

## ANNEX D

### AUTHORIZATION AND HEARING TO APPROVE PROPOSED SETTLEMENT OF XEBEC ADSORPTION INC. SECURITIES CLASS ACTION

June 30, 2023 – This notice relates to a proposed class action commenced against FormerXBC Inc., formerly Xebec Adsorption Inc. (“Xebec”), Kurt Sorschak, Stéphane Archambault, Louis Dufour, William Beckett, Guy Saint Jacques, Desjardins Securities Inc., National Bank Financial Inc., Canaccord Genuity Group Inc., Raymond James Ltd., Beacon Securities Limited, TD Securities Inc., and Stifel Nicolaus Canada Inc.

The representative Plaintiffs and Xebec have reached a proposed settlement of the claim which is subject to approval by the Superior Court of Québec (the “Court”).

The class action has now been authorized for settlement purposes only. This notice provides information about this proposed settlement and related matters and how you can exclude yourself (“opt-out”) out of the class action.

Your legal rights are affected even if you do nothing. Please read this notice carefully.

**The class action was authorized on behalf of all persons and entities, wherever they may reside or may be domiciled, who purchased securities of Xebec pursuant to a prospectus, in the secondary market, through a private placement, or who acquired the securities of Xebec in exchange for shares of HyGear Technology and Services B.V., during the period from November 10, 2019, to March 24, 2021, inclusively, (the “Class Period”) and held some or all of such securities as of the close of trading on the TSX on March 11, 2021 or March 24, 2021, other than the “Excluded Persons”.**

Excluded Persons means:

- (i) Xebec;
- (ii) the Underwriter Defendants and their respective past or present subsidiaries, directors, officers, legal representatives, predecessors, successors and assigns;
- (iii) the Individual Defendants, members of their immediate families and any entity in which the Individual Defendants hold a controlling interest; and
- (iv) SDI, Oost NL and the Trust Foundation, as those entities are defined in the Share Purchase Agreement dated December 8, 2020 with Xebec Europe B.V.

The proposed Settlement Amount is CAD \$5,000,000 (“Settlement Fund”) including Class Counsel’s fees, applicable taxes and expenses, and interest. **The Defendants deny any wrongdoing or liability. The settlement does not constitute an admission of wrongdoing or liability by Xebec or any Defendant.** By agreeing to the proposed settlement, the parties avoid the costs and uncertainty of a trial and delays in obtaining judgment.

#### WHAT COULD I GET FROM THIS ACTION

What you can recover from the Settlement Fund is a function of two variables: (1) The size of your Recognized Claim; and (2) How many other Claimants make claims for a portion of the net Settlement Fund as all recognized claims will be distributed *pro rata* if there are insufficient funds available to pay all claims. Note however that the Settlement Fund will first be reduced by legal fees, notice costs, and administration expenses and there will therefore not be \$5,000,000 available for distribution.

#### WHAT IS A RECOGNIZED CLAIM

In order to be eligible to make a claim you have to have purchases or acquired Xebec Shares during the Class Period and held the Xebec Shares until specific times. The exact time periods relevant to make Recognized Claims are set out below and set out in more detail in the Plan of Allocation available [here](#).

The size of your Recognized Claim depends on 2 factors: (1) The size of your loss measured by the formula in the Plan of Allocation set out [here](#); and (2) your Risk Adjustment factor.

#### RISK ADJUSTMENT FACTOR

Not all persons who acquired Xebec Shares in the Class Period have claims of the same strength. For example, persons who acquired Xebec Shares in the secondary market (like the TSX) or because they were HyGear shareholders, do not have the same

claims as persons who purchased pursuant to a Prospectus. The Plan of Allocation, which still must be approved by the Court, creates a Risk Adjustment factor as set out below, such that each Claimant's loss as calculated in the Plan of Allocation will be adjusted or reduced to arrive at the Recognized Claim amount. A chart of the relevant Risk Adjustments is set out below.

TYPE OF CLAIMANT	RISK ADJUSTMENT FACTOR
<p><b><u>Bought in Secondary Market:</u></b> (i.e., bought Xebec shares on a stock exchange between November 10, 2019 – March 24 2021)</p>	35%
<p><b><u>Bought Pursuant to a Prospectus:</u></b> (i.e., bought Xebec Subscription Receipts pursuant to the Final Short Form Prospectus dated December 21, 2020)</p>	50%
<p><b><u>Bought in a Private Placement:</u></b> (i.e., bought Xebec Subscription Receipts in the private placement carried out in December 2020)</p>	10%
<p><b><u>HyGear Investors:</u></b> (i.e., received Xebec shares in exchange for shares of HyGear Technology and Services B.V.)</p>	35%

#### WHAT IS THE EFFECT OF THE RISK ADJUSTMENT

The Risk Adjustment reduces a claim such that the Recognized Claim is the percentage of the claim set out above. For example, a Claimant that would have a claim for \$100 and is subject to a Risk Adjustment of 35% has a Recognized Claim for \$35. A Claimant with the same claim for \$100 who has a Risk Adjustment of 50% has a Recognized Claim for \$50. If there is not enough money to pay all the Recognized Claims in full, the claims will be paid *pro rata*.

If you do not wish to be bound by the class action and participate in the settlement, you must opt-out of the class action. A copy of the opt-out form is available at:

<https://knd.law/class-actions/xebec-adsorption-inc/> and <https://www.lexgroup.ca/classaction/xebec-adsorption-inc-securities-class-action/>

The Court is required to decide whether to approve the proposed settlement, Class Counsel Fee request of 30% of the Settlement Amount plus disbursements and tax, and a plan to allocate and distribute the Settlement Amount. The Court will hear submissions about the approval of the proposed settlement on **September 29, 2023 at 9:30 AM ET**, in room 16.04 of the Montreal Courthouse (located at 1 Notre-Dame Street East, Montreal, Quebec, Canada, H2Y 1B5). Payments will only be made available if the Court approves the proposed settlement, after any appeals, and after a claims process is concluded.

#### YOUR LEGAL RIGHTS AND OPTIONS:

- 1. Stay in the Class Action and Do Nothing:** You do not have to do anything to stay in the class action. If you stay in the class action and the settlement is approved, you will be bound by the terms of the settlement, you will give up your right to sue the Defendants on your own, and you will not be permitted to bring other legal proceedings in relation to the matters alleged in the action against the Defendants, or any person released by the approved settlement.
- 2. Stay in the Class Action and Object or Comment on the Proposed Settlement:** If you want to object to or comment on the proposed settlement, you must submit an objection or comment stating your name, when and how many shares of Xebec you acquired, and your comment or the reason for your objection. You must submit your objection or comment by email to [xebec@knd.law](mailto:xebec@knd.law) or fax at (416) 352-7638 by September 8, 2023 at 11:59 PM ET for it to be valid. If the settlement is approved despite your objection or comment, you will still be bound by the terms of the settlement, you will give up your right to sue the Defendants on your own, and you will not be permitted to bring other legal proceedings in relation to the matters alleged in the action against the Defendants, or any person released by the approved settlement.

- 3. Opt-out of the Class Action:** You can exclude yourself from the class action and the proposed settlement by filling out an opt-out form available at: <https://knd.law/class-actions/xebec-adsorption-inc/>. You must submit your opt-out form by email to [xebec@knd.law](mailto:xebec@knd.law) or fax at (416) 352-7638 by **August 31, 2023 at 11:59 PM ET** for it to be valid.

#### **WHAT SHOULD I DO**

These rights and options and the deadlines to exercise them and further information about the proposed settlement are explained in a more detailed notice available at:

<https://knd.law/class-actions/xebec-adsorption-inc/> and <https://www.lexgroup.ca/classaction/xebec-adsorption-inc-securities-class-action/>

More details may also be found in the Settlement Agreement. You can obtain a copy of the Settlement Agreement at <https://knd.law/class-actions/xebec-adsorption-inc/> or at <https://www.lexgroup.ca/classaction/xebec-adsorption-inc-securities-class-action/>. You can send your questions by email to [xebec@knd.law](mailto:xebec@knd.law) or [info@lexgroup.ca](mailto:info@lexgroup.ca) or by fax to (416) 352-7638 or (514) 940-1605.

The lawyers for the Plaintiffs and the Class in this class action are KND Complex Litigation and Lex Group Inc.