia, CA 94150
<b>Public Storage</b>	<b>Public Storage</b> <b>Attention: Customer Service</b> P.O. Box 25050 Glendale, CA 91221-5050

## 1. PRESENTATION OF THE PROCEEDING

**TAKE NOTE** that the *Application for the Issuance of a Third Amended and Restated Initial Order and Approval and Vesting Orders* will be presented for adjudication before the

Commercial Division of the Superior Court of Québec, in Courtroom **15.09** of the Montréal Courthouse during the virtual calling of the roll on **February 13, 2023, at 9:30 a.m.**

## **2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL**

The contact information to join the virtual calling of the roll in room 15.09 is as follows:

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

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

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

Trustees: Name, Surname (trustee)

Superintendent: Name, Surname (superintendent)

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

Persons attending a public hearing may simply indicate “public”.

### **By telephone:**

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

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

Conference ID: 374 042 205#

### **By VTC videoconference:** [teams@teams.justice.gouv.qc.ca](mailto:teams@teams.justice.gouv.qc.ca)

Videoconference ID: 1170227884

**In person:** If and only if you do not have access to one of the above-mentioned technological means. You may then go to room 15.09 of the Montréal Courthouse located at:

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

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

**TAKE NOTICE** that in accordance with the Second Amended and Restated Initial Order, if you wish to contest this Application, you must serve responding materials or a notice stating the objection to the Application and the grounds for such objection in writing to the Petitioners and the Monitor, with a copy to all persons on the Service List, no later than **5:00 P.M. on February 10, 2023**, and participate at the virtual calling of the roll, failing

which, judgment may be rendered during the presentation of the proceeding, without further notice or delay.

#### **4. OBLIGATIONS**

##### 4.1 Duty of cooperation

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

##### 4.2 Dispute prevention and resolution processes

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

**DO GOVERN YOURSELF ACCORDINGLY.**

MONTRÉAL, February 8, 2023

*Osler, Hoskin & Harcourt LLP*

---

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

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Commercial Division)

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

No.: 500-11-061483-224

---

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

**XEBEC ADSORPTION INC.**

-and-

**XEBEC RNG HOLDINGS INC.**

-and-

**APPLIED COMPRESSION SYSTEMS LTD.**

-and-

**COMPRESSED AIR INTERNATIONAL INC.**

-and-

**XEBEC HOLDING USA INC.**

-and-

**ENERPHASE INDUSTRIAL SOLUTIONS, INC.**

-and-

**CDA SYSTEMS, LLC**

-and-

**XEBEC ADSORPTION USA INC.**

-and-

**THE TITUS COMPANY**

-and-

**NORTEKBELAIR CORPORATION**

-and-

**XBC FLOW SERVICES – WISCONSIN INC.**

-and-

**CALIFORNIA COMPRESSION, LLC**

-and-

**XEBEC SYSTEMS USA, LLC**

Debtors / Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

**LIST OF EXHIBITS**

- P-1: Draft Third Amended and Restated Initial Order
- P-1A: Comparison between the Third Amended and Restated Initial Order and the Second ARIO
- P-2: Draft Ivys Approval, Vesting and Assignment Order
- P-2A: Comparison between the Ivys Approval, Vesting and Assignment Order and the model approval and vesting order published by the Barreau de Montréal
- P-3: Draft Sullair Approval, Vesting and Assignment Order
- P-3A: Comparison between the Sullair Approval, Vesting and Assignment Order and the model approval and vesting order published by the Barreau de Montréal
- P-4: Draft FSTQ Approval and Vesting Order
- P-4A: Comparison between the FSTQ Approval and Vesting Order and the model approval and vesting order published by the Barreau de Montréal
- P-5: Copy of the Ivys APA (*under seal*)
- P-6: Copy of the Sullair APA (*under seal*)
- P-7: Copy of the FSTQ Purchase Agreement (*under seal*)
- P-8: Second DIP Term Sheet (*under seal*)

MONTRÉAL, February 8, 2023

*Osler, Hoskin & Harcourt LLP*

---

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