

**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

-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**¹

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**”).

¹ 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 TRANSACTION²

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 divesture 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**.

² 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 TRANSACTION³

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.

³ 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 TRANSACTION⁴

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

⁴ 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

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

| ikravtsov@osler.com | scourville@osler.com

Email notification: 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.

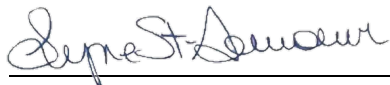
Where the facts alleged in the Application have been obtained from others, I believe them to be true.

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:

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

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

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

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

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

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

Exhibit P-1

**Draft Third Amended and
Restated Initial Order**

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 13, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

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

and

DELOITTE RESTRUCTURING INC.
Monitor

THIRD AMENDED AND RESTATED INITIAL ORDER

Draft

- [1] **CONSIDERING** the *Application for the Issuance of a Third Amended and Restated Initial Order and Approval and Vesting Orders* (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 *Amended Application for the Issuance of a Second Amended and Restated Initial Order, and an Approval and Vesting Order* (the “**Second ARIO Application**”) pursuant to the CCAA;
- [3] **CONSIDERING** the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the “**ARIO Application**”) pursuant to the CCAA;
- [4] **CONSIDERING** the *Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order* (the “**Initial Application**”) pursuant to the CCAA;
- [5] **CONSIDERING** the Sixth Report of the Monitor dated February ●, 2023 (the “**Report**”);
- [6] **CONSIDERING** the submissions of counsel and the testimony of the witnesses heard;
- [7] **GIVEN** the provisions of the CCAA;
- [8] **GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

THE COURT HEREBY:

- [9] **GRANTS** the Application.
- [10] **ISSUES** an order pursuant to the CCAA (the “**Order**”), divided under the following headings:
 - (a) Service;
 - (b) Application of the CCAA;
 - (c) Effective Time;
 - (d) Administrative Consolidation;
 - (e) Plan of Arrangement;

Draft

- (f) Stay of Proceedings against the Petitioners and the Property;
- (g) Stay of Proceedings against the Directors and Officers;
- (h) Possession of Property and Operations;
- (i) No Exercise of Rights or Remedies;
- (j) No Interference with Rights;
- (k) Continuation of Services;
- (l) Non-Derogation of Rights;
- (m) Interim Financing (DIP);
- (n) Second Interim Financing (DIP);
- (o) Directors' and Officers' Indemnification and Charge;
- (p) Restructuring;
- (q) Powers of the Monitor;
- (r) KERPs and KERP Charge;
- (s) Priorities and General Provisions Relating to CCAA Charges;
- (t) Hearing Scheduling and Details;
- (u) General.

a. Service

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

b. Application of the CCAA

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

c. Effective Time

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

Draft

d. Administrative Consolidation

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

e. Plan of Arrangement

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

f. Stay of Proceedings against the Petitioners and the Property

- [18] **ORDERS** that, until and including March 17, 2023 (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Petitioners, or affecting the Petitioners’ business operations and activities (the “**Business**”) or the Property (as defined herein), including as provided in paragraph [31] herein except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.
- [19] **ORDERS** that the rights of His Majesty in right of Canada and His Majesty in right of a Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.
- [20] **ORDERS** and **DECLARES** that the National Bank of Canada (“**NBC**”) is an unaffected creditor in these CCAA proceedings and is not subject to the stay of proceedings, including the Stay Period and any renewal or extension thereof, or any other limitations of creditors’ right or recourses under this Order. Nothing in this Order shall prevent NBC from enforcing its security against the Petitioners’ Property in conformity with its contractual rights, subject only to NBC providing advance notice of its intention to do so.

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g. Stay of Proceedings against Directors and Officers

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

h. Possession of Property and Operations

[22] **ORDERS** that the Petitioners shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the “**Property**”), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph [57] hereof.

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

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

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

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

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

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

[26] **ORDERS** that, subject to the consent of the Monitor, each of the Petitioners is authorized to complete outstanding transactions and engage in new transactions with other Petitioners or their affiliates, including, without limitation, (a) intercompany funding transactions, (b) purchase and sale transactions for goods or services in the ordinary course of the Business, (c) allocation and payments of costs, expenses and other amounts for the benefit of the Petitioners, including, without limitation, debt repayments and interest costs, head office, shared services and restructuring costs (collectively, "**Intercompany Transactions**"), and to continue, on and after the date of this Order, to effect Intercompany Transactions. All Intercompany Transactions among the Petitioners shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures as the Monitor may require, or subject to this Order or further Order of this Court.

[27] **ORDERS** that, in conformity with the DIP Term Sheet, the Petitioners shall notify, at least two (2) days in advance, the Interim Lenders of any monetary payment from a Petitioner to another Petitioner or their affiliates, and that the Monitor shall continue to report from time to time to the Court on such monetary payments constituting Intercompany Transactions.

[28] **ORDERS** that prior to the distribution of any net sale proceeds resulting from the sale or divestiture of any Business or Property (but excluding any distribution made

in respect of any amounts owing under the CCAA Charges (as defined herein), as the case may, it being understood that in each such case, said distribution may in itself constitute an Intercompany Transaction to form part of a subsequent Intercompany Transactions Report, as defined herein), the Monitor shall prepare and file with the Court a report (each, an “**Intercompany Transactions Report**”) detailing all Intercompany Transactions which occurred on or after the date of the Initial Order with respect to the applicable Petitioner(s), which Intercompany Transactions Report shall include the Monitor’s proposed allocation of the net amount to be attributed to each Petitioner as a result of the applicable Intercompany Transactions, if any, and any net sale proceeds to be remitted by one Petitioner to another Petitioner as the case may be (the “**Proposed Allocation**”).

- [29] **ORDERS** the Monitor to serve a copy of the Intercompany Transactions Report upon the service list in these proceedings and **DECLARES** that any interested creditor shall be entitled to apply to this Court within five (5) calendar days of said notification to the service list of the Intercompany Transactions Report to contest or make representations with respect to the Proposed Allocation.
- [30] **DECLARES** that paragraph [28] and [29] of this Order and their effects shall apply to any distribution, even outside of these CCAA proceedings, including, without limitation, a distribution by any trustee in bankruptcy, receiver, receiver and manager, interim receiver or any other person appointed to make a distribution in respect of the Property, unless the Court orders otherwise.

i. No Exercise of Rights or Remedies

- [31] **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the Petitioners is a party as a result of the insolvency of the Petitioners and/or these CCAA proceedings, any events of default or non-performance by the Petitioners or any admissions or evidence in these CCAA proceedings, of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof are hereby stayed and suspended except with leave of this Court.
- [32] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods including, without limitation, to file grievances relating to the Petitioners or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature

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whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioners, or any of them, become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) is appointed in respect of the Petitioners, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioners in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

j. No Interference with Rights

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

k. Continuation of Services

- [34] **ORDERS** that during the Stay Period and subject to paragraphs [35] and [36] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioners or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioners, are hereby restrained until further order of this Court from discontinuing, altering, failing to renew (when contractually provided), interfering with or terminating the supply or, as the case may be, interrupting, delaying or stopping the transit of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Petitioners, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners, as applicable, with the consent of the Monitor, or as may be ordered by this Court.
- [35] **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioners on or after the date of this Order, nor shall

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any Person be under any obligation on or after the date of this Order to make further advance of money or otherwise extend any credit to the Petitioners.

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

I. Non-Derogation of Rights

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

m. Interim Financing (DIP)

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

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material alterations, changes, amendments, deletions or additions thereto as may be agreed to with the Interim Lenders, but only with the consent of the Monitor, and the Petitioners are hereby authorized to perform all of its obligations under the DIP Term Sheet and the Interim Financing Documents.

- [40] **ORDERS** that Petitioners shall pay to the Interim Lenders, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other reasonably required advisors to or agents of the Interim Lenders on a full indemnity basis (the “**Interim Lender Expenses**”)) under the DIP Term Sheet and the Interim Financing Documents and shall perform all of their other obligations owed to the Interim Lenders pursuant to the DIP Term Sheet, the Interim Financing Documents and the Order.
- [41] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,600,000 (the “**DIP Charge**”) in favour of the Interim Lenders as security for all obligations of the Petitioners to the Interim Lenders with respect to the payment of the DIP Facility (including principal, interest and the Interim Lender Expenses) owing to the Interim Lenders under or in connection with the DIP Term Sheet and the Interim Financing Documents. Such Interim Lender Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs 72 and 73 of this Order.
- [42] **ORDERS** that the claims of the Interim Lenders pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lenders, in that capacity, shall be treated as unaffected creditors in these proceedings and in any Plan.
- [43] **ORDERS** that the Interim Lenders may:
- (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the DIP Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
 - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Petitioners if the Petitioners fail to meet the provisions of the DIP Term Sheet and the Interim Financing Documents.
- [44] **ORDERS** that the Interim Lenders shall not take any enforcement steps under the DIP Term Sheet, the Interim Financing Documents or the DIP Charge without providing at least 3 business days written notice (the “**Notice Period**”) of a default thereunder to the Petitioners, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such

notice. Upon expiry of such Notice Period, the Interim Lenders shall be entitled to take any and all steps, the DIP Term Sheet, the Interim Financing Documents, the DIP Charge and otherwise permitted at law, but without having to send any additional demands under Section 244 of the BIA, under the Civil Code of Quebec or any other similar legislation.

- [45] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph 79 of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs 38 to 45 of this Order unless either (a) notice of a motion for such order is served on the Interim Lenders by the moving party within at least seven (7) days prior to the presentation thereof or (b) the Interim Lenders apply for or consents to such order.

n. Second Interim Financing (DIP)

- [46] **ORDERS** that the Petitioners be and are hereby authorized to borrow from Export Development Canada ("**EDC**") such amounts from time to time as the Petitioners may consider necessary or desirable, up to an aggregate principal amount not exceeding \$2,500,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed under seal as Exhibit P-8 in support of the Application (the "**Second DIP Term Sheet**") and in the EDC Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioners and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents (as defined hereinafter) (the "**Second DIP Facility**").
- [47] **ORDERS** that the Petitioners are hereby authorized to execute and deliver the Second DIP Term Sheet and other security documents and ancillary documents as may be required by EDC in connection with the Second DIP Facility and the Second DIP Term Sheet (collectively, the "**EDC Interim Financing Documents**"), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to with EDC, but only with the consent of the Monitor, and the Petitioners are hereby authorized to perform all of its obligations under the Second DIP Term Sheet and the EDC Interim Financing Documents.
- [48] **ORDERS** that Petitioners shall pay to EDC, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other reasonably required advisors to or agents of EDC on a full indemnity basis (the "**EDC Interim Lender Expenses**")) under the Second DIP Term Sheet and the EDC Interim Financing Documents and shall perform all of their other obligations owed to EDC pursuant to the Second DIP Term Sheet, the EDC Interim Financing Documents and the Order.

- [49] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,000,000 (the “**Second DIP Charge**”) in favour of the Interim Lenders as security for all obligations of the Petitioners to EDC with respect to the payment of the Second DIP Facility (including principal, interest and the EDC Interim Lender Expenses) owing to EDC under or in connection with the Second DIP Term Sheet and the EDC Interim Financing Documents. Such Second DIP Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs [72] and [73] of this Order.
- [50] **ORDERS** that the claims of EDC pursuant to the EDC Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and EDC, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan.
- [51] **ORDERS** that EDC may:
- (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Second DIP Charge and the EDC Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
 - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Petitioners if the Petitioners fail to meet the provisions of the Second DIP Term Sheet and the EDC Interim Financing Documents.
- [52] **ORDERS** that EDC shall not take any enforcement steps under the Second DIP Term Sheet, the EDC Interim Financing Documents or the Second DIP Charge without providing at least 3 business days written notice (the “**Notice Period**”) of a default thereunder to the Petitioners, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, EDC shall be entitled to take any and all steps, the Second DIP Term Sheet, the EDC Interim Financing Documents, the Second DIP Charge and otherwise permitted at law, but without having to send any additional demands under Section 244 of the BIA, under the Civil Code of Quebec or any other similar legislation.
- [53] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [79] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [46] to [53] of this Order unless either (a) notice of a motion for such order is served on EDC by the moving party within at least seven (7) days prior to the presentation thereof or (b) EDC apply for or consents to such order.

o. Directors' and Officers' Indemnification and Charge

- [54] **ORDERS** that the Petitioners shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioners after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.
- [55] **ORDERS** that the Directors of the Petitioners shall be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$3,700,000 (the "**D&O Charge**"), as security for the indemnity provided in paragraph 55 of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The D&O Charge shall have the priority set out in paragraphs 72 and 73 of this Order.
- [56] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Directors shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph 55 of this Order.

p. Restructuring

- [57] **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioners, subject to prior approval of the Monitor or further order of the Court, as the case may be, shall have the right to:
- (a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate;
 - (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
 - (c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$750,000 or \$1,500,000 in the aggregate;

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

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

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

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g. Powers of the Monitor & Administration Charge

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

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

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

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

- [61] **ORDERS** that the Petitioners and their current and former shareholders, Directors, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties, rights and obligations as provided and set out in this Order.
- [62] **ORDERS** that, without limiting the generality of anything herein, the Petitioners and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of this Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioners in connection with the Monitor's duties and responsibilities hereunder.
- [63] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioners with information in response to requests made by

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

- [64] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioners or continues the employment of the Petitioners' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
- [65] **DECLARES** that Section 215 of the BIA applies *mutatis mutandis* and that no action or other proceedings shall be commenced against the Monitor or its representatives relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least seven (7) days' notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor and their representatives shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [66] **DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.
- [67] **ORDERS** that the Petitioners shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
- [68] **DECLARES** that the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel, as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, any Plan and the Restructuring, as well as National Bank Financial Inc. ("**NBF**"), as security for the Engagement Fee and the Fairness Opinion Fee (as such terms are defined in the engagement letter filed as Exhibit P-3 in support of the Initial Application, the "**Engagement Letter**") and all disbursements incurred by NBF pursuant to the Engagement Letter, be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$3,000,000 (the "**Administration Charge**"), having the priority established by paragraphs 72 and 73 of this Order.
- [69] **DECLARES** that:

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- (a) upon the disbursement of the initial advance of \$1,250,000 by EDC under the EDC Interim Financing Documents (the “**Initial Advance**”), as confirmed by the issuance of a Monitor’s Certificate confirming receipt of the Initial Advance and First Reduction of the Administration Charge, the Administration Charge shall be reduced by an amount equal to \$750,000 to an amount equal to \$2,250,000; and
- (b) upon the disbursement of the second advance of \$1,250,000 by EDC under the EDC Interim Financing Documents (the “**Second Advance**”), as confirmed by the issuance of a Monitor’s Certificate confirming receipt of the Second Advance and Second Reduction of the Administration Charge, the Administration Charge shall be further reduced by an amount equal to \$750,000 to an amount equal to \$1,500,000.

r. KERPs and KERP Charge

- [70] **ORDERS** that the key employee retention plan, key vice-president retention plan and the key executive incentive plan (collectively, the “**KERPs**”) described in the Application and summarized in the document filed under seal as Exhibit P-3 to the Initial Application are hereby approved, and the Petitioners are hereby authorized and empowered to perform their obligations set forth thereunder, including by making the payments in accordance with the terms set out therein.
- [71] **ORDERS** that the employees designated in the KERPs shall be entitled to the benefit of and are hereby granted a charge and security in the on the Property, to the extent of the aggregate amount of \$1,080,000 (the “**KERP Charge**”), having the priority established by paragraphs 72 and 73 of this Order.

s. Priorities and General Provisions Relating to CCAA Charges

- [72] **DECLARES** that the priorities of the Administration Charge and the D&O Charge (collectively, the “**CCAA Charges**”), as between them with respect to any Property to which they apply, shall be as follows:
- (a) first, the Administration Charge;
 - (b) second, the D&O Charge;
 - (c) third, the DIP Charge;
 - (d) fourth, the Second DIP Charge;
 - (e) fifth, the Transaction Charge (as defined in the Bidding Procedures Order dated September 29, 2022);

(f) sixth, the KERP Charge.

[73] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Property whether or not charged by such Encumbrances, save that, as regards the Transaction Charge and the KERP Charge only, the question with respect to its priority ranking as regards any amounts owing by the Petitioners pursuant to paragraph [25](a) of this Order shall be determined by the Court at a later date and time.

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

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

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

(a) the creation of any of the CCAA Charges shall not create nor be deemed to constitute a breach by the Petitioners of any Third Party Agreement to which any of the Petitioners is a party; and

(b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.

[77] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership

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order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any Petitioners pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances, preferential payments, transfers at undervalue or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

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

t. Hearing Scheduling and Details

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

upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in these proceedings.

- [83] **ORDERS** that, if a Notice of Objection is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time, or such earlier or later time as may be directed by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial Return Date and at the Initial Return Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested application and such other matters, including interim relief, as the Court may direct.

u. General

- [84] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, representatives, legal counsel or financial advisers of the Petitioners or of the Monitor in relation to the Business or Property of the Petitioners, without first obtaining leave of this Court, upon ten (10) calendar days' written notice to the Petitioners' counsel, the Monitor's counsel, and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
- [85] **DECLARES** that this Order and any proceeding or affidavit leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioners under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [86] **DECLARES** that, except as otherwise specified herein, the Petitioners and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery, electronic mail, or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioners and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.
- [87] **DECLARES** that the Petitioners and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses.
- [88] **ORDERS** that Exhibits P-3, P-8, P-10 and Schedule D to Exhibit P-5 to the Initial Application, Exhibits P-2, P-2A and P-3 to the ARIO Application, Appendices A and B to the Fifth Report of the Monitor dated February 1, 2023, Exhibits P-5, P-6, P-7

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and P-8 of to the Application and Appendices ● to the Report shall be filed under seal and kept confidential until further order of this Court.

- [89] **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served an Answer on the counsel for the Petitioners and the Monitor and has filed such notice with this Court, or appears on the Service List, save and except when an order is sought against a Person not previously involved in these proceedings.
- [90] **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.
- [91] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [92] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Petitioners in any foreign proceeding, to assist the Petitioners, and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.
- [93] **AUTHORIZES** the Monitor or the Petitioners to apply as they may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the U.S. Bankruptcy Code, including an order for recognition of these CCAA proceedings as “Foreign Main Proceedings” in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, for which Xebec Adsorption Inc., shall be the foreign representative of the Petitioners. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be deemed necessary or appropriate for that purpose.

- [94] **DECLARES** that, for the purposes of any applications authorized by paragraph [93] of this Order, Petitioners' centre of main interest is located in Montréal, Québec, Canada.
- [95] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.
- [96] **THE WHOLE WITHOUT COSTS.**

Christian Immer, J.S.C.

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

Hearing date: February 13, 2023

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Exhibit P-1A

**Comparison between the
Third Amended and
Restated Initial Order and
the Second ARIO**

SUPERIOR COURT
(Commercial Division)

CANADA

■ PROVINCE OF QUÉBEC DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

| DATE: February 13, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

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

And

and

DELOITTE RESTRUCTURING INC.
Monitor

| **SECOND**

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THIRD AMENDED AND RESTATED INITIAL ORDER

J10082

[1] **CONSIDERING** the ~~Amended~~ Application for the Issuance of a ~~Second~~Third Amended and Restated Initial Order and ~~an~~ Approval and Vesting ~~Order~~Orders (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 Amended Application for the Issuance of a First Day~~Second Amended and Restated~~ Initial Order, ~~a Deemed Extension of the Stay Period and a Bidding Procedures~~and an Approval and Vesting Order (the “Second **ARIO Application**”) pursuant to the CCAA;

[3] **CONSIDERING** the Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order (the “ARIO Application”) pursuant to the CCAA;

[4] **CONSIDERING** the Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period and a Bidding Procedures Order (the “**Initial Application**”) pursuant to the CCAA;

[5] ~~4~~**CONSIDERING** the ~~Fifth~~Sixth Report of the Monitor dated February ~~4~~1, 2023 (the “**Report**”);

[6] ~~5~~**CONSIDERING** the submissions of counsel and the testimony of the ~~Jean-François Nadon on behalf of the Monitor which lead the court to the following findings and conclusions.~~

~~(a) That the debtors and in particular its higher management are in good faith and are acting with great diligence in both operating the petitioners and fully participating in the court mandated SISP;~~

~~(b) That intensive efforts continue to be carried out to bring about transactions as contemplated in the SISP process, as well as alternative processes to maximize value;~~

~~(c) That despite a Very challenging process, impacts are being minimized on employees, clients and suppliers;~~

~~(d) That extending the order will serve the objectives of the CCAA;~~

~~(e) That very significant work is being carried out by the Monitor, the legal counsel of the Petitioners and of the Monitor and the financial advisors in multiple fora;~~

~~(f) That a \$900, 000 Administration Charge was declared in favour of the professionals listed at par. 58 of the October~~

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~~20, 2022 Amended and Restated Initial Order;~~

~~(g) That as at week end of January 28, 2023, the professionals' unpaid billings total in excess of 1,5M\$ that there is significant work in progress which has not been billed and that significant further work will be required over the coming weeks;~~

~~(h) That the cash projections set out in Schedule F of the Report evidence that significant payments will need to be made over the coming weeks to the professional;~~

~~(i) That there is an urgent need to increase the Administration Charge witnesses heard;~~

[7] ~~[6]~~ **GIVEN** the provisions of the CCAA;

[8] ~~[7]~~ **GIVEN** that Montréal, Québec, Canada is the centre of main interest of the Petitioners.

THE COURT HEREBY:

[9] ~~[8]~~ **GRANTS** the Application.

[10] ~~[9]~~ **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following ~~—~~ headings:

~~(a)~~

~~(b)~~

~~(c)~~

~~(d)~~

~~(e)~~

~~ii~~

~~(g)~~

~~(h)~~

~~iii~~

~~ii~~

~~(k)~~

~~(l)~~

- (a) Service; ■
- (b) Application of the CCAA;
- (c) Effective Time;
- (d) Administrative Consolidation;
- (e) Plan of Arrangement;
- (f) Stay of Proceedings against the Petitioners and the Property;
- (g) Stay of Proceedings against the Directors and Officers;
- (h) Possession of Property and Operations;
- (i) No Exercise of Rights or Remedies;
- (j) No Interference with Rights;
- (k) Continuation of Services;
- (l) Non-Derogation of Rights;

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- (m) Interim Financing (DIP);
- (n) Second Interim Financing (DIP);
- (o) ~~(n)~~ Directors' and Officers' Indemnification and Charge;
- (p) ~~(o)~~ Restructuring;
- (q) ~~(p)~~ Powers of the Monitor;
- (r) ~~(q)~~ KERPs and KERP Charge;
- (s) ~~(r)~~ Priorities and General Provisions Relating to CCAA Charges;
- (t) ~~(s)~~ Hearing Scheduling and Details;
- (u) ~~(t)~~ General.

■ **a. Service**

[11] ~~[10]~~ **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.

b. ~~Application~~ Application of the CCAA

[12] ~~[1-1]~~ **DECLARES** that the Petitioners are debtor companies to which the CCAA applies.

c. Effective Time

[13] ~~[12]~~ **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. ~~Monday~~ time, ~~Province~~ Province of Québec, on September 29, 2022 (the "**Effective Time**").

d. Administrative Consolidation

[14] ~~[13]~~ **ORDERS** the consolidation of these CCAA proceedings of the Petitioners under one Court file, in file number 500-11-061483-224.

[15] ~~[14]~~ **ORDERS** that all existing and future proceedings, filings, and other matters (including, without limitation, all applications, reports and cash flows) in the CCAA Proceedings henceforth be jointly and together by the Petitioners, and the Monitor, as applicable, under file number 500-11-061483-224.

■ [16] ~~[15]~~ **DECLARES** that the consolidation of these CCAA proceedings in respect of the Petitioners shall be for administrative purposes only and shall not effect a consolidation of the assets, real property or of the debts and obligations of each of the Petitioners including, without limitation, for the purposes of any plan of compromise or arrangement (a "**Plan**") that may be hereinafter proposed.

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e. Plan of Arrangement

[17] ~~{16}~~ **DECLARES** that the Petitioners shall have the authority to file with this Court and to do so to their creditors one or more Plans in accordance with the CCAA.

f. Stay of Proceedings against the Petitioners and the Property

[18] ~~{17}~~ **ORDERS** that, until and including ~~February~~ March 13~~7~~, 2023 (the “**Stay Period**”) shall be a stay of all proceedings or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be stayed, commenced or continued against or in respect of the Petitioners, or affecting the Petitioners’ business operations and ~~activities~~ activities (the “**Business**”) or the Property (as defined here) including as provided in paragraph ~~[301]~~ herein except with leave of this Court. Any a Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the stay is subject to subsection 11.1 CCAA.

[19] ~~{18}~~ **ORDERS** that the rights of His Majesty in right of Canada and His Majesty in right of the Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.

[20] ~~{19}~~ **ORDERS** and **DECLARES** that the National Bank of Canada (“**NBC**”) is an unaffiliated creditor in these CCAA proceedings and is not subject to the stay of proceedings, including the Stay Period and any renewal or extension thereof, or any other limitations of creditors’ rights or remedies recourses under this Order. Nothing in this Order shall prevent NBC from enforcing its securities against the Petitioners’ Property in conformity with its contractual rights, subject only to providing advance notice of its intention to do so.

g. Stay of ~~Proceedings against~~ Proceedings against Directors and Officers

[21] ~~{20}~~ **ORDERS** that during the Stay Period and except as permitted under subsection 11.03 CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioners nor against any person deemed to be a director or officer of any of the Petitioners under subsection 11.03(3) CCAA (each, a “**Director**”) collectively the “**Directors**”) in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioners where it is alleged that the Director of the Directors is under any law liable in such capacity for the payment of such obligation.

h. Possession of Property and Operations

[22] ~~{21}~~ **ORDERS** that the Petitioners ~~shall~~ shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and ~~whatsoever~~ whatsoever, and ~~wherever~~ wherever situated, including all proceeds thereof (collectively the “**Property**”), the whole in accordance with the terms and conditions of this Order, including, but not limited to, paragraph ~~[4857]~~ hereof.

[23] ~~{22}~~ **ORDERS** that the Petitioners shall be entitled, but not required to pay the following expenses with the prior consent of the Monitor or further order of the Court, as the case may be, which were incurred prior to or after this Order:

(a) outstanding and future wages, salaries, expenses and, benefits payable prior to or

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the date of this Order, in each case incurred in the ordinary

course of business and consistent with existing compensation policies and arrangements;

- (b) the fees and disbursements of any counsel, advisors and agents retained or employed by the Petitioners directly related to these proceedings, at their standard rates and charges and
- (c) amounts owing for goods or services actually supplied to the Petitioners prior to the date of this Order by third party suppliers up to a maximum aggregate amount of \$700,000. In the opinion of the Petitioners and of the Monitor, the supplier is critical to the business and ongoing operations of the Petitioners.

[24] ~~[23]~~ **ORDERS** that except as otherwise provided to the contrary herein, the Petitioners shall be entitled to pay all reasonable expenses incurred by the Petitioners in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, such expenses shall include, without limitation:

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

[25] ~~[24]~~ **ORDERS** that the Petitioners shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of a Province thereof or any other taxation authority which are required to be deducted from the wages of employees; wages, including, without

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limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension Plan, and (iv) income taxes; and

- (b) all goods and services, harmonized sales or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners and in connection with the sale of goods and services by the Petitioners but only where such Sales Taxes are accrued or collected after the date of this Order.

[26] ~~[25]~~ **ORDERS** that, subject to the consent of the Monitor, each of the Petitioners is authorized to complete outstanding transactions and engage in new transactions with other Petitioners or their affiliates, including, without limitation, (a) intercompany funding transactions, (b) purchase and sale transactions for goods or services in the ordinary course of the Business, (c) allocation and payments of costs, expenses and other amounts for the benefit of the Petitioners, including, without limitation, debt repayments and interest costs, head office, shared services and restructuring costs (collectively, "**Intercompany Transactions**"), and to continue, on and after the date of this Order, to effect Intercompany Transactions. All Intercompany Transactions among the Petitioners shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures as the Monitor may require, or subject to this Order or further Order of this Court.

[27] ~~[26]~~ **ORDERS** that, in conformity with the DIP Term Sheet, the Petitioners shall notify, at least two (2) days in advance, the Interim Lenders of any monetary payment from a Petitioner to another Petitioner or their affiliates, and that the Monitor shall continue to report from time to time to the Court on such monetary payments constituting Intercompany Transactions.

[28] ~~[27]~~ **ORDERS** that prior to the distribution of any net sale proceeds resulting from the sale or divestiture of any Business or Property (but excluding any distribution made

in respect of any amounts owing under the CCAA Charges (as defined herein), as the case may, it being understood that in each such case, said distribution may in itself constitute an Intercompany Transaction to form part of a subsequent Intercompany Transactions Report, as defined herein), the Monitor shall prepare and file with the Court a report (each, an "**Intercompany Transactions Report**") detailing all Intercompany Transactions which occurred on or after the date of the Initial Order with respect to the applicable Petitioner(s), which Intercompany Transactions Report shall include the Monitor's proposed allocation of the net amount to be attributed to each Petitioner as a result of the applicable Intercompany Transactions, if any, and any net sale proceeds to be remitted by one Petitioner to another Petitioner as the case may be (the "**Proposed Allocation**").

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[29] ~~[28a]~~ **ORDERS** the Monitor to serve a copy of the Intercompany Transactions Report ~~—~~ upon the service list in these proceedings and **DECLARES** that any interested creditor shall be entitled to apply to this Court within five (5) calendar days of said notification to the service list of the Intercompany Transactions Report to contest or make representations with respect to the Proposed Allocation.

[30] ~~[29]~~ **DECLARES** that paragraph ~~[278]~~ and ~~[289]~~ of this Order and their effects shall apply to any distribution, even outside of these CCAA proceedings, including, without limitation, a distribution by any trustee in bankruptcy, receiver, receiver and manager, interim receiver or any other person appointed to make a distribution in respect of the Property, unless the Court orders otherwise.

i. No Exercise of ~~Rights~~ Rights or Remedies

[31] ~~[30]~~ **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the Petitioners is a party as a result of the insolvency of the Petitioners and/or these CCAA proceedings, any ~~eVents~~ events of default or non-performance by the Petitioners or any admissions or evidence in these CCAA proceedings, of any individual,

~~natura!~~ natural person, firm, corporation, partnership, limited liability company, trust, joint ~~venture~~ venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof are hereby stayed and suspended except with leave of this Court. ■

[32] ~~[31]~~ **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods including, without limitation, to file grievances relating to the Petitioners or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature

whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioners, or any of them, become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) is appointed in respect of the Petitioners, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioners in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

j. ~~No Interference with~~ Rights Rights

[33] ~~[32]~~ **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, fail to renew (when contractually provided), alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners except with the written consent of the Petitioners and the Monitor, or with ~~lea~~leave of this Court.

k. Continuation of Services

[34] ~~[33]~~ **ORDERS** that during the Stay Period and subject to paragraphs [345] and [356] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioners or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioners, are hereby restrained until further order of this Court from discontinuing, altering, failing to renew (when contractually provided), interfering with or terminating the supply or, as the case may be, interrupting, delaying or stopping the transit of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Petitioners, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners, as applicable, with the consent of the Monitor, or as may be ordered by this Court.

[35] ~~[34]~~ **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration ~~pro~~vided to the Petitioners on or after the date of this Order, nor shall

any Person be under any obligation on or after the date of this Order to make further ~~ad~~lvance of money or otherwise extend any credit to the Petitioners.

[36] ~~[35]~~ **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any Petitioners with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of this Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not ~~pre~~vent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by a Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments

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deposited into a Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

l. Non-Derogation of Rights

[37] ~~[36]~~ **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Petitioners shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of this Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; ~~however~~ however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

m. Interim Financing ~~Financing~~ **(DIP)**

[38] ~~[37]~~ **ORDERS** that the Petitioners be and are hereby authorized to borrow from NBC and Export Development Canada (collectively, the "**Interim Lenders**") such amounts from time to time as the Petitioners may consider necessary or desirable, up to an aggregate principal amount not exceeding \$3,000,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed under seal as Exhibit P-2A in support of the ARIO Application (the "**DIP Term Sheet**") and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioners and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents (as defined hereinafter) (the "**DIP Facility**").

[39] ~~[38]~~ **ORDERS** that the Petitioners are hereby authorized to execute and deliver the DIP Term Sheet and other security documents and ancillary documents as may be required by the Interim Lenders in connection with the DIP Facility and the DIP Term Sheet (collectively, the "**Interim Financing Documents**"), with such non-

material alterations, changes, amendments, deletions or additions thereto as may be agreed to with the Interim Lenders, but only with the consent of the Monitor, and the Petitioners are hereby authorized to perform all of its obligations under the DIP Term Sheet and the Interim Financing Documents.

[40] ~~[39]~~ **ORDERS** that Petitioners shall pay to the Interim Lenders, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other reasonably required advisors to or agents of the Interim Lenders on a full indemnity basis (the "**Interim Lender Expenses**")) under the DIP Term Sheet and the Interim Financing Documents and shall perform all of their other obligations owed to the Interim Lenders pursuant to the DIP Term Sheet, the Interim Financing Documents and the Order.

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[41] ~~[40]~~ **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,600,000 (the “**DIP Charge**”) in favour of the Interim Lenders as security for all obligations of the Petitioners to the Interim Lenders with respect to the payment of the DIP Facility (including principal, interest and the Interim Lender Expenses) owing to the Interim Lenders under or in connection with the DIP Term Sheet and the Interim Financing Documents. Such Interim Lender Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs ~~[6724]~~ and ~~[673]~~ of this Order.

[42] ~~[41]~~ **ORDERS** that the claims of the Interim Lenders pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lenders, in that capacity, shall be treated as unaffected creditors in these proceedings and in any Plan.

[43] ~~[42]~~ **ORDERS** that the Interim Lenders may:

- (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the DIP Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
- (b) notwithstanding the terms of the paragraph to follow, refuse to make any ~~advance~~ advance to the Petitioners if the Petitioners fail to meet the provisions of the DIP Term Sheet and the Interim Financing Documents.

[44] ~~[43]~~ **ORDERS** that the Interim Lenders shall not take any enforcement steps under the DIP Term Sheet, the Interim Financing Documents or the DIP Charge without providing at least 3 business days written notice (the “**Notice Period**”) of a default thereunder to the Petitioners, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such

notice. Upon expiry of such Notice Period, the Interim Lenders shall be entitled to take any and all steps, the DIP Term Sheet, the Interim Financing Documents, the DIP Charge and otherwise permitted at law, but without having to send any additional demands under Section 244 of the BIA, under the Civil Code of Quebec or any other similar legislation.

[45] ~~[44]~~ **ORDERS** that, subject to further order of this Court and notwithstanding paragraph ~~[679]~~ of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs ~~[37]8~~ to ~~[44]45~~ of this Order unless either (a) notice of a motion for such order is served on the Interim Lenders by the moving party within at least seven

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

[46] **ORDERS** that the Petitioners be and are hereby authorized to borrow from Export Development Canada ("**EDC**") such amounts from time to time as the Petitioners may consider necessary or desirable, up to an aggregate principal amount not exceeding \$2,500,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed under seal as Exhibit P-8 in support of the Application (the "**Second DIP Term Sheet**") and in the EDC Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioners and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents (as defined hereinafter) (the "**Second DIP Facility**").

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

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

[49] **DECLARES** that all of the Property of Petitioners is hereby subject to a charge and security for an aggregate amount of \$3,000,000 (the "**Second DIP Charge**") in favour of the Interim Lenders as security for all obligations of the Petitioners to EDC with respect to the payment of the Second DIP Facility (including principal, interest and the EDC Interim Lender Expenses) owing to EDC under or in connection with the Second DIP Term Sheet and the EDC Interim Financing Documents. Such Second DIP Charge shall subsist without necessity of any publication, registration, recording, filing or perfection and shall have the priority established by paragraphs [72] and [73] of this Order.

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

[51] **ORDERS** that EDC may:

- (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Second DIP Charge and the EDC Interim Financing

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

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

[53] **ORDERS** that, subject to further order of this Court and notwithstanding paragraph [79] of this Order, no order shall be made varying, rescinding, or otherwise affecting paragraphs [46] to [53] of this Order unless either (a) notice of a motion for such order is served on EDC by the moving party within at least seven (7) days prior to the presentation thereof or (b) EDC apply for or consents to such order.

o. n- Directors' and Officers' Indemnification and ChargeCharge

[54] ~~[45]~~ **ORDERS** that the Petitioners shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which ~~have~~ have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioners after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.

[55] ~~[46]~~ **ORDERS** that the Directors of the Petitioners shall be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$3,700,000 (the "**D&O Charge**"), as security for the indemnity provided in paragraph ~~[45]~~ [45] of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The D&O Charge shall have the priority set out in paragraphs ~~[67]~~ [67] and ~~[67]~~ [67] of this Order.

[56] ~~[47]~~ **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Directors shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph ~~[45]~~ [45] of this Order. ~~e.~~

p. Restructuring

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500-11487486-21 ~~1487486-21~~ **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the “**Restructuring**”) but subject to such requirements as are imposed by the CCAA, the Petitioners, subject to prior ~~approval~~ approval of the Monitor or further order of the Court, as the case may be, shall have the right to:

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

■
■

[49]

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

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

[59] ~~[59]~~ **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, C 5, and equivalent provisions of the *Act Respecting the Protection of Personal Information in the Private Sector*, RSQ, c P-39.1, the Petitioners are permitted, in

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the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or ~~prospective~~prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a **“Third Party”**), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of a Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them to maintain and protect the ~~privacy~~privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of a Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

q. ~~p.~~ Powers of the Monitor & Administration ChargeCharge

[60] ~~[54]~~ **ORDERS** that *Deloitte Restructuring Inc.* is hereby appointed to monitor the business and financial affairs of the Petitioners as an officer of this Court (the **“Monitor”**) and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

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

- (e) shall advise and assist the Petitioners, to the extent required by the Petitioners, to review the Petitioners' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (f) shall assist the Petitioners, to the extent required by the Petitioners, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider a Plan;
- (g) shall report to the Court on the state of the business and financial affairs of the Petitioners or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated reports for the Petitioners;

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

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

[61] ~~[52]~~ **ORDERS** that the Petitioners and their current and former shareholders, Directors, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties, rights and obligations as ~~pro'vided~~ provided and set out in this Order.

~~[53]~~

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

[63] ~~[54]~~ **DECLARES** that the Monitor may provide creditors and other relevant

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1 stakeholders of the Petitioners with information in response to requests made by

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

[64] ~~[55]~~ **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioners or continues the employment of the Petitioners' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.

[65] ~~[56]~~ **DECLARES** that Section 215 of the BIA applies *mutatis mutandis* and that no action or other proceedings shall be commenced against the Monitor or its representatives relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least seven (7) days' notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor and their representatives shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.

[66] ~~[57]~~ **DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.

[67] ~~[58]~~ **ORDERS** that the Petitioners shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal ~~counsel~~ counsel, the Petitioners' legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

[68] ~~[59]~~ **DECLARES** that the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel, as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, any Plan and the Restructuring, as well as National Bank Financial Inc. ("**NBF**"), as security for the Engagement Fee and the Fairness Opinion Fee (as such terms are defined in the engagement letter filed as Exhibit P-3 in support of the Initial Application, the "**Engagement Letter**") and all disbursements incurred by NBF pursuant to the Engagement Letter, be entitled to the benefit of and are hereby granted a charge and security in the Property, to the extent of the aggregate amount of \$3,000,000 (the "**Administration Charge**"), having the priority established by paragraphs ~~[672]~~ and ~~[673]~~ of this Order.

[69] **DECLARES** that:

(a) upon the disbursement of the initial advance of \$1,250,000 by EDC under

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the EDC Interim Financing Documents (the “**Initial Advance**”), as confirmed by the issuance of a Monitor’s Certificate confirming receipt of the Initial Advance and First Reduction of the Administration Charge, the Administration Charge shall be reduced by an amount equal to \$750,000 to an amount equal to \$2,250,000; and

- (b) upon the disbursement of the second advance of \$1,250,000 by EDC under the EDC Interim Financing Documents (the “**Second Advance**”), as confirmed by the issuance of a Monitor’s Certificate confirming receipt of the Second Advance and Second Reduction of the Administration Charge, the Administration Charge shall be further reduced by an amount equal to \$750,000 to an amount equal to \$1,500,000.

r. ~~q.~~ **KERPs and KERP Charge**

[70] ~~[60]~~ **ORDERS** that the key employee retention plan, key vice-president retention plan and the key executive incentive plan (collectively, the “**KERPs**”) described in the Application and summarized in the document filed under seal as Exhibit P-3 to the Initial Application are hereby approved, and the Petitioners are hereby authorized and empowered to perform their obligations set forth thereunder, including by making ~~—~~ the payments in accordance with the terms set out therein.

[71] ~~[64]~~ **ORDERS** that the employees designated in the KERPs shall be entitled to the benefit of and are hereby granted a charge and security in the on the Property, to the extent of the aggregate amount of \$1,080,000 (the “**KERP Charge**”), having the priority established by paragraphs ~~[672]~~ and ~~[673]~~ of this Order.

s. ~~r.~~ **Priorities and General Provisions Relating** ~~Charge~~ Charges

[72] ~~[62]~~ **DECLARES** that the priorities of the Administration Charge and the D&O Charge (collectively, the “**CCAA Charges**”), as between them with respect to any Property to which they apply, shall be as follows:

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

[73] ~~[63]~~ **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Property whether or not charged by such Encumbrances, ~~save~~ save that, as regards the Transaction Charge and the KERP Charge only, the question with respect to its priority ranking as regards any amounts owing by the Petitioners pursuant to paragraph ~~[245]~~(a) of this Order shall be determined by the Court at a later date and time.

~~[64]~~

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

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

~~_____~~ [65]

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

[76] [66] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be ~~Valid~~ valid and enforceable and not otherwise be limited, impaired or impaired in any way by (i) these proceedings and the declarations of insolvency made hereunder; (ii) any application(s) for bankruptcy or receivership order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt, the creation of Encumbrances, contained in any agreement, lease, sub-lease or other arrangement which binds the Petitioners (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

(a) the creation of any of the CCAA Charges shall not create nor be deemed to constitute a breach by the Petitioners of any Third Party Agreement to which ~~any~~ any of the Petitioners is a party; and

(b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.

[77] [67] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy or receivership

order(s) filed pursuant to BIA, or any bankruptcy or receivership order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioner, and (iii) the ~~preVisions~~ provisions of any federal or provincial statute, the payment or disposition of Property made by any Petitioners pursuant to this Order and the granting of CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances, preferential payments, transfers at undervalue or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

[78] [68] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners.

t. s. **Hearing Scheduling and Details**

[79] [69] **ORDERS** that, subject to further Order of this Court, all applications in these proceedings are to be brought on not less than five (5) calendar days' notice to all Persons

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the service list prepared by the Monitor or counsel for the Monitor in connection with these proceedings (the "**Service List**"). Each application shall specify a date (the "**Initial Return Date**") and time (the "**Initial Return Time**") for the hearing.

[80] [70] **ORDERS** that any Person wishing to object to the relief sought on an application in CCAA proceedings must serve responding materials or a notice stating the objection to the application and the grounds for such objection (a "**Notice of Objection**") in writing to the moving party, the Petitioners and the Monitor, with a copy to all Persons on the Service List, no later than 5 P.M. on the date that is three (3) calendar days prior to the Initial Return Date (the "**Objection Deadline**").

[81] [74] **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of these proceedings (the "**Presiding Judge**") may determine: (a) whether a hearing is necessary; (b) whether such hearing will be in person, by videoconference, telephone or by written submissions only; and (c) the parties from whom submissions are required (collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

[82] [72] **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Monitor or the Monitor's counsel shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor or the Monitor's counsel shall thereafter advise the Service List of the Hearing Details and the Monitor shall report

upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in these proceedings.

[83] [73] **ORDERS** that, if a Notice of Objection is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time, or such earlier or later time as may be directed by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial Return Date and at the Initial Return Time; (b) establish a schedule for the delivery of materials and the hearing of the contested application and such other matters, including interim relief, as the Court may direct.

u. **General**

[84] [74] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, representatives, legal counsel or financial advisers of the Petitioners or of the Monitor in relation to the Business or Property of the Petitioners, without obtaining leave of this Court, upon ten (10) calendar days' written notice to the Petitioners' counsel, the Monitor's counsel, and to all those referred to in this paragraph whom it is proposed to be named in such Proceedings.

[85] [75] **DECLARES** that this Order and any proceeding or affidavit leading to this Order shall not, in and of themselves, constitute a default or failure to comply by the Petitioners under any statute, regulation, licence, permit, contract, permission, coverage agreement, undertaking or other written document or requirement.

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

[87] ~~[77]~~ **DECLARES** that the Petitioners and any party to these proceedings may serve any materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses.

[88] ~~[78]~~ **ORDERS** that Exhibits- P-3, P-8, P-10 and Schedule D to Exhibit P-5 to the Application, Exhibits P-2, P-2A and P-3 to the ARIQ Application, ~~and~~ Appendices A and B [Fifth Report of the Monitor dated February 1, 2023, Exhibits P-5, P-6, P-7](#)

[and P-8 of to the Application and Appendices](#) **to the** Report shall be filed under seal and confidential until further order of this Court.

[89] ~~[79]~~ **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by the Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served an Answer on the counsel for the Petitioners, the Monitor and has filed such notice with this Court, or appears on the Service List, save except when an order is sought against a Person not ~~previously~~ [previously](#) involved in these proceedings.

[90] ~~[80]~~ **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 in respect of the proper execution of this Order on notice only to each other.

[91] ~~[84]~~ **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

[92] ~~[82]~~ **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 or 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. Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to issue such orders and to provide such assistance to the Petitioners and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor as the authorized representative of the Petitioners in any foreign proceeding, to assist the Petitioners, and the Monitor, and to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

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[93] ~~[83]~~ **AUTHORIZES** the Monitor or the Petitioners to apply as they may consider necessary and desirable, with or without notice, to any other court or administrative body, whether in Canada or in the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders made pursuant to Chapter 15 of the U.S. Bankruptcy Code, including an order for recognition of these proceedings as “Foreign Main Proceedings” in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, for which Xebec Adsorption Inc., shall be the sole authorized representative of the Petitioners. All courts and administrative bodies of all such jurisdiction are hereby respectively requested to make such orders and to provide such assistance to the Monitor, the Petitioners and the Monitor as may be deemed necessary or appropriate for that purpose.

~~[84]~~

[94] **DECLARES** that, for the purposes of any applications authorized by paragraph ~~[83]~~[93] of this Order, Petitioners’ centre of main interest is located in Montréal, Québec, Canada.

[95] ~~[85]~~ **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.

[96] ~~[86]~~ **THE WHOLE WITHOUT COSTS.**

Christian Immer, J.S.C.

M^{TRE} SANDRA ABITAN M^{TRE} ~~JULI~~
~~EN MORISSETTE~~ JULIEN M
ORISSETTE M^{TRE} ILIA ~~KR~~
~~AVTSOV~~ KRAVTSOV
(OSLER HOSKIN & HARCOURT LLP) COUNSEL TO
THE PETITIONERS

Hearing date: February 13, 2023

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Exhibit P-2

**Draft Ivys Approval, Vesting
and Assignment Order**

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 13, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

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

Debtors / Petitioners

and
DELOITTE RESTRUCTURING INC.
Monitor

and

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**IVYS ADSORPTION INC.
IVYS, INC.**
Impleaded Parties (Buyers)

and
**THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL
RIGHTS (QUÉBEC)
THE REGISTRAR OF THE ONTARIO PERSONAL PROPERTY REGISTRY**
Impleaded Parties (Registrars)

**APPROVAL, VESTING AND ASSIGNMENT ORDER IN RESPECT OF THE ASSETS
OF XEBEC ADSORPTION INC. AND COMPRESSED AIR INTERNATIONAL INC.**

- [1] **CONSIDERING** the *Application for the Issuance of an Approval, Vesting and Assignment Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the ● Report of the Monitor dated ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **CONSIDERING** the Third Amended and Restated Initial Order (the “**Third ARIO**”) issued by this Court on February 13, 2023;
- [5] **GIVEN** the provisions of the CCAA:
- [6] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Asset Purchase Agreement dated February 8, 2023 (the “**Purchase Agreement**”) between Xebec Adsorption Inc. and Compressed Air International Inc. (collectively, the “**Sellers**”), and Ivys Adsorption Inc. (the “**Asset Buyer**”) and Ivys, Inc., on behalf of a corporation to be incorporated (the “**Equity Buyer**”) and together with the Asset Buyer, collectively the “**Buyers**” and individually a “**Buyer**”), a copy of which was filed as **Exhibit P-5 (under seal)** to the Application, and vesting in the Buyers the Purchased Assets.

THE COURT HEREBY:

- [7] **GRANTS** the Application.

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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 Purchase Agreement.

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 Purchase Agreement by the Sellers 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 Sellers and the Buyers, with the consent of the Monitor.

EXECUTION OF DOCUMENTATION

[12] **AUTHORIZES** the Buyers and the Sellers 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 Purchase Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto, including the Transaction.

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 Closing Certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Closing Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Buyers,

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free and clear of and from any 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 hypothecs, charges or security evidenced by registration, publication or filing pursuant to the Civil Code of Québec and the Personal Property Security Act of the Province of Ontario, or any other applicable legislation providing for a security interest in personal or movable property (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "B"**).

- [15] For greater certainty, **ORDERS** that all of the Encumbrances, other than those listed on Schedule "B" hereto, 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 Closing 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 Closing 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] **AUTHORIZES AND DIRECTS** the Monitor to use the net proceeds from the sale of the Purchased Assets to pay any and all outstanding invoices of the beneficiaries of the Administration Charge (as defined in the Third ARIO), provided that such payments shall not affect or reduce the quantum of the Administration Charge, but only according to the conditions and limits provided for in the Second DIP Term Sheet (as defined in the Third ARIO).
- [18] **ORDERS** that the Monitor may rely on written notice from the Sellers and the Buyers regarding the fulfillment of conditions to closing under the Purchase Agreement and shall have no liability with respect to the delivery of the Monitor's Closing Certificate.

- [19] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Closing Certificate, as soon as practicable after issuance thereof.
- [20] **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 Closing Certificate, as soon as practicable after the issuance thereof.

ASSIGNMENT OF CONTRACTS

- [21] **ORDERS** and **DECLARES** that upon the issuance of the Monitor's Closing Certificate, the rights and obligations of the Sellers under the agreements listed in **Schedule "C"** hereto, as they may have been amended or restated from time to time (the "**Assumed Contract(s)**"), are automatically and irrevocably assigned as follows:
- (a) for all Assumed Contracts other than those numbered 14 and 15 in **Schedule "C"** hereto, assigned to the Asset Buyer; and
 - (b) for the Assumed Contracts numbered 14 and 15 in **Schedule "C"** hereto, assigned to the Equity Buyer,

free and clear of all Claims and Encumbrances, subject to the payment of the respective Cure Costs, without any further consents or approvals of this Court.

- [22] **ORDERS** that Cure Costs in relation to an Assumed Contract and indicated in **Schedule "C"** hereto shall be remedied by the relevant assignee Buyer no later than thirty (30) days following issuance of the Monitor's Closing Certificate failing which, such Assumed Contract is not assigned to the relevant assignee Buyer.
- [23] **ORDERS** the Sellers to send by e-mail, registered mail or courier a copy of this Order to every party to an Assumed Contract.
- [24] **DECLARES** that either Buyer shall be entitled to notify the Monitor in writing, no later than thirty (30) days following the Closing Time, that it seeks the post-Closing assignment to such Buyer of the rights, benefits, obligations and interests of any of the Sellers under one or more contracts or agreements to which one or more of the Sellers are party to and which do not form part of the Assumed Contracts (the "**Proposed Post-Closing Assignment(s)**", and each such agreement a "**Proposed Post-Closing Assigned/Assumed Contract(s)**") **AND FURTHER DECLARES** that until the expiry of such thirty (30) day period, Sellers shall not assign, disclaim or otherwise cancel any such contracts or agreements, it being understood that the Sellers can send notices of conditional disclaimer or resiliation to the counterparties to such contracts or agreements providing that such contracts or agreements will be disclaimed or resiliated effective 30 days after Closing Date

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unless they become Post-Closing Assigned/Assumed Contracts as provided herein.

[25] **ORDERS** the Monitor, within five (5) days of the receipt from either Buyer of a notice of a Proposed Post-Closing Assignment, to review such proposed assignment, and:

- (a) If the Monitor approves the Proposed Post-Closing Assignment, to send one or more notices of the Proposed Post-Closing Assignment to the parties to the Proposed Post-Closing Assigned/Assumed Contracts substantially in the form of the draft notice of assignment attached hereto as **Schedule “D”** (the “**Notice of Assignment**”); or
- (b) If the Monitor does not approve the Proposed Post-Closing Assignment, to inform such Buyer, in writing of its decision (the “**Monitor’s Notice**”).

[26] **DECLARES** that:

- (a) if a party to a Proposed Post-Closing Assigned/Assumed Contract has notified the Monitor of its opposition to the Proposed Post-Closing Assignment within fifteen (15) days of the receipt of the Notice of Assignment; or
- (b) if the Monitor has issued the Monitor’s Notice,

the Monitor or either Buyer shall be entitled to apply to this Court to seek the assignment of such Proposed Post-Closing Assignment Contract.

[27] **ORDERS** that, if no party to a Proposed Post-Closing Assigned/Assumed Contract has notified the Monitor of an opposition to the Proposed Post-Closing Assignment within fifteen (15) days of the receipt of the Notice of Assignment, the Monitor shall issue forthwith and file with the Court a certificate substantially in the form appended as **Schedule “E”** hereto (a “**Post-Closing Assignment Certificate**”).

[28] **ORDERS** and **DECLARES** that upon the issuance of a Post-Closing Assignment Certificate by the Monitor, the rights, benefits, obligations and interests of the Sellers under the Proposed Post-Closing Assigned/Assumed Contract referenced in such Post-Closing Assignment Certificate (the “**Post-Closing Assigned/Assumed Contract(s)**”) shall be automatically and irrevocably assigned to the assignee Buyer free and clear of all Claims and Encumbrances, without any further consents or approvals of this Court, subject to paragraph 30 hereof.

[29] **ORDERS** the Monitor to issue a certificate substantially in the form appended as **Schedule “F”** hereto (the “**Post-Closing Certificate**”) on the earlier of:

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- (a) the date on which the Monitor is advised in writing by the Buyers that no further Proposed Post-Closing Assignments are required;
- (b) the 31st day following Closing Time, unless on that day any application referred to at paragraph 26 has not been finally determined; or
- (c) on the first day on which all applications referred to at paragraph 26 shall have been withdrawn or finally determined, if on the 31st day following Closing Time any such application had not been finally determined.

[30] **ORDERS** that all monetary defaults of the Sellers in relation to any Post-Closing Assigned/Assumed Contract (other than those arising by reason only of the insolvency of the Petitioners, the commencement of proceedings under the CCAA or the failure to perform non-monetary obligations) shall be remedied on or before thirty (30) days following the date of the applicable Post-Closing Assignment Certificate, or as the assignee Buyer and the relevant counterparty may agree in writing, failing which such Post-Closing Assigned/Assumed Contract will not be assigned to the assignee Buyer.

[31] **DECLARES** that subject to the assignee Buyer's obligations relating to the monetary defaults set forth in paragraph 30, the counterparties to any Post-Closing Assigned/Assumed Contract have no right to claim or effect compensation or set-off between:

- (a) the amounts that are currently owing or which may become owing by such counterparties to the assignee Buyer in connection with the Post-Closing Assigned/Assumed Contract, as and from the effective date of the assignment; and
- (b) any amounts owed, or allegedly owed, by the Sellers to such counterparties, whether related or not to the Post-Closing Assigned/Assumed Contract.

[32] **ORDERS** that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts or any of the Post-Closing Assigned/Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.

[33] **ORDERS** that the Assumed Contracts and the Post-Closing Assigned/Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the assignee Buyer in accordance with their terms for the benefit of the assignee Buyer.

- [34] **ORDERS** and **DIRECTS** the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts and the Post-Closing Assigned/Assumed Contracts, if any.
- [35] **AUTHORIZES** the Petitioners, the assignee Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts and the Post-Closing Assigned/Assumed Contracts to the assignee Buyer in accordance with this Order.

CANCELLATION OF SECURITY REGISTRATIONS

- [36] **ORDERS** the *Quebec Personal and Movable Real Rights Registrar* to strike and discharge any publication or registration, as the case may be, in connection with the Purchased Assets, in order to allow the transfer to the Buyers of the Purchased Assets free and clear of such registrations.
- [37] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to reduce the scope and effect of the following Encumbrances, namely:

Nature of Security Registration	Publication No. (Registration)	Date of Publication	Secured Party
Conventional hypothec without delivery	21-0793644-0001	2021-07-20	Export Development Canada
Conventional hypothec without delivery	21-0144140-0001	2021-02-19	National Bank of Canada
Conventional hypothec without delivery	20-0119389-0001	2020-02-05	National Bank of Canada

in order that the foregoing Encumbrances no longer hypothecate, charge, encumber or otherwise affect any or all of the Purchased Assets, namely all of the Sellers' property, with the sole exclusion of the following (capitalized terms in this paragraph have the meaning ascribed to them in the Purchase Agreement):

- (1) *Cash and Cash Equivalents* – all Cash and Cash Equivalents;
- (2) *Corporate Records* – original Tax records and books and records pertaining thereto, minute books, share ledgers, organizational documents, corporate seals, taxpayer and other identification numbers and other documents, in each case, relating to the organization, maintenance and existence of each Seller as a Person; provided that the Buyers may take copies of all Tax records and

- books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Acquired Business after Closing, including the filing of any Tax return to the extent permitted under Applicable Law;
- (3) *Excluded Contracts* – all Contracts of the Sellers that are not Assumed Contracts or Post-Closing Assigned/Assumed Contracts;
 - (4) *Claims in connection with Excluded Contracts* – all rights and Claims arising out of Excluded Contracts, except for Accounts Receivable relating thereto, provided that such Accounts Receivable appear on the Aged Receivables Report on the Business Day prior to Closing;
 - (5) *Collateral* – all letters of credit, cash or cash equivalents of the Sellers granted by the Sellers as collateral to secure outstanding letters of credit in respect of any Excluded Liability or Excluded Asset;
 - (6) *Rights under Agreements* – all of the Sellers' rights under the Purchase Agreement; the NDA; any confidentiality, non-disclosure or similar agreements entered into in connection with the CCAA Proceedings or the SISF; the DIP Facility, the EDC Credit Agreement and the NBC Credit Agreement; the Excluded Contracts; the Closing Documents and the transactions contemplated by hereby and thereby;
 - (7) *Director and Officer Insurance Policies* – all rights of the Sellers and the directors and officers of the Sellers under any director and officer insurance policies including any proceeds received or receivable by such Persons thereunder;
 - (8) *Licenses and Registrations* – extra-provincial, sales, excise or other Permits (other than Transferred Permits), licenses or registrations issued to or held by any of the Sellers, whether relating to the Acquired Business or otherwise to the extent not transferable;
 - (9) *Tax Refunds* – the benefit of the Sellers to any refundable Taxes payable or paid by a Seller, net of any amounts withheld by any Governmental Authority, having jurisdiction over the assessment, determination, collection, or other imposition of any Tax, and the benefit of the Sellers to any claim or right of a Seller to any refund, rebate, or credit of Taxes;
 - (10) *Avoidance Claims* – all rights and Claims against any Person for any liability of any kind based on or arising out of the occurrence of any

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fraudulent conveyance, settlement, reviewable transaction, transfer at undervalue, fraudulent preference or similar claim;

- (11) *Plan Assets* – all trust funds or other entities holding assets (or, in the case of a dedicated bank account held by the Sellers, the assets of such account) related to any Employee Plan which is not part of the Assumed Employee Plans;
- (12) *Certain Securities* – all Equity Interests of the Seller Subsidiaries other than the Transferred Equity Interests, which for greater certainty shall include all Equity Interests of XEBEC ITALY S.r.l.;
- (13) *Ordinary Course Assets* – any asset of the Sellers that would otherwise constitute a Purchased Asset but for the fact that it is conveyed, leased or otherwise disposed of in the ordinary course of business in compliance with Section 7.2 of the Purchase Agreement or as obsolete during the period beginning on the date of the Purchase Agreement and ending on the Closing Date;
- (14) *Intercompany Accounts Receivable* – any debts due or accruing due prior to the Closing Time from any shareholder, director, or affiliate of the Sellers other than such amounts owing by Xebec Asia;
- (15) *London RNG Receivables* – any London RNG Receivables, it being understood that such London RNG Receivables shall be a Purchased Asset in the event the London RNG Contract becomes a Post-Closing Assigned/Assumed Contract; and
- (16) *Employee Records* – any personnel and employment records pertaining to any Employee who is not an Assumed Employee.

[38] **ORDERS** that upon the issuance of the Monitor's Closing Certificate, any of the Sellers, either Buyer or the Monitor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets (including filing such financing change statements in the *Ontario Personal Property Registry* ("**OPPR**") as may be necessary or any further application to this Court) or, to effect the discharge of any registration filed against the Sellers in the OPPR, provided that the Sellers, the Buyers and the Monitor shall not be authorized to effect any discharge that would have the effect of releasing any Encumbrances against any property other than the Purchased Assets.

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PROTECTION OF PERSONAL INFORMATION

- [39] **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 Buyers the personal information in the custody or control of the Petitioners set out in the Purchase Agreement (the “**Disclosed Information**”). The Buyers 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.
- [40] **ORDERS** that the Buyers 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;
 - (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

- [41] **ORDERS** that notwithstanding:
- (a) the pendency of these proceedings;
 - (b) any petition for a bankruptcy order now or hereafter issued pursuant to the 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 Purchase Agreement and the assignment of the Assumed Contracts and the Post-Closing Assigned/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 Buyers, or the Monitor.

RELEASES AND D&O CHANNELING INJUNCTION

[42] **ORDERS** that effective as of the issuance of the Monitor's Closing Certificate (a) the current and former employees, legal counsel and advisors of the Sellers and (b) the Monitor and its legal counsel (in such capacities, collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the issuance of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the business, operations, assets, property and affairs of the Sellers wherever or however conducted or governed, the administration and/or management of the Seller, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, as they relate to the Sellers, or (ii) the Purchase Agreement and any agreement, document, instrument, matter or transaction involving the Sellers arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively the "**Released Claims**"), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Purchase Agreement and/or any agreement, document, instrument, matter or transaction involving the Sellers arising in connection with or pursuant to any of the foregoing.

[43] **ORDERS** that effective as of the issuance of the Monitor's Closing Certificate any person having, or claiming any entitlement or compensation relating to any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, executions, recoupments, debts, sums of money, expenses, accounts, taxes, recoveries, and obligations of any nature or kind

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whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) against a current or former director or officer of any the Sellers except a claim that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA (a “**D&O Claim**”) shall be irrevocably limited to recovery in respect of such D&O Claim solely from the proceeds of the applicable insurance policies held by the Sellers (the “**Insurance Policies**”), and persons with any D&O Claim will have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the current and former directors and officers of any the Sellers, other than enforcing such person’s rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies.

THE MONITOR

- [44] **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.
- [45] **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.
- [46] **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 possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.
- [47] **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

- [48] **ORDERS** that Exhibit P-5 to the Application shall be filed under seal and kept confidential until further order of this Court.

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GENERAL

- [49] **ORDERS** that all professional fees and disbursements by the Monitor and its counsel and other professionals, and the Debtor and its counsel and other professionals, incurred or envisaged by this Order will be for the account of the Debtors, to the exclusion of the Buyers.
- [50] **DECLARES** that this Order shall have full force and effect in all provinces and territories of Canada.
- [51] **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 Buyers.
- [52] **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.
- [53] **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.
- [54] **ORDERS** provisional execution of this Order notwithstanding any appeal and without security.
- [55] **THE WHOLE** without costs.

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Christian Immer, JCS

MTRE. SANDRA ABITAN
MTRE. JULIEN MORISSETTE
MTRE. ILIA KRAVTSOV

500-11-061483-224

PAGE: 15

(OSLER HOSKIN & HARCOURT LLP)
Attorneys for the Petitioners

Hearing date: **February 13, 2023**

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**SCHEDULE A
DRAFT 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

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

**XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
APPLIED COMPRESSION SYSTEMS
LTD.
COMPRESSED AIR INTERNATIONAL
INC.
XEBEC HOLDING USA INC.
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XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES - WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC**

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

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CERTIFICATE OF THE MONITOR

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & 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 February 13, 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") authorizing and approving, *inter alia*, the execution of a Asset Purchase Agreement by and among Xebec Adsorption Inc. and Compressed Air International Inc. (collectively, the "**Sellers**") and Ivys Adsorption Inc. (the "**Asset Buyer**") and Ivys, Inc., on behalf of a corporation to be incorporated (the "**Equity Buyer**" and together with the Asset Buyer, collectively the "**Buyers**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

WHEREAS the Approval, Vesting and Assignment Order contemplates the issuance of this Certificate of the Monitor once (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Buyers to the Sellers; and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE MONITOR CERTIFIES THAT IT HAS BEEN ADVISED BY THE SELLERS AND THE BUYERS AS TO THE FOLLOWING:

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Monitor on _____ [DATE].

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Deloitte Restructuring Inc., in its capacity as Monitor
to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

SCHEDULE B

PERMITTED ENCUMBRANCES

1. Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under any Personal Property Leases.
2. Encumbrances affecting a landlord's, lessor's, licensor's or sublandlord's, as applicable, interest in any applicable Real Property Leases, including for greater certainty any registered servitudes or rights of way by Hydro-Québec or Bell Canada to install any circuits, poles and necessary equipment.
3. Notices registered on title in respect of the Real Property Leases.
4. Reservations, limitations, provisos and conditions, if any, expressed in any original grants of land from the Crown and any statutory limitations, exceptions, reservations and qualifications.
5. Any rights of expropriation, access or use or any other similar rights conferred or reserved by Applicable Law.
6. Applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, other agreements, building and other restrictions, easements, servitudes, rights of way and licences.
7. Minor survey exceptions, minor encumbrances, easements or reservations of, or rights of other for, rights-of-way, sewers, electric lines, telephone lines and other similar purposes, or zoning or similar restriction as to the use of any applicable Real Property Leases.
8. Encumbrances permitted in writing by the Buyers.

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SCHEDULE C

ASSUMED CONTRACTS AND CURE COSTS

	Seller	Counterparty	Type of Contract or Service	Contract Name or Number	Contract Date	Cure Costs
1.	Xebec ¹	Konica Minolta	Personal Property Lease	Lease for 6 printers, including a Bizhub C450I 45 PPM Color MFP Printer and a PC-416 Paper Feed Cabinet	May 28, 2020	Nil
2.	CAI ²	Colony Ford-Lincoln Sales Inc.	Personal Property Lease	Lease for Ford Edge SEL 2022 (Serial #2FMPK4J94NBA07760)	April 1, 2022	Nil
3.	CAI	HumberviewGroup Leasing Inc.	Personal Property Lease	Lease for GMC Sierra 1500 2018 (Serial #1GTR1LEH4JZ123107)	March 1, 2018	Nil
4.	CAI	HumberviewGroup Leasing Inc.	Personal Property Lease	Lease for GMC Sierra 1500 2015 (Serial #1GTN1TEHXFZ260865)	December 1, 2018	Nil
5.	CAI	HumberviewGroup Leasing Inc.	Personal Property Lease	Lease for Chevrolet Silverado 1500 WT 2018 (Serial #1GCRCNEH4JZ307209)	August 1, 2018	Nil

¹ Xebec Adsorption Inc.

² Compressed Air International Inc.

6.	CAI	HumberviewGroup Leasing Inc.	Personal Property Lease	Lease for Chevrolet Silverado 1500 LD WT 2019 (Serial#2GCRCNEC8K1163405)	April 1, 2019	Nil
7.	CAI	HumberviewGroup Leasing Inc.	Personal Property Lease	Lease for Chevrolet Silverado (Serial # 2GCRCNEC8K1129836)	November 1, 2018	Nil
8.	Xebec	Cominar Real Estate Investment Trust	Real Property Lease	Lease relating to premises located at 730 Industriel Blvd, Blainville, Québec	October 1, 2011	Nil
9.	Xebec	Alliance Hepyx Inc.	Real Property Lease	Lease relating to premises located at 1120 Michèle-Bohec Blvd, Blainville, Québec	February 3, 2022	\$15 093.36
10.	CAI	N.E. Locicero Holdings Inc.	Real Property Lease	Lease relating to premises located at 60 Haist Road, Unit 1, Woodbridge, Ontario	July 1, 2020	Nil
11.	CAI	Newlife and Hall	Verbal Lease Agreement	Lease relating to premises located at Premises located at 5477 Highway #6 North, Guelph, Ontario		Nil
12.	Xebec	Air Products Chemicals Inc.	Patent License	Patent License	March 16, 2012	Nil
13.	Xebec	Enbridge Gas Inc.	Operating and Maintenance Agreement	Operating and Maintenance Agreement	June 15, 2020	Nil

14.	Xebec	Shanghai Shenergy Energy Innovation & Development Co., Ltd., and Shanghai Liuhuan Investment Co., Ltd.	Other	Articles of Association for the formation of Xebec Adsorption (Shanghai) Co. Ltd.	October 15, 2020	Nil
15.	Xebec	Shanghai Chengyi New Energy Venture Capital Co., Ltd., Shanghai Zhiyi Enterprise Management Consulting Co., Ltd. and Shanghai Liuhuan Investment Co., Ltd.	Other	Investment and Operation Agreement	August 2015	Nil
16.	Xebec	Air Liquide Advanced Technology US	Master Purchase Agreement	Master Purchase Agreement for Goods and Services	January 21, 2022	Nil
17.	Xebec	NextWatts, Inc. (d/b/a CarbonQuest)	Development and Supply Agreement	Development and Supply Agreement	August 8, 2020	Nil

SCHEDULE D

DRAFT NOTICE OF A PROPOSED POST-CLOSING ASSIGNMENT

Date: ●

To: ● (“you”)

Re: Superior Court, District of Montreal, No. 500-11-061483-224

We act as the Monitor of Xebec Adsorption Inc., Xebec RNG Holdings Inc., Applied Compression Systems Ltd., Compressed Air International Inc., Xebec Holding USA Inc., Enerphase Industrial Solutions Inc., CDA Systems, LLC, Xebec Adsorption USA Inc., The Titus Company, Nortekbelair Corporation, XBC Flow Services – Wisconsin Inc., California Compression, LLC and Xebec Systems USA, LLC (collectively, the “**Debtors**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).

We refer to:

- the attached Approval, Vesting and Assignment Order dated ● rendered by the Superior Court of Québec, District of Montreal in Court File No. 500-11-061483-224 (the “**Order**”), which approved the sale transaction between Xebec Adsorption Inc. and Compressed Air International Inc. (collectively, the “**Sellers**”), and Ivys Adsorption Inc. (the “**Asset Buyer**”) and Ivys, Inc., on behalf of a corporation to be incorporated (the “**Equity Buyer**”) and together with the Asset Buyer, collectively the “**Buyers**”); and
- the following agreement(s) (the “**Agreement**”) to which you and the Sellers are parties: ●.

We have been notified by ●, one of the Buyers, that it seeks the post-closing assignment of the rights, benefits, obligations and interests of the Sellers under the Agreement to such Buyer, and we have approved such assignment as the Monitor of the Debtors (the “**Proposed Post-Closing Assignment**”).

If you oppose the Proposed Post-Closing Assignment, you must inform the Monitor in writing of your grounds for opposition at the latest 15 days after the receipt of this notice, failing which the rights, benefits, obligations and interests of the Sellers under the

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Agreement shall be automatically and irrevocably assigned to ●, without any further consents or approvals.

If you agree with the Proposed Post-Closing Assignment you have nothing to do. The rights, benefits, obligations and interests of the Sellers under the Agreement will be automatically and irrevocably assigned to ● after 15 days of the receipt of this notice.

More information can be obtained on the restructuring of the Debtors at: www.insolvencies.deloitte.ca/Xebec.

Deloitte Restructuring Inc.

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SCHEDULE E
DRAFT POST-CLOSING ASSIGNMENT CERTIFICATE

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

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

Draft

POST-CLOSING ASSIGNMENT CERTIFICATE

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & 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 ●, 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") authorizing and approving, *inter alia*, the execution of an Asset Purchase Agreement by and among Xebec Adsorption Inc. and Compressed Air International Inc. (collectively, the "**Sellers**") and Ivys Adsorption Inc. (the "**Asset Buyer**") and Ivys, Inc., on behalf of a corporation to be incorporated (the "**Equity Buyer**" and together with the Asset Buyer, collectively the "**Buyers**" and individually a "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

WHEREAS the Approval, Vesting and Assignment Order contemplates the issuance and filing by the Monitor of this Post-Closing Assignment Certificate.

Unless otherwise defined, all capitalized terms used herein shall have the meanings ascribed to them in the Approval, Vesting and Assignment Order:

THE MONITOR CERTIFIES THE FOLLOWING:

- (a) The Monitor has received a notice in writing from ●, one of the Buyers, within 30 days of Closing Time, that it seeks the post-closing assignment to such Buyer of the rights, benefits, obligations and interests of the Sellers under the following Agreements to which one or more of the Sellers are party to: ● (the "**Proposed Post-Closing Assignment**" and the "**Proposed Post-Closing Assigned/Retained Contracts**").
- (b) The Monitor has reviewed and approved the Proposed Post-Closing Assignment.
- (c) The Monitor has sent one or more Notices of Assignment to the parties to the Proposed Post-Closing Assigned/Retained Contracts.
- (d) No party to the Proposed Post-Closing Assigned/Retained Contracts has notified it of an opposition to the Proposed Post-Closing Assignment within 15 days of the receipt of the Notice of Assignment.

This Post-Closing Assignment Certificate was issued by the Monitor at ____ **[TIME]** on _____ **[DATE]**.

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Deloitte Restructuring Inc., in its capacity as Monitor to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

SCHEDULE F
DRAFT POST-CLOSING CERTIFICATE

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

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

Draft

POST-CLOSING CERTIFICATE

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & 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 ●, 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") authorizing and approving, *inter alia*, the execution of an Asset Purchase Agreement by and among Xebec Adsorption Inc. and Compressed Air International Inc. (collectively, the "**Sellers**") and Ivys Adsorption Inc. (the "**Asset Buyer**") and Ivys, Inc., on behalf of a corporation to be incorporated (the "**Equity Buyer**" and, together with the Asset Buyer, collectively the "**Buyers**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

WHEREAS the Approval, Vesting and Assignment Order contemplates the issuance and filing by the Monitor of this Post-Closing Certificate.

Unless otherwise defined, all capitalized terms used herein shall have the meanings ascribed to them in the Approval, Vesting and Assignment Order.

THE MONITOR ISSUES THE POST-CLOSING CERTIFICATE PURSUANT TO THE APPROVAL, VESTING AND ASSIGNMENT ORDER

This Post-Closing Certificate was issued by the Monitor at ____ [TIME] on _____ [DATE].

Deloitte Restructuring Inc., in its capacity as Monitor to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

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Exhibit P-2A

Comparison between the Ivys Approval, Vesting and Assignment Order and the model approval and vesting order published by the Barreau de Montréal

SUPERIOR COURT

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 13, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

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

and
DELOITTE RESTRUCTURING INC.
Monitor

and

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IVYS ADSORPTION INC.
IVYS, INC.

Impleaded Parties (Buyers)

and

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

THE REGISTRAR OF THE ONTARIO PERSONAL PROPERTY REGISTRY

Impleaded Parties (Registrars)

APPROVAL, VESTING AND ASSIGNMENT ORDER IN RESPECT OF THE ASSETS OF XEBEC ADSORPTION INC. AND COMPRESSED AIR INTERNATIONAL INC.

~~(Commercial Division)~~

~~CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No. 500-11-
DATE: ●~~

~~PRESIDING : THE HONOURABLE, J.S.C.~~

~~IN THE MATTER OF ●:~~

●
~~Debtor~~

~~-and-~~

●
~~THE LAND REGISTRAR FOR THE LAND REGISTRY
OFFICE FOR THE REGISTRATION DIVISION OF ● (Québec)/~~

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~~THE LAND REGISTRAR FOR THE LAND REGISTRY OFFICE
OF ● (Rest of Canada) / THE REGISTRAR OF THE REGISTER OF PERSONAL AND
MOVABLE REAL RIGHTS (Québec)~~

~~_____ Mis-en-Cause~~

~~-and-~~

~~●~~

~~_____ [Petitioner]¹~~

~~-and-~~

~~●~~

~~_____ [Receiver/Trustee/Monitor]~~

APPROVAL AND VESTING ORDER²⁻³

[1] ~~ON READING CONSIDERING~~ the ~~[Debtor/Petitioner/Receiver/Trustee/Monitor]'s~~ Motion Application for the Issuance of an Approval ~~and~~ Vesting and Assignment Order (the ~~"Motion"~~, ~~the affidavit~~ "Application") pursuant to the Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended ("CCAA") and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof, ~~as well as~~ ;

[2] CONSIDERING the ● Report of the ~~[Receiver/Trustee/Monitor]~~ dated ~~●~~ (the ~~"Report")~~ ●, 2023;

¹ ~~Under section 243(1) of the BIA, the sale of assets of an insolvent debtor by the receiver may be ordered at the request of the secured creditor. In such a case, the secured creditor would be the petitioner.~~

² ~~A blacklined version must to be included with the Motion~~

³ ~~This Model Authorization and Vesting Order (the "Model Order") is an order authorizing an insolvent debtor under Court protection (whether under the Bankruptcy and Insolvency Act ("BIA") or the Companies' Creditors~~

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- [2] ~~SEEING~~ the service of the Motion⁴;
- [3] ~~SEEING~~ CONSIDERING the submissions of ~~[Debtor/Receiver/Trustee/Monitor]'s attorneys and the submissions of~~ counsel;
- [4] CONSIDERING the Third Amended and Restated Initial Order (the "Third ARIO") issued by this Court on February 13, 2023;
- [5] GIVEN the provisions of the CCAA:
- [6] ~~[4] SEEING~~ CONSIDERING that it is appropriate to issue an order approving the sale transaction(s) (the "Transaction") contemplated by the agreement entitled ~~• (the "Asset Purchase Agreement") by and between~~ [Debtor/Receiver/Trustee/Monitor] (the "Vendor"), as vendor dated February 8, 2023 (the "Purchase Agreement") between Xebec Adsorption Inc. and Compressed Air International Inc. (collectively, the "Sellers"), and • Ivys Adsorption Inc. (the "Purchaser"), as purchaser, "Asset Buyer" and Ivys, Inc., on behalf of a corporation to be incorporated (the "Equity Buyer" and together with the Asset Buyer, collectively the "Buyers" and individually a "Buyer"), a copy of which was filed as Exhibit RP-5 (under seal) to the Motion Application, and vesting in the Purchaser/Buyers the ~~assets described in the Purchase Agreement (the "Purchased Assets")~~⁵.

~~WHEREFORE~~ THE COURT HEREBY:

- [7] ~~[5]~~ GRANTS the ~~Motion;~~ Application.

DEFINITIONS

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

~~Arrangement Act ("CCAA")) or a receiver appointed under s. 243 of the BIA to enter into a transaction for the sale of its assets and vesting the purchased assets in the purchaser, free and clear of any liens, charges, hypothecs or other encumbrances.~~

~~4. The Motion should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should be prepared to provide proof of service to the Court. The practice in Quebec is to implead (as mis-en-cause) and serve the proceedings requesting the issuance of an authorization and vesting orders on the land registry named in the orders sought and on the Register of personal and movable real rights, as the case may be. The practice of impleading the registries concerned does not appear to be followed in Canadian provinces outside of Quebec, however, such that preliminary inquiries with the registries concerned are recommended before serving any proceedings on land or other registries outside of Quebec.~~

~~5. To allow this Order to be free standing (and not require reference to the Court record and/or the Purchase Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

SERVICE

[9] ~~[6]~~ **ORDERS** that any prior delay for the presentation of ~~this Motion~~ the Application is hereby abridged and validated so that ~~this Motion~~ the Application is properly returnable today and ~~hereby~~ dispenses with further service thereof.

[10] ~~[7]~~ **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE TRANSACTION APPROVAL

[11] ~~[8]~~ **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the ~~Vendor~~ Sellers is hereby authorized and approved nunc pro tunc, with such ~~non-material~~ minor alterations, changes, amendments, deletions or additions thereto as may be agreed to ~~but only by the~~ Sellers and the Buyers, with the consent of the ~~[Receiver/Trustee/Monitor]~~.

EXECUTION OF DOCUMENTATION

[12] ~~[9]~~ **AUTHORIZES** the ~~[Vendor/Receiver/Trustee/Monitor]~~ Buyers and the ~~Purchaser~~ Sellers 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 Purchase Agreement (~~Exhibit R-1~~) and any other ancillary document which could be required or useful to give full and complete effect thereto, including the Transaction.

AUTHORIZATION

[13] ~~[10]~~ **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the ~~Vendor~~ 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 (choose A or B whether Purchased Assets are only located in Quebec (A) or also outside of Quebec (B))

~~[11] **A** **ORDERS** and **DECLARES** that upon the issuance of a [Receiver/Trustee/Monitor]'s certificate substantially in the form appended as Schedule "A" hereto (the "Certificate"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights~~

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~~relating to the Property, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "Encumbrances"⁶), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the Civil Code of Québec in movable / immovable property, excluding however, the permitted encumbrances and restrictive covenants listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be cancelled and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.~~

~~[11] **B** **ORDERS** and **DECLARES** that upon the issuance of a [Receiver/Trustee/Monitor]'s certificate~~

[14] **ORDERS AND DECLARES** that upon the issuance of a Monitor's Closing Certificate substantially in the form appended as **Schedule "A"** hereto (the "**Monitor's Closing Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser/Buyers, free and clear of and from any 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 "**Encumbrances**" "**Claims**"), including, without limiting the generality of the foregoing all, all encumbrances created by order of this Court, all hypothecs, charges, or security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, and the [Province(s)] Personal Property Security Act of the Province of Ontario, or any other applicable legislation providing for a security interest in personal or movable property, excluding however, (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.").

⁶ ~~The "Encumbrances" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served.~~

- [15] For greater certainty, **ORDERS** that all of the Encumbrances, other than those listed on Schedule "B" hereto, 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 Closing 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 Closing 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] **AUTHORIZES AND DIRECTS** the Monitor to use the net proceeds from the sale of the Purchased Assets to pay any and all outstanding invoices of the beneficiaries of the Administration Charge (as defined in the Third ARIQ), provided that such payments shall not affect or reduce the quantum of the Administration Charge, but only according to the conditions and limits provided for in the Second DIP Term Sheet (as defined in the Third ARIQ).
- [18] **ORDERS** that the Monitor may rely on written notice from the Sellers and the Buyers regarding the fulfillment of conditions to closing under the Purchase Agreement and shall have no liability with respect to the delivery of the Monitor's Closing Certificate.
- [19] **ORDERS** the Monitor to file with the Court a copy of the Monitor's Closing Certificate, as soon as practicable after issuance thereof.
- [20] **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 Closing Certificate, as soon as practicable after the issuance thereof.

ASSIGNMENT OF CONTRACTS

- [21] ~~[12]~~ **ORDERS** and **DECLARES** that upon the issuance of the Monitor's Closing Certificate, the rights and obligations of the ~~Vendor~~Sellers under the ~~Agreements~~agreements listed ~~on~~in **Schedule "C"** hereto ~~(the "Assigned Agreements,~~ as they may have been amended or restated from time to time (the "**Assumed Contract(s)**") , are automatically and irrevocably assigned as follows:
- (a) for all Assumed Contracts other than those numbered 14 and 15 in **Schedule "C"** hereto, assigned to the ~~Purchaser~~and Asset Buyer; and

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(b) for the Assumed Contracts numbered 14 and 15 in **Schedule “C”** hereto, assigned to the Equity Buyer,

free and clear of all Claims and Encumbrances, subject to the payment of the respective Cure Costs, without any further consents or approvals of this Court.

[22] **ORDERS** that Cure Costs in relation to an Assumed Contract and indicated in **Schedule “C”** hereto shall be remedied by the relevant assignee Buyer no later than thirty (30) days following issuance of the Monitor’s Closing Certificate failing which, such Assumed Contract is not assigned to the relevant assignee Buyer.

[23] **ORDERS** the Sellers to send by e-mail, registered mail or courier **a copy of this Order to every party to an Assumed Contract.**

[24] **DECLARES** that either Buyer shall be entitled to notify the Monitor in writing, no later than thirty (30) days following the Closing Time, that it seeks the post-Closing assignment to such Buyer of the rights, benefits, obligations and interests of any of the Sellers under one or more contracts or agreements to which one or more of the Sellers are party to and which do not form part of the Assumed Contracts (the “**Proposed Post-Closing Assignment(s)**”, and each such agreement a “**Proposed Post-Closing Assigned/Assumed Contract(s)**”) **AND FURTHER DECLARES** that until the expiry of such thirty (30) day period, Sellers shall not assign, disclaim or otherwise cancel any such contracts or agreements, it being understood that the Sellers can send notices of conditional disclaimer or resiliation to the counterparties to such contracts or agreements providing that such contracts or agreements will be disclaimed or resiliated effective 30 days after Closing Date unless they become Post-Closing Assigned/Assumed Contracts as provided herein.

[25] **ORDERS** the Monitor, within five (5) days of the receipt from either Buyer of a notice of a Proposed Post-Closing Assignment, to review such proposed assignment, and:

(a) If the Monitor approves the Proposed Post-Closing Assignment, to send one or more notices of the Proposed Post-Closing Assignment to the parties to the Proposed Post-Closing Assigned/Assumed Contracts substantially in the form of the draft notice of assignment attached hereto as **Schedule “D”** (the “**Notice of Assignment**”); or

(b) If the Monitor does not approve the Proposed Post-Closing Assignment, to inform such Buyer, in writing of its decision (the “**Monitor’s Notice**”).

[26] **DECLARES** that:

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(a) if a party to a Proposed Post-Closing Assigned/Assumed Contract has notified the Monitor of its opposition to the Proposed Post-Closing Assignment within fifteen (15) days of the receipt of the Notice of Assignment; or

(b) if the Monitor has issued the Monitor's Notice,

the Monitor or either Buyer shall be entitled to apply to this Court to seek the assignment of such Proposed Post-Closing Assignment Contract.

[27] **ORDERS** that, if no party to a Proposed Post-Closing Assigned/Assumed Contract has notified the Monitor of an opposition to the Proposed Post-Closing Assignment within fifteen (15) days of the receipt of the Notice of Assignment, the Monitor shall issue forthwith and file with the Court a certificate substantially in the form appended as **Schedule "E"** hereto (a "**Post-Closing Assignment Certificate**").

[28] **ORDERS** and **DECLARES** that upon the issuance of a Post-Closing Assignment Certificate by the Monitor, the rights, benefits, obligations and interests of the Sellers under the Proposed Post-Closing Assigned/Assumed Contract referenced in such Post-Closing Assignment Certificate (the "**Post-Closing Assigned/ Assumed Contract(s)**") shall be automatically and irrevocably assigned to the assignee Buyer free and clear of all Claims and Encumbrances, without any further consents or approvals of this Court, subject to paragraph 30 hereof.

[29] **ORDERS** the Monitor to issue a certificate substantially in the form appended as **Schedule "F"** hereto (the "**Post-Closing Certificate**") on the earlier of:

(a) the date on which the Monitor is advised in writing by the Buyers that no further Proposed Post-Closing Assignments are required;

(b) the 31st day following Closing Time, unless on that day any application referred to at paragraph 26 has not been finally determined; or

(c) on the first day on which all applications referred to at paragraph 26 shall have been withdrawn or finally determined, if on the 31st day following Closing Time any such application had not been finally determined.

[30] **ORDERS** that all monetary defaults of the **DebtorSellers** in relation to ~~the~~any Post-Closing Assigned—~~Agreements~~—/Assumed Contract (other than those arising by reason only of the insolvency of the **DebtorPetitioners**, the commencement of proceedings under the **[BIA/CCAA]** or the failure to perform non-monetary obligations—~~)~~ shall be remedied on or before ~~•~~.

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~~[13] **DECLARES** that upon issuance thirty (30) days following the date of the applicable Post-Closing Assignment Certificate, the Transaction shall or as the assignee Buyer and the relevant counterparty may agree in writing, failing which such Post-Closing Assigned/Assumed Contract will not be deemed assigned to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the Code of Civil Procedure and a forced sale as per the provisions of the Civil Code of Quebec. [This paragraph is only required when the sale is done by a Receiver] the assignee Buyer.~~

~~[14] **ORDERS and DIRECTS** the [Vendor/Receiver/Trustee/Monitor] to serve a copy of this Order to every party to the Assigned Agreements.~~

~~[15] **ORDERS and DIRECTS** the [Receiver/Trustee/Monitor] to file with the Court a copy of the Certificate, forthwith after issuance thereof.~~

[31] **DECLARES** that subject to the assignee Buyer's obligations relating to the monetary defaults set forth in paragraph 30, the counterparties to any Post-Closing Assigned/Assumed Contract have no right to claim or effect compensation or set-off between:

(a) the amounts that are currently owing or which may become owing by such counterparties to the assignee Buyer in connection with the Post-Closing Assigned/Assumed Contract, as and from the effective date of the assignment; and

(b) any amounts owed, or allegedly owed, by the Sellers to such counterparties, whether related or not to the Post-Closing Assigned/Assumed Contract.

[32] **ORDERS** that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts or any of the Post-Closing Assigned/Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.

[33] **ORDERS** that the Assumed Contracts and the Post-Closing Assigned/Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the assignee Buyer in accordance with their terms for the benefit of the assignee Buyer.

[34] **ORDERS and DIRECTS** the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts and the Post-Closing Assigned/Assumed Contracts, if any.

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[35] **AUTHORIZES** the Petitioners, the assignee Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts and the Post-Closing Assigned/Assumed Contracts to the assignee Buyer in accordance with this Order.

CANCELLATION OF SECURITY REGISTRATIONS⁷⁸⁹

For Quebec Property:

~~[16] **ORDERS** the Land Registrar of the Land Registry Office for the Registry Division of ~~●~~, upon presentation of the Certificate in the form appended as Schedule "A" and a certified copy of this Order accompanied by the **required** application for registration and upon payment of the prescribed fees, to publish this Order and (i) to make an entry on the Land Register showing the Purchaser as the owner of the immovable property identified in Schedule "~~●~~" hereto (the "**Quebec Real Property**") and (ii) to cancel any and all Encumbrances on Quebec Real Property (other than Permitted Encumbrances), including, without limitation, the following registrations published at the said Land Registry Office:~~

~~▪ **[provide details of security/encumbrances to be discharged]**~~

[36] **ORDERS** the Quebec Personal and Movable Real Rights Registrar to strike and discharge any publication or registration, as the case may be, in connection with the Purchased Assets, in order to allow the transfer to the Buyers of the Purchased Assets free and clear of such registrations.

[37] ~~[17]~~ **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to ~~reduce the scope of] or [strike] the registrations number [provide details of security/encumbrances to be discharged]~~ in connection with the ~~Purchased Asset~~ and effect of the following Encumbrances, namely:

~~⁷ This Model Order provides a model for Quebec Courts to effect the vesting of assets in the Province of Quebec as well as in other Canadian provinces. In each province other than Quebec, the provisions of the Model Order dealing with registration of title and the discharge of encumbrances will have to be adjusted to refer to the appropriate registry and related offices and the appropriate terminology. Province specific orders are identified in this Model Order. While the Model Order contains proposed language, verifications with lawyers in the relevant jurisdiction is advisable.~~

~~⁸ Land registries in both in Quebec and in the rest of Canada may be consulted prior to the issuance of a vesting order so as to validate the language of the proposed orders relating to said land registries. This procedure, known as a "pre-validation procedure" in Quebec, is recommended so as to ensure that the vesting order is properly registered without undue delay after its issuance.~~

~~⁹ The registration of a vesting order with a land registry may be subject to statutory delays. For instance, in Quebec, land registrars require the expiry of the delay for appeal before a judgment cancelling a registration can be published.~~

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<u>Nature of Security Registration</u>	<u>Publication No. (Registration)</u>	<u>Date of Publication</u>	<u>Secured Party</u>
<u>Conventional hypothec without delivery</u>	<u>21-0793644-0001</u>	<u>2021-07-20</u>	<u>Export Development Canada</u>
<u>Conventional hypothec without delivery</u>	<u>21-0144140-0001</u>	<u>2021-02-19</u>	<u>National Bank of Canada</u>
<u>Conventional hypothec without delivery</u>	<u>20-0119389-0001</u>	<u>2020-02-05</u>	<u>National Bank of Canada</u>

in order ~~to allow~~ that the ~~transfer to the Purchaser~~ foregoing Encumbrances no longer hypothecate, charge, encumber or otherwise affect any or all of the Purchased Assets ~~free and clear of such registrations~~, namely all of the Sellers' property, with the sole exclusion of the following (capitalized terms in this paragraph have the meaning ascribed to them in the Purchase Agreement):

For Ontario Property:

~~[18] **ORDERS** that upon registration in the Land Registry Office~~

~~(a) **[NTD: For Land Titles System]:** for the Land Titles Division of ~~●~~ of an Application for Vesting Order in the form prescribed by the Land Registration Reform Act (Ontario), including a law statement confirming that the Certificate has been filed, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in **Schedule "●"** (the "**Ontario Real Property**") hereto in fee simple, and is hereby directed to delete and expunge from title to the ~~●~~ ~~●~~ Real Property all of the Encumbrances, which for the sake of clarity do not include the Permitted Encumbrances listed on Schedule B;~~

~~(b) **[NTD: For Land Registry System]:** for the Registry Division of ~~●~~ of a Vesting Order in the form prescribed by the Land Registration Reform Act (Ontario), including a law statement confirming that the Certificate has been filed, the Land Registrar is hereby directed to record such Vesting Order in respect of the subject real property identified in **Schedule "●"** (the "**Ontario Real Property**"), which for the sake of clarity do not include the Permitted Encumbrances listed on Schedule B;~~

~~[19] **[NTD: For Movable Assets]:** **ORDERS** that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the Ontario Personal Property Registry ("**OPPR**") as may be necessary, from any registration filed against the Vendor in the **OPPR**, provided that the Vendor shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendor shall be authorized to take any further steps by way of further application to this Court.~~

For British Columbia Property:

~~[20] **[NTD: For Immovable Assets]:** **ORDERS** the British Columbia Registrar of Land Titles (the "**BC Registrar**"), upon the registration in the Land Title Office for the Land Title~~

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~~District of ● of a certified copy of this Order, together with a letter from [Receiver/Trustee/Monitor's counsel], solicitors for the [Receiver/Trustee/Monitor], authorizing registration of this Order,~~

~~(a) to enter the Purchaser as the owner of the lands, as identified in Schedule "●" hereto (the "BC Real Property"), together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the BC Real Property; and~~

~~(b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the BC Real Property all of the registered Encumbrances except for those listed in Schedule "●".~~

~~[21] [NTD: For Immovable Assets]: DECLARES that it has been proven to the satisfaction of this Court on investigation that the title of the Purchaser in and to the BC Real Property is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid.~~

~~[22] [NTD: For Movable Assets]: ORDERS that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the British Columbia Personal Property Security Registry (the "BC PPR") as may be necessary, from any registration filed against the Vendors in the BC PPR, provided that the Vendors shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendors shall be authorized to take any further steps by way of further application to this Court.~~

For New Brunswick Property:

~~[23] [NTD: For Immovable Assets]: ORDERS that upon registration in the Land Registry Office for the Registry Division of ● of an Application for Vesting Order in the form prescribed by the Registry Act (New Brunswick) duly executed by the [Receiver/Trustee/Monitor], the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule "●" (the "NB Real Property") in fee simple, and is hereby directed to delete and expunge from title to the NB Real Property, all of the Encumbrances, other than the Permitted Encumbrances.~~

~~[24] [NTD: For Movable Assets]:~~

- ~~(1) Cash and Cash Equivalents – all Cash and Cash Equivalents;~~
- ~~(2) Corporate Records – original Tax records and books and records pertaining thereto, minute books, share ledgers, organizational documents, corporate seals, taxpayer and other identification numbers and other documents, in each case, relating to the organization, maintenance and existence of each Seller as a~~

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Person; provided that the Buyers may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Acquired Business after Closing, including the filing of any Tax return to the extent permitted under Applicable Law;

- (3) *Excluded Contracts* – all Contracts of the Sellers that are not Assumed Contracts or Post-Closing Assigned/Assumed Contracts;
- (4) *Claims in connection with Excluded Contracts* – all rights and Claims arising out of Excluded Contracts, except for Accounts Receivable relating thereto, provided that such Accounts Receivable appear on the Aged Receivables Report on the Business Day prior to Closing;
- (5) *Collateral* – all letters of credit, cash or cash equivalents of the Sellers granted by the Sellers as collateral to secure outstanding letters of credit in respect of any Excluded Liability or Excluded Asset;
- (6) *Rights under Agreements* – all of the Sellers' rights under the Purchase Agreement; the NDA; any confidentiality, non-disclosure or similar agreements entered into in connection with the CCAA Proceedings or the SISF; the DIP Facility, the EDC Credit Agreement and the NBC Credit Agreement; the Excluded Contracts; the Closing Documents and the transactions contemplated by hereby and thereby;
- (7) *Director and Officer Insurance Policies* – all rights of the Sellers and the directors and officers of the Sellers under any director and officer insurance policies including any proceeds received or receivable by such Persons thereunder;
- (8) *Licenses and Registrations* – extra-provincial, sales, excise or other Permits (other than Transferred Permits), licenses or registrations issued to or held by any of the Sellers, whether relating to the Acquired Business or otherwise to the extent not transferable;
- (9) *Tax Refunds* – the benefit of the Sellers to any refundable Taxes payable or paid by a Seller, net of any amounts withheld by any Governmental Authority, having jurisdiction over the assessment, determination, collection, or other imposition of any Tax, and the benefit of the Sellers to any claim or right of a Seller to any refund, rebate, or credit of Taxes;

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- (10) Avoidance Claims – all rights and Claims against any Person for any liability of any kind based on or arising out of the occurrence of any fraudulent conveyance, settlement, reviewable transaction, transfer at undervalue, fraudulent preference or similar claim;
- (11) Plan Assets – all trust funds or other entities holding assets (or, in the case of a dedicated bank account held by the Sellers, the assets of such account) related to any Employee Plan which is not part of the Assumed Employee Plans;
- (12) Certain Securities – all Equity Interests of the Seller Subsidiaries other than the Transferred Equity Interests, which for greater certainty shall include all Equity Interests of XEBEC ITALY S.r.l.;
- (13) Ordinary Course Assets – any asset of the Sellers that would otherwise constitute a Purchased Asset but for the fact that it is conveyed, leased or otherwise disposed of in the ordinary course of business in compliance with Section 7.2 of the Purchase Agreement or as obsolete during the period beginning on the date of the Purchase Agreement and ending on the Closing Date;
- (14) Intercompany Accounts Receivable – any debts due or accruing due prior to the Closing Time from any shareholder, director, or affiliate of the Sellers other than such amounts owing by Xebec Asia;
- (15) London RNG Receivables – any London RNG Receivables, it being understood that such London RNG Receivables shall be a Purchased Asset in the event the London RNG Contract becomes a Post-Closing Assigned/Assumed Contract; and
- (16) Employee Records – any personnel and employment records pertaining to any Employee who is not an Assumed Employee.

[38] **ORDERS** that upon the issuance of the Monitor's Closing Certificate, any of the VendorSellers, either Buyer or the Monitor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, ~~(including filing such financing change statements in the New BrunswickOntario Personal Property Registry (the "NBPPR"OPPR) as may be necessary, ~~from~~ or any further application to this Court) or, to effect the discharge of any registration filed against the VendorSellers in the NBPPROPPR, provided that the VendorSellers, the Buyers and the Monitor shall not be authorized to effect any discharge that would have the effect of releasing any ~~collateral~~ Encumbrances against any property other~~

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than ~~the Assets, and the Vendor shall be authorized to take any further steps by way of further application to this Court.~~

NET PROCEEDS

~~[25] ORDERS that the net proceeds⁴⁰ from the sale of the Purchased Assets (the "Net Proceeds") shall be remitted to the [Receiver/Trustee/Monitor] and shall be distributed in accordance with applicable legislation.~~

~~[26] ORDERS that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds 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.~~

PROTECTION OF PERSONAL INFORMATION

~~[39] [27] ORDERS that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act, SC 2000, c 5* or any similar provision of any applicable provincial legislation (collectively, the Receiver is "Applicable Privacy Laws"), the Petitioners and the Monitor are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including Buyers the personal information of those employees listed on Schedule "•" to in the custody or control of the Petitioners set out in the Purchase Agreement (the "Disclosed Information"). The Purchaser Buyers 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 Debtor;⁴¹ [NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause]; Petitioners.~~

~~[40] ORDERS that the Buyers 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;~~

⁴⁰ ~~The Motion and related draft order should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "Net Proceeds".~~

⁴¹ ~~This paragraph may not be necessary depending on the nature of the Purchased Assets.~~

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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

[41] ~~[28]~~ **ORDERS** that notwithstanding:

- (a) ~~(i)~~ the pendency of these proceedings;
- (b) ~~(ii)~~ any petition for a receiving bankruptcy order now or hereafter issued pursuant to the ~~Bankruptcy and Insolvency Act ("BIA")~~ and any order issued pursuant to any such petition; or
- (c) ~~(iii)~~ the provisions of any federal or provincial legislation;

the vesting of ~~the~~ Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement and the assignment of the Assumed Contracts and the Post-Closing Assigned/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 ~~Vendor~~ Petitioners, the ~~Purchaser~~ [Buyers, or the Receiver/Trustee/Monitor].

LIMITATION OF LIABILITY

~~[29]~~ **DECLARES** that, ~~subject to other orders of this Court, nothing herein contained shall require the [Receiver/Trustee/Monitor] to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The [Receiver/Trustee/Monitor] shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the [BIA/CCAA];~~

RELEASES AND D&O CHANNELING INJUNCTION

[42] **ORDERS** that effective as of the issuance of the Monitor's Closing Certificate (a) the current and former employees, legal counsel and advisors of the Sellers and (b) the Monitor and its legal counsel (in such capacities, collectively, the "Released Parties") shall be deemed to be forever irrevocably released and

discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the issuance of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the business, operations, assets, property and affairs of the Sellers wherever or however conducted or governed, the administration and/or management of the Seller, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, as they relate to the Sellers, or (ii) the Purchase Agreement and any agreement, document, instrument, matter or transaction involving the Sellers arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively the "**Released Claims**"), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Purchase Agreement and/or any agreement, document, instrument, matter or transaction involving the Sellers arising in connection with or pursuant to any of the foregoing.

- [43] **ORDERS** that effective as of the issuance of the Monitor's Closing Certificate any person having, or claiming any entitlement or compensation relating to any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, executions, recoupments, debts, sums of money, expenses, accounts, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) against a current or former director or officer of any the Sellers except a claim that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA (a "**D&O Claim**") shall be irrevocably limited to recovery in respect of such D&O Claim solely from the proceeds of the applicable insurance policies held by the Sellers (the "**Insurance Policies**"), and persons with any D&O Claim will

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have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the current and former directors and officers of any the Sellers, other than enforcing such person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies.

THE MONITOR

[44] **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.

[45] ~~[30]~~ **DECLARES** that no action lies against the ~~[Receiver/Trustee/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 ~~[Receiver/Trustee/Monitor]~~ or belonging to the same group as the ~~Receiver/Monitor~~ shall benefit from the protection arising under the present paragraph.

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

[47] **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

[48] **ORDERS** that Exhibit P-5 to the Application shall be filed under seal and kept confidential until further order of this Court.

GENERAL

~~[31] **ORDERS AND DECLARES** that the Transaction is exempt from the application of the Bulk Sales Act (Ontario). [NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause] [Ontario – Adapt for other common law Provinces where applicable]~~

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- [32] ~~ORDERS~~ that the Purchaser or the ~~[Vendor/Receiver/Trustee/Monitor]~~ shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.
- [33] ~~ORDERS~~ that the Purchase Agreement be kept confidential and under seal until the earlier of a) the closing of the Transaction; or b) further order of this Court.
- [49] ORDERS that all professional fees and disbursements by the Monitor and its counsel and other professionals, and the Debtor and its counsel and other professionals, incurred or envisaged by this Order will be for the account of the Debtors, to the exclusion of the Buyers.
- [50] ~~[34]~~ **DECLARES** that this Order shall have full force and effect in all provinces and territories ~~in~~ of Canada;
- [35] ~~DECLARES~~ that the ~~[Vendor/Receiver/Trustee/Monitor]~~ shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the ~~[Vendor/Receiver/Trustee/Monitor]~~ shall be the foreign representative of the Debtor. ~~All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the [Vendor/Receiver/Trustee/Monitor] as may be deemed necessary or appropriate for that purpose;~~
- [51] 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 Buyers.
- [52] 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.
- [53] ~~[36]~~ **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or ~~administrative body and any federal or state court or administrative body~~ 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 ~~act in aid of and to be complementary to this Court~~ give effect to this Order, and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of ~~the~~ 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.

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[54] ~~[37] ORDERS~~ the provisional execution of ~~the present~~this Order notwithstanding any appeal and without ~~the requirement to provide any security or provision for costs whatsoever;~~

[55] THE WHOLE ~~[WITH/WITHOUT] COSTS~~without costs.

●, J.S.C. Christian Immer, JCS

MTRE. SANDRA ABITAN
MTRE. JULIEN MORISSETTE
MTRE. ILIA KRAVTSOV
(OSLER HOSKIN & HARCOURT LLP)

●
Attorneys for ●the Petitioners

Hearing date: February 13, 2023

Draft

~~[Draft](#)~~

SCHEDULE A

SCHEDULE "A"

DRAFT CERTIFICATE OF THE [RECEIVER/TRUSTEE/MONITOR]

CANADA

PROVINCE OF QUEBECQUÉBEC
DISTRICT OF MONTRÉAL

~~_____
SUPERIOR COURT~~

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

File: No: ~~500-11-●~~

IN THE MATTER OF ● THE
COMPROMISE OR ARRANGEMENT
OF:

●

Debtor

-and-

●

[Petitioner]

-and-

●

[Receiver/Trustee/Monitor]

●
XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.

Draft

APPLIED COMPRESSION SYSTEMS LTD.
COMPRESSED AIR INTERNATIONAL INC.
XEBEC HOLDING USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES - WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC XEBEC SYSTEMS USA, LLC

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

Draft

CERTIFICATE OF THE [RECEIVER/TRUSTEE/MONITOR]

RECITALS:

~~WHEREAS on [REDACTED], the Superior Court of Quebec (the "Court") issued a [REDACTED] order (the "[REDACTED] Order") pursuant to the [REDACTED] (the "Act") in respect of [REDACTED] (the "Petitioners"); [NTD: refer to BIA notice of intention/proposal if applicable]~~

~~WHEREAS pursuant to the terms of the [REDACTED] Order/NOI], [REDACTED] (the "[Receiver/Trustees/Monitor]") was named [Receiver/Trustees/Monitor] of the Petitioner; and September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & 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 [REDACTED] February 13, 2023, the Court issued an Order (the "[Approval, Vesting and Assignment Order]") thereby, *inter alia*, authorizing and approving, *inter alia*, the execution by the Petitioner of an agreement entitled [REDACTED] Agreement (the "a Asset Purchase Agreement") by and between [REDACTED], as vendor among Xebec Adsorption Inc. and Compressed Air International Inc. (collectively, the "Sellers") and Ivys Adsorption Inc. (the "Vendor Asset Buyer") and [REDACTED] as purchaser (the "Purchaser" Ivys, Inc., on behalf of a corporation to be incorporated (the "Equity Buyer" and together with the Asset Buyer, collectively the "Buyers"), a copy of which was filed in the Court record (the "Purchase Agreement"), and into all the transactions contemplated therein (the "[Transaction]") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the [Receiver/Trustees/Monitor].~~

~~WHEREAS the Approval, Vesting and Assignment Order contemplates the issuance of this Certificate of the [Receiver/Trustees/Monitor] once the (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Purchaser Buyers to the Sellers; and (c) and all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.~~

~~THE [RECEIVER/TRUSTEES/MONITOR] CERTIFIES [THAT IT HAS BEEN ADVISED BY THE VENDORSELLERS AND THE PURCHASERBUYERS AS TO] THE FOLLOWING:~~

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and

Draft

(c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the ~~[Receiver/Trustees]~~ Monitor at _____ [TIME] on _____ [DATE].

• Deloitte Restructuring Inc., in its capacity as
• Monitor to the Petitioners, and not in its personal capacity.

Per: _____
Name: _____
Title: _____

Name: _____
Title: _____

Draft

SCHEDULE "B"

PERMITTED ENCUMBRANCES

1. Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under any Personal Property Leases.
2. Encumbrances affecting a landlord's, lessor's, licensor's or sublandlord's, as applicable, interest in any applicable Real Property Leases, including for greater certainty any registered servitudes or rights of way by Hydro-Québec or Bell Canada to install any circuits, poles and necessary equipment.
3. Notices registered on title in respect of the Real Property Leases.
4. Reservations, limitations, provisos and conditions, if any, expressed in any original grants of land from the Crown and any statutory limitations, exceptions, reservations and qualifications.
5. Any rights of expropriation, access or use or any other similar rights conferred or reserved by Applicable Law.
6. Applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, other agreements, building and other restrictions, easements, servitudes, rights of way and licences.
7. Minor survey exceptions, minor encumbrances, easements or reservations of, or rights of other for, rights-of-way, sewers, electric lines, telephone lines and other similar purposes, or zoning or similar restriction as to the use of any applicable Real Property Leases.
8. Encumbrances permitted in writing by the Buyers.

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SCHEDULE "C"
ASSIGNED AGREEMENTS

ASSUMED CONTRACTS AND CURE COSTS

	<u>Seller</u>	<u>Counterparty</u>	<u>Type of Contract or Service</u>	<u>Contract Name or Number</u>	<u>C</u>
<u>1.</u>	<u>Xebec</u> <u>¹</u>	<u>Konica Minolta</u>	<u>Personal Property Lease</u>	<u>Lease for 6 printers, including a Bizhub C450I 45 PPM Color MFP Printer and a PC-416 Paper Feed Cabinet</u>	<u>M</u>
<u>2.</u>	<u>CAI</u> ²	<u>Colony Ford-Lincoln Sales Inc.</u>	<u>Personal Property Lease</u>	<u>Lease for Ford Edge SEL 2022 (Serial #2FMPK4J94NBA07760)</u>	<u>A</u>
<u>3.</u>	<u>CAI</u>	<u>HumberviewGroup Leasing Inc.</u>	<u>Personal Property Lease</u>	<u>Lease for GMC Sierra 1500 2018 (Serial #1GTR1LEH4JZ123107)</u>	<u>M</u>
<u>4.</u>	<u>CAI</u>	<u>HumberviewGroup Leasing Inc.</u>	<u>Personal Property</u>	<u>Lease for GMC Sierra 1500 2015 (Serial #1GTN1TEHXFZ260865)</u>	<u>De</u> <u>1</u>

¹ Xebec Adsorption Inc.

² Compressed Air International Inc.

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			<u>Lease</u>		
<u>5.</u>	<u>CAI</u>	<u>HumberviewGroup Leasing Inc.</u>	<u>Personal Property Lease</u>	<u>Lease for Chevrolet Silverado 1500 WT 2018 (Serial #1GCRCNEH4JZ307209)</u>	<u>Ac</u>
<u>6.</u>	<u>CAI</u>	<u>HumberviewGroup Leasing Inc.</u>	<u>Personal Property Lease</u>	<u>Lease for Chevrolet Silverado 1500 LD WT 2019 (Serial#2GCRCNEC8K1163405)</u>	<u>A</u>
<u>7.</u>	<u>CAI</u>	<u>HumberviewGroup Leasing Inc.</u>	<u>Personal Property Lease</u>	<u>Lease for Chevrolet Silverado (Serial # 2GCRCNEC8K1129836)</u>	<u>No</u> <u>1</u>
<u>8.</u>	<u>Xebec</u>	<u>Cominar Real Estate Investment Trust</u>	<u>Real Property Lease</u>	<u>Lease relating to premises located at 730 Industriel Blvd, Blainville, Québec</u>	<u>Oc</u>
<u>9.</u>	<u>Xebec</u>	<u>Alliance Hepyx Inc.</u>	<u>Real Property Lease</u>	<u>Lease relating to premises located at 1120 Michèle-Bohec Blvd, Blainville, Québec</u>	<u>Fel</u>
<u>10.</u>	<u>CAI</u>	<u>N.E. Locicero Holdings Inc.</u>	<u>Real Property Lease</u>	<u>Lease relating to premises located at 60 Haist Road, Unit 1, Woodbridge, Ontario</u>	<u>s</u>
<u>11.</u>	<u>CAI</u>	<u>Newlife and Hall</u>	<u>Verbal Lease Agreement</u>	<u>Lease relating to premises located at Premises located at 5477 Highway #6 North, Guelph, Ontario</u>	
<u>12.</u>	<u>Xebec</u>	<u>Air Products Chemicals Inc.</u>	<u>Patent License</u>	<u>Patent License</u>	<u>Ma</u>
<u>13.</u>	<u>Xebec</u>	<u>Enbridge Gas Inc.</u>	<u>Operating and</u>	<u>Operating and Maintenance Agreement</u>	<u>J</u>

			<u>Maintenance Agreement</u>		
<u>14.</u>	<u>Xebec</u>	<u>Shanghai Shenergy Energy Innovation & Development Co., Ltd., and Shanghai Liuhuan Investment Co., Ltd.</u>	<u>Other</u>	<u>Articles of Association for the formation of Xebec Adsorption (Shanghai) Co. Ltd.</u>	<u>Oc</u>
<u>15.</u>	<u>Xebec</u>	<u>Shanghai Chengyi New Energy Venture Capital Co., Ltd., Shanghai Zhiyi Enterprise Management Consulting Co., Ltd. and Shanghai Liuhuan Investment Co., Ltd.</u>	<u>Other</u>	<u>Investment and Operation Agreement</u>	<u>A</u>
<u>16.</u>	<u>Xebec</u>	<u>Air Liquide Advanced Technology US</u>	<u>Master Purchase Agreement</u>	<u>Master Purchase Agreement for Goods and Services</u>	<u>Jan</u>
<u>17.</u>	<u>Xebec</u>	<u>NextWatts, Inc. (d/b/a CarbonQuest)</u>	<u>Development and Supply Agreement</u>	<u>Development and Supply Agreement</u>	<u>A</u>

SCHEDULE D

DRAFT NOTICE OF A PROPOSED POST-CLOSING ASSIGNMENT

Date: ●

To: ● (“you”)

Re: Superior Court, District of Montreal, No. 500-11-061483-224

We act as the Monitor of Xebec Adsorption Inc., Xebec RNG Holdings Inc., Applied Compression Systems Ltd., Compressed Air International Inc., Xebec Holding USA Inc., Enerphase Industrial Solutions Inc., CDA Systems, LLC, Xebec Adsorption USA Inc., The Titus Company, Nortekbelair Corporation, XBC Flow Services – Wisconsin Inc., California Compression, LLC and Xebec Systems USA, LLC (collectively, the “Debtors”) under the *Companies’ Creditors Arrangement Act* (the “CCAA”).

We refer to:

- the attached Approval, Vesting and Assignment Order dated ● rendered by the Superior Court of Québec, District of Montreal in Court File No. 500-11-061483-224 (the “Order”), which approved the sale transaction between Xebec Adsorption Inc. and Compressed Air International Inc. (collectively, the “Sellers”), and Ivys Adsorption Inc. (the “Asset Buyer”) and Ivys, Inc., on behalf of a corporation to be incorporated (the “Equity Buyer” and together with the Asset Buyer, collectively the “Buyers”); and
- the following agreement(s) (the “Agreement”) to which you and the Sellers are parties: ●.

We have been notified by ●, one of the Buyers, that it seeks the post-closing assignment of the rights, benefits, obligations and interests of the Sellers under the Agreement to such Buyer, and we have approved such assignment as the Monitor of the Debtors (the “Proposed Post-Closing Assignment”).

If you oppose the Proposed Post-Closing Assignment, you must inform the Monitor in writing of your grounds for opposition at the latest 15 days after the receipt of this notice, failing which the rights, benefits, obligations and interests of the Sellers under the Agreement shall be automatically and irrevocably assigned to ●, without any further consents or approvals.

If you agree with the Proposed Post-Closing Assignment you have nothing to do. The rights, benefits, obligations and interests of the Sellers under the Agreement will be automatically and irrevocably assigned to ● after 15 days of the receipt of this notice.

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| [More information can be obtained on the restructuring of the Debtors at:
www.insolvencies.deloitte.ca/Xebec.](http://www.insolvencies.deloitte.ca/Xebec)

| [Deloitte Restructuring Inc.](#)

~~Draft~~

SCHEDULE E
DRAFT POST-CLOSING ASSIGNMENT CERTIFICATE

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

SUPERIOR COURT
(Commercial Division)

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

IN THE MATTER OF THE COMPROMISE
OR ARRANGEMENT OF:

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

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

Draft

POST-CLOSING ASSIGNMENT CERTIFICATE

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & 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 ●, 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") authorizing and approving, *inter alia*, the execution of an Asset Purchase Agreement by and among Xebec Adsorption Inc. and Compressed Air International Inc. (collectively, the "**Sellers**") and Ivys Adsorption Inc. (the "**Asset Buyer**") and Ivys, Inc., on behalf of a corporation to be incorporated (the "**Equity Buyer**" and together with the Asset Buyer, collectively the "**Buyers**" and individually a "**Buyer**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

WHEREAS the Approval, Vesting and Assignment Order contemplates the issuance and filing by the Monitor of this Post-Closing Assignment Certificate.

Unless otherwise defined, all capitalized terms used herein shall have the meanings ascribed to them in the Approval, Vesting and Assignment Order:

THE MONITOR CERTIFIES THE FOLLOWING:

- (a) The Monitor has received a notice in writing from ●, one of the Buyers, within 30 days of Closing Time, that it seeks the post-closing assignment to such Buyer of the rights, benefits, obligations and interests of the Sellers under the following Agreements to which one or more of the Sellers are party to: ● (the "**Proposed Post-Closing Assignment**" and the "**Proposed Post-Closing Assigned/Retained Contracts**").
- (b) The Monitor has reviewed and approved the Proposed Post-Closing Assignment.
- (c) The Monitor has sent one or more Notices of Assignment to the parties to the Proposed Post-Closing Assigned/Retained Contracts.
- (d) No party to the Proposed Post-Closing Assigned/Retained Contracts has notified it of an opposition to the Proposed Post-Closing Assignment within 15 days of the receipt of the Notice of Assignment.

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This Post-Closing Assignment Certificate was issued by the Monitor at _____ **[TIME]** on
_____ **[DATE]**.

Deloitte Restructuring Inc., in its capacity as Monitor
to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

Draft

SCHEDULE F
DRAFT POST-CLOSING CERTIFICATE

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

SUPERIOR COURT
(Commercial Division)

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

IN THE MATTER OF THE COMPROMISE
OR ARRANGEMENT OF:

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

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

Draft

POST-CLOSING CERTIFICATE

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & 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 ●, 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") authorizing and approving, *inter alia*, the execution of an Asset Purchase Agreement by and among Xebec Adsorption Inc. and Compressed Air International Inc. (collectively, the "**Sellers**") and Ivys Adsorption Inc. (the "**Asset Buyer**") and Ivys, Inc., on behalf of a corporation to be incorporated (the "**Equity Buyer**" and, together with the Asset Buyer, collectively the "**Buyers**"), a copy of which was filed in the Court record (the "**Purchase Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

WHEREAS the Approval, Vesting and Assignment Order contemplates the issuance and filing by the Monitor of this Post-Closing Certificate.

Unless otherwise defined, all capitalized terms used herein shall have the meanings ascribed to them in the Approval, Vesting and Assignment Order.

THE MONITOR ISSUES THE POST-CLOSING CERTIFICATE PURSUANT TO THE APPROVAL, VESTING AND ASSIGNMENT ORDER

This Post-Closing Certificate was issued by the Monitor at _____ **[TIME]** on _____ **[DATE]**.

Deloitte Restructuring Inc., in its capacity as Monitor to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

Draft

Exhibit P-3

**Draft Sullair Approval,
Vesting and Assignment
Order**

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 13, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

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

Debtors / Petitioners

and
DELOITTE RESTRUCTURING INC.
Monitor

and
SULLAIR, LLC

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Impleaded Party (Buyer)

**APPROVAL, VESTING AND ASSIGNMENT ORDER IN RESPECT OF THE ASSETS
OF CDA SYSTEMS, LLC AND CALIFORNIA COMPRESSION LLC**

- [1] **CONSIDERING** the *Application for the Issuance of an Approval, Vesting and Assignment Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the ● Report of the Monitor dated ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **GIVEN** the provisions of the CCAA:
- [5] **CONSIDERING** that it is appropriate to issue an order approving the sale transaction (the “**Transaction**”) contemplated by the agreement entitled Asset Purchase Agreement dated February 8, 2023 (the “**Purchase Agreement**”) between CDA Systems, LLC and California Compression LLC (collectively, the “**Sellers**”), and Sullair, LLC, as buyer, (the “**Buyer**”), a copy of which was filed as **Exhibit P-6 (under seal)** to the Application, and vesting in the Buyer the Purchased Assets.

THE COURT HEREBY:

- [6] **GRANTS** the Application.

DEFINITIONS

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

SERVICE

- [8] **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.

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- [9] **PERMITS** service of this Order at any time and place and by any means whatsoever.

TRANSACTION APPROVAL

- [10] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Sellers 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 Sellers and the Buyer, with the consent of the Monitor.

EXECUTION OF DOCUMENTATION

- [11] **AUTHORIZES** the Sellers 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 Purchase Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto, including the Transaction.

AUTHORIZATION

- [12] **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

- [13] **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 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, and those Claims listed on

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Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include any permitted encumbrances, easements and restrictive covenants listed on Schedule "C").

- [14] For greater certainty, **ORDERS** that all of the Encumbrances, other than those listed on Schedule "C" hereto, 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.
- [15] **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.
- [16] **AUTHORIZES AND DIRECTS** the Monitor to use the net proceeds from the sale of the Purchased Assets to pay any and all outstanding invoices of the beneficiaries of the Administration Charge (as defined in the Third ARIO), provided that such payments shall not affect or reduce the quantum of the Administration Charge, but only according to the conditions and limits provided for in the Second DIP Term Sheet (as defined in the Third ARIO).
- [17] **ORDERS** that the Monitor may rely on written notice from the Sellers and the Buyer regarding the fulfillment of conditions to closing under the Purchase Agreement 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 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.

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ASSIGNMENT OF CONTRACTS

- [21] **ORDERS** and **DECLARES** that upon the issuance of the Monitor's Closing Certificate, the rights and obligations of the Sellers under the agreements listed in **Schedule "D"** hereto, as they may have been amended or restated from time to time (the "**Assumed Contract(s)**"), are automatically and irrevocably assigned to the Buyer without any further consents or approvals of this Court.
- [22] **ORDERS** that all Cure Costs in relation to the Assumed Contracts, which are set out in Schedule D, shall be remedied by the Buyer no later than thirty (30) days following issuance of the Monitor's Closing Certificate.
- [23] **ORDERS** that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.
- [24] **ORDERS** that the Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the Buyer in accordance with their terms for the benefit of the Buyer.
- [25] **ORDERS** and **DIRECTS** the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts, if any.
- [26] **AUTHORIZES** the Petitioners, the Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts to the Buyer in accordance with this Order.

PROTECTION OF PERSONAL INFORMATION

- [27] **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 Purchase Agreement (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.
- [28] **ORDERS** that the Buyer shall:

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- (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;
- (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

[29] **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*, R.S.C., 1985, c. B-3, (the “**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 Purchase Agreement 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.

RELEASES AND D&O CHANNELLING INJUNCTION

[30] **ORDERS** that effective as of the issuance of the Monitor’s Closing Certificate (a) the current and former employees, legal counsel and advisors of the Sellers and (b) the Monitor and its legal counsel (in such capacities, collectively, the “**Released Parties**”) shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and

obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the issuance of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the business, operations, assets, property and affairs of the Sellers wherever or however conducted or governed, the administration and/or management of the Sellers, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, as they relate to the Sellers, or (ii) the Purchase Agreement and any agreement, document, instrument, matter or transaction involving the Sellers arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively the "**Released Claims**"), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Purchase Agreement and/or any agreement, document, instrument, matter or transaction involving the Sellers arising in connection with or pursuant to any of the foregoing.

- [31] **ORDERS** that effective as of the issuance of the Monitor's Closing Certificate any person having, or claiming any entitlement or compensation relating to any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, executions, recoupments, debts, sums of money, expenses, accounts, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) against a current or former director or officer of any the Sellers except a claim that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA (a "**D&O Claim**") shall be irrevocably limited to recovery in respect of such D&O Claim solely from the proceeds of the applicable insurance policies held by the Sellers (the "**Insurance Policies**"), and persons with any D&O Claim will have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the current and former directors and officers of any the Sellers, other than enforcing such person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies.

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THE MONITOR

- [32] **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.
- [33] **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.
- [34] **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 possession of any assets of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.
- [35] **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

- [36] **ORDERS** that Exhibit P-6 to the Application shall be filed under seal and kept confidential until further order of this Court.

GENERAL

- [37] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [38] **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.
- [39] **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.

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- [40] **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.
- [41] **ORDERS** provisional execution of this Order notwithstanding any appeal and without security.
- [42] **THE WHOLE** without costs.

Christian Immer, JCS

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

Hearing date: **February 13, 2023**

Draft

**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 *Bankruptcy and Insolvency Act*, RSC
1985, c B-3)

No.: 500-11-061483-224

**IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:**

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

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

Draft

CERTIFICATE OF THE MONITOR

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & 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 February 13, 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") authorizing and approving, *inter alia*, the execution of a Asset Purchase Agreement dated February 8, 2023 (the "**Purchase Agreement**") between CDA Systems, LLC and California Compression LLC (collectively, the "**Sellers**"), and Sullair, LLC, as buyer, (the "**Buyer**"), with such minor alterations, changes, amendments, deletions or additions thereto as may be agreed to by the Sellers and the Buyer, with the consent of the Monitor.

WHEREAS the Approval, Vesting and Assignment Order contemplates the issuance of this Certificate of the Monitor once (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Buyer to the Sellers; and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

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

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Monitor on _____ [DATE].

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Deloitte Restructuring Inc., in its capacity as Monitor to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

SCHEDULE B**ENCUMBRANCES TO BE VESTED***Uniform Commercial Code (California)*

Secured Party(ies)	Debtor(s)	File Number	Description	Date Filed
NATIONAL BANK OF CANADA	CDA SYSTEMS, LLC	U210026524223	All right, title and interest of Debtor in all personal property, wherever located and whether now owned or hereafter owned or acquired by Debtor, whether or not affixed to realty, in all Proceeds and Products thereof in any form, in all parts, accessories, attachments, special tools, additions, replacements, substitutions and accessions thereto or therefor, in all supporting obligations thereof and in all increases or profits received therefrom, including all property from time to time delivered by Debtor to Secured Party and all Goods (including, but not limited to, Equipment, Fixtures, and Inventory), Accounts, Chattel Paper, Documents, Instruments, Investment Property, General Intangibles, Deposit Accounts and Letter- of- Credit Rights.	2/25/2021
NATIONAL BANK OF CANADA	CALIFORNIA COMPRESSION, LLC	U21097074233	All right, title and interest of Debtor in all personal property, wherever located and whether now owned or hereafter owned or acquired by Debtor, whether or not affixed to realty, in all	12/22/2021

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Draft

			Proceeds and Products thereof in any form, in all parts, accessories, attachments, special tools, additions, replacements, substitutions and accessions thereto or therefor, in all supporting obligations thereof and in all increases or profits received therefrom, including all property from time to time delivered by Debtor to Secured Party and all Goods (including, but not limited to, Equipment, Fixtures, and Inventory), Accounts, Chattel Paper, Documents, Instruments, Investment Property, General Intangibles, Deposit Accounts and Letter-of-Credit Rights.	
EXPORT DEVELOPMENT CANADA	CALIFORNIA COMPRESSION, LLC	U220200892224	All right, title and interest of Debtor in all personal property, wherever located and whether now owned or hereafter owned or acquired by Debtor, whether or not affixed to realty, in all Proceeds and Products thereof in any form, in all parts, accessories, attachments, special tools, additions, replacements, substitutions and accessions thereto or therefor, in all supporting obligations thereof and in all increases or profits received therefrom, including all property from time to time delivered by Debtor to Secured Party and all Goods (including, but not	6/9/2022

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			limited to, Equipment, Fixtures, and Inventory), Accounts, Chattel Paper, Documents, Instruments, Investment Property, General Intangibles, Deposit Accounts and Letter-of-Credit Rights.	
--	--	--	---	--

SCHEDULE C

PERMITTED ENCUMBRANCES

1. Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under any Personal Property Leases.
2. Encumbrances affecting a landlord's, lessor's, licensor's or sublandlord's, as applicable, interest in any applicable Real Property Leases.
3. Notices registered on title in respect of the Real Property Leases.
4. Applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, other agreements of similar import, building and other restrictions, easements, servitudes, rights of way and licences as relates to any applicable Real Property Leases.
5. Minor survey exceptions, minor encumbrances, easements or reservations of, or rights of other for, rights-of-way, sewers, electric lines, telephone lines and other similar purposes, or zoning or similar restriction as to the use of any applicable Real Property Leases.
6. Encumbrances expressly permitted in writing by the Buyer.

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SCHEDULE D

ASSUMED CONTRACTS

Counterparty	Project	Customer	Cure Costs (USD)
California Compression, LLC	Schnitzer Steel 2023' Main Plant Compressor/Dryer PM Agreement	Schnitzer Steel Industries Inc	-
California Compression, LLC	WADHAM PM SCHEDULE	Wadham Energy L.P.	-
California Compression, LLC	Sonoco Exeter Compressor/Vacuum 2023 PM Agreement	Sonoco Exeter	-
California Compression, LLC	/Earthbound 2022-2023 PM Schedule	Earthbound Farms/ Taylor Farms	-
California Compression, LLC	US PIPE 2022-2023 PM Agreement	US Pipe	-
California Compression, LLC	CARGILL SALT 2022-2023 PM AGREEMENT	Cargill Salt	-
California Compression, LLC	Coherent 2022-2023 PM AGREEMENT	Coherent	-
California Compression, LLC	Teichert Aggregates-Vernalis Plant 22-23 PM Agreement	TEICHERT AGGREGATES	-
California Compression, LLC	SHELL CATALYST PM AGREEMENT	Shell Catalyst & Technologies LP	-
California Compression, LLC	2022 PM AGREEMENT	Zymergen, Inc.	-
California Compression, LLC	2022 Air Systems Services	Gallo Glass	-
California Compression, LLC	Musco 2021-22' PM Agreement	Musco Family Olive Co.	-
California Compression, LLC	BALL METAL 2022 PM AGREEMENT	Sonoco Metal Packaging LLC	-
California Compression, LLC	PP-PM 2021-22 PM Agreement	Ardagh Metal Beverage USA	-
California Compression, LLC	2021 PM AGREEMENT	Northern California Power Agency	-

Counterparty	Distribution Agreement	Distributor	Cure Costs (USD)
CDA Systems, LLC	Industrial Distributor Agreement	Rogers Machinery Company, Inc.	25,743.39 \$
CDA Systems, LLC	Distribution Agreement	SPX Flow Technology USA, Inc.	145,951.66 \$

Counterparty	Lease	Cure Costs (USD)
California Compression, LLC	Lease dated January 14, 2021, between California Compression, LLC and Arroyo/ Livermore Business Park LP in respect of premises located at 4659 Las Positas Rd,	-
CDA Systems, LLC	Standard Industrial/Commercial Multi-Tenant Lease-Net dated April 5, 2017, between CDA Systems, LLC and DJ Smith Family Partnership	-
CDA Systems, LLC	Rental Agreement dated October 1, 2019, between Public Storage and Richard Yue (on behalf of CDA Systems, LLC).	-
Arroyo/Livermore Business Park L.P. and Advanced Air Leak Detection	Consent and Agreement Regarding Sublease and Control of Tenant and First Amendment of Lease dated August 24, 2021 between Arroyo/Livermore Business Park L.P., California	

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	Compression, LLC and Advanced Air Leak Detection	
CDA Systems, LLC	Commercial Lease Agreement dated May 2, 2022 between CDA Systems, LLC and 5360 Gateway Plaza LLC	-

Exhibit P-3A

Comparison between the Sullair Approval, Vesting and Assignment Order and the model approval and vesting order published by the Barreau de Montréal

SUPERIOR COURT
(Commercial Division)

CANADA PROVINCE OF QUÉBEC DISTRICT OF MONTRÉAL

No. : 500-11-061483-224

DATE: ~~•~~

~~PRESIDING~~ : February 13, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

~~•~~
~~Debtor~~

~~-and-~~

~~•~~
~~THE LAND REGISTRAR FOR THE LAND REGISTRY~~

XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS
INC.
APPLIED COMPRESSION SYSTEMS
LTD. COMPRESSED AIR
INTERNATIONAL INC. XEBEC HOLDING
USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS, INC.
CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION

~~OFFICE FOR THE REGISTRATION DIVISION OF (Québec)~~

Draft

XBC FLOW SERVICES – WISCONSIN
INC. CALIFORNIA COMPRESSION, LLC
XEBEC SYSTEMS USA, LLC

Debtors / Petitioners

~~THE LAND REGISTRAR FOR THE LAND REGISTRY OFFICE
OF (Rest of Canada) / THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS
(Québec)~~

~~_____ Mis-en-Cause~~

~~-~~

~~and-~~

~~_____ [Petitioner]¹~~

~~-and-~~

~~_____ [Receiver/Trustee/~~

DELOITTE RESTRUCTURING INC.

~~Monitor]~~

and

SULLAIR, LLC

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Impleaded Party (Buyer)

**APPROVAL ~~AND~~, VESTING AND ASSIGNMENT ORDER²⁻³ IN RESPECT OF THE
ASSETS OF CDA SYSTEMS, LLC AND CALIFORNIA COMPRESSION
LLC**

¹ ~~Under section 243(1) of the BIA, the sale of assets of an insolvent debtor by the receiver may be ordered at the request of the secured creditor. In such a case, the secured creditor would be the petitioner.~~

² ~~A blacklined version must to be included with the Motion~~

³ ~~This Model Authorization and Vesting Order (the "**Model Order**") is an order authorizing an insolvent debtor under Court protection (whether under the *Bankruptcy and Insolvency Act* ("**BIA**") or the *Companies' Creditors Arrangement Act* ("**CCAA**")) or a receiver appointed under s. 243 of the BIA to enter into a transaction for the sale of its assets and vesting the purchased assets in the purchaser, free and clear of any liens, charges, hypothecs or other encumbrances.~~

Draft

[1] ~~ON-READING~~ **CONSIDERING** the ~~[Debtor/Petitioner/Receiver/Trustee/Monitor]'s Motion~~ Application for the Issuance of an Approval ~~and~~, Vesting and Assignment Order (the "~~Motion~~", ~~the affidavit~~ "Application") pursuant to the Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended ("CCAA") and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof, ~~as well as~~;

[2] **CONSIDERING** the Report of the ~~[Receiver/Trustee/Monitor]~~ dated ~~(the "Report")~~ ●, 2023;

~~[2]—SEEING~~ the service of the Motion⁴;

[3] ~~SEEING~~ **CONSIDERING** the submissions of ~~[Debtor/Receiver/Trustee/Monitor]'s attorneys and~~ counsel;

[4] **GIVEN** the ~~submissions~~ provisions of ~~●~~; the CCAA:

[5] ~~[4]—SEEING~~ **CONSIDERING** that it is appropriate to issue an order approving the sale transaction~~(s)~~ (the "Transaction") contemplated by the agreement entitled Asset Purchase Agreement dated February 8, 2023 (the "Purchase Agreement") ~~by and~~ between ~~[Debtor/Receiver/Trustee/Monitor]~~ (CDA Systems, LLC and California Compression LLC (collectively, the "Vendor"),—as vendor "Sellers"), and Sullair, LLC, as buyer, (the "Purchaser" "Buyer"), ~~as purchaser,~~ a copy of which was filed as Exhibit RP-6 (under seal) to the Motion Application, and vesting in the Purchaser Buyer the ~~assets described in the Purchase Agreement (the "Purchased Assets")~~⁵.

~~WHEREFORE~~ THE COURT HEREBY:

[6] ~~[5]—GRANTS~~ the ~~Motion~~; Application.

DEFINITIONS

[7] **DECLARES** that, unless otherwise defined, all capitalized terms in this Order shall have the meaning ascribed thereto in the Purchase Agreement.

SERVICE

⁴ ~~—The Motion should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should be prepared to provide proof of service to the Court. The practice in Québec is to implead (as mis-en-cause) and serve the proceedings requesting the issuance of an authorization and vesting orders on the land registry named in the orders sought and on the Register of personal and movable real rights, as the case may be. The practice of impleading the registries concerned does not appear to be followed in Canadian provinces outside of Québec, however, such that preliminary inquiries with the registries concerned are recommended before serving any proceedings on land or other registries outside of Québec.~~

⁵ ~~—To allow this Order to be free standing (and not require reference to the Court record and/or the Purchase Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

[8] ~~[6]~~ **ORDERS** that any prior delay for the presentation of ~~this Motion~~ the Application is hereby abridged and validated so that ~~this Motion~~ the Application is properly returnable today and ~~hereby~~ dispenses with further service thereof.

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[9] ~~[7]~~ **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE TRANSACTION APPROVAL

[10] ~~[8]~~ **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the ~~Vendor~~ Sellers is hereby authorized and approved nunc pro tunc, with such ~~non-material~~ minor alterations, changes, amendments, deletions or additions thereto as may be agreed to ~~but only by the~~ Sellers and the Buyer, with the consent of the ~~[Receiver/Trustee/Monitor]~~.

EXECUTION OF DOCUMENTATION

[11] ~~[9]~~ **AUTHORIZES** the ~~[Vendor/Receiver/Trustee/Monitor]~~ Sellers and the ~~Purchaser~~ 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 Purchase Agreement (~~Exhibit R~~) and any other ancillary document which could be required or useful to give full and complete effect thereto, including the Transaction.

AUTHORIZATION

[12] ~~[10]~~ **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the ~~Vendor~~ 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 ~~(choose A or B whether Purchased Assets are only located in Quebec (A) or also outside of Quebec (B))~~

[13] ~~[11]~~ **A** ~~—~~ **ORDERS** and **AND DECLARES** that upon the issuance of a ~~[Receiver/Trustee/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 ~~Purchaser~~ Buyer, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, ~~right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the Property, encumbrances, whether or not they have been registered, published or filed and whether secured,~~

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~~unsecured or otherwise (collectively, the "Encumbrances"⁶), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the Civil Code of Québec in movable / immovable property, excluding however, the permitted encumbrances and restrictive covenants listed on Schedule "B" hereto (the "Permitted Encumbrances") and, for greater certainty, ORDERS that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be cancelled and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.~~

[11] ~~B~~ ~~ORDERS~~ and ~~DECLARES~~ that upon the issuance of a ~~[Receiver/Trustee/Monitor]'s~~ certificate substantially in the form appended as Schedule "A" hereto (the "~~Certificate~~"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any 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 "~~Encumbrances~~" "Claims"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges, or security ~~interests or charges~~ evidenced by registration, publication or filing pursuant to ~~the Civil Code of Québec, the [Province(s)] Personal Property Security Act, or any other~~ applicable legislation providing for a security interest in personal or movable property, ~~excluding however, the~~ and those Claims listed on

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Schedule "B" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include any permitted encumbrances, easements and restrictive covenants listed on Schedule "B" hereto (the "Permitted Encumbrances") and, for "C").

[14] For greater certainty, ~~ORDERS~~ that all of the Encumbrances, other than those listed on Schedule "C" hereto, affecting or relating to the Purchased Assets, ~~other than the Permitted Encumbrances~~, be ~~expunged~~ cancelled and discharged as against the Purchased Assets, in each case effective as of the ~~applicable time and date of the Certificate.~~

[12] ~~ORDERS~~ and ~~DECLARES~~ that upon the issuance of the Certificate, the rights and obligations of the Vendor under the Agreements listed on ~~Schedule "C" hereto (the "Assigned Agreements")~~ are assigned to the Purchaser ~~[and ORDERS that all monetary defaults of the Debtor in relation to the Assigned Agreements — other than those arising by reason only of the insolvency of the Debtor,~~

⁶ The "Encumbrances" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served.

~~the commencement of proceedings under the [BIA/CCAA] or the failure to perform non-monetary obligations – shall be remedied on or before];~~

- ~~[13] **DECLARES** that upon issuance of the Certificate, the Transaction shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*. **[This paragraph is only required when the sale is done by a Receiver]**~~
- ~~[14] **ORDERS and DIRECTS** the **[Vendor/Receiver/Trustee/Monitor]** to serve a copy of this Order to every party to the Assigned Agreements.~~
- ~~[15] **ORDERS and DIRECTS** the **[Receiver/Trustee/Monitor]** to file with the Court a copy of the Certificate, forthwith after issuance thereof.~~

CANCELLATION OF SECURITY REGISTRATIONS⁷⁸⁹

For Quebec Property:

- ~~[16] **ORDERS** the Land Registrar of the Land Registry Office for the Registry Division of , upon presentation of the Certificate in the form appended as Schedule "A" and a certified copy of this Order accompanied by the **required** application for registration and upon payment of the prescribed fees, to publish this Order and (i) to make an entry on the Land Register showing the Purchaser as the owner of the immovable property identified in Schedule "" hereto (the "**Quebec Real Property**") and (ii) to cancel any and all Encumbrances on Quebec Real Property (other than Permitted Encumbrances), including, without limitation, the following registrations published at the said Land Registry Office:~~
- ~~* **[provide details of security/encumbrances to be discharged]**~~

- ~~[17] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to **[reduce the scope of]** or **[strike]** the registrations number **[provide details of security/encumbrances to be discharged]** in connection with the Purchased Asset in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations.~~

For Ontario Property:

- ~~[18] **ORDERS** that upon registration in the Land Registry Office~~
- ~~(a) **[NTD: For Land Titles System]**: for the Land Titles Division of of an Application for Vesting Order in the form prescribed by the Land Registration Reform Act (Ontario), including a law statement confirming that the Certificate has been filed, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in **Schedule ""** (the "**Ontario Real Property**") hereto in fee simple, and is hereby directed to delete and expunge from title to the **Real Property** all of the Encumbrances, which for the sake of clarity do not include the Permitted Encumbrances listed on Schedule B;~~

⁷ This Model Order provides a model for Quebec Courts to effect the vesting of assets in the Province of Quebec as well as in other Canadian provinces. In each province other than Quebec, the provisions of the Model Order dealing with registration of title and the discharge of encumbrances will have to be adjusted to refer to the appropriate registry and related offices and the appropriate terminology. Province specific orders are identified in this Model Order. While the Model Order contains proposed language, verifications with lawyers in the relevant jurisdiction is advisable.

⁸ Land registries in both in Quebec and in the rest of Canada may be consulted prior to the issuance of a vesting order so as to validate the language of the proposed orders relating to said land registries. This procedure, known as a "pre-validation procedure" in Quebec, is recommended so as to ensure that the vesting order is properly registered without undue delay after its issuance.

⁹ The registration of a vesting order with a land registry may be subject to statutory delays. For instance, in Quebec, land registrars require the expiry of the delay for appeal before a judgment cancelling a registration can be published.

~~(b) [NTD: For Land Registry System]: for the Registry Division of of a Vesting Order in the form prescribed by the Land Registration Reform Act (Ontario), including a law statement confirming that the Certificate has been filed, the Land Registrar is hereby directed to record such Vesting Order in respect of the subject real property identified in Schedule "" (the "Ontario Real Property"), which for the sake of clarity do not include the Permitted Encumbrances listed on Schedule B;~~

~~[19] [NTD: For Movable Assets]: ORDERS that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the Ontario Personal Property Registry ("OPPR") as may be necessary, from any registration filed against the Vendor in the OPPER, provided that the Vendor shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendor shall be authorized to take any further steps by way of further application to this Court.~~

~~**For British Columbia Property:**~~

~~[20] [NTD: For Immovable Assets]: ORDERS the British Colombia Registrar of Land Titles (the "BC Registrar"), upon the registration in the Land Title Office for the Land Title District of of a certified copy of this Order, together with a letter from [Receiver/Trustee/Monitor's counsel], solicitors for the [Receiver/Trustee/Monitor], authorizing registration of this Order,~~

~~(a) to enter the Purchaser as the owner of the lands, as identified in Schedule "" hereto (the "BC Real Property"), together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the BC Real Property; and~~

~~(b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the BC Real Property all of the registered Encumbrances except for those listed in Schedule "".~~

~~[21] [NTD: For Immovable Assets]: DECLARES that it has been proven to the satisfaction of this Court on investigation that the title of the Purchaser in and to the BC Real Property is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid.~~

~~[22] [NTD: For Movable Assets]: ORDERS that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the British Columbia Personal Property Security Registry (the "BC PPR") as may be necessary, from any registration filed against the Vendors in the BC PPR, provided that the Vendors shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendors shall be authorized to take any further steps by way of further application to this Court.~~

~~**For New Brunswick Property:**~~

~~[23] [NTD: For Immovable Assets]: ORDERS that upon registration in the Land Registry Office for the Registry Division of of an Application for Vesting Order in the form prescribed by the Registry Act (New Brunswick) duly executed by the [Receiver/Trustee/Monitor], the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule "" (the "NB Real Property") in fee simple, and is hereby directed to delete and expunge from title to the NB Real Property, all of the Encumbrances, other than the Permitted Encumbrances.~~

~~[24] [NTD: For Movable Assets]: ORDERS that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the New Brunswick Personal Property Registry (the "NBPPR") as may be necessary, from any registration filed against the Vendor in the NBPPR, provided that the Vendor shall not be authorized to effect any discharge~~

~~that would have the effect of releasing any collateral other than the Assets, and the Vendor shall be authorized to take any further steps by way of further application to this Court.~~

NET PROCEEDS

~~[25] ORDERS that the net proceeds¹⁰ from the sale of the Purchased Assets (the “Net Proceeds”) shall be remitted to the [Receiver/Trustee/Monitor] and shall be distributed in accordance with applicable legislation.~~ issuance of the Monitor’s Certificate.

[15] ~~[26]~~ **ORDERS** that for the purposes of determining the nature and priority of ~~the Encumbrances~~ Claims, the ~~Net Proceeds~~ net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that ~~upon payment from and after the delivery of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances except for the Permitted~~ Monitor’s Certificate all Claims and Encumbrances shall attach to the ~~Net Proceeds~~ 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.

[16] **AUTHORIZES AND DIRECTS** the Monitor to use the net proceeds from the sale of the Purchased Assets to pay any and all outstanding invoices of the beneficiaries of the Administration Charge (as defined in the Third ARIO), provided that such payments shall not affect or reduce the quantum of the Administration Charge, but only according to the conditions and limits provided for in the Second DIP Term Sheet (as defined in the Third ARIO).

[17] **ORDERS** that the Monitor may rely on written notice from the Sellers and the Buyer regarding the fulfillment of conditions to closing under the Purchase Agreement 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

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¹⁰ ~~The Motion and related draft order should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at “Net Proceeds”.~~

registration 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.

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ASSIGNMENT OF CONTRACTS

- [21] ORDERS and DECLARES that upon the issuance of the Monitor's Closing Certificate, the rights and obligations of the Sellers under the agreements listed in Schedule "D" hereto, as they may have been amended or restated from time to time (the "Assumed Contract(s)"), are automatically and irrevocably assigned to the Buyer without any further consents or approvals of this Court.
- [22] ORDERS that all Cure Costs in relation to the Assumed Contracts, which are set out in Schedule D, shall be remedied by the Buyer no later than thirty (30) days following issuance of the Monitor's Closing Certificate.
- [23] ORDERS that any anti-assignment, consent-to-assignment or any other provisions restricting or affecting the assignment by either Seller in any of the Assumed Contracts shall not restrict, limit, impair, prohibit or otherwise affect the assignment of any Assumed Contracts or of any Post-Closing Assigned/Assumed Contracts provided by this Order.
- [24] ORDERS that the Assumed Contracts shall be valid and binding and in full force and effect and enforceable by the Buyer in accordance with their terms for the benefit of the Buyer.
- [25] ORDERS and DIRECTS the Monitor to notify a copy of this Order to each of the counterparties to the Assumed Contracts, if any.
- [26] AUTHORIZES the Petitioners, the Buyer and the Monitor to perform all acts, sign all documents and take any other action that could be required or useful to give full effect to the assignment of the Assumed Contracts to the Buyer in accordance with this Order.

PROTECTION OF PERSONAL INFORMATION

- [27] ORDERS that, pursuant to sub-section 7(3)(c) of the ~~Canada~~ Personal Information Protection and Electronic Documents Act, SC 2000, c 5 or any similar provision of any applicable provincial legislation (collectively, the Receiver is "Applicable Privacy Laws"), the Petitioners and the Monitor are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including Buyer the personal information of those employees listed on Schedule "•" to in the custody or control of the Petitioners set out in the Purchase Agreement (the "Disclosed Information"). The Purchaser/Buyer shall maintain and protect the privacy of such information and shall be entitled to use the

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personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor;⁴⁴ ~~[NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause];~~ Petitioners.

[28] ORDERS that the Buyer shall:

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- (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;
- (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

[29] ~~[28]~~ ORDERS that notwithstanding:

- (a) ~~(i)~~ the pendency of these proceedings;
- (b) ~~(ii)~~ any petition for a ~~receiving~~ bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3*, ("the BIA") and any order issued pursuant to any such petition; or
- (c) ~~(iii)~~ the provisions of any federal or provincial legislation;

the vesting of ~~the~~ Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement 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 ~~Vendor~~ Petitioners, the ~~Purchaser~~ [Buyer, or the Receiver/Trustee/Monitor], nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~LIMITATION OF LIABILITY~~

RELEASES AND D&O CHANNELLING INJUNCTION

⁴⁴ ~~...This paragraph may not be necessary depending on the nature of the Purchased Assets.~~

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[30] ~~[29] DECLARES that, subject to other orders of this Court, nothing herein contained shall require the [Receiver/Trustee/Monitor] to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The [Receiver/Trustee/Monitor] shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the [BIA/CAA];~~ ORDERS that effective as of the issuance of the Monitor's Closing Certificate (a) the current and former employees, legal counsel and advisors of the Sellers and (b) the Monitor and its legal counsel (in such capacities, collectively, the "Released Parties") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and

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obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the issuance of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the business, operations, assets, property and affairs of the Sellers wherever or however conducted or governed, the administration and/or management of the Sellers, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, as they relate to the Sellers, or (ii) the Purchase Agreement and any agreement, document, instrument, matter or transaction involving the Sellers arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions (collectively the "Released Claims"), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Purchase Agreement and/or any agreement, document, instrument, matter or transaction involving the Sellers arising in connection with or pursuant to any of the foregoing.

[31] ORDERS that effective as of the issuance of the Monitor's Closing Certificate any person having, or claiming any entitlement or compensation relating to any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, executions, recoupments, debts, sums of

money, expenses, accounts, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) against a current or former director or officer of any the Sellers except a claim that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA (a “D&O Claim”) shall be irrevocably limited to recovery in respect of such D&O Claim solely from the proceeds of the applicable insurance policies held by the Sellers (the “Insurance Policies”), and persons with any D&O Claim will have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the current and former directors and officers of any the Sellers, other than enforcing such person’s rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies.

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THE MONITOR

[32] **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.

[33] ~~[30]~~ **DECLARES** that no action lies against the ~~{Receiver/Trustee/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 ~~{Receiver/Trustee/Monitor}~~ or belonging to the same group as the ~~Receiver/Monitor~~ shall benefit from the protection arising under the present paragraph.

GENERAL

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

~~[31] **ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario). [NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause] [Ontario – Adapt for other common law Provinces where applicable]~~

~~[32] **ORDERS** that the Purchaser or the ~~{Vendor/Receiver/Trustee/Monitor}~~ shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.~~

[33] **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

- [35] **ORDERS** that ~~the Purchase Agreement be~~ Exhibit P-6 to the Application shall be filed under seal and kept confidential ~~and under seal until the earlier of a) the closing of the Transaction; or b)~~ further order of this Court.

GENERAL

- [36] ~~[34]~~ **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;
- [37] **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.
- [38] ~~[35] DECLARES that the [Vendor/Receiver/Trustee/Monitor] shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the [Vendor/Receiver/Trustee/Monitor] shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the [Vendor/Receiver/Trustee/Monitor] as may be deemed necessary or appropriate for that purpose;~~ **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.

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- [39] ~~[36]~~ **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or ~~administrative body and any federal or state court or administrative body~~ 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 ~~act in aid of and to be complementary to this Court~~ give effect to this Order, and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of the 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.
- [40] ~~[37]~~ **ORDERS** ~~the~~ provisional execution of ~~the present~~ this Order notwithstanding any appeal and without ~~the requirement to provide any security or provision for costs whatsoever;~~

[41] THE WHOLE ~~[WITH/WITHOUT] COSTS~~ without costs.

J.S.C.

Attorneys for

Draft

Christian Immer, JCS

M^{TRE.} SANDRA ABITAN M^{TRE.} JULIEN M
ORISSETTE M^{TRE.} ILIA KRAVTSOV (O
SLER HOSKIN & HARCOURT LLP)
Attorneys for the Petitioners

Hearing date: February 13, 2023

SCHEDULE "A"

DRAFT CERTIFICATE

OF THE [RECEIVER/

TRUSTEE/MONITOR]

CANADA

PROVINCE OF
QUEBECQUÉBEC
DISTRICT OF MONTRÉAL

(Commercial Division)

S U P E R I R I O R -C O U R C O U R

(Sitting as a court designated pursuant
to the *Bankruptcy and Insolvency Act*
RSC 1985, c B-3)

File:

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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF: ♦

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

Debtor ~~and~~ [Petitioner] and ~~•~~ [Receiver/Trustee]/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor}

CERTIFICATE OF THE [RECEIVER/TRUSTEE/MONITOR]

RECITALS:

WHEREAS on September 29, 2022, the ~~Superior Court of Quebec (the "Court")~~ issued a order (the "**Order**") pursuant to the ~~(the "Act")~~ in respect of ~~(the "Petitioners")~~; ~~[NTD: refer to BIA notice of intention/proposal if applicable]~~

WHEREAS Debtors/Petitioners Xebec Adsorption Inc. & Al. filed an Application pursuant to the terms of the [Order/NOI], (the "[Receiver/Trustees/Monitor]") was named [Receiver/Trustees/Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended ("CCAA") and Deloitte Restructuring Inc. was appointed as monitor thereto (the "Monitor] of the Petitioner; and").

WHEREAS on February 13, 2023, the Court issued an Order (the "**Approval, Vesting and Assignment Order**") ~~thereby, inter alia,~~ authorizing and approving, *inter alia*, the execution ~~by the Petitioner of an agreement entitled~~ of a Asset Purchase Agreement dated February 8, 2023 (the "**Purchase Agreement**") ~~by and~~ between ~~, as vendor (CDA Systems, LLC and California Compression LLC (collectively, the "VendorSellers"), and Sullair, LLC, as purchaser/buyer, (the "Purchaser"), copy of which was filed in the Court record, and into all the transactions contemplated therein (the "Transaction")~~ "Buyer", with

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such minor alterations, changes, amendments, deletions or additions thereto, as may be agreed to by the Sellers and the Buyer, with the consent of the ~~{Receiver/Trustees/Monitor}~~.

WHEREAS the Approval, Vesting and Assignment Order contemplates the issuance of this Certificate of the ~~{Receiver/Trustees/Monitor}~~ once ~~the~~ (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the ~~Purchaser~~Buyer to the Sellers; and (c) ~~and~~ all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE ~~{RECEIVER/TRUSTEES/MONITOR}~~ CERTIFIES {THAT IT HAS BEEN ADVISED BY THE ~~VENDOR~~SELLERS AND THE ~~PURCHASER~~BUYER AS TO} THE FOLLOWING:

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the ~~{Receiver/Trustees/Monitor}~~ at _____ ~~[TIME]~~ on _____ [DATE].

Deloitte Restructuring Inc., in its capacity as Monitor to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

SCHEDULE "B"

ENCUMBRANCES TO BE VESTED

Uniform Commercial Code (California)

<u>Secured Party(ies)</u>	<u>Debtor(s)</u>	<u>File Number</u>	<u>Description</u>	<u>Date Filed</u>
<u>NATIONAL BANK OF CANADA</u>	<u>CDA SYSTEMS, LLC</u>	<u>U210026524223</u>	<u>All right, title and interest of Debtor in all personal property, wherever located and whether now owned or hereafter owned or acquired by Debtor, whether or not affixed to realty, in all Proceeds and Products thereof in any form, in all parts, accessories, attachments, special tools, additions, replacements, substitutions and accessions thereto or therefor, in all supporting obligations thereof and in all increases or profits received therefrom, including all property from time to time delivered by Debtor to Secured Party and all Goods (including, but not limited to, Equipment, Fixtures, and Inventory), Accounts, Chattel Paper, Documents, Instruments, Investment Property, General Intangibles, Deposit Accounts and Letter- of- Credit Rights.</u>	<u>2/25/2021</u>
<u>NATIONAL BANK OF CANADA</u>	<u>CALIFORNIA COMPRESSION, LLC</u>	<u>U21097074233</u>	<u>All right, title and interest of Debtor in all personal property, wherever located and whether now owned or hereafter owned or</u>	<u>12/22/2021</u>

			<u>acquired by Debtor, whether or not affixed to realty, in all</u>	
			<u>Proceeds and Products thereof in any form, in all parts, accessories, attachments, special tools, additions, replacements, substitutions and accessions thereto or therefor, in all supporting obligations thereof and in all increases or profits received therefrom, including all property from time to time delivered by Debtor to Secured Party and all Goods (including, but not limited to, Equipment, Fixtures, and Inventory), Accounts, Chattel Paper, Documents, Instruments, Investment Property, General Intangibles, Deposit Accounts and Letter-of-Credit Rights.</u>	
<u>EXPORT DEVELOPMENT CANADA</u>	<u>CALIFORNIA COMPRESSION, LLC</u>	<u>U220200892224</u>	<u>All right, title and interest of Debtor in all personal property, wherever located and whether now owned or hereafter owned or acquired by Debtor, whether or not affixed to realty, in all Proceeds and Products thereof in any form, in all parts, accessories, attachments, special tools, additions, replacements, substitutions and accessions thereto or therefor, in all supporting obligations thereof and in all increases or profits received therefrom, including all property from</u>	<u>6/9/2022</u>

				<u>time to time delivered by Debtor to Secured Party and all Goods (including, but not</u>	
--	--	--	--	--	--

				<u>limited to, Equipment, Fixtures, and Inventory), Accounts, Chattel Paper, Documents, Instruments, Investment Property, General Intangibles, Deposit Accounts and Letter-of- Credit Rights.</u>	
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SCHEDULE C

PERMITTED ENCUMBRANCES

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1. Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under any Personal Property Leases.
2. Encumbrances affecting a landlord's, lessor's, licensor's or sublandlord's, as applicable, interest in any applicable Real Property Leases.
3. Notices registered on title in respect of the Real Property Leases.
4. Applicable municipal by-laws, development agreements, subdivision agreements, site plan agreements, other agreements of similar import, building and other restrictions, easements, servitudes, rights of way and licences as relates to any applicable Real Property Leases.
5. Minor survey exceptions, minor encumbrances, easements or reservations of, or rights of other for, rights-of-way, sewers, electric lines, telephone lines and other similar purposes, or zoning or similar restriction as to the use of any applicable Real Property Leases.
6. Encumbrances expressly permitted in writing by the Buyer.

SCHEDULE "C" D

ASSUMED

CONTRACTS

ASSIGNED AGREEMENTS

Draft

<u>Counterparty</u>	<u>Project</u>	<u>Customer</u>	<u>Cure Costs (USD)</u>
California Compression, LLC	Schnitzer Steel 2023' Main Plant Compressor/Dryer PM Agreement	Schnitzer Steel Industries Inc	..
California Compression, LLC	WADHAM PM SCHEDULE	Wadham Energy L.P.	..
California Compression, LLC	Sonoco Exeter Compressor/Vacuum 2023 PM Agreement	Sonoco Exeter	..
California Compression, LLC	/Earthbound 2022-2023 PM Schedule	Earthbound Farms/ Taylor Farms	..
California Compression, LLC	US PIPE 2022-2023 PM Agreement	US Pipe	..
California Compression, LLC	CARGILL SALT 2022-2023 PM AGREEMENT	Cargill Salt	..
California Compression, LLC	Coherent 2022-2023 PM AGREEMENT	Coherent	..
California Compression, LLC	Teichert Aggregates-Vernalis Plant 22-23 PM Agreement	TEICHERT AGGREGATES	..
California Compression, LLC	SHELL CATALYST PM AGREEMENT	Shell Catalyst & Technologies LP	..
California Compression, LLC	2022 PM AGREEMENT	Zymergen, Inc.	..
California Compression, LLC	2022 Air Systems Services	Gallo Glass	..
California Compression, LLC	Musco 2021-22' PM Agreement	Musco Family Olive Co.	..
California Compression, LLC	BALL METAL 2022 PM AGREEMENT	Sonoco Metal Packaging LLC	..
California Compression, LLC	PP-PM 2021-22 PM Agreement	Ardagh Metal Beverage USA	..
California Compression, LLC	2021 PM AGREEMENT	Northern California Power Agency	..
<u>Counterparty</u>	<u>Distribution Agreement</u>	<u>Distributor</u>	<u>Cure Costs (USD)</u>
CDA Systems, LLC	Industrial Distributor Agreement	Rogers Machinery Company, Inc.	25,743.39 \$
CDA Systems, LLC	Distribution Agreement	SPX Flow Technology USA, Inc.	145,951.66 \$

<u>Counterparty</u>	<u>Lease</u>	<u>Cure Costs (USD)</u>
California Compression, LLC	Lease dated January 14, 2021, between California Compression, LLC and Arroyo/ Livermore Business Park LP in respect of premises located at 4659 Las Positas Rd.	..
CDA Systems, LLC	Standard Industrial/Commercial Multi-Tenant Lease-Net dated April 5, 2017, between CDA Systems, LLC and DJ Smith Family Partnership	..
CDA Systems, LLC	Rental Agreement dated October 1, 2019, between Public Storage and Richard Yue (on behalf of CDA Systems, LLC).	..
Arroyo/Livermore Business Park L.P. and Advanced Air Leak	Consent and Agreement Regarding Sublease and Control of Tenant and First Amendment of Lease dated	

Draft

Detection	August 24, 2021 between Arroyo/Livermore Business Park L.P., California Compression, LLC and Advanced Air Leak Detection	
CDA Systems, LLC	Commercial Lease Agreement dated May 2, 2022 between CDA Systems, LLC and 5360 Gateway Plaza LLC	=

Exhibit P-4

**Draft FSTQ Approval and
Vesting Order**

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 13, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

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

and
DELOITTE RESTRUCTURING INC.
Monitor

and
**FONDS DE SOLIDARITÉ DES TRAVAILLEURS DU QUÉBEC (F.T.Q.)
GNR QUÉBEC CAPITAL L.P.**

Draft

**GNR QUÉBEC CAPITAL MANAGEMENT INC.
THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL
RIGHTS (QUÉBEC)**
Impleaded Parties

APPROVAL AND VESTING ORDER IN RESPECT OF GNR LP

- [1] **CONSIDERING** the *Application for the Issuance of an Approval, Vesting and Assignment Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the ● Report of the Monitor dated ●, 2023;
- [3] **CONSIDERING** the submissions of counsel;
- [4] **CONSIDERING** the Third Amended and Restated Initial Order (the “**Third ARIO**”) issued by this Court on February 13, 2023;
- [5] **GIVEN** the provisions of the CCAA;
- [6] **CONSIDERING** that it is appropriate to issue an order approving the transaction (the “**Transaction**”) contemplated by the agreement entitled Share Purchase and Unit Repurchase Agreement dated February 8, 2023 (the “**Agreement**”) between Xebec Adsorption Inc. and Xebec RNG Holdings Inc as sellers (collectively the “**Vendor**”), and Fonds de solidarité des travailleurs du Québec (F.T.Q.) and GNR Québec Capital L.P. as buyers (collectively, the “**Purchaser**”), a copy of which was filed as **Exhibit P-7 (under seal)** to the Application, and vesting in the Purchaser the Purchased Interest.

THE COURT HEREBY:

- [7] **GRANTS** the Application.

DEFINITIONS

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

Draft

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 Agreement by the Vendor 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 Vendor and the Purchaser, with the consent of the Monitor.

EXECUTION OF DOCUMENTATION

- [12] **AUTHORIZES** the Purchaser and the Vendor 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 Agreement and any other ancillary document which could be required or useful to give full and complete effect thereto, including the Transaction.

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 INTEREST

- [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 Interest shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any 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

Draft

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 the Civil Code of Québec.

- [15] For greater certainty, **ORDERS** that all of the Encumbrances, affecting or relating to the Purchased Interests be cancelled and discharged as against the Purchased Interest, 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 Interest shall stand in the place and stead of the Purchased Interest, 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 Interest with the same priority as they had with respect to the Purchased Interest immediately prior to the sale, as if the Purchased Interest 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] **AUTHORIZES AND DIRECTS** the Monitor to use the net proceeds from the sale of the Purchased Assets to pay any and all outstanding invoices of the beneficiaries of the Administration Charge (as defined in the Third ARIO), provided that such payments shall not affect or reduce the quantum of the Administration Charge, but only according to the conditions and limits provided for in the Second DIP Term Sheet (as defined in the Third ARIO).
- [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** that the Monitor may rely on written notice from the Vendor and the Purchaser regarding the fulfillment of conditions to closing under the Agreement and shall have no liability with respect to the delivery of the Monitor’s Certificate.
- [20] **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

- [21] **ORDERS** the *Quebec Personal and Movable Real Rights Registrar* to strike and discharge any registration, as the case may be, in connection with the Purchased Interest, in order to allow the transfer to the Purchaser of the Purchased Interest free and clear of such registrations.

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[22] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to reduce the scope of the registration numbers listed in **Schedule "B"** hereto in connection with the Purchased Assets in order to allow the transfer of said Purchased Assets to the Buyer free and clear of registrations on the following Vendor's assets:

- (a) right, title and interest in and to the issued and outstanding shares in the capital of the GNR Québec Capital Management Inc.; and
- (b) right, title and interest in and to the limited partnership units in the capital of GNR Québec Capital L.P.

PROTECTION OF PERSONAL INFORMATION

[23] **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 Purchaser the personal information in the custody or control of the Petitioners set out in the Agreement (the "**Disclosed Information**"). The Purchaser 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.

[24] **ORDERS** that the Purchaser 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;
- (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

[25] **ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;

- (b) any petition for a bankruptcy order now or hereafter issued pursuant to the BIA and any order issued pursuant to any such petition; or
- (c) the provisions of any federal or provincial legislation;

the vesting of Purchased Interest contemplated in this Order, as well as the execution of the Agreement 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 Purchaser, or the Monitor.

RELEASES AND D&O CHANNELLING INJUNCTION

- [26] **ORDERS** that effective as of the issuance of the Monitor's Certificate (a) the employees, legal counsel and advisors of the Vendor; (b) the Monitor and its legal counsel; and (c) the Purchaser and its respective current and former directors, officers, employees, legal counsel and advisers (in such capacities, collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the issuance of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the business, operations, assets, property and affairs of the Vendor wherever or however conducted or governed, the administration and/or management of the Vendor, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, as they relate to the Vendor, (ii) the Agreement and any agreement, document, instrument, matter or transaction involving the Vendor arising in connection with or pursuant to any of the foregoing and/or the consummation of the Transaction, or (iii) the Amended and Restated Limited Partnership Agreement intervened on May 29, 2020 between the Debtor Xebec Adsorption Inc, the mises en cause Fonds de solidarité des travailleurs du Québec (F.T.Q.) and GNR Québec Capital Management Inc, (collectively the "**Released Claims**"), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged,

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released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Purchase Agreement and/or any agreement, document, instrument, matter or transaction involving the Sellers arising in connection with or pursuant to any of the foregoing.

- [27] **ORDERS** that effective as of the issuance of the Monitor's Closing Certificate any person having, or claiming any entitlement or compensation relating to any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, executions, recoupments, debts, sums of money, expenses, accounts, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) against a current or former director or officer of any the Sellers except a claim that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA (a "**D&O Claim**") shall be irrevocably limited to recovery in respect of such D&O Claim solely from the proceeds of the applicable insurance policies held by the Sellers (the "**Insurance Policies**"), and persons with any D&O Claim will have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the current and former directors and officers of any the Sellers, other than enforcing such person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies.

THE MONITOR

- [28] **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.
- [29] **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.
- [30] **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 Interest of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets or interest of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

- [31] **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

- [32] **ORDERS** that the Agreement, **Exhibit P-7** shall be filed under seal and kept confidential until further order of this Court.

GENERAL

- [33] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [34] **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 Purchaser.
- [35] **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.
- [36] **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.
- [37] **ORDERS** provisional execution of this Order notwithstanding any appeal and without security.

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

CHRISTIAN IMMER, J.S.C.

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

Hearing date: February 13, 2023

Draft

**SCHEDULE A
DRAFT 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

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

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

Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

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CERTIFICATE OF THE MONITOR

RECITALS:

WHEREAS on September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & 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 February 13, 2023, the Court issued an Order (the "**Approval and Vesting Order**") authorizing and approving, *inter alia*, the execution of a Share Purchase and Unit Repurchase Agreement by and among Xebec Adsorption Inc. (the "**Vendor**"), and Fonds de solidarité des travailleurs du Québec (F.T.Q.) and GNR Québec Capital L.P. as buyers (collectively the "**Purchaser**"), a copy of which was filed in the Court record (the "**Agreement**"), and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor.

WHEREAS the Approval and Vesting Order contemplates the issuance of this Certificate of the Monitor once (a) the Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Agreement) has been paid by the Purchaser to the Vendor; and (c) all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE MONITOR CERTIFIES THAT IT HAS BEEN ADVISED BY THE VENDOR AND THE PURCHASER AS TO THE FOLLOWING:

- (a) the Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Agreement) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Monitor on _____ [DATE].

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Deloitte Restructuring Inc., in its capacity as Monitor
to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

SCHEDULE B

ENCUMBRANCES TO BE VESTED

- 1) Movable hypothec without delivery by Xebec Adsorption Inc. dated July 16, 2021 in favour of Export Development Canada and registered at the Register of Personal and Movable Real Rights (RDPRM) on July 20, 2021 under number 21-0793644-0001;
- 2) Movable hypothec without delivery by Xebec Adsorption Inc. dated February 19, 2021 in favour of National Bank of Canada and registered at the Register of Personal and Movable Real Rights (RDPRM) on February 19, 2021 under number 21-0144140-0001; and
- 3) Movable hypothec without delivery by Xebec Adsorption Inc. dated December 6, 2019 in favour of National Bank of Canada and registered at the Register of Personal and Movable Real Rights (RDPRM) on February 5, 2020 under number 20-0119389-0001.

Draft

Exhibit P-4A

Comparison between the
FSTQ Approval and Vesting
Order and the model
approval and vesting order
published by the Barreau de
Montréal

May 2014

SUPERIOR COURT

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: February 13, 2023

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

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

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

and
DELOITTE RESTRUCTURING INC.
Monitor

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

Draft

GNR QUÉBEC CAPITAL L.P.
GNR QUÉBEC CAPITAL MANAGEMENT INC.
THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL
RIGHTS (QUÉBEC)
Impleaded Parties

APPROVAL AND VESTING ORDER IN RESPECT OF GNR LP

~~(Commercial Division)~~

~~CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No. 500-11-
DATE: ●~~

~~PRESIDING :- THE HONOURABLE, J.S.C.~~

~~IN THE MATTER OF ●:~~

●
— Debtor

~~-and-~~

●
~~THE LAND REGISTRAR FOR THE LAND REGISTRY
OFFICE FOR THE REGISTRATION DIVISION OF ● (Québec)/
THE LAND REGISTRAR FOR THE LAND REGISTRY OFFICE
OF ● (Rest of Canada) / THE REGISTRAR OF THE REGISTER OF PERSONAL AND
MOVABLE REAL RIGHTS (Québec)~~

— Mis-en-Cause

Draft

~~-and-~~

●

~~— [Petitioner]¹~~

~~-and-~~

●

~~— [Receiver/Trustee/Monitor]~~

~~APPROVAL AND VESTING ORDER²⁻³~~

[1] ~~ON READING~~ **CONSIDERING** the ~~[Debtor/Petitioner/Receiver/Trustee/Monitor]'s~~ *Motion* Application for the Issuance of an Approval ~~and~~ Vesting and Assignment Order (the "~~Motion~~", ~~the affidavit~~ "Application") pursuant to the Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended ("CCAA") and the exhibits thereto and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof, as well as;

[2] **CONSIDERING** the ● Report of the ~~[Receiver/Trustee/Monitor]~~ dated ● ~~(the "Report")~~ ●, 2023;

[2] ~~SEEING~~ the service of the Motion⁴;

¹ ~~Under section 243(1) of the BIA, the sale of assets of an insolvent debtor by the receiver may be ordered at the request of the secured creditor. In such a case, the secured creditor would be the petitioner.~~

² ~~A blacklined version must be included with the Motion~~

³ ~~This Model Authorization and Vesting Order (the "**Model Order**") is an order authorizing an insolvent debtor under Court protection (whether under the *Bankruptcy and Insolvency Act* ("**BIA**") or the *Companies' Creditors Arrangement Act* ("**CCAA**") or a receiver appointed under s. 243 of the BIA to enter into a transaction for the sale of its assets and vesting the purchased assets in the purchaser, free and clear of any liens, charges, hypothecs or other encumbrances.~~

⁴ ~~The Motion should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should be prepared to provide proof of service to the Court. The practice in Quebec is to implead (as mis-en-cause) and serve the proceedings requesting the issuance of an authorization and vesting orders on the land registry named in the orders sought and on the Register of personal and movable real rights, as the case may be. The practice of impleading the registries~~

Draft

- [3] ~~SEEING~~ **CONSIDERING** the submissions of ~~[Debtor/Receiver/Trustee/Monitor]'s attorneys and the submissions of~~ counsel;
- [4] **CONSIDERING** the Third Amended and Restated Initial Order (the "Third ARIO") issued by this Court on February 13, 2023;
- [5] **GIVEN** the provisions of the CCAA;
- [6] ~~[4] SEEING~~ **CONSIDERING** that it is appropriate to issue an order approving the transaction(s) (the "Transaction") contemplated by the agreement entitled ~~the "Share Purchase and Unit Repurchase Agreement") by and~~ dated February 8, 2023 (the "Agreement") between [Debtor/Receiver/Trustee/Monitor] (the "Xebec Adsorption Inc. and Xebec RNG Holdings Inc as sellers (collectively the "Vendor"), as vendor, and (and Fonds de solidarité des travailleurs du Québec (F.T.Q.) and GNR Québec Capital L.P. as buyers (collectively, the "Purchaser"), as purchaser, a copy of which was filed as **Exhibit RP-7 (under seal)** to the Motion Application, and vesting in the Purchaser the ~~assets described in the Purchase Agreement (the "Purchased Assets")~~⁵ Interest.

WHEREFORE THE COURT HEREBY:

- [7] ~~[5] GRANTS~~ the Motion Application.

DEFINITIONS

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

SERVICE

- [9] ~~[6] ORDERS~~ that any prior delay for the presentation of ~~this Motion~~ the Application is hereby abridged and validated so that ~~this Motion~~ the Application is properly returnable today and ~~hereby~~ dispenses with further service thereof.
- [10] ~~[7] PERMITS~~ service of this Order at any time and place and by any means whatsoever.

~~concerned does not appear to be followed in Canadian provinces outside of Quebec, however, such that preliminary inquiries with the registries concerned are recommended before serving any proceedings on land or other registries outside of Quebec.~~

⁵ ~~To allow this Order to be free standing (and not require reference to the Court record and/or the Purchase Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

SALE TRANSACTION APPROVAL

[11] ~~[8]~~ **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the ~~Purchase~~-Agreement by the Vendor is hereby authorized and approved nunc pro tunc, with such ~~non-material~~minor alterations, changes, amendments, deletions or additions thereto as may be agreed to ~~but only by the Vendor and the Purchaser~~, with the consent of the ~~[Receiver/Trustee/Monitor]~~.

EXECUTION OF DOCUMENTATION

[12] ~~[9]~~ **AUTHORIZES** the ~~[Vendor/Receiver/Trustee/Monitor] and the~~ Purchaser and the Vendor 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 ~~Purchase~~-Agreement (~~Exhibit R-1~~) and any other ancillary document which could be required or useful to give full and complete effect thereto, including the Transaction.

AUTHORIZATION

[13] ~~[10]~~ **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the ~~Vendor~~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 (choose A or B whether Purchased Assets are only located in Quebec (A) or also outside of Quebec (B)) INTEREST

[14] ~~[11]~~ **A** ~~AND~~ **ORDERS** and **AND** **DECLARES** that upon the issuance of a ~~[Receiver/Trustee/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 AssetsInterest shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, ~~right of retention, charges, hypothecs, deemed trusts, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the Property, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "Encumbrances"⁶), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all~~

⁶ ~~The "Encumbrances" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served.~~

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~~charges, or security evidenced by registration, publication or filing pursuant to the Civil Code of Québec in movable / immovable property, excluding however, the permitted encumbrances and restrictive covenants listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be cancelled and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.~~

[11] ~~**B** **ORDERS** and **DECLARES** that upon the issuance of a [Receiver/Trustee/Monitor]'s certificate substantially in the form appended as Schedule "A" hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any 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 "**Encumbrances**" "**Claims**"), including, without limiting the generality of the foregoing, all encumbrances created by order of this Court, all charges, or security ~~interests or charges~~ evidenced by registration, publication or filing pursuant to the Civil Code of Québec, ~~the [Province(s)] Personal Property Security Act, or any other applicable legislation providing for a security interest in personal or movable property, excluding however, the permitted encumbrances, easements and restrictive covenants listed on Schedule "B" hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.~~~~

[12] ~~**ORDERS** and **DECLARES** that upon the issuance of the Certificate, the rights and obligations of the Vendor under the Agreements listed on **Schedule "C"** hereto (the "**Assigned Agreements**") are assigned to the Purchaser [and **ORDERS** that all monetary defaults of the Debtor in relation to the Assigned Agreements — other than those arising by reason only of the insolvency of the Debtor, the commencement of proceedings under the [BIA/CCAA] or the failure to perform non-monetary obligations — shall be remedied on or before ●].~~

[13] ~~**DECLARES** that upon issuance of the Certificate, the Transaction shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*. [This paragraph is only required when the sale is done by a Receiver]~~

[14] ~~**ORDERS** and **DIRECTS** the [Vendor/Receiver/Trustee/Monitor] to serve a copy of this Order to every party to the Assigned Agreements.~~

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- [15] For greater certainty, **ORDERS** that all of the Encumbrances, affecting or relating to the Purchased Interests be cancelled and discharged as against the Purchased Interest, 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 Interest shall stand in the place and stead of the Purchased Interest, 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 Interest with the same priority as they had with respect to the Purchased Interest immediately prior to the sale, as if the Purchased Interest 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] **AUTHORIZES AND DIRECTS** the Monitor to use the net proceeds from the sale of the Purchased Assets to pay any and all outstanding invoices of the beneficiaries of the Administration Charge (as defined in the Third ARIO), provided that such payments shall not affect or reduce the quantum of the Administration Charge, but only according to the conditions and limits provided for in the Second DIP Term Sheet (as defined in the Third ARIO).
- [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** that the Monitor may rely on written notice from the Vendor and the Purchaser regarding the fulfillment of conditions to closing under the Agreement and shall have no liability with respect to the delivery of the Monitor's Certificate.
- [20] ~~[15]~~ **ORDERS and AND DIRECTS** the **[Receiver/Trustee/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, ~~forthwith~~ as soon as practicable after the issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS⁷⁸⁹

~~⁷ This Model Order provides a model for Quebec Courts to effect the vesting of assets in the Province of Quebec as well as in other Canadian provinces. In each province other than Quebec, the provisions of the Model Order dealing with registration of title and the discharge of encumbrances will have to be adjusted to refer to the appropriate registry and related offices and the appropriate terminology. Province specific orders are identified in this Model Order. While the Model Order contains proposed language, verifications with lawyers in the relevant jurisdiction is advisable.~~

~~⁸ Land registries in both in Quebec and in the rest of Canada may be consulted prior to the issuance of a vesting order so as to validate the language of the proposed orders relating to said land registries. This procedure,~~

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For Quebec Property:

~~[16] ORDERS the Land Registrar of the Land Registry Office for the Registry Division of ●, upon presentation of the Certificate in the form appended as Schedule "A" and a certified copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to publish this Order and (i) to make an entry on the Land Register showing the Purchaser as the owner of the immovable property identified in Schedule "●" hereto (the "Quebec Real Property") and (ii) to cancel any and all Encumbrances on Quebec Real Property (other than Permitted Encumbrances), including, without limitation, the following registrations published at the said Land Registry Office:~~

~~▪ [provide details of security/encumbrances to be discharged]~~

[21] ORDERS the Quebec Personal and Movable Real Rights Registrar to strike and discharge any registration, as the case may be, in connection with the Purchased Interest, in order to allow the transfer to the Purchaser of the Purchased Interest free and clear of such registrations.

[22] ~~[17]~~ORDERS the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to [reduce the scope of] or [strike] the ~~registrations number~~ [provide details of security/encumbrances to be discharged] registration numbers listed in Schedule "B" hereto in connection with the Purchased ~~Asset~~Assets in order to allow the transfer ~~to the Purchaser~~ of the said Purchased Assets to the Buyer free and clear of ~~such~~ registrations. on the following Vendor's assets:

For Ontario Property:

~~[18] ORDERS that upon registration in the Land Registry Office~~

~~(a) [NTD: For Land Titles System]: for the Land Titles Division of ● of an Application for Vesting Order in the form prescribed by the Land Registration Reform Act (Ontario), including a law statement confirming that the Certificate has been filed, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule "●" (the "Ontario Real Property") hereto in fee simple, and is hereby directed to delete and expunge from title to the ● Real Property all of the Encumbrances, which for the sake of clarity do not include the Permitted Encumbrances listed on Schedule B;~~

~~order so as to validate the language of the proposed orders relating to said land registries. This procedure, known as a "pre-validation procedure" in Quebec, is recommended so as to ensure that the vesting order is properly registered without undue delay after its issuance.~~

⁹~~—The registration of a vesting order with a land registry may be subject to statutory delays. For instance, in Quebec, land registrars require the expiry of the delay for appeal before a judgment cancelling a registration can be published.~~

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~~(b) [NTD: For Land Registry System]: for the Registry Division of ● of a Vesting Order in the form prescribed by the Land Registration Reform Act (Ontario), including a law statement confirming that the Certificate has been filed, the Land Registrar is hereby directed to record such Vesting Order in respect of the subject real property identified in Schedule "●" (the "Ontario Real Property"), which for the sake of clarity do not include the Permitted Encumbrances listed on Schedule B;~~

~~[19] [NTD: For Movable Assets]: ORDERS that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the Ontario Personal Property Registry ("OPPR") as may be necessary, from any registration filed against the Vendor in the OPPR, provided that the Vendor shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendor shall be authorized to take any further steps by way of further application to this Court.~~

~~**For British Columbia Property:**~~

~~[20] [NTD: For Immovable Assets]: ORDERS the British Colombia Registrar of Land Titles (the "BC Registrar"), upon the registration in the Land Title Office for the Land Title District of ● of a certified copy of this Order, together with a letter from [Receiver/Trustee/Monitor's counsel], solicitors for the [Receiver/Trustee/Monitor], authorizing registration of this Order,~~

~~(a) to enter the Purchaser as the owner of the lands, as identified in Schedule "●" hereto (the "BC Real Property"), together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the BC Real Property; and~~

~~(b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the BC Real Property all of the registered Encumbrances except for those listed in Schedule "●".~~

~~[21] [NTD: For Immovable Assets]: DECLARES that it has been proven to the satisfaction of this Court on investigation that the title of the Purchaser in and to the BC Real Property is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid.~~

~~[22] [NTD: For Movable Assets]: ORDERS that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the British Columbia Personal Property Security Registry (the "BC PPR") as may be necessary, from any registration filed against the Vendors in the BC PPR, provided that the Vendors shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the Purchased Assets, and the Vendors shall be authorized to take any further steps by way of further application to this Court.~~

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For New Brunswick Property:

~~[23] **[NTD: For Immovable Assets]: ORDERS** that upon registration in the Land Registry Office for the Registry Division of ~~●~~ of an Application for Vesting Order in the form prescribed by the Registry Act (New Brunswick) duly executed by the **[Receiver/Trustee/Monitor]**, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in **Schedule "●"** (the "**NB Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the NB Real Property, all of the Encumbrances, other than the Permitted Encumbrances.~~

~~[24] **[NTD: For Movable Assets]: ORDERS** that upon the issuance of the Certificate, the Vendor shall be authorized to take all such steps as may be necessary to effect the discharge of all Encumbrances registered against the Purchased Assets, including filing such financing change statements in the New Brunswick Personal Property Registry (the "**NBPPR**") as may be necessary, from any registration filed against the Vendor in the NBPPR, provided that the Vendor shall not be authorized to effect any discharge that would have the effect of releasing any collateral other than the ~~●~~ Assets, and the Vendor shall be authorized to take any further steps by way of further application to this Court.~~

NET PROCEEDS

~~[25] **ORDERS** that the net proceeds¹⁰ from the sale of the Purchased Assets (the "**Net Proceeds**") shall be remitted to the **[Receiver/Trustee/Monitor]** and shall be distributed in accordance with applicable legislation.~~

~~[26] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds 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~~

~~(a) right, title and interest in and to the issued and outstanding shares in the capital of the GNR Québec Capital Management Inc.; and~~

~~(b) right, title and interest in and to the limited partnership units in the capital of GNR Québec Capital L.P.~~

PROTECTION OF PERSONAL INFORMATION

¹⁰ ~~The Motion and related draft order should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "Net Proceeds".~~

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[23] ~~[27]~~ **ORDERS** that, pursuant to sub-section 7(3)(c) of the ~~Canada~~ *Personal Information Protection and Electronic Documents Act, SC 2000, c 5* or any similar provision of any applicable provincial legislation (collectively, the Receiver is "**Applicable Privacy Laws**"), the Petitioners and the Monitor are authorized ~~and permitted~~ to disclose and transfer to the Purchaser ~~all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including the~~ personal information ~~of those employees listed on Schedule "a" to~~ in the custody or control of the Petitioners set out in the Purchase Agreement (the "Disclosed Information"). The Purchaser 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 Debtor;¹⁴ ~~[NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause];~~ Petitioners.

[24] **ORDERS** that the Purchaser 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;
- (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

[25] ~~[28]~~ **ORDERS** that notwithstanding:

- (a) ~~(i)~~ the pendency of these proceedings;
- (b) ~~(ii)~~ any petition for a receiving bankruptcy order now or hereafter issued pursuant to the ~~Bankruptcy and Insolvency Act ("BIA")~~ and any order issued pursuant to any such petition; or
- (c) ~~(iii)~~ the provisions of any federal or provincial legislation;

the vesting of ~~the~~ Purchased Assets Interest contemplated in this Order, as well as the execution of the ~~Purchase Agreement~~ authorized by this Order, and the

¹⁴ ~~__This paragraph may not be necessary depending on the nature of the Purchased Assets.~~

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 ~~Vendor~~Petitioners, the Purchaser, ~~{~~or the ~~Receiver/Trustee/Monitor}~~.

LIMITATION OF LIABILITY

~~[29] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the [Receiver/Trustee/Monitor] to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The [Receiver/Trustee/Monitor] shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the [BIA/CCAA];~~

RELEASES AND D&O CHANNELLING INJUNCTION

[26] **ORDERS** that effective as of the issuance of the Monitor's Certificate (a) the employees, legal counsel and advisors of the Vendor; (b) the Monitor and its legal counsel; and (c) the Purchaser and its respective current and former directors, officers, employees, legal counsel and advisers (in such capacities, collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the issuance of the Monitor's Certificate or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the business, operations, assets, property and affairs of the Vendor wherever or however conducted or governed, the administration and/or management of the Vendor, these CCAA proceedings and/or the Chapter 15 case commenced in the United States Bankruptcy Court for the District of Delaware, as they relate to the Vendor, (ii) the Agreement and any agreement, document, instrument, matter or transaction involving the Vendor arising in connection with or pursuant to any of the foregoing and/or the consummation of the Transaction, or (iii) the Amended and Restated Limited Partnership Agreement intervened on May 29, 2020 between

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the Debtor Xebec Adsorption Inc, the mises en cause Fonds de solidarité des travailleurs du Québec (F.T.Q.) and GNR Québec Capital Management Inc, (collectively the “Released Claims”), which Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties; provided that, nothing in this paragraph shall waive, discharge, release, cancel or bar (x) any claim with respect to any act or omission that is determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence, or (y) any obligations of any of the Released Parties under or in connection with the Purchase Agreement and/or any agreement, document, instrument, matter or transaction involving the Sellers arising in connection with or pursuant to any of the foregoing.

- [27] **ORDERS** that effective as of the issuance of the Monitor’s Closing Certificate any person having, or claiming any entitlement or compensation relating to any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, executions, recoupments, debts, sums of money, expenses, accounts, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) against a current or former director or officer of any the Sellers except a claim that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA (a “D&O Claim”) shall be irrevocably limited to recovery in respect of such D&O Claim solely from the proceeds of the applicable insurance policies held by the Sellers (the “Insurance Policies”), and persons with any D&O Claim will have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from any of the current and former directors and officers of any the Sellers, other than enforcing such person’s rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies.

THE MONITOR

- [28] **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.
- [29] ~~[30]~~ **DECLARES** that no action lies against the **{Receiver/Trustee/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 **{Receiver/Trustee/Monitor}** or belonging to the same group as the **Receiver/Monitor** shall benefit from the protection arising under the present paragraph.

[30] 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 Interest of the Petitioners. The Monitor shall not, as a result of this Order, be deemed to be in possession of any assets or interest of the Petitioners within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

[31] 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

[32] ORDERS that the Agreement, Exhibit P-7 shall be filed under seal and kept confidential until further order of this Court.

GENERAL

~~[31] ORDERS AND DECLARES that the Transaction is exempt from the application of the Bulk Sales Act (Ontario). [NOTE: It is desirable to obtain specific evidence in order to convince the Tribunal of the necessity of this clause] [Ontario – Adapt for other common law Provinces where applicable]~~

~~[32] ORDERS that the Purchaser or the [Vendor/Receiver/Trustee/Monitor] shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.~~

~~[33] ORDERS that the Purchase Agreement be kept confidential and under seal until the earlier of a) the closing of the Transaction; or b) further order of this Court.~~

[33] ~~[34]~~ DECLARES that this Order shall have full force and effect in all provinces and territories in Canada;

[34] 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 Purchaser.

[35] ~~DECLARES that the [Vendor/Receiver/Trustee/Monitor] shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the~~

~~[Vendor/Receiver/Trustee/Monitor] shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the [Vendor/Receiver/Trustee/Monitor] as may be deemed necessary or appropriate for that purpose;~~ 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.

[36] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or ~~administrative body and any federal or state court or administrative body~~ 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 ~~act in aid of and to be complementary to this Court~~ give effect to this Order, and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of the 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.~~

[37] **ORDERS** ~~the~~ provisional execution of ~~the present~~ this Order notwithstanding any appeal and without ~~the requirement to provide any security or provision for costs whatsoever;~~

[38] **THE WHOLE** ~~[WITH/WITHOUT] COSTS~~ without costs.

CHRISTIAN IMMER, J.S.C.

MTRE. SANDRA ABITAN
MTRE. JULIEN MORISSETTE
MTRE. ILIA KRAVTSOV
OSLER HOSKIN & HARCOURT LLP

Attorneys for the Petitioners

Hearing date: February 13, 2023

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SCHEDULE "A"
DRAFT CERTIFICATE OF THE [RECEIVER/TRUSTEE/MONITOR]

CANADA

PROVINCE OF ~~QUEBEC~~QUÉBEC
DISTRICT OF MONTRÉAL

~~———— SUPERIOR COURT~~

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

File: No: 500-11-●

IN THE MATTER OF ● THE
COMPROMISE OR ARRANGEMENT
OF:

●
———— Debtor

-and-

●
———— [Petitioner]

-and-

●
———— [Receiver/Trustee/Monitor]

●
XEBEC ADSORPTION INC.
XEBEC RNG HOLDINGS INC.
APPLIED COMPRESSION SYSTEMS LTD.
COMPRESSED AIR INTERNATIONAL INC.
XEBEC HOLDING USA INC.
ENERPHASE INDUSTRIAL SOLUTIONS, INC.

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CDA SYSTEMS, LLC
XEBEC ADSORPTION USA INC.
THE TITUS COMPANY
NORTEKBELAIR CORPORATION
XBC FLOW SERVICES - WISCONSIN INC.
CALIFORNIA COMPRESSION, LLC XEBEC SYSTEMS USA, LLC
Debtor/Petitioners

-and-

DELOITTE RESTRUCTURING INC.
Monitor

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CERTIFICATE OF THE ~~[RECEIVER/TRUSTEE/MONITOR]~~

RECITALS:

~~WHEREAS~~ on ~~●~~, the Superior Court of Quebec (the "~~Court~~") issued a ~~●~~ order (the "~~Order~~") pursuant to the ~~●~~ (the "~~Act~~") in respect of ~~●~~ (the "~~Petitioners~~"); ~~[NTD: refer to BIA notice of intention/proposal if applicable]~~

~~WHEREAS~~ pursuant to the terms of the ~~[● Order/NOI]~~, ~~●~~ (the "~~[Receiver/Trustees/Monitor]~~") was named ~~[Receiver/Trustees/Monitor]~~ of the ~~Petitioner~~; and ~~September 29, 2022, the Debtors/Petitioners Xebec Adsorption Inc. & 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 ~~●~~ February 13, 2023, the Court issued an Order (the "~~Approval and Vesting Order~~") ~~thereby, inter alia,~~ authorizing and approving, ~~inter alia,~~ the execution ~~by the Petitioner of an agreement entitled ● Agreement (the "a Share Purchase and Unit Repurchase Agreement")~~ by and ~~between ●, as vendor~~ among ~~Xebec Adsorption Inc. (the "Vendor") and ●, and Fonds de solidarité des travailleurs du Québec (F.T.Q.) and GNR Québec Capital L.P. as purchaser (buyers (collectively the "Purchaser"), a copy of which was filed in the Court record (the "Agreement"), and into all the transactions contemplated therein (the "Transaction")~~ with such ~~non-material~~ alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the ~~[Receiver/Trustees/Monitor]~~.

~~WHEREAS~~ the ~~Approval and Vesting Order~~ contemplates the issuance of this Certificate of the ~~[Receiver/Trustees/Monitor]~~ once ~~the~~ (a) the ~~Purchase Agreement~~ has been executed and delivered; and (b) the Purchase Price (as defined in the ~~Purchase Agreement~~) has been paid by the Purchaser ~~to the Vendor~~; and (c) ~~and~~ all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

THE ~~[RECEIVER/TRUSTEES/MONITOR]~~ CERTIFIES ~~[THAT IT HAS BEEN ADVISED BY THE VENDOR AND THE PURCHASER AS TO]~~ THE FOLLOWING:

- (a) the ~~Purchase Agreement~~ has been executed and delivered;
- (b) the Purchase Price (as defined in the ~~Purchase Agreement~~) payable upon the closing of the Transaction and all applicable taxes have been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

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This Certificate was issued by the ~~[Receiver/Trustees]~~ Monitor at _____ ~~[TIME]~~ on _____ [DATE].

- Deloitte Restructuring Inc., in its capacity as
- Monitor to the Petitioners, and not in its personal capacity.

Per: _____

Name: _____

Title: _____

Name: _____

Title: _____

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SCHEDULE "B"

~~PERMITTED~~ ENCUMBRANCES TO BE VESTED

Draft

SCHEDULE "C"
ASSIGNED AGREEMENTS

- 1) Movable hypothec without delivery by Xebec Adsorption Inc. dated July 16, 2021 in favour of Export Development Canada and registered at the Register of Personal and Movable Real Rights (RDPRM) on July 20, 2021 under number 21-0793644-0001;
- 2) Movable hypothec without delivery by Xebec Adsorption Inc. dated February 19, 2021 in favour of National Bank of Canada and registered at the Register of Personal and Movable Real Rights (RDPRM) on February 19, 2021 under number 21-0144140-0001; and
- 3) Movable hypothec without delivery by Xebec Adsorption Inc. dated December 6, 2019 in favour of National Bank of Canada and registered at the Register of Personal and Movable Real Rights (RDPRM) on February 5, 2020 under number 20-0119389-0001.

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No: 500-11-061483-224

**SUPERIOR COURT
(Commercial Division)**

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

DISTRICT OF MONTRÉAL

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

XEBEC ADSORPTION INC. & AL

Debtors / Petitioners

and.

DELOITTE RESTRUCTURING INC.

Monitor

**APPLICATION FOR THE ISSUANCE OF A THIRD
AMENDED AND RESTATED INITIAL ORDER
AND APPROVAL AND VESTING ORDERS,
AFFIDAVIT, NOTICE OF PRESENTATION, LIST
OF EXHIBITS, EXHIBITS P-1, P-1A, P-2, P-2A, P-
3, P-3A, P-4 and P-4A (Sections 11, 11.2 and 36
of the *Companies' Creditors Arrangement Act*,
RSC 1985, c C-36)**

ORIGINAL

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