

XEBEC CLASS ACTION SETTLEMENT AGREEMENT

Made as of the 26th day of May, 2023

Between

Maurice Leclair and Evert Schuringa

Proposed representative plaintiffs in Québec Superior Court proceeding No.: 500-06-001135-215
in their personal and representative capacities

- and -

FormerXBC Inc., formerly known as Xebec Adsorption Inc.

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RECITALS

- A. WHEREAS** on or about March 15, 2021, the Plaintiffs commenced the Action in the form of a proposed class action for, *inter alia*, damages for misrepresentation under Title VIII, Chapter II, Divisions I and II of the QSA and, if necessary, the concordant provisions of the other Securities Legislation, for civil fault pursuant to article 1457 of the CCQ, and for oppression pursuant to section 241 of the CBCA;
- B. AND WHEREAS** Xebec and its direct and indirect subsidiaries and other affiliated entities and related persons, both past and present, and their respective present and former directors, officers, employees, agents, representatives, underwriters, auditors and insurers deny any liability with respect to the allegations made, or which could have been made, in the Action;
- C. AND WHEREAS** on September 29, 2022, the CCAA Court issued a First Day Initial Order pursuant to the CCAA, which resulted in the stay of all proceedings involving Xebec and its former and current directors and officers, including the Action;
- D. AND WHEREAS**, both before and after the First Day Initial Order, counsel for the Parties have engaged in arm's length settlement discussions and negotiations, including a mediation, which ultimately resulted in the Settlement;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the Parties that the Action be declared settled out of court without costs, subject to the approval of the Class Action Court, on the following terms and conditions.

SECTION 1 - DEFINITIONS

1.1 For the purposes of this Agreement, including the Recitals:

- (a) **Action** means the authorization proceeding and proposed class action styled *Leclair et al. v. FormerXBC Inc., formerly known as Xebec Adsorption Inc., et al.* in the Class Action Court File No.: 500-06-001135-215.

- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, the Claims Administrator or otherwise for the approval, implementation and operation of this Agreement, including the costs of notices and claims administration, but not Class Counsel Fees.
- (c) **Agreement** means this settlement agreement, including the Recitals.
- (d) **Authorization** means authorization to bring a class action under article 574 of the CCP.
- (e) **CBCA** means the *Canada Business Corporations Act*, RSC 1985, c C-44.
- (f) **CCAA** means the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36.
- (g) **CCAA Court** means the Commercial Division of the Superior Court of Québec (District of Montréal) or any other court seized of, or having jurisdiction in, the CCAA Proceeding.
- (h) **CCAA Proceeding** means the proceeding styled *In the Matter of the Compromise or Arrangement of FormerXBC Inc. et al.* in the CCAA Court File No.: 500-11-061483-224.
- (i) **CCP** means the *Code of Civil Procedure*, CQRL, c. 25.01.
- (j) **CCQ** means the *Civil Code of Québec*, CQLR c CCQ-1991.
- (k) **Claim Form** means the form or forms to be approved by the Court, which when completed and submitted in a timely manner to the Claims Administrator, enables Settlement Class Members to apply for compensation pursuant to the Agreement.
- (l) **Claims Administrator** means KND Complex Litigation and any employees of KND Complex Litigation, or a third-party professional firm and any employees of such firm, appointed by the Class Action Court to administer:
 - (i) this Agreement;
 - (ii) the program whereby Class Members can exclude themselves from the Action; and

- (iii) the Plan of Allocation.
- (m) **Claims Bar Deadline** means the date by which each Settlement Class Member must file a Claim Form and all required supporting documentation with the Claims Administrator, which date shall be set out in the Second Notice and which shall be at least one hundred twenty (120) days after the date on which the Second Notice is first published.
- (n) **Class** or **Class Member** means, other than the Excluded Persons, any person or entity, wherever they may reside or may be domiciled, who purchased or otherwise acquired securities of Xebec by any means (whether pursuant to a primary market offering, in the secondary market or otherwise) during the Class Period, and held some or all of such securities as of the close of trading on the TSX on March 11, 2021 or March 24, 2021.
- (o) **Class Action Court** means the Class Actions Division of the Superior Court of Québec (District of Montréal) or any other court seized of, or having jurisdiction in, the Action.
- (p) **Class Counsel** means KND Complex Litigation and Lex Group Inc.
- (q) **Class Counsel Fees** means the fees and any proportionate amount of accrued interest on the Settlement Amount, Administration Expenses, holdbacks, GST/PST/HST and other applicable taxes or charges of Class Counsel.
- (r) **Class Period** means the period from November 10, 2019, to March 24, 2021, inclusively.
- (s) **Collateral Agreement** means the agreement executed contemporaneously with this Agreement, which sets the Opt-Out Threshold, the terms of which shall be kept confidential unless a Court requires disclosure thereof.
- (t) **Contributing Parties** means Xebec's insurers, as will be identified in the Letter of Undertaking, but only in their respective capacities as insurers of Xebec and the Individual Defendants under the insurance policies.

- (u) **Effective Date** means the date when the Settlement Approval Order issued by the Class Action Court approving this Agreement becomes the Final Approval Order;
- (v) **Eligible Securities** means Xebec's securities held by the Class Members that are the basis for inclusion in the Action.
- (w) **Escrow Account** means an interest-bearing escrow account at a Canadian Schedule 1 bank under the control of KND Complex Litigation or the Claims Administrator for the benefit of the Settlement Class Members.
- (x) **Excluded Persons** means the following persons and entities:
 - (i) Xebec;
 - (ii) the Underwriter Defendants and their respective past or present subsidiaries, directors, officers, legal representatives, predecessors, successors and assigns;
 - (iii) the Individual Defendants, members of their immediate families and any entity in which the Individual Defendants hold a controlling interest; and
 - (iv) SDI, Oost NL and the Trust Foundation, as those entities are defined in the Share Purchase Agreement dated December 8, 2020 with Xebec Europe B.V.
- (y) **Execution Date** means the date on the execution pages as of which the Parties have fully executed this Agreement.
- (z) **Final Approval Order** means the later of a final judgment granting the Settlement Approval Order, the time to appeal such judgment having expired without any appeal being taken, or if an appeal is pursued, the approval of this Agreement upon a final disposition of all appeals.
- (aa) **Final Lift Stay Order** means the later of a final judgment entered by the CCAA Court granting the Lift Stay Order, the time to appeal such judgment having expired without any appeal being taken, and if an appeal lies, the lifting of the Stay of Proceedings upon a final disposition of all appeals.

- (bb) **First Motion** means the motions or applications brought before the Class Action Court, for orders:
- (i) granting Authorization and Leave for settlement purposes only;
 - (ii) setting the date for the hearing of the Second Motion;
 - (iii) approving the form of the First Notice;
 - (iv) approving and authorizing publication and dissemination of the First Notice;
 - (v) appointing the Claims Administrator; and
 - (vi) appointing Class Counsel to control the Escrow Account subject to the terms of the Agreement.
- (cc) **First Notice** means the form or forms of notice to the class, as agreed to by the Plaintiffs and Xebec, and approved by the Class Action Court, which shall substantially be in accordance with the notice at Schedule “A” and a French translation thereof, which inform(s) the Settlement Class Members of: (i) the date and location of the Settlement Approval Hearing; (ii) the principal elements of the Agreement; (iii) the process by which Settlement Class Members may object to or opt out of the Settlement; and (iv) Class Counsel Fees requested by Class Counsel.
- (dd) **Individual Defendants** means Kurt Sorschak, Stéphane Archambault, Louis Dufour, William Beckett, and Guy Saint Jacques.
- (ee) **Leave** means leave to commence a secondary market securities claim under section 225.4 of the QSA.
- (ff) **Letter of Undertaking** means the agreement executed contemporaneously with this Agreement, which sets the contribution of each Contributing Party, the terms of which shall be kept confidential unless a Court requires disclosure thereof.
- (gg) **Lift Stay Order** means the order of the CCAA Court to be requested by Xebec, with consent of the Plaintiffs, lifting the Stay of Proceedings with respect to Xebec and the Individual Defendants for the sole purpose of allowing the Plaintiffs to apply for: (i) the authorization of the Action as a class proceeding on behalf of the Settlement Class for settlement purposes, and (ii) the Settlement Approval Order.

- (hh) **Litigation Disbursements** means disbursements made by Class Counsel in connection with the prosecution of the Action.
- (ii) **Opt-Out Deadline** means the date to be specified and determined by the Class Action Court which shall be at least 30 days after the date on which the First Notice is first published.
- (jj) **Opt-Out Parties** means collectively, all persons who would otherwise be Class Members who validly opt out of the Action, each individually being an “Opt-Out Party”.
- (kk) **Opt-Out Threshold** means the total number of Xebec outstanding shares required to be held by all Opt-Out Parties in order to trigger Xebec’s right to terminate this Agreement in accordance with Section 10.6 hereof, as particularized in the Collateral Agreement.
- (ll) **Parties** means Xebec, the Individual Defendants, the Underwriter Defendants, and the Plaintiffs and, where applicable, the Settlement Class Members.
- (mm) **Plaintiffs** means Maurice Leclair and Evert Schuringa.
- (nn) **Plan of Allocation** means the plan for allocating and distributing the Settlement Amount and accrued interest, net of court-approved deductions, in whole or in part, as established by Class Counsel and approved by the Class Action Court.
- (oo) **Proceedings** means any action or proceeding, other than the Action, advancing Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (pp) **QSA** means Québec *Securities Act*, CQLR c. V-1.1.
- (qq) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, representative or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers’ fees, known or unknown, suspected or unsuspected,

foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof relating to any conduct alleged (or which could have been alleged) in the Action including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, concerning, based on, arising out of, or in connection with both: (i) the purchase or other acquisition, holding, sale, disposition or other transactions in relation to Securities by Plaintiffs or any other Settlement Class Member during the Class Period; and (ii) the allegations, transactions, acts, facts, matters, occurrences, disclosures, statements, filings, representations, omissions, or events that were or could have been alleged or asserted in the Action.

- (rr) **Releasees** means, jointly and severally, individually and collectively, Xebec, the Individual Defendants and the Underwriter Defendants, and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, principals, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (ss) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and Settlement Class Members on behalf of themselves and any person claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee or representative of any kind.
- (tt) **Second Motion** means the motions or applications brought before the Class Action Court for orders:

- (i) approving the Agreement;
 - (ii) approving the Second Notice;
 - (iii) approving the Plan of Allocation;
 - (iv) approving the Claim Form;
 - (v) approving the Claims Bar Deadline; and
 - (vi) approving the Class Counsel Fees and the Litigation Disbursements.
- (uu) **Second Notice** means notices to the Class of *inter alia* the granting of the Settlement Approval Order and the process to submit a claim for a portion of the net Settlement Amount, in a form to be approved by the Court which shall substantially be in accordance with the notice at Schedule “B” and a French translation thereof.
- (vv) **Securities** means the securities issued by Xebec, including, without limitation, common shares and subscription receipts.
- (ww) **Securities Legislation** means, collectively, the QSA; the *Securities Act*, RSO 1990, c S.5, as amended; the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended.
- (xx) **Settlement** means the settlement provided for in this Agreement.
- (yy) **Settlement Amount** means the sum of five million dollars (CAD \$5,000,000.00).
- (zz) **Settlement Approval Hearing** means the hearing for the Class Action Court’s approval of the Settlement.

- (aaa) **Settlement Approval Order** means the order of the Class Action Court to be requested by the Plaintiffs, with the consent of Xebec, the Individual Defendants and the Underwriter Defendants, approving the Agreement.
- (bbb) **Settlement Class or Settlement Class Members** means, other than Excluded Persons and any person who validly opted out of the Action or who is deemed to have opted out of the Action pursuant to Article 580 of the CCP:
- (i) All persons and entities, wherever they may reside or may be domiciled, who purchased or otherwise acquired securities of Xebec by any means (whether pursuant to a primary market offering, in the secondary market or otherwise) during the Class Period, and held some or all of such securities as of the close of trading on the TSX on March 11, 2021 or March 24, 2021.
- (ccc) **Stay of Proceedings** means the stay of proceedings ordered by the CCAA Court, as part of the CCAA Proceeding, with respect to all proceedings against or respect of, *inter alia*, Xebec and its former and current directors and officers, as per the terms of the First Initial Order dated September 29, 2022, as subsequently amended, restated, and extended by the CCAA Court from time to time.
- (ddd) **TSX** means the Toronto Stock Exchange.
- (eee) **Underwriter Defendants** means Desjardins Securities Inc., National Bank Financial Inc., Canaccord Genuity Group Inc., Raymond James Ltd., Beacon Securities Limited, TD Securities Inc. and Stifel Nicolaus Canada Inc.
- (fff) **Xebec** means the corporation known as FormerXBC Inc. and formerly known as Xebec Adsorption Inc.

SECTION 2 - SETTLEMENT BENEFITS

Payment of Settlement Amount

- 2.1 Subject to Section 10, within fifteen (15) business days from the Final Lift Stay Order, the Contributing Parties, pursuant to the Letter of Undertaking, shall pay the Settlement Amount to KND Complex Litigation for deposit into the Escrow Account.
- 2.2 The Contributing Parties shall deposit the Settlement Amount into the Escrow Account by wire transfer. KND Complex Litigation shall provide the necessary wire transfer information to counsel for Xebec on or before the Final Lift Stay Order so that the Contributing Parties have a reasonable period of time to comply with Section 2.1.
- 2.3 The Settlement Amount shall be paid in full satisfaction of the Released Claims against the Releasees.
- 2.4 The Settlement Amount shall be inclusive of all amounts, including, but not limited to, interest, taxes, fees, costs, expenses, disbursements, Class Counsel Fees, Administration Expenses and Litigation Disbursements.
- 2.5 Once a Claims Administrator has been appointed, if the Class Action Court appoints a firm other than KND Complex Litigation, then KND Complex Litigation shall transfer control of the Escrow Account to the Claims Administrator.
- 2.6 KND Complex Litigation and the Claims Administrator shall maintain the Escrow Account as provided for in this Agreement. While in control of the Escrow Account, KND Complex Litigation and the Claims Administrator shall not pay out all or part of the monies in the Escrow Account, except in accordance with this Agreement, or in accordance with an order of the Class Action Court obtained.

SECTION 3- CLASS COUNSEL FEES

Class Counsel Fees Approval

- 3.1 At the Settlement Approval Hearing, Class Counsel shall also seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount. Unless this Agreement is terminated pursuant to Section 10, all amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount.

- 3.2 At the Settlement Approval Hearing, Class Counsel shall also seek the approval of Litigation Disbursements to be paid as a first charge on the Settlement Amount. Unless this Agreement is terminated pursuant to Section 10, all amounts awarded on account of Litigation Disbursements shall be paid from the Settlement Amount.
- 3.3 Xebec, the Individual Defendants and the Underwriter Defendants acknowledge that they are not parties to the application concerning the approval of Class Counsel Fees and Litigation Disbursements, will have no involvement in nor take any position on the approval process to determine the amount of Class Counsel Fees and Litigation Disbursements and will not make any submissions to the Class Action Court concerning Class Counsel Fees and Litigation Disbursements unless requested to do so by the Class Action Court.
- 3.4 Any order in respect of Class Counsel Fees and Litigation Disbursements, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Agreement or affect or delay the Settlement of the Action as provided herein. For greater certainty, and without limitation of any of the foregoing, any appeal from any order in respect of Class Counsel Fees and Litigation Disbursements shall have no effect on the date on which the Settlement Approval Order becomes the Final Approval Order.
- 3.5 Forthwith after the Effective Date, Class Counsel Fees and Litigation Disbursements approved by the Class Action Court shall be paid to Class Counsel from the Escrow Account in accordance with the order of the Class Action Court.

Taxes and Interest

- 3.6 Except as expressly provided herein, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the amount held in escrow pursuant to this Agreement (together with the Settlement Amount, the “**Escrow Amount**”).
- 3.7 Subject to Section 3.8, all taxes payable on any interest which accrues on or otherwise in relation to the Escrow Amount shall be paid from the Escrow Account. KND Complex Litigation or the Claims Administrator, as may later be appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Escrow

Amount, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Escrow Amount shall be paid from the Escrow Account.

- 3.8 Xebec, the Individual Defendants and the Underwriter Defendants shall have no responsibility in any way related to the Escrow Account including but not limited to, making any filings relating to the Escrow Account, paying taxes on any income earned by the Escrow Amount, or paying any taxes on the monies in the Escrow Account, unless this Agreement is terminated as provided for herein, in which case any interest earned on the Escrow Amount shall be paid to Xebec who, in such case, shall be responsible for the payment of any taxes on such interest not previously paid by KND Complex Litigation or the Claims Administrator.
- 3.9 The Parties agree that they are in no way liable for any taxes any Settlement Class Members may be required to pay as a result of receiving any benefits under this Settlement Agreement. No opinion concerning the tax consequences of this Settlement Agreement to any Settlement Class Member is given or will be given by the Parties or their respective counsel, nor are they providing any representation or guarantee respecting the tax consequences of this Settlement Agreement as to any Settlement Class Member. Each Settlement Class Member is responsible for their tax reporting and other obligations respecting this Settlement Agreement, if any.

No Reversion

- 3.10 Unless this Agreement is terminated as provided for herein, Xebec shall not be entitled to the repayment of any portion of the Escrow Amount and then only to the extent of and in accordance with the terms provided for herein.

SECTION 4- DISTRIBUTION OF SETTLEMENT AMOUNT

Distribution of the Settlement Amount

- 4.1 The formula for distribution of the Settlement Amount to Settlement Class Members shall be contained in the Plan of Allocation.
- 4.2 In conjunction with the Plaintiffs' application to the Class Action Court for the Settlement Approval Order, on notice to Xebec, the Individual Defendants and the Underwriter

Defendants, Class Counsel will make an application seeking an order from the Class Action Court approving the Plan of Allocation.

- 4.3 Xebec, the Individual Defendants and the Underwriter Defendants shall take no position on the Class Action Court's approval of the Plan of Allocation, and shall not make any submissions to the Court about the Plan of Allocation, unless requested by the Class Action Court.
- 4.4 Xebec, the Individual Defendants and the Underwriter Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the Plan of Allocation, or the investment, distribution or administration of monies in the Escrow Account.

SECTION 5- EFFECT OF SETTLEMENT

No Admissions or Concessions

- 5.1 This Agreement, whether or not it is terminated, anything contained in it, any and all negotiations, discussions, and communications associated with this Agreement, and any action taken to implement this Agreement, shall not be deemed, construed or interpreted to be:
- (a) an admission or concession by Xebec, the Individual Defendants or the Underwriter Defendants of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made or which could have been made against any of them in the Action, or the application of the law of Québec or any other Province of Canada to any of the claims made in the Action; or
 - (b) an admission or concession by the Plaintiffs, Class Counsel or the Settlement Class of any weakness in the claims of the Plaintiffs and the Settlement Class, or that the consideration to be given hereunder represents the amount that could or would have been recovered after trial of the Action.

Agreement Not Evidence Nor Presumption

- 5.2 This Agreement, whether or not it is terminated, anything contained in it, any and all negotiations, documents, discussions and proceedings associated with this Agreement, and

any action taken to implement this Agreement, shall not be offered or received in the Action or any pending or future civil, criminal, quasi-criminal, administrative action or disciplinary investigation or proceeding in any jurisdiction:

- (a) against Xebec, the Individual Defendants or the Underwriter Defendants, as evidence, or a presumption, of a concession or admission of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made against any of them in the Action or the application of the law of Québec or any other Province of Canada to any of the claims made in the Action; or
- (b) against the Plaintiffs, Class Counsel or the Settlement Class, as evidence, or a presumption, of a concession or admission of any weakness in the claims of the Plaintiffs and the Settlement Class, or that the consideration to be given hereunder represents the amount that could or would have been recovered after trial of the Action.

5.3 Notwithstanding Section 5.2, this Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the CCAA Court or the Class Action Court contemplated by this Agreement, in a proceeding to approve or enforce this Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

SECTION 6 - STEPS TO IMPLEMENT AGREEMENT

Reasonable Efforts

- 6.1 The Action shall be authorized as a class proceeding on behalf of the Settlement Class solely for purposes of settlement of the Action and the approval and implementation of this Agreement by the Class Action Court.
- 6.2 The Parties shall take all reasonable steps within their power to implement the Agreement and to prepare and execute such documents or undertake such proceedings as may reasonably be required to obtain its approval and implementation, including:
 - (a) The application by Xebec, before the CCAA Court, to obtain the Lift Stay Order;
 - (b) The application by the Plaintiffs, before the Class Action Court, to authorize the Action as a class proceeding for the sole purpose of settlement of the Action; and

(c) The application by the Plaintiffs, before the Class Action Court, to obtain the Settlement Approval Order.

6.3 This Agreement shall only become final on the Effective Date.

6.4 The Plaintiffs will provide all materials to be filed with or provided to the Class Action Court in connection with this Agreement to Xebec in advance for review and comment. Xebec will provide all materials to be filed with or provided to the CCAA Court in connection with this Agreement to Class Counsel in advance for review and comment.

Action in Abeyance

6.5 Until the Parties have obtained the Final Approval Order or this Agreement is terminated as provided for herein, whichever occurs first, the Parties agree to hold in abeyance all other steps in the Action, other than the applications described in Section 6.2 (and such other matters required to implement the terms of this Agreement), unless otherwise agreed in writing by the Parties.

SECTION 7- NOTICE TO SETTLEMENT CLASS

7.1 The proposed Settlement Class shall be given the following notices: (i) the First Notice; (ii) the Second Notice; (iii) notice if this Agreement is not approved, is terminated, or otherwise fails to take effect; and (iv) such further notice as may be directed by the Class Action Court; all costs, fees, and/or disbursements in relation to such notices, including any costs or fees of the Claims Administrator, will be paid exclusively from the Escrow Account, whether or not this Agreement is terminated for any reason or whether or not this Agreement is ultimately approved by the Class Action Court. The Plaintiffs and Class Counsel will in no circumstances be responsible to pay such costs, fees and/or disbursements.

7.2 The form of notices referred to in Section 7.1 and the manner and extent of publication and distribution shall be as follows:

(a) by Class Counsel posting the notice on their websites and by delivering a copy of the notice of authorization electronically to all individuals and entities who have contacted Class Counsel about this Action and for whom Class Counsel has an email address, and all individuals and entities who request it;

- (b) by the Claims Administrator placing the notice online on websites such as Stockhouse.com and CEO.ca in abbreviated form with a URL leading to more information on a number of websites for a period of 45 days;
- (c) by the Claims Administrator disseminating the notice once through Canada NewsWire in English and French;
- (d) by the Claims Administrator publishing the notice once in French in a weekday tablet (online) edition of *La Presse*;
- (e) by Class Counsel publishing the notice on the Québec Class Action Registry;
- (f) by Class Counsel publishing a link to the notice on their LinkedIn and/or Twitter accounts; and
- (g) by the Claims Administrator publishing the notice once in English in the national print edition of *The Globe and Mail*, Report on Business section, and once in English in the national print edition of the *National Post*, Financial Post section.

or in such form or manner as approved or ordered by the Class Action Court.

7.3 Unless otherwise authorized by the Class Action Court, any Settlement Class Member who has not opted out and who intends to object to the fairness of this Agreement must do so in writing no later than twenty (20) days prior to the Settlement Approval Hearing (hereinafter the “**Objection Date**”). The written objection must be served on the Claims Administrator no later than the Objection Date. The written objection must include:

- (a) a heading which refers to the *Leclair et al. v. Xebec Adsorption Inc. et al.* class action, File No.: 500-06-001135-215;
- (b) the objector’s name, address, telephone number(s), email address(es) and, if represented by counsel, the name, address, telephone number and email address of counsel;
- (c) a statement whether the objector intends to appear at the Settlement Approval Hearing, either in person or through counsel;

- (d) a declaration that the objector considers himself/herself to be included in the Settlement Class;
- (e) a statement of the objection and the grounds supporting the objection;
- (f) copies of any papers, briefs, or other documents upon which the objection is based;
- (g) a declaration under the penalty of perjury that the foregoing information is true and correct; and
- (h) the objector's signature.

7.4 Unless otherwise ordered by the Class Action Court, any Settlement Class Member who files and serves a written objection, as described above, may appear at the Settlement Approval Hearing, either in person or through counsel hired at the said Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Settlement. Unless otherwise authorized by the Class Action Court, any Settlement Class Member who fails to comply with the above provisions shall waive and forfeit any and all rights he, she or it may have to appear separately and/or to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments in the Action.

SECTION 8 - SETTLEMENT APPROVAL

Motions for Approval

- 8.1 As soon as practicable after the Execution Date and in any event no later than ten (10) business days thereafter, Xebec shall file an application for the Lift Stay Order.
- 8.2 As soon as practicable after the Lift Stay Order and in any event no later than twenty one (21) calendar days thereafter, the Plaintiffs shall bring the First Motion.
- 8.3 The form of order referred to in Section 8.2, and any notices attached thereto, shall be as agreed to by the Plaintiffs and Xebec both acting reasonably, or in such form or manner as approved by the Class Action Court.
- 8.4 As soon as practicable after obtaining the order referred to in Section 8.2, Plaintiffs shall bring the Second Motion.

- 8.5 The form of Settlement Approval Order shall be as agreed to by the Plaintiffs and Xebec both acting reasonably, or in such form or manner as approved by the Class Action Court.
- 8.6 The Settlement Approval Order shall also contain a term providing that no action may be taken against Xebec, the Individual Defendants, the Underwriter Defendants, the Plaintiffs, Class Counsel or the Claims Administrator without leave of the Class Action Court with respect to any issues arising from the Settlement.

No Press Release

- 8.7 Plaintiffs and Class Counsel agree that, other than in connection with any court-approved notice arising from this Agreement, they will not issue any press release, whether joint or individual, concerning this Agreement or anything related thereto and that they will not seek to obtain media coverage in relation to the Agreement, with the exception (i) of the publication of notices as provided herein; and (ii) that Class Counsel will post this Agreement (or links leading to this Agreement) on their websites and social media accounts, and on the Québec Class Action Registry.
- 8.8 The Parties specifically agree that the Parties will not make any public statements, comment or any communication of any kind about any negotiations or information exchanged as part of the settlement process. The Parties' obligations under this subsection shall not prevent them, or any of them, from reporting to their clients, or from complying with any court order, or from making any disclosure or comment otherwise required by the Agreement, or from making any necessary disclosure or comment for the purposes of any applicable legislation or professional obligation, or from preparing and filing the materials necessary to obtain the Class Action Court's approval of the Settlement. For greater certainty, nothing in this section prohibits Xebec from issuing a press release disclosing the fact of this Agreement and describing its terms or from responding to third party inquiries from, *inter alia*, analysts, investors or media regarding same.
- 8.9 If comment is solicited by the press, Class Counsel and the Plaintiffs agree and undertake to describe the Settlement and the terms of this Agreement only as fair, reasonable and in the best interests of the Settlement Class.

SECTION 9 - RELEASES

- 9.1 As of the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Agreement, the Releasers forever and absolutely release, relinquish and discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have.
- 9.2 The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.
- 9.3 As of the Effective Date, the Releasers and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other person, any action, suit cause of action, claim or demand against any Releasee or against any other person who may seek contribution or indemnity from any Releasee in respect of any Released Claims or any matter related thereto.
- 9.4 Class Counsel do not as of the date of this Agreement and will not in the future represent plaintiffs in any other proceeding related to any matter raised or which could have been raised in the Action.
- 9.5 Upon the Effective Date, the Action shall be declared settled out of court, and without costs.
- 9.6 For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Agreement are material terms (subject to Subsection 10.3), the releases and reservation of rights contemplated in this Section 9 shall be considered a material term of the Agreement and the failure of the Class Action Court to approve the releases and/or reservation of rights contemplated herein shall give rise to a right of termination pursuant to section 10.1 of the Agreement.

SECTION 10- TERMINATION**Right of Termination**

10.1 In the event that:

- (a) the CCAA Court declines to grant the Lift Stay Order as contemplated by Section 8.1;
- (b) the Lift Stay Order does not become a Final Lift Stay Order;
- (c) after the Final Lift Stay Order, the CCAA Court reinstates the Stay of Proceedings with respect to any of Xebec or any the Individual Defendants;
- (d) the Class Action Court declines to grant Authorization on behalf of the Settlement Class for settlement purposes;
- (e) the Class Action Court declines to grant the Settlement Approval Order;
- (f) the Class Action Court issues a Settlement Approval Order that is materially inconsistent with the terms of the Agreement, including, but not limited to, if the Class Action Court declines to approve the releases, covenants (including covenants not to sue), and dismissals contemplated in Section 9, or approves them in a materially modified form;
- (g) the Settlement Approval Order does not become a Final Approval Order;
- (h) the Class Action Court declines to declare the Action settled out of court; or
- (i) the CCAA Court fails or declines to issue any approval or other order necessary, if any, for the execution or implementation of the Settlement;

either Xebec or the Plaintiffs shall have the right to terminate this Agreement by delivering a written notice in accordance with subsection 12.17 of same within thirty (30) days following an event described above.

10.2 In the event that the Opt-Out Threshold is exceeded as provided for in Section 10.6 of the Agreement, only Xebec shall have the right, but not the obligation to terminate this Agreement in accordance with the terms of subsection 10.6.

- 10.3 Notwithstanding anything to the contrary, any order, ruling or determination made (or rejected) by the Class Action Court with respect to Class Counsel Fees or Litigation Disbursements shall not be deemed to be a material modification of all, or a part, of this Agreement and shall not provide any basis for the termination of this Agreement.
- 10.4 For greater certainty, the Settlement is not conditional on the approval by the Class Action Court of the Class Counsel Fees or Litigation Disbursements.
- 10.5 Except as provided for in section 10.13 and subject to section 10.14, if the Plaintiffs or Xebec exercise their right to terminate, the Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason, the Parties reiterating that all notice or Claims Administrator costs, Administration Expenses, disbursements, and/or fees (including taxes) incurred before termination will remain exclusively paid from the Escrow Account and the Plaintiffs and Class Counsel will never be responsible to pay for said amounts.

Effect of Exceeding the Opt-Out Threshold

- 10.6 Notwithstanding any other provision in the Agreement, Xebec, in its sole discretion, may elect to terminate the Agreement if the Opt-Out Threshold is exceeded provided its election is made by delivering a written notice in accordance with subsection 12.17 within thirty (30) business days of receiving notice from Class Counsel notifying it of the number of opt-outs received and showing the Opt-Out Threshold being exceeded. If Xebec does not elect to terminate the Agreement within this period, its right to terminate the Agreement pursuant to the provisions of this section will expire.
- 10.7 If the Opt-Out Threshold is not exceeded, Xebec's right to terminate the Agreement pursuant to the provisions of this section is inoperative.
- 10.8 The Opt-Out Threshold shall be stated in the Collateral Agreement signed contemporaneously with the execution of this Agreement. The Opt-Out Threshold shall be kept confidential by the Parties and their respective counsel, and may be confidentially shown to the Class Action Court solely for the purposes of seeking approval of the Settlement, unless disclosure is ordered by the CCAA Court or Class Action Court, or if Xebec and Plaintiffs provide prior written consent to disclosure.

Steps Required on Termination

- 10.9 If this Agreement is terminated, either Xebec or the Plaintiffs shall, within thirty (30) days after termination, apply to the Class Action Court, on notice to the Parties, for an order:
- (a) declaring this Agreement null and void and of no force or effect except for the provisions of those sections listed in Section 10.13;
 - (b) setting aside and declaring null and void and of no force or effect, *nunc pro tunc*, all prior orders or judgments entered by a court in accordance with the terms of this Agreement; and
 - (c) authorizing the payment to Xebec of the Escrow Amount, after deductions made of all already incurred and/or paid costs, fees, disbursements or taxes of the Claims Administrator and/or relating to any notices.
- 10.10 Subject to Section 10.14, the Plaintiffs shall consent to the orders sought in any application made by Xebec under Section 10.9 and Xebec shall consent to the orders sought in any application made by the Plaintiffs under Section 10.9.

Notice of Termination

- 10.11 If this Agreement is terminated, a notice of the termination will be given to the Settlement Class. Plaintiffs' counsel will cause the notice of termination, in a form approved by the Class Action Court, to be published and disseminated as the Class Action Court directs, the whole to be paid from the Escrow Account.

Effect of Termination

- 10.12 In the event this Agreement is terminated as provided for herein or otherwise fails to take effect for any reason:
- (a) the Parties will be restored to their respective positions prior to the execution of this Agreement, except as expressly provided for herein;
 - (b) no application for Authorization for settlement purposes or application to approve this Agreement which has not been decided shall proceed;

- (c) the Parties will cooperate in seeking to have all prior orders or judgments entered by a court in accordance with the terms of this Agreement set aside and declared null and void and of no force or effect, and any of the Plaintiffs and Xebec shall be estopped from asserting otherwise;
- (d) Class Counsel shall, within thirty (30) business days of the issuance of the order contemplated by 10.9(c), return to Xebec the Escrow Amount, after deductions made of all already incurred and/or paid costs, fees, disbursements or taxes of the Claims Administrator and/or relating to any notices;
- (e) this Agreement will have no further force or effect and no effect on the rights of the Parties except as specifically provided for herein;
- (f) this Agreement will not be introduced into evidence or otherwise referred to in any litigation against Xebec, the Individual Defendants or the Underwriter Defendants.

10.13 Notwithstanding the provisions of Section 10.5, if this Agreement is terminated, the provisions of Sections 3.7, 3.8, 5.1, 5.2, 5.3, 6.3, 8.7, 8.8, 10.4, 10.5, 10.8, 10.9, 10.10, 10.11, 10.12, 10.13, 10.14, 11.2, 11.3, 12.3, 12.4, 12.5, 12.6, 12.7, 12.8, 12.12, 12.13, 12.15, 12.16, and 12.17, and the definitions and recitals applicable thereto (but only for the limited purpose of the interpretation of those sections), shall survive termination and shall continue in full force and effect. All other provisions of this Agreement and all other obligations pursuant to this Agreement shall cease immediately.

Disputes Relating to Termination

10.14 If there is a dispute about the termination of this Agreement, the Parties agree that the Class Action Court shall determine the dispute on an application made by Xebec or the Plaintiffs on notice to the Parties.

SECTION 11 – ADMINISTRATION

11.1 The Class Action Court will appoint KND Complex Litigation or a third-party firm as Claims Administrator to serve until further order of the Court, to implement the Agreement, the opt-out program and the Plan of Allocation, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Agreement and in the Plan of Allocation.

- 11.2 All Administration Expenses shall be paid from the Escrow Account, subject to approval of the Class Action Court.
- 11.3 If the Agreement is terminated, the Claims Administrator's fees, disbursements and taxes will be paid out as set out in Subsection 10.12(d).
- 11.4 If the Agreement is not terminated, the Class Action Court will approve and fix the Claims Administrator's compensation on application by the Plaintiffs.

Claims Process

- 11.5 In order to seek payment from the Escrow Account, a Settlement Class Member must submit a completed Claim Form to the Claims Administrator, in accordance with the provisions of the Plan of Allocation, on or before the Claims Bar Deadline, and any Settlement Class Member who fails to do so shall not share in any distribution made in accordance with the Plan of Allocation unless the Class Action Court orders otherwise.

Conclusion of the Administration

- 11.6 Upon the conclusion of the administration, or at such other time(s) as the Class Action Court directs, on application by Class Counsel, on notice to Xebec, the Individual Defendants and the Underwriter Defendants, the Claims Administrator shall report to the Class Action Court on the administration and shall account for all monies it has received, administered and disbursed including a full accounting of its own invoices, and obtain an order from the Class Action Court discharging it as Claims Administrator.

SECTION 12- MISCELLANEOUS

Motions for Directions

- 12.1 Any of the Parties may apply to the Class Action Court for directions in respect of any matter in relation to this Agreement.
- 12.2 All applications contemplated by this Agreement shall be on notice to the Parties.

Headings, etc.

- 12.3 In this Agreement:

- (a) the division into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation;
- (b) the terms “the Agreement”, “this Agreement”, “herein”, “hereto” and similar expressions refer to this Agreement and not to any particular section or other portion of the Agreement; and
- (c) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

Computation of Time

12.4 In the computation of time in this Agreement, except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a Saturday, Sunday or holiday, the act may be done on the next day that is not a Saturday, Sunday or holiday.

Governing Law

12.5 The Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Québec.

12.6 The Parties agree that the Class Action Court shall retain continuing jurisdiction to interpret and enforce the terms, conditions and obligations under this Agreement and the Settlement Approval Order.

Severability

12.7 Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

Entire Agreement

12.8 This Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Agreement, unless expressly incorporated herein.

Amendments

12.9 This Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment after settlement approval must be approved by the Class Action Court.

Binding Effect

12.10 If the settlement is approved by the Class Action Court and becomes final, this Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, Class Counsel, Xebec, the Individual Defendants, the Underwriter Defendants, the Releasees and the Releasers or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasers and each and every covenant and agreement made herein by Xebec shall be binding upon all of the Releasees.

Survival

12.11 The representations and warranties contained in this Agreement shall survive its execution and implementation.

Negotiated Agreement

12.12 This Agreement and the underlying Settlement have been the subject of arm's-length negotiations and discussions among the Parties and their respective counsel. Each of the Parties has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the

Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement.

Transaction

12.13 This Agreement constitutes a transaction in accordance with Articles 2631 and following of the CCQ, and the Parties are hereby renouncing any errors of fact, of law and/or of calculation.

Recitals

12.14 The recitals to this Agreement are true, constitute integral parts hereof and are fully incorporated into, and form part of, this Agreement.

Acknowledgements

12.15 Each Party hereby affirms and acknowledges that:

- (a) her, his or its signatory has the authority to bind the Party for which it is signing with respect to the matters set forth herein and has reviewed this Agreement;
- (b) the terms of this Agreement and the effects thereof have been fully explained to her, him or it by her, his or its counsel; and
- (c) her, his or its representative fully understands each term of this Agreement and its effect.

Counterparts

12.16 This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and an emailed pdf. signature shall be deemed an original signature for purposes of executing this Agreement.

Notice

12.17 Any notice, instruction, motion for court approval or motion for directions or court orders sought in connection with this Agreement or any other report or document to be given by any Party to any other Party shall be in writing and delivered by email to:

For Plaintiffs:
KND Complex Litigation
c/o Mtres Eli Karp, Sage Nematollahi

1186 Eglinton Ave. West
Toronto (Ontario) M6C 2E3
or to
Lex Group Inc.
c/o Mtre David Assor
4101 Sherbrooke St. West
Westmount (Québec) H3Z 1A7

For Xebec:
Osler, Hoskin & Harcourt LLP
c/o Jessica Harding and Robert A. Carson
2100-1000 De La Gauchetière West
Montreal (Québec) H3B 4W5

Third Party Beneficiaries

12.18 The Individual Defendants and the Underwriter Defendants are stipulated to be third party beneficiaries of the obligations in Section 5, 8, 9, 10 and 11 of this Agreement for the purpose of Article 1444 of the CCQ, and as such, the Individual Defendants and the Underwriter Defendants have the right to exact performance of said obligations directly.

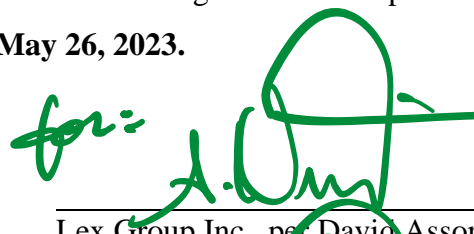
Language

12.19 The present Agreement is available in French and English versions. In case of inconsistency, the English version of this Agreement shall prevail.

This Agreement is executed as of May 26, 2023.

Date:

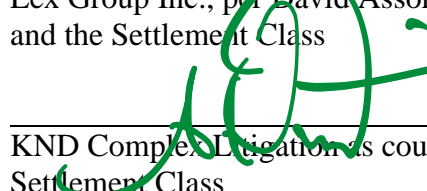
May 26, 2023

for: 

Lex Group Inc., per David Assor, as counsel for the Plaintiffs and the Settlement Class

Date:

May 26, 2023



KND Complex Litigation as counsel for the Plaintiffs and the Settlement Class

Date:

(s) Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP as counsel for Xebec