

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

FORMERXBC HOLDING USA INC.  
(f/k/a XEBEC HOLDING USA INC.), *et al.*,

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

Chapter 15

Case No. 22-10934 (KBO)

Jointly Administered

Re: D.I. No. 180

**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; AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of FormerXBC Inc. (f/k/a Xebec Adsorption, Inc.), in its capacity as the duly-appointed foreign representative (the “**Foreign Representative**”) for the above-captioned debtors (collectively, the “**Debtors**”), for entry of an order pursuant to sections 105(a) 363, 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and Local Rules 2002-1, 6004-1, and 9006-1 (this “**Order**”), (a) recognizing and enforcing that certain *Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (Formerly Xebec Systems USA, LLC)*, entered by the Canadian Court on May 24, 2023 (the “**CCAA Vesting Order**”), attached hereto as **Exhibit A**; (b) approving, under section 363 of the Bankruptcy Code, the sale of Debtor FormerXBC Systems USA, LLC’s rights,

<sup>1</sup> The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: FormerXBC Inc. (f/k/a Xebec Adsorption Inc.) (0228), 11941666 Canada Inc. (f/k/a Xebec RNG Holdings Inc.) (N/A), Applied Compression Systems Ltd. (N/A), 1224933 Ontario Inc. (f/k/a Compressed Air International Inc.) (N/A), FormerXBC Holding USA Inc. (f/k/a Xebec Holding USA Inc.) (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), FormerXBC Adsorption USA Inc. (f/k/a Xebec Adsorption USA Inc.) (0821), FormerXBC Pennsylvania Company (f/k/a The Titus Company) (9757), FormerXBC NOR Corporation (f/k/a Nortekbelair Corporation) (1897), FormerXBC Flow Services – Wisconsin Inc. (f/k/a XBC Flow Services – Wisconsin Inc.) (7493), California Compression, LLC (4752), and FormerXBC Systems USA, LLC (f/k/a 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 defined herein shall have the meaning ascribed to such terms in the Motion.

title, and interests in and to the Purchased Assets (as defined below) to Ivys Adsorption Inc. (“**Buyer**”), pursuant to that certain Asset Purchase Agreement, dated August 3, 2023, by and between FormerXBC Systems USA, LLC (“**Seller**”) and Buyer (collectively with all exhibits and schedules thereto, the “**Purchase Agreement**”), free and clear of any and all liens, claims, encumbrances, and other interests; and (c) granting such other relief as this Court deems just and proper, all as more fully set forth in the Motion; and upon consideration of the Vounassis First Day Declaration, the Vounassis Sale Declaration, the Morissette Declaration, and the Monitor Declaration (collectively, the “**Declarations**”); and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and sections 109 and 1501 of the Bankruptcy Code; and venue being proper before this Court pursuant to 28 U.S.C. § 1410(1) and (3); and the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and that this Court may enter a final order consistent with Article III of the United States Constitution; and adequate and sufficient notice of the filing of the Motion having been given by the Foreign Representative; and it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and this Court having scheduled a hearing (the “**Hearing**”) to consider the relief requested in the Motion; and there being no objections or other responses filed that have not been overruled, withdrawn, or otherwise resolved; and after due deliberation and sufficient cause appearing therefore, **IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, and to the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court previously entered that certain Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief [Docket No. 36] on October 27, 2022 (the “**Recognition Order**”), pursuant to which this Court found that the Debtors had satisfied the requirements of, among others, sections 101(23) and (24), 1502(4), 1504, 1507, 1509, 1510, 1515, 1517, 1520, 1521, and 1522 of the Bankruptcy Code. All such findings by this Court are hereby incorporated by reference herein and such Recognition Order shall continue in effect in all respects except to the extent this Order directly modifies or directly contradicts such Recognition Order.

C. On September 29, 2022, the Canadian Court entered that certain Bidding Procedures Order that, among other things authorized the Debtors to implement a sale and investment solicitation process (the “**SISP**”).

D. On May 24, 2023, the Canadian Court entered the CCAA Vesting Order, which, among other things, authorized Seller to sell its rights, title, and interests in and to five (5) BioStream units (the “**Purchased Assets**”) to Buyer.

E. The CCAA Vesting Order granted Seller, as security for the payments to be made by Buyer pursuant to the Purchase Agreement, a charge and security in the Purchased Assets to the extent of the aggregate amount of the Payment Balance (as defined in the Purchase Agreement) (the “**BioStream Charge**”).

F. Based on the affidavits of service filed with, and the representations made to, this Court: (i) notice of the Motion, the Hearing, and the CCAA Vesting Order was proper, timely, adequate, and sufficient under the circumstances of these chapter 15 cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; and (ii) no other or further notice of the Motion, the Hearing, the CCAA Vesting Order, or the entry of this Order is necessary or shall be required.

G. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

H. The relief granted herein is necessary and appropriate, is in the interest of the public, promotes international comity, is consistent with the public policies of the United States, is warranted pursuant to sections 105(a), 363(b), (f), (m) and (n), 1501, 1507, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

I. Based on information contained in the Motion and the Declarations, the Debtors' advisors conducted the SISP to solicit interest in, among other of the Debtors' assets, the Purchased Assets, and such process was non-collusive, duly noticed, and provided a reasonable opportunity to make an offer to purchase the Purchased Assets. The Foreign Representative and the Monitor have recommended that the Debtors sell the Purchased Assets to Buyer in accordance with the terms and conditions set forth in the Purchase Agreement.

J. Based on information contained in the Motion and the Declarations, the relief granted herein relates to assets and interests that, under the laws of the United States, should be administered in the Canadian Proceedings.

K. The Debtors' and Seller's performance under the Purchase Agreement and related agreements: (i) constitute a sound and reasonable exercise of the Debtors' and Seller's business judgment; (ii) provide value and are beneficial to the Debtors and Seller, and are in the best interests of the Debtors and Seller, their estates, their creditors, and their stakeholders; and (iii) are reasonable and appropriate under the circumstances. The consideration provided by Buyer for the Purchased Assets under the Purchase Agreement constitutes fair consideration and reasonably

equivalent value for the Purchased Assets under the Bankruptcy Code and other laws of the United States, any state, territory, possession thereof, or the District of Columbia.

L. Buyer is not a mere continuation or successor of the Debtors or Seller, there is no substantial continuity between Buyer and the Debtors or Seller, and there is no continuity of enterprise between Buyer and the Debtors or Seller. No common identity of incorporators, directors, officers, members or stockholders exists between Buyer and the Debtors or Seller. Buyer is not holding itself out to the public as a continuation of the Debtors or Seller. Buyer is not an “insider” or otherwise an “affiliate” of the Debtors or Seller (as such terms are defined in section 101 of the Bankruptcy Code). The transactions contemplated by the Purchase Agreement (collectively, the “**Transaction**”) does not amount to a consolidation, merger, or *de facto* merger of Buyer and any of the Debtors or Seller.

M. Time is of the essence in consummating the Purchase Agreement and the Transaction. To maximize the value of the Purchased Assets, it is essential that the Transaction occur and be recognized and enforced in the United States promptly and become effective. The Foreign Representative, on behalf of the Debtors, has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval of the Transaction as contemplated by the Purchase Agreement. Accordingly, there is cause to waive the stay that would otherwise be applicable under Bankruptcy Rules 6004(a) and 6004(h).

N. Based upon information contained in the Motion, the Declarations, and the other pleadings filed in these chapter 15 cases, the Purchase Agreement and each of the transactions contemplated therein were negotiated, proposed, and entered into by the Debtors, Seller and Buyer in good faith, without collusion, and from arm’s-length bargaining positions. Buyer is a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code and, as such, is

entitled to all the protections afforded thereby. Neither the Debtors, the Foreign Representative, nor Buyer have engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the Transaction to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Buyer is not an “insider” of any of the Debtors, as that term is defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, managers, or controlling stockholders exists between Buyer and the Debtors or Seller.

O. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding any present or future creditors of the Debtors or Seller.

P. The Foreign Representative, on behalf of itself and the Debtors and Seller, may sell the Purchased Assets free and clear of any and all liens, claims (as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances, and other interests of any kind or nature whatsoever against the Debtors or the Purchased Assets, because with respect to each creditor asserting any liens, claims, encumbrances, and other interests, one or more of the standards set forth in section 363(f)(1) through (5) of the Bankruptcy Code has been satisfied. Each creditor that did not object to the Motion is deemed to have consented to the sale of the Purchased Assets free and clear of any and all liens, claims, encumbrances, and other interests pursuant to section 363(f)(2) of the Bankruptcy Code.

Q. The total consideration to be provided under the Purchase Agreement reflects Buyer’s reliance on this Order to provide it, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, with title to and possession of the Purchased Assets free and clear of any and all liens, claims, encumbrances, and other interests.

R. The sale of the Purchased Assets to Buyer is a legal, valid, and effective sale of the Purchased Assets, and vests Buyer with all rights, title, and interests of the Debtors and Seller in

and to the Purchased Assets, free and clear of any and all liens, claims, encumbrances, and other interests.

S. The Foreign Representative, the Debtors, Seller, and the Monitor, as appropriate: (i) had full power and authority to execute the Purchase Agreement and all other documents contemplated thereby; (ii) have all the power and authority necessary to consummate the transactions contemplated by the Purchase Agreement; and (iii) other than any consents identified in the Purchase Agreement, need no consent or approval from any other person or governmental unit to consummate the Transaction. As of the date of entry of the CCAA Vesting Order, the Debtors and Seller were the sole and rightful owners of the Purchased Assets, no other person had any ownership rights, title, or interests therein, and the Transaction had been duly and validly authorized by all necessary corporate action of the Debtors and Seller.

T. The Purchase Agreement is a valid and binding contract between Seller and Buyer and shall be enforceable pursuant to its terms. The Purchase Agreement, the Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and the Foreign Representative in these chapter 15 cases and any trustee that may be appointed in any chapter 7 or chapter 11 successor cases, and shall not be subject to rejection or avoidance by the foregoing parties or any other person.

U. Buyer would not have entered into the Purchase Agreement and would not consummate the purchase of the Purchased Assets and the related transactions, thus adversely affecting the Debtors, their estates, their creditors, and other parties in interest, if the sale of the Purchased Assets to Buyer was not free and clear of any and all liens, claims, encumbrances, and other interests, or if Buyer would, or in the future could, be liable on account of any such lien,

claim, encumbrance, or any other interest, including, as applicable, certain liabilities related to the Purchased Assets that will not be assumed by Buyer, as described in the Purchase Agreement.

V. A sale of the Purchased Assets other than free and clear of any and all liens, claims, encumbrances, and other interests would yield substantially less value than the sale of the Purchased Assets pursuant to the Purchase Agreement; thus, the sale of the Purchased Assets free and clear of any and all liens, claims, encumbrances, and other interests, in addition to all of the relief provided herein, is in the best interests of the Debtors, Seller, their estates, their creditors, and other parties in interest.

W. The interests of the Debtors' and Seller's creditors in the United States are sufficiently protected. The relief granted herein is necessary and appropriate, in the interest of the public and international comity, consistent with the public policies of the United States, and warranted pursuant to sections 1521(b) and 1522 of the Bankruptcy Code.

X. The legal and factual bases set forth in the Motion establish just cause for the relief granted herein.

Y. Entry of this Order is in the best interests of the Debtors, Seller, their creditors and interest holders, and all other parties in interest.

**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 in its entirety as set forth herein.
2. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled by stipulation filed with this Court, and all reservations of rights included therein, are hereby overruled on the merits. The parties who did not object, or who withdrew their objections, to the Sale Motion, are deemed to have consented to the relief sought



therein, including, without limitation, consummation of the sale transaction, pursuant to section 363(f)(2) of the Bankruptcy Code.

3. The CCAA Vesting Order and all of its respective terms, including any immaterial or administrative amendments thereto, including those necessary to give effect to the substance of such order, either pursuant to the terms therein or as approved by the Canadian Court, are fully recognized and given full force and effect in the United States in their entirety.

4. The Purchase Agreement and the transactions contemplated thereunder, including, for the avoidance of doubt, (a) the sale of the Purchased Assets, (b) the granting of the BioStream Charge to secure the Payment Balance (as defined in the Purchase Agreement), and (c) the transfer of the Purchased Assets and any assets located within the United States on the terms set forth in the Purchase Agreement, the CCAA Vesting Order, including all transactions contemplated thereunder, this Order, including all transactions contemplated hereunder, and all of the terms and conditions of each of the foregoing are hereby approved and authorized pursuant to sections 105, 363, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Purchase Agreement and the Transaction be authorized and approved in its entirety. Upon entry of this Order, the covenants contained in the Purchase Agreement, to the extent (if any) not already enforceable by their terms, shall be fully enforceable by the parties to the Purchase Agreement in accordance with and subject to the terms and conditions of the Purchase Agreement. The offer of Buyer, upon the terms and conditions set forth in the Purchase Agreement, including the form and total consideration to be realized by the Debtors pursuant to the Purchase Agreement, is the highest and best offer received by the Debtors for the Purchased Assets.

5. Pursuant to sections 105, 363, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, the CCAA Vesting Order, and this Order, the Debtors, Seller, Buyer, the Monitor, and the Foreign Representative (as well as their respective officers, employees, and agents) are authorized to take any and all actions necessary or appropriate to: (a) consummate the Transaction, including the sale of the Purchased Assets, in accordance with the Purchase Agreement, the CCAA Vesting Order, and this Order; and (b) perform, consummate, implement, and close fully the Transaction, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Transaction and to take such additional steps and all further actions as may be necessary or appropriate to the performance of the obligations contemplated by the Purchase Agreement, all without further order of this Court, and are hereby authorized and empowered to cause to be executed and filed such statements, instruments, releases, and other documents on behalf of such person with respect to the Purchased Assets that are necessary or appropriate to effectuate the transactions, any related agreements, the CCAA Vesting Order, and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtors or Buyer may determine are necessary or appropriate, and are hereby authorized and empowered to cause to be filed, registered, or otherwise recorded a certified copy of the CCAA Vesting Order, this Order, or the Purchase Agreement, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests against the Purchased Assets. The CCAA Vesting Order and this Order are deemed to be in recordable form sufficient

to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office.

6. All persons other than Buyer that are currently in possession of some or all of the Purchased Assets located in the United States or that are otherwise subject to the jurisdiction of this Court are hereby directed to surrender possession of such Purchased Assets to Buyer.

7. This Court shall retain jurisdiction to enforce this Order and any and all terms and provisions of the CCAA Vesting Order in the United States.

**Transfer of the Purchased Assets Free and Clear**

8. Pursuant to sections 105(a), 363, 1501, 1520, 1521, 1525, and 1527 of the Bankruptcy Code, all rights, title, and interests of the Debtors and Seller in the Purchased Assets shall be transferred and absolutely vest in Buyer, without further instrument of transfer, and such transfer shall: (a) be a legal, valid, binding, and effective transfer of the Purchased Assets to Buyer; (b) vest Buyer with all rights, title, and interests of the Debtors and Seller in the Purchased Assets; and (c) be free and clear of any and all liens, claims, encumbrances, and other interests with all such liens, claims, encumbrances, and other interests, including all Claims and Encumbrances (as defined in the CCAA Vesting Order), but excluding the BioStream Charge, attaching to the proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. Pursuant to sections 105(a), 363(f), 1501, 1520, 1521, 1525 and 1527 of the Bankruptcy Code: (a) other than Seller's rights with regard to the BioStream Charge, no holder of a lien, claim, encumbrance, or other interest shall interfere, and each and every holder of a lien, claim, encumbrance, or other interest is enjoined from interfering, with Buyer's rights and title to

or use and enjoyment of the Purchased Assets; and (b) the sale of the Purchased Assets, the Purchase Agreement, and any instruments contemplated thereby shall be enforceable against and binding upon, and not subject to rejection or avoidance by, the Debtors, Seller, their estates, their creditors, or any successors thereof. Other than Seller with regard to the BioStream Charge, all persons holding a lien, claim, encumbrance, or other interest are forever barred and enjoined from asserting such lien, claim, encumbrance, or other interest against the Purchased Assets, Buyer or its affiliates and their respective officers, directors, employees, managers, partners, members, financial advisors, attorneys, agents, and representatives, and their respective affiliates, successors, and assigns from and after closing of the Transaction.

10. For the avoidance of doubt, transfer of title and possession of the Purchased Assets in and to Buyer shall be free and clear of any liabilities and other liens pursuant to any successor, successor-in-interest, successor employer, substantial continuation, or other legal theory, including the following: (a) any employment or labor agreements, (b) all deeds of trust, security deeds, mortgages, liens, and security interests, (c) intercompany loans and receivables between the Debtors and any non-Debtor subsidiary; (d) any pension or medical benefit plan of the Debtors, any compensation or other employee benefit plan of the Debtors, or any other employee welfare agreements, practices and programs, (e) any other employee, workers' compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims and other liens that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, and state equivalents thereof, (ii) the Fair Labor Standards Act, and state equivalents thereof, (iii) Title VII of the Civil Rights Act of 1964, and state equivalents thereof, (iv) the Federal Rehabilitation Act of 1973, and state equivalents thereof, (v) the National Labor Relations Act, and state equivalents thereof, (vi) the Worker Adjustment

and Retraining Act of 1988, and state equivalents thereof, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, and state equivalents thereof, (viii) the Americans with Disabilities Act of 1990, and state equivalents thereof, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, and state equivalents thereof, (x) state discrimination laws, (xi) state unemployment compensation laws or any other similar state laws, or (xii) any other state or federal benefits or claims and other liens relating to any employment with the Debtors or any predecessors, (f) environmental or other claims and other liens arising under any environmental laws with respect to any assets owned or operated by Debtor(s) or any corporate predecessor at any time on or prior to the Closing Date (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or other state or federal statute, (g) any bulk sales or similar law, (h) any Tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (i) any and all theories based upon successor liability, including any theories on successor products liability grounds or otherwise; (j) any claims arising prior to the Closing Date based on equity ownership; and (k) any claims arising prior to the Closing Date based upon or sounding in equity.

11. Each and every federal, state, and local governmental agency or department is authorized and directed, to the fullest extent permitted by applicable law, to accept, file, register, or otherwise record (and not impose any fee, charge, or tax in connection therewith) any and all documents and instruments necessary or appropriate to consummate the sale of the Purchased Assets to Buyer and the transactions generally. The CCAA Vesting Order and this Order shall constitute for any and all purposes a full and complete conveyance and transfer of the Debtors'

interests in the Purchased Assets to Buyer free and clear of any and all liens, claims, encumbrances, and other interests, other than the BioStream Charge.

12. This Order (a) shall be effective as a determination that, as of the Closing Date, all liens, claims, encumbrances, and other interests, excluding, for the avoidance of doubt, the BioStream Charge, have been unconditionally released, discharged, and terminated as to Buyer and the Purchased Assets, and that the conveyances and transfers described herein have been effected, and (b) is, and shall be, binding upon and govern the acts of all persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease. Each of the foregoing persons is hereby authorized and directed, to the fullest extent permitted by applicable law, to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement and effect the discharge of all liens, claims, encumbrances, and other interests pursuant to this Order and the CCAA Vesting Order and not impose any fee, charge, or tax in connection therewith.

13. Buyer is not and shall not be deemed to: (a) be a legal successor, or otherwise be deemed a successor, to any of the Debtors; (b) have, *de facto* or otherwise, merged with or into any or all Debtors; or (c) be a mere continuation or substantial continuation of any or all Debtors or the enterprise or operations of any or all Debtors.

14. The Purchase Agreement, including the purchase of the Purchased Assets, is undertaken by Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorizations provided herein shall neither affect the validity of the Transaction nor the transfer of the Purchased Assets to Buyer free and clear of any and all liens, claims, encumbrances, and other interests, unless such authorization is duly stayed pending such appeal.

15. Neither the Debtors nor Buyer have engaged in any conduct that would cause or permit the Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code.

16. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and this Order, and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

17. The terms and provisions of the Purchase Agreement, the CCAA Vesting Order, and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, Seller, Buyer, the Foreign Representative, the Monitor, the Debtors' creditors, and all other parties in interest, and any successors of the Debtors, Seller, Buyer, the Foreign Representative, the Monitor, and the Debtors' creditors, including any foreign representative(s) of the Debtors, trustee(s), examiner(s), or receiver(s) appointed in any proceeding, including, without limitation, any proceeding under any chapter of the Bankruptcy Code, the CCAA, or any other law, and all such terms and provisions shall likewise be binding on such foreign representative(s), trustee(s), examiner(s), or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, their creditors, or any trustee(s), examiner(s), or receiver(s).

18. Subject to the terms and conditions of the CCAA Vesting Order, the Purchase Agreement, and any related agreements, documents, or other instruments, may be modified, amended, or supplemented by the parties thereto, in a writing signed by each party, and in accordance with the terms thereof, without further order of this Court; *provided* that any such modification, amendment, or supplement does not materially change the terms of the Transaction, the Purchase Agreement, or any related agreements, documents, or other instruments and is otherwise in accordance with or not expressly prohibited by the CCAA Vesting Order.

19. The provisions of this Order and the Purchase Agreement are non-severable and mutually dependent. To the extent that there are any inconsistencies between the terms of this Order and the CCAA Vesting Order, on the one hand, and the Purchase Agreement, on the other, this Order and the CCAA Vesting Order shall govern.

20. Nothing in this Order shall be deemed to waive, release, extinguish, or estop the Debtors or the Foreign Representative from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset, or counterclaim in respect of any asset or interest that is not a Purchased Asset.

21. All persons subject to the jurisdiction of the United States are permanently enjoined and restrained from taking any actions inconsistent with, or interfering with, the enforcement and implementation of the CCAA Vesting Order or any documents incorporated by the foregoing and this Order.

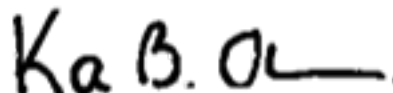
22. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion and the CCAA Vesting Order.



23. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

24. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry. For the avoidance of doubt, any stay pursuant to Bankruptcy Rule 6004(h) and 6006(d) is hereby dispensed with and waived.

**Dated: September 28th, 2023**  
**Wilmington, Delaware**

  
**KAREN B. OWENS**  
**UNITED STATES BANKRUPTCY JUDGE**

**EXHIBIT A**

**CCAA Vesting Order**

**SUPERIOR COURT  
(Commercial Division)**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: May 24, 2023

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

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

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)  
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)  
APPLIED COMPRESSION SYSTEMS LTD.  
1224933 ONTARIO INC. (FORMERLY COMPRESSED AIR INTERNATIONAL INC.)  
FORMERXBC HOLDING USA INC. (FORMERLY XEBEC HOLDING USA INC.)  
ENERPHASE INDUSTRIAL SOLUTIONS, INC.  
CDA SYSTEMS, LLC  
FORMERXBC ADSORPTION USA INC. (FORMERLY XEBEC ADSORPTION USA INC.)  
FORMERXBC PENNSYLVANIA COMPANY (FORMERLY THE TITUS COMPANY)  
FORMERXBC NOR CORPORATION (FORMERLY NORTEKBELAIR CORPORATION)  
FORMERXBC FLOW SERVICES – WISCONSIN INC. (FORMERLY XBC FLOW  
SERVICES – WISCONSIN INC.)  
CALIFORNIA COMPRESSION, LLC  
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)  
Debtors / Petitioners**

and  
**DELOITTE RESTRUCTURING INC.**  
Monitor

and

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PAGE: 2

**IVYS ADSORPTION INC.**  
Impleaded Party (Buyer)

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**APPROVAL AND VESTING ORDER IN RESPECT OF BIOSTREAM ASSETS OF  
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)**

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- [1] **CONSIDERING** the *Application for (i) an Extension of the Stay of Proceedings, (ii) the Establishment of a Claims Process, (iii) the Authorization to Use Net Proceeds to Fund Cash-Flow Requirements and (iv) the Issuance of an Approval and Vesting Order in Respect of BioStream Assets of FormerXBC Systems USA, LLC (Formerly Xebec Systems USA, LLC) (the "Application")* pursuant to the *Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended ("CCAA")* and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Tenth Report of the Monitor dated May 19, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **CONSIDERING** the provisions of the CCAA;
- [5] **GIVEN** the Fifth Amended and Restated Initial Order rendered by the Court on March 27, 2023 (the "**Fifth ARIO**");
- [6] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the "**Transaction**") contemplated by the agreement entitled Binding Letter of Intent For Purchase of Biostream WIP / Inventory dated May 19, 2023 (the "**Binding LOI**") between **FormerXBC Systems USA, LLC** (the "**Seller**"), and **Ivys Adsorption Inc.**, as buyer, (the "**Buyer**"), a copy of which was filed under seal as **Exhibit P-5** to the Application, and vesting in the Buyer certain work in progress and inventory (the "**Purchased Assets**").

**THE COURT HEREBY:**

- [7] **GRANTS** the Application, with further written reasons to follow.

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### DEFINITIONS

- [8] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Application.

### SERVICE

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

### TRANSACTION APPROVAL

- [11] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Binding LOI by the Seller is hereby authorized and approved *nunc pro tunc*, with such minor alterations, changes, amendments, deletions or additions thereto as may be agreed to by the Seller and the Buyer, with the consent of the Monitor.

### EXECUTION OF DOCUMENTATION

- [12] **AUTHORIZES** the Seller and the Buyer to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Binding LOI and any other ancillary document which could be required or useful to give full and complete effect thereto, including entering into an asset purchase agreement.

### AUTHORIZATION

- [13] **ORDERS and DECLARES** that this Order shall constitute the only authorization required by the Petitioners to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

### VESTING OF PURCHASED ASSETS

- [14] **ORDERS AND DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Buyer, free and clear of and from any



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and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, deemed trusts, assignments, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, taxes or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges or security evidenced by registration, publication or filing pursuant to any applicable legislation providing for a security interest in personal or movable property (all of which are collectively referred to as the "**Encumbrances**"), excluding for greater certainty the Biostream Charge (as defined below).

- [15] For greater certainty, **ORDERS** that all of the Encumbrances, affecting or relating to the Purchased Assets be cancelled and discharged as against the Purchased Assets, in each case effective as of the issuance of the Monitor's Certificate.
- [16] **ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
- [17] **ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer regarding the fulfillment of conditions to closing under the Binding LOI and shall have no liability with respect to the delivery of the Monitor's Certificate.
- [18] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Certificate, as soon as practicable after issuance thereof.
- [19] **ORDERS AND DIRECTS** the Monitor to serve on the service list in the within CCAA proceedings, post on the Monitor's website and file with the Court a copy of the Monitor's Certificate, as soon as practicable after the issuance thereof.

#### **CANCELLATION OF SECURITY REGISTRATIONS**

- [20] **ORDERS** that upon the issuance of the Monitor's Certificate, the Petitioners shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets from any registration



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filed against the Petitioners, provided that the Petitioners shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Petitioners shall be authorized to take any further steps by way of further application to this Court.

### **BIOSTREAM CHARGE**

- [21] **DECLARES** that the Seller, as security for the payments to be made by the Buyer pursuant to the Biostream Transaction, be entitled to the benefit of and is hereby granted a charge and security in the five biostream units of the Purchase Assets, to the extent of the aggregate amount of \$2,000,000 (the "**Biostream Charge**").
- [22] **DECLARES** that following the initial payment by the Buyer equivalent to 25% of the Purchase Price, such charge will be discharged on a unit-by-unit basis following the payment of each instalment payment received by the Monitor from the Buyer, as confirmed by the issuance of Monitor's certificates confirming receipt of the instalments and reductions of the Biostream Charge, except for the Biostream Charge on the last biostream unit which will only be discharged upon receipt by the Monitor of the balance of payment of the Purchase Price and as confirmed by the issuance of a Monitor's certificate confirming that the Purchase Price has been paid in full and cancelling and discharging the Biostream Charge.
- [23] **DECLARES** that the Biostream Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Purchase Assets.

### **PROTECTION OF PERSONAL INFORMATION**

- [24] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the "**Applicable Privacy Laws**"), the Petitioners and the Monitor are authorized to disclose and transfer to the Buyer the personal information in the custody or control of the Petitioners set out in the Binding LOI (the "**Disclosed Information**"). The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Petitioners.
- [25] **ORDERS** that the Buyer shall:
- (a) maintain and protect the Disclosed Information with security safeguards appropriate to the Disclosed information and as may otherwise be required by Applicable Privacy Laws;

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- (b) use and disclose the Disclosed Information for the purposes for which the Disclosed Information was collected by the Petitioners and as may otherwise be permitted by Applicable Privacy Laws; and
- (c) give effect to any withdrawals of consent of the individuals to whom the Disclosed Information relates.

### **VALIDITY OF THE TRANSACTION**

[26] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act.*, RSC 1985, c B-3 BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

the vesting of Purchased Assets contemplated in this Order, as well as the execution of the Binding LOI and the assignment of the Assumed Contracts authorized by this Order, and the payments, distributions and disbursements made pursuant to or in connection with this Order are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Petitioners, the Buyer, or the Monitor, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

### **THE MONITOR**

[27] **DECLARES** that the Monitor shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor.

[28] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.

[29] **DECLARES** that nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the assets of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in



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possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

- [30] **ORDERS AND DECLARES** that no provision of this Order is intended to appoint the Monitor as an officer, director or employee of any of the Petitioners, de facto or otherwise, or to create a fiduciary duty to any party, including any creditor or shareholder of the Petitioners. Additionally, nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, or receiver and manager of any of the Petitioners and any distribution made to the creditors of the Petitioners will be deemed to have been made by the Petitioners.

### SEALING

- [31] **ORDERS** that the Binding LOI, Exhibit P-5 shall be filed under seal and kept confidential until further order of this Court.

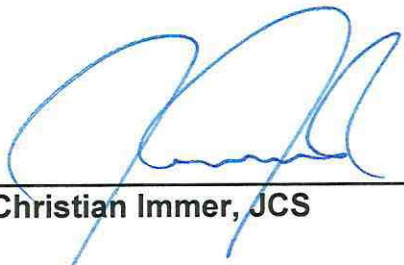
### GENERAL

- [32] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [33] **DECLARES** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other and the Buyer.
- [34] **DECLARES** that the Petitioners and the Monitor shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.
- [35] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order, and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order in any foreign proceeding, to assist the Petitioners, the Monitor and their respective agents in carrying out this Order.
- [36] **ORDERS** provisional execution of this Order notwithstanding any appeal and without security.

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[37] **THE WHOLE** without costs.



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Christian Immer, JCS

MTRE. SANDRA ABITAN  
MTRE. JULIEN MORISSETTE  
MTRE. ILIA KRAVTSOV  
MTRE. SOPHIE COURVILLE  
(OSLER HOSKIN & HARCOURT LLP)  
Attorneys for the Petitioners

Hearing date: **May 24, 2023**

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**SCHEDULE A**  
**CERTIFICATE OF THE MONITOR**

**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

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

**FORMERXBC INC. (FORMERLY XEBEC  
ADSORPTION INC.)  
11941666 CANADA INC. (FORMERLY XEBEC  
RNG HOLDINGS INC.)  
APPLIED COMPRESSION SYSTEMS LTD.  
1224933 ONTARIO INC. (FORMERLY  
COMPRESSED AIR INTERNATIONAL INC.)  
FORMERXBC HOLDING USA INC. (FORMERLY  
XEBEC HOLDING USA INC.)  
ENERPHASE INDUSTRIAL SOLUTIONS, INC.  
CDA SYSTEMS, LLC  
FORMERXBC ADSORPTION USA INC.  
(FORMERLY XEBEC ADSORPTION USA INC.)  
FORMERXBC PENNSYLVANIA COMPANY  
(FORMERLY THE TITUS COMPANY)  
FORMERXBC NOR CORPORATION  
(FORMERLY NORTEKBELAIR CORPORATION)  
FORMERXBC FLOW SERVICES - WISCONSIN  
INC. (FORMERLY XBC FLOW SERVICES -  
WISCONSIN INC.)  
CALIFORNIA COMPRESSION, LLC  
FORMERXBC SYSTEMS USA, LLC (FORMERLY  
XEBEC SYSTEMS USA, LLC)**

Debtors/Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

**CERTIFICATE OF THE MONITOR**



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**(CLOSING OF THE BIOSTREAM TRANSACTION AND CREATION OF THE BIOSTREAM CHARGE)**

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**RECITALS:**

**WHEREAS** on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. et al. filed an Application pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**") and Deloitte Restructuring Inc. was appointed as monitor thereto (the "**Monitor**").

**WHEREAS** on May 24, 2023, the Court issued the *Approval, Vesting and Assignment Order in Respect of Assets of FormerXBC Systems USA, LLC* (the "**Approval and Vesting Order**") authorizing and approving, *inter alia*, the execution of the Binding LOI and the conclusion of a definitive asset purchase agreement reflecting the terms of the Binding LOI (the "**Purchase Agreement**"), between FormerXBC Systems USA, LLC, as seller, (the "**Seller**"), and Ivys Adsorption Inc. as buyer, (the "**Buyer**") and all the transactions contemplated therein (the "**Transaction**"), with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed with the consent of the Monitor.

**WHEREAS** the Approval and Vesting Order contemplates the issuance of this Certificate of the Monitor once (a) the Purchase Agreement has been executed and delivered, (b) the Initial Payment (as provided by the Binding LOI and defined in the Purchase Agreement) has been paid, and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

**WHEREAS**, following confirmation of the above, it also contemplated that the Monitor will issue this Certificate creating and effecting the Biostream Charge (as defined in the Approval and Vesting Order).

**THE MONITOR CERTIFIES THAT IT HAS BEEN ADVISED BY THE SELLER AND THE BUYER AS TO THE FOLLOWING:**

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Initial Payment payable upon the closing of the Transaction has been paid and received by the Monitor;
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto, such that closing has occurred; and
- (d) The Biostream Charge is accordingly created and effected, in accordance with para. 21 of the Approval and Vesting Order.

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This Certificate was issued by the Monitor on ●, 2023.

**Deloitte Restructuring Inc.**, in its capacity as Monitor  
and not in its personal capacity.

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Name: Jean-François Nadon, CPA, CIRP, LIT

Title: President

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