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COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/2008-141;

AND IN THE MATTER OF the proposed acquisition by Superior Plus LP of Gibson Energy ULC’s propane distribution business;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to sections 92 and 105 of the *Competition Act*.

B E T W E E N :

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
REGISTERED / ENREGISTRÉ
FILED / PRODUIT
Date: September 27, 2017
CT-2017-015

Andrée Bernier for / pour
REGISTRAR / REGISTRARE

OTTAWA, ONT.

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THE COMMISSIONER OF COMPETITION

Applicant

– and –

SUPERIOR PLUS CORP. and SUPERIOR PLUS LP

Respondents

CONSENT AGREEMENT

RECITALS:

A. Superior Plus Corp., through its subsidiary Superior Plus LP, proposes to acquire from Gibson Energy ULC, an affiliate of Gibson Energy Inc., all of the issued and outstanding share capital of Canwest Propane ULC and Stittco Energy Limited (together with Canwest Propane Partnership, “Canwest”) and 70% of the partnership interests of Canwest Propane Partnership (the remaining 30% of which is directly or indirectly owned by Canwest Propane ULC) (the “Transaction”).

B. The Commissioner has concluded that the Transaction is likely to result in a substantial lessening of competition in the retail supply of propane in the local markets identified in Confidential Schedule B, and that the implementation of this Agreement is necessary to ensure that any substantial lessening of competition will not result from the Transaction.

C. Respondents do not admit but will not for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the

Commissioner's conclusions that (i) the Transaction is likely to result in a substantial lessening of competition in the retail supply of propane in certain local markets; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening of competition will not result from the Transaction.

D. Nothing in this Agreement affects any investigation, inquiry or proceeding other than under section 92 of the Act in respect of the Transaction.

THEREFORE Respondents and the Commissioner agree as follows:

I. DEFINITIONS

[1] Whenever used in this Agreement, the following words and terms have the meanings set out below:

- (a) **“Act”** means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- (b) **“Affiliate”** means, in respect of a Person, any other Person controlling, controlled by or under common control with such first Person, whether directly or indirectly, and **“control”** means directly or indirectly hold securities or other interests in a Person (i) to which are attached more than 50% of the votes that may be cast to elect directors or persons exercising similar functions or (ii) entitling the holder to receive more than 50% of the profits of the Person or more than 50% of its assets on dissolution;
- (c) **“Agreement”** means this Consent Agreement, including the schedules hereto, and references to a “Part”, “Section”, “Paragraph” or “Schedule” are, unless otherwise indicated, references to a part, section, paragraph or schedule of or to this Agreement;
- (d) **“Business Day”** means a day on which the Competition Bureau's Gatineau, Quebec office is open for business;
- (e) **“Canwest Preservation Assets”** means the Divestiture Assets located at the Divested Canwest Sites, excluding the Hold Separate Assets;
- (f) **“Closing”** means the completion of the Transaction under the Transaction Agreement;
- (g) **“Closing Date”** means the date on which Closing occurs;
- (h) **“Commissioner”** means the Commissioner of Competition appointed under the Act and includes his authorized representatives;
- (i) **“Confidential Information”** means competitively sensitive, proprietary and all other information that is not in the public domain, that pertains to Respondents' or Canwest's retail propane business, and includes

operations and financial information, customer lists, price lists, contracts, cost and revenue information and marketing methods;

- (j) **“Designated Personnel”** means the employees of Respondents listed in Schedule E, as modified from time to time by agreement of Respondents and the Commissioner, who have signed a confidentiality agreement in a form satisfactory to the Commissioner;
- (k) **“Divested Business”** means the retail propane business carried out at the Divested Canwest Sites and the Divested Superior Sites;
- (l) **“Divested Canwest Sites”** means Canwest’s retail propane assets at Castlegar, Golden, Kamloops, Port Hardy, Prince George, Valemount and Winfield, BC; Rainbow Lake and Sexsmith, AB; and Thunder Bay, ON;
- (m) **“Divested Superior Sites”** means Superior’s retail propane assets at Kindersley and Swift Current, SK; Medicine Hat, AB; and Hay River, NWT;
- (n) **“Divestiture”** means the sale, conveyance, transfer, assignment or other disposal of the Divestiture Assets to one or more Purchasers pursuant to this Agreement and with the prior approval of the Commissioner, such that Respondents will have no direct or indirect interest in the Divestiture Assets;
- (o) **“Divestiture Agreement”** means a binding and definitive agreement between Respondents and a Purchaser to effect the sale of all or part of the Divestiture Assets pursuant to this Agreement and subject to the prior approval of the Commissioner;
- (p) **“Divestiture Applicant”** means Respondents during the Initial Sale Period or the Divestiture Trustee during the Divestiture Trustee Sale Period;
- (q) **“Divestiture Assets”** means all of Respondents’ right, title and interest in, to and under, or relating to the following assets owned or used by Respondents or held by Respondents for use at the Divested Canwest Sites and the Divested Superior Sites:
 - (i) Office buildings and equipment (including parts and accessories);
 - (ii) Land or leasehold interests;
 - (iii) Distribution agreements;
 - (iv) Propane storage tanks and pumping equipment;
 - (v) Cylinder filling equipment;

- (vi) Divestiture Contracts;
- (vii) Customer tank inventory;
- (viii) Trucks; and
- (ix) Other tangible and intangible assets, which, for greater certainty, shall not include any rights relating to any brand name, or intellectual property relating to any proprietary brands owned by Respondents or Canwest;
- (r) **“Divestiture Contracts”** means, subject to Section 42 of this Agreement, all customer contracts (excluding contracts for sales to other retailers of bulk propane, and contracts for sales to customers serviced from multiple locations where volumes in excess of 100,000 litres annually are not being supplied from a divested site, subject to review and confirmation by the Monitor) in respect of the Canwest sites at Hay River (excluding Regulated Customers) and Medicine Hat, the Divested Canwest Sites other than Winfield and Thunder Bay (excluding Regulated Customers at Golden), and the Divested Superior Sites other than Hay River and Medicine Hat;
- (s) **“Divestiture Process Agreement”** means the agreement described in Section 6 of this Agreement;
- (t) **“Divestiture Trustee”** means the Person appointed pursuant to Part III of this Agreement (or any substitute appointed thereto) and any employees, agents or other Persons acting for or on behalf of the Divestiture Trustee;
- (u) **“Divestiture Trustee Sale”** means the Divestiture to be conducted by the Divestiture Trustee pursuant to Part III of this Agreement;
- (v) **“Divestiture Trustee Sale Period”** means the 6 month period commencing upon expiry of the Initial Sale Period;
- (w) **“First Reference Date”** shall have the meaning set out in Paragraph 22(d) of this Agreement;
- (x) **“Hold Separate Assets”** means the Divestiture Assets of the Divested Canwest Sites at Castlegar, Golden, Kamloops and Valemount, BC and the assets of the Canwest site at Invermere, BC;
- (y) **“Hold Separate Employees”** means those employees of Respondents who are employed primarily in connection with the Hold Separate Assets, and **“Hold Separate Employee”** means any one of them;
- (z) **“Hold Separate Manager”** means the Person appointed pursuant to Part V of this Agreement (or any substitute appointed thereto) to manage the

operation of the Hold Separate Assets, and any employees, agents or other Persons acting for or on behalf of the Hold Separate Manager;

- (aa) **“Hold Separate Period”** means the period that commences at Closing and ends upon the completion of the Divestiture of the Hold Separate Assets;
- (bb) **“Initial Sale Period”** means the period that commences at Closing and ends at the time set out in Confidential Schedule A to this Agreement;
- (cc) **“Management Agreement”** means the agreement described in Section 27 of this Agreement;
- (dd) **“Monitor”** means the Person appointed pursuant to Part X of this Agreement (or any substitute appointed thereto), and any employees, agents or other Persons acting for or on behalf of the Monitor, provided that if no Monitor is appointed, other than in Part X of this Agreement Monitor means the Commissioner;
- (ee) **“Monitor Agreement”** means the agreement described in Section 50 of this Agreement;
- (ff) **“Person”** means any individual, corporation or partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business, and any Affiliates thereof;
- (gg) **“Preservation Assets”** means the Divestiture Assets at the Divested Canwest Sites and the Divested Superior Sites, excluding the Hold Separate Assets;
- (hh) **“Purchaser”** means a Person that acquires Divestiture Assets pursuant to this Agreement and a Divestiture Agreement;
- (ii) **“Records”** means records within the meaning of subsection 2(1) of the Act;
- (jj) **“Regulated Customers”** means customers on propane grids regulated by the Manitoba Public Utilities Board, the Northwest Territories Public Utilities Board, or the British Columbia Utilities Commission;
- (kk) **“Remaining Divestiture Assets”** means the Divestiture Assets for which a Divestiture has not been completed prior to the expiry of the Initial Sale Period;
- (ll) **“Respondents”** means Superior Plus Corp. and Superior Plus LP and their Affiliates and their directors, officers, employees, agents, representatives, successors and assigns;

- (mm) **“Respondents’ Continuing Employees”** means those employees of Respondents who are not employed primarily in connection with the Divested Canwest Sites and are not employees, agents or other Persons acting for or on behalf of the Hold Separate Manager;
- (nn) **“Second Reference Date”** shall have the meaning set out in Paragraph 22(e) of this Agreement;
- (oo) **“Third Party”** means any Person other than the Commissioner, Respondents or a Purchaser, but does not include a retail propane customer;
- (pp) **“Transaction”** means the transaction described in the first recital to this Agreement;
- (qq) **“Transaction Agreement”** means the Option Agreement entered into on March 1, 2017 between Gibson Energy ULC and Superior Plus LP; and
- (rr) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.).

II. OBLIGATION TO COMPLETE DIVESTITURE

- [2] Respondents shall use commercially reasonable efforts to complete the Divestiture.
- [3] During the Initial Sale Period, Respondents shall use commercially reasonable efforts to complete the Divestiture in accordance with the provisions of this Part and Confidential Schedule A and subject to Part IV.
- [4] During the Initial Sale Period, Respondents shall provide to the Commissioner and to the Monitor every 30 days a written report describing the progress of their efforts to effect the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. Respondents shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of Respondents’ efforts to complete the Divestiture. An officer or other duly authorized representative of Respondents shall certify that he or she has examined the information provided in any such response and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

III. DIVESTITURE TRUSTEE SALE PROCESS

- [5] In the event that Respondents fail to complete the Divestiture of the Divestiture Assets located in a particular local market or markets during the Initial Sale Period, the Commissioner shall appoint a Divestiture Trustee to complete the

Divestiture of the Remaining Divestiture Assets in accordance with this Agreement. Such appointment may be made at any time prior to the expiry of the Initial Sale Period if the Commissioner is of the opinion that the Divestiture will not likely be completed during the Initial Sale Period, or on such later date as the Commissioner determines.

- [6] Within 5 Business Days after the appointment of the Divestiture Trustee, Respondents shall submit to the Commissioner for approval the terms of a proposed Divestiture Process Agreement with the Divestiture Trustee and the Commissioner that confers on the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the Divestiture of the Remaining Divestiture Assets.
- [7] Within 5 Business Days after receipt of the proposed Divestiture Process Agreement referred to in Section 6, the Commissioner shall advise Respondents whether or not he approves the terms of the proposed Divestiture Process Agreement. If the Commissioner does not approve the terms of the proposed Divestiture Process Agreement, he shall prescribe alternative terms that Respondents shall incorporate into a final Divestiture Process Agreement with the Divestiture Trustee and the Commissioner.
- [8] Without limiting the Commissioner's discretion to require additional terms, Respondents consent to the following terms and conditions regarding the Divestiture Trustee's rights, powers and duties, and shall include such terms in the Divestiture Process Agreement:
- (a) The Divestiture Trustee shall complete the Divestiture of the Remaining Divestiture Assets as expeditiously as possible, and in any event prior to expiry of the Divestiture Trustee Sale Period.
 - (b) The Divestiture Trustee shall use reasonable efforts to negotiate terms and conditions for the Divestiture of the Remaining Divestiture Assets that are as favourable to Respondents as are reasonably available at that time; however, the Divestiture shall not be subject to any minimum price. The Divestiture Trustee's opinion of what constitutes favourable terms and conditions and what constitutes reasonably available terms and conditions, is subject to review and approval by the Commissioner.
 - (c) Subject to oversight and approval by the Commissioner, the Divestiture Trustee shall have full and exclusive authority during the Divestiture Trustee Sale Period:
 - (i) to complete the Divestiture in accordance with the provisions of this Part;
 - (ii) to solicit interest in a possible Divestiture by whatever process or procedure the Divestiture Trustee believes is suitable to allow a fair opportunity for one or more prospective good faith Purchasers

to offer to acquire the Divestiture Assets, and for greater certainty, in determining whether to pursue negotiations with a prospective Purchaser, may have regard to the approval criteria in Section 23;

- (iii) to enter into a Divestiture Agreement with a Purchaser that will be legally binding on Respondents;
 - (iv) to negotiate reasonable commercial covenants, representations, warranties and indemnities to be included in a Divestiture Agreement; and
 - (v) to employ, at the expense of Respondents, such consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants as the Divestiture Trustee believes are necessary to carry out the Divestiture Trustee's duties and responsibilities.
- (d) Where any Person makes a good faith inquiry respecting a possible purchase of Divestiture Assets, the Divestiture Trustee shall notify such Person that the Divestiture is being made and shall provide to such Person a copy of this Agreement, with the exception of the provisions hereof that are confidential pursuant to Section 76 of this Agreement.
- (e) Where, in the opinion of the Divestiture Trustee, a Person has a good faith interest in purchasing Divestiture Assets and has executed a confidentiality agreement, in a form satisfactory to the Commissioner, with the Divestiture Trustee protecting any Confidential Information that such Person may receive in the course of its due diligence review of the Divestiture Assets, the Divestiture Trustee shall:
- (i) promptly provide to such Person all information respecting the Remaining Divestiture Assets that is determined by the Divestiture Trustee to be relevant and appropriate;
 - (ii) permit such Person to make reasonable inspection of the Remaining Divestiture Assets and of all financial, operational or other non-privileged Records and information, including Confidential Information, that may be relevant to the Divestiture; and
 - (iii) give such Person as full and complete access as is reasonable in the circumstances to the personnel involved in managing the Remaining Divestiture Assets.
- (f) The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets.

- (g) The Divestiture Trustee shall provide to the Commissioner and to the Monitor, within 14 days after the later of the Divestiture Trustee's appointment and the commencement of the Divestiture Trustee Sale Period and thereafter every 30 days, a written report describing the progress of the Divestiture Trustee's efforts to complete the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Remaining Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. The Divestiture Trustee shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of the Divestiture Trustee's efforts to complete the Divestiture.
 - (h) The Divestiture Trustee shall notify Respondents and the Commissioner immediately upon the signing of any letter of intent or agreement in principle relating to the Remaining Divestiture Assets, and shall provide to Respondents a copy of any executed Divestiture Agreement upon receipt of the Commissioner's approval of the Divestiture contemplated in such Divestiture Agreement.
- [9] Respondents shall not be involved in the Divestiture process during the Divestiture Trustee Sale Period or in any negotiations with prospective Purchasers undertaken by the Divestiture Trustee, nor will Respondents have contact with prospective Purchasers during the Divestiture Trustee Sale Period.
- [10] Subject to any legally recognized privilege, Respondents and the Hold Separate Manager shall provide to the Divestiture Trustee full and complete access to all personnel, Records, information (including Confidential Information) and facilities relating to the Remaining Divestiture Assets, to enable the Divestiture Trustee to conduct its own investigation of the Remaining Divestiture Assets and to provide access and information to prospective Purchasers.
- [11] Respondents shall take no action that interferes with or impedes, directly or indirectly, the Divestiture Trustee's efforts to complete the Divestiture.
- [12] Respondents and the Hold Separate Manager shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. Respondents shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Divestiture Trustee on behalf of Respondents.
- [13] Respondents will do all such acts and execute all such documents, and will cause the doing of all such acts and the execution of all such documents as are within their power to cause the doing or execution of, as may be reasonably necessary to ensure that the Divestiture Assets are divested in the Divestiture Trustee Sale Period and that agreements entered into by the Divestiture Trustee are binding upon and enforceable against Respondents.

- [14] Respondents shall be responsible for all reasonable fees and expenses properly charged or incurred by the Divestiture Trustee in the course of carrying out the Divestiture Trustee's duties and responsibilities under this Agreement. The Divestiture Trustee shall serve without bond or security, and shall account for all fees and expenses incurred. Respondents shall pay all reasonable invoices submitted by the Divestiture Trustee within 30 days after receipt and, without limiting this obligation, Respondents shall comply with any agreement they reach with the Divestiture Trustee regarding interest on late payments. In the event of any dispute: (i) such invoice shall be subject to the approval of the Commissioner; and (ii) Respondents shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Divestiture Trustee by Respondents shall be paid out of the proceeds of the Divestiture.
- [15] Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Divestiture Trustee.
- [16] Respondents shall indemnify the Commissioner and hold the Commissioner harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability.
- [17] If the Commissioner determines that the Divestiture Trustee has ceased to act or has failed to act diligently, the Commissioner may remove the Divestiture Trustee and appoint a substitute Divestiture Trustee. The provisions of this Agreement respecting the Divestiture Trustee shall apply in the same manner to any substitute Divestiture Trustee.
- [18] Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner; provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commissioner.
- [19] The Commissioner may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Divestiture

Trustee may receive from the Commissioner in connection with the performance of the Divestiture Trustee's duties.

- [20] Notwithstanding any term of this Agreement, the rights, powers and duties of the Divestiture Trustee under this Agreement shall not expire until the Divestiture is completed.

IV. COMMISSIONER APPROVAL OF DIVESTITURE

- [21] A Divestiture may proceed only with the prior approval of the Commissioner in accordance with this Part. For greater certainty, if a Divestiture is a notifiable transaction nothing in this Agreement affects the operation of Part IX of the Act.

- [22] The Divestiture Applicant shall comply with the following process for seeking and obtaining a decision of the Commissioner regarding his approval of a proposed Divestiture:

- (a) The Divestiture Applicant shall promptly:
 - (i) inform the Commissioner of any negotiations with a prospective Purchaser that may lead to a divestiture; and
 - (ii) forward to the Commissioner copies of any agreement that is signed with a prospective Purchaser, including non-binding expressions of interest.
- (b) The Divestiture Applicant shall immediately notify the Commissioner if it intends to enter a Divestiture Agreement with a prospective Purchaser, or has entered into an agreement that, if approved by the Commissioner, will be a Divestiture Agreement within the meaning of this Agreement. If the Divestiture Applicant has entered into or intends to enter into more than one agreement in respect of the same Divestiture Assets, the Divestiture Applicant shall identify the agreement in respect of which it seeks the Commissioner's approval and the remainder of this Part shall apply only to that agreement unless the Divestiture Applicant designates a substitute agreement.
- (c) The notice described in Paragraph 22(b) shall be in writing and shall include: the identity of the proposed Purchaser; the details of the proposed Divestiture Agreement and any related agreements; and information concerning whether and how the proposed Purchaser would, in the view of the Divestiture Applicant, likely satisfy the terms of this Agreement.
- (d) Within 14 days following receipt of the notice described in Paragraph 22(b), the Commissioner may request additional information concerning the proposed Divestiture from any or all of Respondents, the Monitor, the Hold Separate Manager, the prospective Purchaser and, in the Divestiture

Trustee Sale Period, the Divestiture Trustee. These Persons shall each provide any additional information requested from them. When they have provided a complete response to the Commissioner's request, these Persons shall comply with the following procedures:

- (i) the Divestiture Trustee shall provide written confirmation to the Commissioner that the Divestiture Trustee has provided to the Commissioner all additional information requested from the Divestiture Trustee;
- (ii) the Monitor shall provide written confirmation to the Commissioner that the Monitor has provided to the Commissioner all additional information requested from the Monitor;
- (iii) an officer or other duly authorized representative of Respondents shall certify that he or she has examined the additional information provided by Respondents in response to the Commissioner's request and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects;
- (iv) an officer or other duly authorized representative of the Hold Separate Manager shall certify that he or she has examined the additional information provided by the Hold Separate Manager in response to the Commissioner's request and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects; and
- (v) an officer or other duly authorized representative of the prospective Purchaser shall certify that he or she has examined the additional information provided by the prospective Purchaser in response to the Commissioner's request and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

The date on which the last of the Divestiture Trustee, Respondents, the Monitor, the Hold Separate Manager and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the "**First Reference Date**".

- (e) Within 7 days after the First Reference Date, the Commissioner may request further additional information concerning the proposed Divestiture from any or all of the Persons identified in Paragraph 22(d). These Persons shall each provide any further additional information requested from them. When they have provided a complete response to the Commissioner's request, if any, these Persons shall comply with the procedures outlined in Paragraph 22(d) in regard to the further additional information provided.

The date on which the last of the Divestiture Trustee, Respondents, the Monitor, the Hold Separate Manager and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the “**Second Reference Date**”.

- (f) The Commissioner shall notify the Divestiture Applicant of the approval of, or the objection to, the proposed Divestiture as soon as possible, and in any event within 14 days after the date on which the Commissioner receives the notice described in Paragraph 22(b) or, if he requests any additional information under Paragraph 22(d) or further additional information under Paragraph 22(e), within 14 days after the later of:
 - (i) the First Reference Date; and
 - (ii) the Second Reference Date, if any.
- (g) The Commissioner’s determination as to whether to approve a proposed Divestiture shall be in writing.

[23] In exercising his discretion to determine whether to approve a proposed Divestiture, the Commissioner shall take into account the likely impact of the Divestiture on competition, and may consider any other factor he considers relevant. Prior to granting his approval, the Commissioner must also be satisfied that:

- (a) the proposed Purchaser is independent of and operates at arm’s length from Respondents;
- (b) Respondents will have no direct or indirect interest in the Divestiture Assets following the Divestiture;
- (c) the proposed Purchaser is committed to carrying on the Divested Business;
- (d) the proposed Purchaser has the managerial, operational and financial capability to compete effectively in the retail supply of propane; and
- (e) the proposed Purchaser will (i) if the Commissioner grants his approval during the Initial Sale Period, complete the Divestiture prior to the expiry of the Initial Sale Period; or (ii) if the Commissioner grants his approval during the Divestiture Trustee Sale Period, complete the Divestiture during the Divestiture Trustee Sale Period.

V. HOLD SEPARATE AND PRESERVATION

[24] Until Closing, Respondents shall make reasonable efforts to ensure that Gibson Energy ULC preserves the Hold Separate Assets in a manner consistent with this Part V of this Agreement. At all times prior to their Divestiture, Respondents shall

preserve the Divested Superior Sites in a manner consistent with this Part V of this Agreement.

- [25] During the Hold Separate Period, Respondents shall:
- (a) hold the Hold Separate Assets separate, apart and independent of Respondents and shall confer on the Hold Separate Manager all rights and powers necessary to conduct the business of the Hold Separate Assets;
 - (b) not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or the Hold Separate Manager; and
 - (c) take no action that interferes with or impedes, directly or indirectly, the Hold Separate Manager's duties and responsibilities.
- [26] Prior to or at Closing, the Commissioner shall appoint a Hold Separate Manager, responsible for managing and operating the Hold Separate Assets independently of Respondents during the Hold Separate Period, provided that Respondents may provide or arrange for the provision of administrative and other back office services as required for the Hold Separate Assets, including: human resources, payroll, and pension and benefits; accounts payable and receivable systems; information technology services; supply chain and inventory management services; procurement services; occupational health and safety; services relating to environmental permitting and liability; insurance, including notification of claims for which coverage is sought; financial services, including banking, financial reporting, accounting and tax services; and legal and regulatory compliance services, including compliance with reporting obligations.
- [27] Within 5 Business Days after the appointment of the Hold Separate Manager, Respondents shall submit to the Commissioner for approval the terms of a proposed Management Agreement with the Hold Separate Manager and the Commissioner that confers on the Hold Separate Manager all rights and powers necessary to permit the Hold Separate Manager to manage and operate the Hold Separate Assets independently of Respondents during the Hold Separate Period in accordance with this Agreement.
- [28] Within 5 Business Days after receipt of the proposed Management Agreement referred to in Section 27, the Commissioner shall advise Respondents whether or not he approves the terms of the proposed Management Agreement. If the Commissioner does not approve the terms of the proposed Management Agreement, he shall prescribe alternative terms for the Management Agreement that Respondents shall incorporate into a final Management Agreement with the Hold Separate Manager and the Commissioner.
- [29] Without limiting the Commissioner's discretion to require additional terms, Respondents consent to the following terms and conditions regarding the Hold Separate Manager's rights, powers and duties, and shall include such terms in the Management Agreement:

- (a) The Hold Separate Manager shall report solely and exclusively to the Monitor.
- (b) The Hold Separate Manager shall not have any involvement with, or receive any Confidential Information respecting, the businesses or assets of Respondents other than in respect of the Hold Separate Assets or as required to fulfill Respondents' or the Hold Separate Manager's obligations under this Agreement.
- (c) Subject to the oversight of the Monitor, the Hold Separate Manager shall manage and maintain the operation of the Hold Separate Assets independently and separately from Respondents, in the regular and ordinary course of business and in accordance with past practice, and shall use commercially reasonable efforts to ensure the ongoing economic viability, marketability and competitiveness of the Hold Separate Assets.
- (d) Without limiting the generality of Paragraph 29(c) above, the Hold Separate Manager shall:
 - (i) maintain and hold the Hold Separate Assets in good condition and repair, normal wear and tear excepted, and to standards at least equal to those that existed prior to the date of this Agreement;
 - (ii) take all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of the Hold Separate Assets at least equal to those that existed prior to the date of this Agreement;
 - (iii) not knowingly take or allow to be taken any action that adversely affects the competitiveness, operations, financial status or value of the Hold Separate Assets;
 - (iv) not alter or cause to be altered, to any material extent, the management of the Hold Separate Assets as it existed prior to the date of this Agreement, except with the prior approval of the Monitor;
 - (v) not terminate or materially alter any employment, salary or benefit agreements, as they existed at the date of this Agreement, for Persons employed primarily in connection with the Hold Separate Assets, except with the prior approval of the Monitor;
 - (vi) ensure that the Hold Separate Assets are staffed with sufficient employees to ensure their viability and competitiveness, including by replacing any departing employees with other qualified employees subject to the prior approval of the Monitor; and

- (vii) maintain inventory levels and payment terms consistent with the practices of Respondents that existed, with respect to the Hold Separate Assets, prior to the date of this Agreement.
 - (e) Respondents shall provide sufficient financial resources, including general funds, capital funds, working capital and reimbursement for any operating, capital or other losses, to permit the Hold Separate Manager to comply with its obligations under this Section. The Hold Separate Manager, subject to the prior approval of the Monitor, may request funds at any time for this purpose, and Respondents shall comply with any such request. If the Monitor believes that Respondents have not provided, are not providing or will not provide sufficient financial and other resources under this Paragraph, the Monitor shall forthwith refer the matter to the Commissioner, who shall make a final determination respecting the financial and other resources that Respondents must provide. Respondents shall comply with any determination made by the Commissioner on this issue.
 - (f) The Hold Separate Manager shall have no financial interests affected by Respondents' revenues, profits or profit margins, except that Respondents shall provide to the Hold Separate Manager reasonable incentives to undertake this position. The Monitor shall determine the type and value of such incentives, which shall include continuation of all employee benefits, and such additional incentives as the Monitor determines may be necessary to assure the continuation and prevent any diminution of the viability, marketability and competitiveness of the Hold Separate Assets.
 - (g) In addition to those Persons employed in connection with the Hold Separate Assets on the Closing Date, the Hold Separate Manager may employ such other Persons as the Monitor believes are necessary to assist the Hold Separate Manager in managing and operating the Hold Separate Assets.
 - (h) Subject to any legally recognized privilege, the Hold Separate Manager shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Respondents' compliance with this Agreement.
 - (i) The Hold Separate Manager shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request.
- [30]** Respondents shall be responsible for all reasonable fees and expenses properly charged or incurred by the Hold Separate Manager in the course of carrying out the Hold Separate Manager's duties under this Agreement. The Hold Separate Manager shall serve without bond or security, and shall account for all fees and expenses incurred. Respondents shall pay all reasonable invoices submitted by the

Hold Separate Manager within 30 days after receipt and, without limiting this obligation, Respondents shall comply with any agreement they reach with the Hold Separate Manager regarding interest on late payments. In the event of any dispute: (i) such invoice shall be subject to the approval of the Commissioner; and (ii) Respondents shall promptly pay any invoice approved by the Commissioner.

- [31] Respondents shall indemnify the Hold Separate Manager and hold the Hold Separate Manager harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Hold Separate Manager's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Hold Separate Manager.
- [32] If the Commissioner determines that the Hold Separate Manager has ceased to act or has failed to act diligently, the Commissioner may remove the Hold Separate Manager and appoint a substitute Hold Separate Manager. The provisions of this Agreement respecting the Hold Separate Manager shall apply in the same manner to any substitute Hold Separate Manager.
- [33] Respondents and the Hold Separate Manager shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Monitor in consultation with the Commissioner, of access and data controls to prevent unauthorized access to or dissemination of Confidential Information relating to the Hold Separate Assets. The system shall include the following protocols:
- (a) The Monitor shall approve all proposed communications between the Hold Separate Manager and Respondents before such communications occur.
 - (b) Subject to Paragraph 33(c), Respondents' Continuing Employees shall not receive, have access to or use any Confidential Information respecting the Hold Separate Assets. If any of Respondents' Continuing Employees possesses Confidential Information respecting the Hold Separate Assets as of the date of this Agreement, such Person shall, within 5 Business Days following appointment of the Hold Separate Manager, (i) deliver any Records containing such Confidential Information to the Hold Separate Manager (or, at the Hold Separate Manager's option, destroy such Records) and a signed statement confirming that he or she is no longer in possession of any Records containing Confidential Information respecting the Hold Separate Assets; and (ii) submit to the Monitor a signed statement confirming that he or she undertakes not to share any Confidential Information respecting the Hold Separate Assets with any of Respondents' Continuing Employees.

- (c) Notwithstanding Paragraph 33(b), Designated Personnel of Respondents may receive or retain aggregate financial and operational information relating to the Hold Separate Assets only to the extent necessary to comply with securities laws, prepare financial and regulatory reports, tax returns, administer employee benefits, defend litigation, comply with this Agreement, carry out the sale of the Divested Assets, or provide the services required under Paragraph 26. Any such information received after the Closing Date shall be: (i) approved by the Monitor prior to its receipt by any Designated Personnel; (ii) maintained in a separate confidential file that is accessible only to the Designated Personnel; and (iii) used only for the purposes set forth in this Agreement.
- (d) Neither the Hold Separate Manager nor any Hold Separate Employee shall receive, have access to or use any Confidential Information relating to Respondents' businesses other than the Hold Separate Assets.

[34] In order to preserve the Preservation Assets after Closing and pending completion of the Divestiture of the Preservation Assets, Respondents shall maintain the economic viability, marketability and competitiveness of the Preservation Assets and shall comply with any decision of or direction given by the Monitor that relates to preservation of the Preservation Assets.

[35] Without limiting the generality of the foregoing, the Respondents shall:

- (a) maintain and hold the Preservation Assets in good condition and repair, normal wear and tear excepted, and to standards that are, in the view of the Monitor, at least equal to those that existed at Closing;
- (b) ensure that the management and operation of the Preservation Assets continues in the ordinary course of business and in a manner that is, in the view of the Monitor, reasonably consistent in nature, scope and magnitude with past practices and generally accepted industry practices, and in compliance with all applicable laws;
- (c) not knowingly take or allow to be taken any action that, in the view of the Monitor, adversely affects the competitiveness, operations, financial status or value, viability and saleability of the Preservation Assets;
- (d) ensure that the Preservation Assets are not engaged in any type of business other than the type of business conducted as of the date of this Agreement, except with the prior approval of the Monitor;
- (e) maintain all approvals, registrations, consents, licences, permits, waivers, and other authorizations that are, in Monitor's view subject to consultation with Respondent, advisable for the operation of the Preservation Assets;
- (f) take commercially reasonable steps to retain and honour all customer contracts and to maintain quality and service standards for customers of

the Preservation Assets that are, in the view of the Monitor, at least equal to the standards that existed during the fiscal year prior to this Agreement;

- (g) not curtail marketing, sales, promotional or other activities of the Preservation Assets, except with the prior approval of the Monitor;
- (h) not alter, or cause to be altered, the management of the Preservation Assets as it existed during the fiscal year prior to the date of this Agreement, except with the prior approval of the Monitor;
- (i) not terminate or materially alter any employment, salary or benefit agreements, as they existed at the date of this Agreement, for Persons employed primarily in connection with the Preservation Assets, without the prior approval of the Monitor;
- (j) ensure that the Preservation Assets are staffed with sufficient employees to ensure their viability and competitiveness, including by replacing any departing employees with other qualified employees provided that the Monitor has approved both the qualifications and the need for such replacement employees;
- (k) maintain inventory levels and payment terms consistent with the practices of Respondents that existed, with respect to the Preservation Assets, during the fiscal year prior to the date of this Agreement; and
- (l) maintain in accordance with Canadian generally accepted accounting principles, separate and adequate financial ledger books and records of material financial information with respect to the Preservation Assets.

For greater certainty, at the Canwest Thunder Bay and Canwest Winfield locations Sections 34 and 35 of this Agreement only apply to the Divestiture Assets and do not apply to, e.g., customer contracts or other operations that do not constitute Divestiture Assets.

[36] Pending completion of the Divestiture, Respondents shall not, without the Commissioner's prior written approval:

- (a) create any new encumbrances on the Preservation Assets, other than ordinary course obligations that are not due or delinquent;
- (b) enter into, withdraw from, amend or otherwise take steps to alter any obligations in material contracts relating to the Preservation Assets, except as necessary to comply with this Agreement; or
- (c) make any material changes to the Preservation Assets, except as required to comply with this Agreement.

- [37] Respondents shall provide sufficient financial resources, including general funds, capital funds, working capital and reimbursement for any operating, capital or other losses, to maintain the Preservation Assets in accordance with this Part. If the Monitor believes that Respondents have not provided, are not providing or will not provide sufficient financial and other resources under this Part, the Monitor shall forthwith refer the matter to the Commissioner, who shall make a final determination respecting the financial and other resources that Respondents must provide. Respondents shall comply with any determination made by the Commissioner on this issue.
- [38] Respondents shall prevent access to, and disclosure of, Confidential Information relating to the Canwest Preservation Assets, by or to any persons not authorized to access, receive, or use such information pursuant to this Agreement.
- [39] Respondents shall develop and implement procedures with respect to Confidential Information relating to the Canwest Preservation Assets (except for Canwest Thunder Bay and Canwest Winfield), pursuant to which such information is:
- (a) Subject to Paragraph 39(d) of this Agreement, not accessible by, or disclosed to, Respondents' Continuing Employees (other than Designated Personnel);
 - (b) Not communicated to anyone other than Respondents' legal or financial advisors (to the extent necessary for the provision of their services), Designated Personnel, the Monitor, a Person with a good faith interest in purchasing the Preservation Assets or who has executed a confidentiality agreement, or as otherwise permitted in this Agreement;
 - (c) Not accessible by, or disclosed to, any persons or entities not authorized to have access to such materials pursuant to the terms of this Agreement;
 - (d) Used solely for the purposes of the operation and preservation of the Canwest Preservation Assets or the purposes set out in Paragraph 33(c) of this Agreement; and
 - (e) Maintained confidentially and securely.
- [40] Such procedures shall include:
- (a) Monitoring compliance;
 - (b) Requiring and enforcing compliance with appropriate remedial action in the event of non-compliant use or disclosure;
 - (c) Distributing information and providing training regarding the procedures to all relevant employees engaged in the operation of the Canwest Preservation Assets; and

- (d) Instituting all necessary information technology procedures, authorizations and protocols, and any other controls necessary to comply with this Paragraph.

VI. THIRD PARTY CONSENTS

- [41] It shall be a condition in any Divestiture Agreement (whether negotiated by Respondents or by the Divestiture Trustee) that Respondents shall, as a condition of closing, obtain any consents and waivers from Third Parties that are necessary to permit the assignment to, and assumption by, a Purchaser of all material contracts, approvals and authorizations relating to the applicable Divestiture Assets; provided, however, that Respondents may satisfy this requirement by certifying that the applicable Purchaser has executed agreements directly with one or more Third Parties which make such assignment and assumption unnecessary.

VII. CONTRACTS AND TRANSITIONAL SUPPLY

- [42] Respondents shall make commercially reasonable efforts to divest all customer contracts included in the definition of Divestiture Assets. Respondents shall ensure that the customer contracts divested in respect of each market account for at least the volume specified in Confidential Schedule B to this Agreement. For the purpose of this Agreement, Canwest customers that are tracked at the division level are considered to be customers of the nearest Canwest facility. If additional customers are required to satisfy the minimum volume requirement, Respondents shall make commercially reasonable efforts to divest the contracts of the next closest customers to the divested site (excluding other retailers of bulk propane, and customers serviced from multiple locations where volumes in excess of 100,000 litres annually are not being supplied from a divested site, subject to review and confirmation by the Monitor).

- [43] Respondents shall not enforce the terms of any contracts with residential customers of the following facilities, or commercial customers of the following Canwest facilities, in force as at the date the Divestiture of the Divestiture Assets in that market is complete, that impede a customer from switching suppliers, including any terms providing for (i) automatic renewal; (ii) exclusive supply or minimum volume requirements; (iii) equipment removal, propane pump-out or other termination fees, charges or damages, and shall notify customers of this commitment in accordance with Schedule C to this Agreement:

- (a) Thunder Bay: Superior Thunder Bay; Canwest Thunder Bay;
- (b) Kamloops: Superior Kamloops, Lillooet, Kelowna, Oliver; Canwest Winfield, Armstrong, West Kelowna, Sicamous, Kamloops;
- (c) Prince George: Superior Prince George, Williams Lake; Canwest Prince George, Williams Lake; and

- (d) Invermere: Superior Invermere, Golden, Cranbrook; Canwest Golden, Invermere.

[44] At the option of a Purchaser, for up to 1 year following the Divestiture, Superior shall sell to the Purchaser the amount of propane requested by the Purchaser to supply the Divestiture Assets, at a price not to exceed the price charged to Superior's retail outlets for similar sales on similar terms at equivalent locations on equivalent order dates and delivery dates.

VIII. EMPLOYEES

[45] Respondents (during the Initial Sale Period), the Divestiture Trustee (during the Divestiture Trustee Sale Period) and the Hold Separate Manager (for the Hold Separate Employees) shall provide to any prospective Purchaser, the Commissioner and the Monitor information relating to the employees whose responsibilities in the opinion of the Monitor primarily involve the operation of Divestiture Assets, to enable such Purchaser to make decisions regarding offers of employment to such employees. The Monitor shall review the information provided to ensure that it is sufficient to enable the Purchaser to make such decisions.

[46] Respondents shall:

- (a) not interfere, directly or indirectly, with any negotiations by a Purchaser to employ any employees whose responsibilities in the opinion of the Monitor primarily involve the operation of Divestiture Assets;
- (b) not offer any incentive to such employees to decline employment with a Purchaser or to accept other employment with Respondents;
- (c) remove any impediment that may deter such employees from accepting employment with a Purchaser;
- (d) waive or amend any non-compete or confidentiality provisions of employment or other contracts that could impair the ability of such employees to be employed by a Purchaser; and
- (e) pay or transfer to or maintain for the employees subsequently employed by a Purchaser all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of Respondents.

[47] For a period of one year following completion of the Divestiture, Respondents shall not, without the prior written consent of the Commissioner, directly or indirectly solicit or employ any Persons employed in connection with the Divestiture Assets at the time such assets were owned by the Respondents and who has accepted an offer of employment with a Purchaser unless such Person's employment has been terminated by the Purchaser.

IX. FAILURE OF DIVESTITURE TRUSTEE SALE

[48] If, by the end of the Divestiture Trustee Sale Period, the Divestiture has not been completed, or if the Commissioner is of the opinion that the Divestiture likely will not be completed prior to the end of the Divestiture Trustee Sale Period, the Commissioner may apply to the Tribunal, at his election, for either (i) such order as is necessary to complete the Divestiture of the Remaining Divestiture Assets; or (ii) such order as is necessary to ensure that the Transaction is not likely to prevent or lessen competition substantially in the markets identified in Confidential Schedule B to this Agreement.

X. MONITOR

[49] The Commissioner shall appoint a Monitor, responsible for monitoring compliance by Respondents with this Agreement. Such appointment may occur at any time following registration of this Agreement. A reference in this Agreement to specific monitoring functions or tasks that are to be undertaken by the Monitor shall in no way detract from the Monitor's general right, power and duty to monitor all aspects of Respondents' compliance with this Agreement.

[50] Within 5 Business Days after the appointment of the Monitor, Respondents shall submit to the Commissioner for approval the terms of a proposed Monitor Agreement with the Monitor and the Commissioner that confers on the Monitor all rights and powers necessary to permit the Monitor to monitor compliance by Respondents with this Agreement.

[51] Within 5 Business Days after receipt of the proposed Monitor Agreement referred to in Section 50, the Commissioner shall advise Respondents whether or not he approves the terms of the proposed Monitor Agreement. If the Commissioner does not approve the terms of the proposed Monitor Agreement, he shall prescribe alternative terms for the Monitor Agreement that Respondents shall incorporate into a final Monitor Agreement with the Monitor and the Commissioner.

[52] Respondents consent to the following terms and conditions regarding the Monitor's rights, powers and duties, and shall include such terms in the Monitor Agreement:

- (a) The Monitor shall have the power and authority to monitor Respondents' compliance with this Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Agreement and in consultation with the Commissioner.
- (b) The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, legal counsel and other representatives and assistants as the Monitor believes are necessary to carry out the Monitor's duties and responsibilities.

- (c) The Monitor shall have no obligation or authority to operate or maintain the Divestiture Assets.
 - (d) The Monitor shall act for the sole benefit of the Commissioner, maintain all confidences and avoid any conflict of interest.
 - (e) The Monitor shall have no duties of good faith (except as required by law), of a fiduciary nature, or otherwise, to Respondents.
 - (f) The Monitor shall provide to the Commissioner every 30 days after the date of the Monitor's appointment until the Divestiture is complete and thereafter annually on or before every six month anniversary of the Divestiture, a written report concerning performance by Respondents of its obligations under this Agreement. The Monitor shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding Respondents' compliance.
- [53] Subject to any legally recognized privilege, Respondents shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Respondents' compliance with this Agreement.
- [54] Respondents shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor Respondents' compliance with this Agreement.
- [55] Respondents shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. Respondents shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Monitor on behalf of Respondents.
- [56] Respondents may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commissioner.
- [57] The Commissioner may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Monitor may receive from the Commissioner in connection with the performance of the Monitor's duties.
- [58] Respondents shall be responsible for all reasonable fees and expenses properly charged or incurred by the Monitor in the course of carrying out the Monitor's duties under this Agreement. The Monitor shall serve without bond or security, and shall account for all fees and expenses incurred. Respondents shall pay all reasonable invoices submitted by the Monitor within 30 days after receipt and,

without limiting this obligation, Respondents shall comply with any agreement they reach with the Monitor regarding interest on late payments. In the event of any dispute: (i) such invoice shall be subject to the approval of the Commissioner; and (ii) Respondents shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Monitor by Respondents shall be paid out of the proceeds of the Divestiture.

- [59]** Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Monitor.
- [60]** If the Commissioner determines that the Monitor has ceased to act or has failed to act diligently, the Commissioner may remove the Monitor and appoint a substitute Monitor. The provisions of this Agreement respecting the Monitor shall apply in the same manner to any substitute Monitor.
- [61]** The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with this Agreement.

XI. COMPLIANCE

- [62]** Within 5 Business Days after the Closing Date, Respondents shall provide written confirmation to the Commissioner of the date on which the Transaction was completed.
- [63]** Respondents shall provide a copy of this Agreement to each of their own and their Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Agreement, within 3 Business Days after the date of registration of this Agreement. Respondents shall ensure that their directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting Respondents' responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.
- [64]** Respondents shall not, for a period of 5 years after the date when the Divestiture is completed, directly or indirectly acquire all or substantially all of the Divestiture Assets in any local market, without the prior written approval of the Commissioner. Nothing in this provision affects the freedom of customers to choose their supplier following the expiry of their contracts for the supply of propane.

[65] For a period of 2 years after the date when the Divestiture is completed, Respondents shall not, without providing advance written notification to the Commissioner in the manner described in this Section, directly or indirectly:

- (a) acquire any assets or shares of, or any other interest in, any retail propane supply business in a market identified in Confidential Schedule B to this Agreement; or
- (b) consummate any merger or other combination relating to the retail propane supply business in a market identified in Confidential Schedule B to this Agreement.

If a transaction described in (a) or (b) is one for which notice is not required under section 114 of the Act, Respondents shall supply to the Commissioner the information described in section 16 of the *Notifiable Transactions Regulations* at least 30 days before completing such transaction. Respondents shall certify such information in the same manner as would be required if section 118 of the Act applied. The Commissioner may accept a competitive impact brief from Respondents instead of such information. The Commissioner may, within 30 days after receiving the information described in this Section, request that Respondents supply additional information that is relevant to the Commissioner's assessment of the transaction. In the event that the Commissioner issues such a request for additional information, Respondents shall supply information to the Commissioner in the form specified by the Commissioner and shall not complete such transaction until at least 30 days after Respondents has supplied all such requested information in the form specified by the Commissioner.

[66] Six months after the date of registration of this Agreement and annually thereafter on the six month anniversary of the date of registration, and at such other times as the Commissioner may require, Respondents shall file an affidavit or certificate, substantially in the form of Schedule D to this Agreement, certifying its compliance with Parts VII, VIII and XI of this Agreement and setting out the following information in detail:

- (a) the steps taken to ensure compliance;
- (b) the controls in place to verify compliance; and
- (c) the names and titles of employees who have oversight of compliance.

[67] If any of Respondents, the Hold Separate Manager, the Divestiture Trustee or the Monitor becomes aware that there has been a breach or likely breach of any of the terms of this Agreement, such Person shall, within 5 Business Days after becoming aware of the breach or likely breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or likely breach, provided that notification of a possible breach is not required if such Person determines within those 5 Business Days that it could not reasonably be considered a breach of any of the terms of this

Agreement. Respondents shall provide confirmation of its compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to Section 59 of this Agreement.

- [68]** Respondents shall notify the Commissioner at least 30 days prior to:
- (a) any proposed dissolution of a Respondent; or
 - (b) any other change in Respondents if such change may affect compliance obligations arising out of this Agreement including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of Respondents' incorporating statute.
- [69]** For purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, Respondents shall, upon written request given at least 5 Business Days in advance to Respondents, permit any authorized representative(s) of the Commissioner, without restraint or interference:
- (a) to access, during regular office hours of Respondents on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of Respondents related to compliance with this Agreement, which copying services shall be provided by Respondents at its expense; and
 - (b) to interview such officers, directors or employees of Respondents as the Commissioner requests regarding such matters.

XII. DURATION

- [70]** This Agreement shall become effective on the date when it is registered, and shall remain in effect for 5 years following the Divestiture, except that Parts II, III, IV, V and VI of this Agreement shall be effective only until the Divestiture is completed.

XIII. NOTICES

- [71]** A notice or other communication required or permitted to be given under this Agreement is valid if it is:
- (a) in writing and delivered by personal delivery, registered mail, courier service, facsimile or electronic mail; and
 - (b) addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

if to the Commissioner:

Commissioner of Competition
Competition Bureau Canada
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Commissioner of Competition
Fax: (819) 953-5013
Email address: ic.avisdefusionmergernotification.ic@canada.ca

with a copy to:

Executive Director and Senior General Counsel
Competition Bureau Legal Services
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Fax: (819) 953-9267
Email address: ic.cb_lsu_senior_general_counsel-
 avocat_general_principal_usj_bc.ic@canada.ca

if to Respondents:

Darren Hribar
Senior Vice President and Chief Legal Officer
401, 200 Wellington Street West
Toronto, ON M5V 3C7

with a copy to:

Brian Facey and Navin Joneja
Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9

[72] A notice or other communication under this Agreement is effective on the day that it is received by the receiving party and is deemed to have been received as follows:

- (a) if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;

- (b) if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip; or
- (c) if it is delivered by electronic mail, when the recipient, by an email sent to the email address for the sender stated in this Section or by a notice delivered by another method in accordance with this Section, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section.

If a notice or other communication is received after 5:00 p.m. local time, or on a day that is not a Business Day, it shall be deemed to have been received on the next Business Day.

[73] Notwithstanding Sections 71 and 72, a notice or other communication that is not communicated in accordance with Sections 71 and 72 is valid if a representative of the party to this Agreement that is the recipient of such communication confirms the receipt of such communication and does not, at the time of such confirmation, request that it be delivered differently.

XIV. GENERAL

[74] In this Agreement:

- (a) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (b) **Time Periods** – Computation of time periods shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21, and the definition of “holiday” in the *Interpretation Act* shall include Saturday.

[75] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. Respondents hereby consent to such registration. Following the filing of this Agreement, the Commissioner shall promptly issue a letter to Respondents indicating that, subject to the implementation of this Agreement, the Commissioner does not intend to make an application under section 92 of the Act in respect of the Transaction.

[76] Information in Confidential Schedule A shall be made public upon the expiry of the Initial Sale Period. The volume information in Confidential Schedule B shall be made public 3 years after the completion of the Divestiture.

[77] The Commissioner may, after informing Respondents, extend any of the time periods contemplated by this Agreement other than Sections 64, 65 and 70. If any time period is extended, the Commissioner shall promptly notify Respondents of the revised time period.

- [78] Nothing in this Agreement precludes Respondents or the Commissioner from bringing an application under section 106 of the Act. Respondents will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions that: (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in the retail supply of propane in certain local markets; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction.
- [79] Respondents attorn to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.
- [80] This Agreement constitutes the entire agreement between the Commissioner and Respondents, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
- [81] This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.
- [82] In the event of a dispute regarding compliance with or the interpretation, implementation or application of this Agreement, the Commissioner or Respondents may apply to the Tribunal for directions or an order. In the event of any discrepancy between the English language version of this Agreement and the French language version of this Agreement, the English language version of this Agreement shall prevail. In no event shall any dispute suspend the Initial Sale Period or the Divestiture Trustee Sale Period.
- [83] This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

DATED this 27th day of September, 2017

COMMISSIONER OF COMPETITION

[Original signed by John Pecman]

Name: John Pecman

Title: Commissioner of Competition

SUPERIOR PLUS CORP.

[Original signed by Darren Hribar]

I/We have authority to bind the corporation

Name: Darren Hribar

Title: Senior Vice President & Chief Legal Officer

[Original signed by Luc Desjardins]

I/We have authority to bind the corporation

Name: Luc Desjardins

Title: President & Chief Executive Officer

SUPERIOR PLUS LP

[Original signed by Darren Hribar]

I/We have authority to bind the partnership

Name: Darren Hribar

Title: Senior Vice President & Chief Legal Officer

[Original signed by Luc Desjardins]

I/We have authority to bind the partnership

Name: Luc Desjardins

Title: President & Chief Executive Officer

CONFIDENTIAL SCHEDULE A
INITIAL SALE PERIOD

[CONFIDENTIAL]

CONFIDENTIAL SCHEDULE B

MINIMUM VOLUME REQUIREMENTS

Market	Divested Sites	Address	Minimum Volume (Litres)
091 - Thunder Bay - Thunder Bay	Canwest Thunder Bay	1950 Mountdale Avenue, Thunder Bay, ON	[CONFIDENTIAL]
401 - South Saskatchewan - Kindersley & Swift Current	Superior Kindersley	101-5th Street West, Kindersley, SK	
	Superior Swift Current	1710 South Service Road, Swift Current, SK	
414 - Kamloops - Kamloops, Kelowna, Lillooet, & Oliver	Canwest Kamloops	926 Yellowhead Hwy, Kamloops, BC	
	Canwest Winfield	7931 Highway 97 Winfield, Winfield, BC	
414 - Kamloops - Valemount	Canwest Valemount	845 Cedarside Road, Valemount, BC	
444 - Grande Prairie - Grande Prairie	Canwest Sexsmith	9201 95 Avenue, Sexsmith, AB	
444 - Grande Prairie - Zama	Canwest Rainbow Lake	25 Mobile Avenue, Rainbow Lake, AB	
445 - Prince George - Prince George & Williams Lake	Canwest Prince George	4989 Hartway Drive, Prince George, BC	
705 - Lethbridge	Superior Medicine Hat	1202 South Railway St. SE Medicine Hat, AB	
802 - Nanaimo - Port McNeil	Canwest Port Hardy	8050 Goodspeed Road, Port Hardy, BC	
810 - Invermere - Castlegar	Canwest Castlegar	1715 Hwy 3, Castlegar, BC	
810 - Invermere - Invermere, Golden, & Cranbrook	Canwest Golden	1021 11 Avenue N, Golden, BC	
832 - Yellowknife - Hay River & Fort Simpson	Superior Hay River	25-101 Ave., Hay River, NWT	

SCHEDULE C

FORM OF CUSTOMER COMMUNICATION

Respondents shall send a notice to affected customers substantially in the following form within two Business Days after the Commissioner approves a proposed divestiture.

Notice to Canwest Customers

<<Date>>
<<Name>>
<<Street Address>>
<<City, Province, Postal Code>>

Dear <<Customer Name>>,

Welcome to Superior Propane! We're very happy to have you as a customer and are making every effort to ensure a seamless transition of your account. As a valued Superior Propane customer, you can be confident that you'll receive **reliable propane deliveries** and **best-in-class customer service**.

Below you'll find your new Superior Propane account number. Please note that the terms of your account are the same as with your previous supplier, **with four exceptions**. Pursuant to the consent agreement reached with the Commissioner of Competition (available at www.ct-tc.gc.ca), Superior Propane will not be enforcing the provisions in your current tank rental agreement with your previous supplier relating to automatic renewal, charges for equipment removal or propane pump out upon expiration or termination of the contract and claims for fees or damages for early termination. Further, if you own multiple tanks, you will no longer be required to purchase all of your propane requirements exclusively from Superior. **In practical terms, what this means is that if you wish to purchase propane from another supplier, either now or in the future, you can without penalty terminate your agreement with Superior Propane on 30 days written notice and, in that event, you will not be required to pay for any of the removal costs associated with the propane tank at your location.**

Your New Account Number: _____

If you have an outstanding balance owing to your previous supplier on _____, that balance owing will be transferred over to Superior Propane. You will therefore receive a Statement of Account from us, which will act as an invoice. We ask that you please remit your payment to the address indicated on the Statement of Account, in order to bring your account balance to zero.

Over the coming weeks, one of our Customer Service Representatives will be contacting you to confirm that your account information is accurate and complete.

Should you have any questions or concerns about the transition of your account, please do not hesitate to call our _____ branch office at (____) ____-____.

If you wish to find out more about our products and services, visit the **Superior in Your Home** section of our website at superiorpropane.com. For emergency service, we can be reached 24/7 through our toll-free phone number, **1-87SUPERIOR (1-877-873-7467)**.

We're proud to be active members of your community and look forward to delivering all your propane needs.

Your Dedicated Customer Service Team

Superior Propane

Notice to Superior Residential Customers

<<Date>>

<<Name>>

<<Street Address>>

<<City, Province, Postal Code>>

Dear <<Customer Name>>,

As a valued Superior Propane customer, you can be confident that you'll continue to receive **reliable propane deliveries** and **best-in-class customer service** following Superior's acquisition of Canwest.

With the acquisition of Canwest, Superior has decided to alter certain terms of your existing propane contract. Please note that the terms of your account are the same as always, **with five exceptions**. Pursuant to the consent agreement reached with the Commissioner of Competition (available at www.ct-tc.gc.ca), Superior Propane will not be enforcing the provisions in your current tank rental agreement with Superior relating to exclusive supply, automatic renewal, charges for equipment removal or propane pump out upon expiration or termination of the contract and claims for fees or damages for early termination. **In practical terms, what this means is that if you wish to purchase propane from another supplier, either now or in the future, you can without penalty terminate your agreement with Superior Propane on 30 days written notice and, in that event, you will not be required to pay for any of the removal costs associated with the propane tank at your location.**

Should you have any questions or concerns the changes to your account, please do not hesitate to call our _____ branch office at (____) ____-____.

If you wish to find out more about our products and services, visit the **Superior in Your Home** section of our website at superiorpropane.com. For emergency service, we can be reached 24/7 through our toll-free phone number, **1-877-SUPERIOR (1-877-873-7467)**.

We're proud to be active members of your community and look forward to continuing to deliver all your propane needs.

Your Dedicated Customer Service Team

Superior Propane

SCHEDULE D

FORM OF COMPLIANCE CERTIFICATION/AFFIDAVIT

I, **[name]**, of **[place]**, hereby certify¹ in accordance with the terms of the Registered Consent Agreement dated • between Superior Plus Corp., Superior Plus LP (collectively, the “Respondents”) and the Commissioner of Competition, that:

1. I am the **[title]** of **[Respondent]**, and have personal knowledge of the matters deposed to herein, unless they are stated to be on information and belief, in which cases I state the source of such information and believe it to be true.
2. On **[date]**, Respondents entered into a Consent Agreement (the “Consent Agreement”) with the Commissioner of Competition (the “Commissioner”) in connection with the proposed acquisition by Superior Plus LP of Gibson Energy ULC’s propane distribution business (the “Transaction”).
3. The Transaction closed on **[date]** (the “Closing Date”).²
4. The Divestiture (as defined in the Consent Agreement) to **[Purchaser]** was completed on **[date]**.
5. Pursuant to Section 66 of the Consent Agreement, Respondents is required to file **[annual reports/reports when requested by the Commissioner]** certifying its compliance with Parts VII, VIII and XI of the Consent Agreement.

Oversight of Compliance

6. **[Names/titles]** have primary responsibility for overseeing compliance with this Agreement.

Closing Date

7. Pursuant to Section 62 of the Consent Agreement, Respondents is required to provide written confirmation to the Commissioner of the date on which the Transaction was completed. Such notice was provided on **[date]**.

Circulation of Consent Agreement

8. Pursuant to Section 64 of the Consent Agreement, Respondents are required to provide a copy of the Consent Agreement to each of their own and their Affiliates’ directors, officers, employees and agents having managerial responsibility for any obligations under the Consent Agreement, within 3

¹ If this is drafted as an affidavit, the words “hereby certify” should be removed and should be replaced with “make oath and say”. An affidavit should be sworn under oath. A certification should be certified by a Commissioner for taking affidavits.

² Paragraphs 3, 4, 7 and 8 need only be included in the first certification/affidavit.

Business Days after the date of registration of the Consent Agreement. The Consent Agreement was circulated by [whom] to [provide list] on [dates].

9. Pursuant to Section 64 of the Consent Agreement, Respondents are required to ensure that its directors, officers, employees and agents with responsibility for any obligations under the Consent Agreement receive sufficient training respecting Respondents' responsibilities and duties under the Consent Agreement. The following training has been provided: **[provide list of who was trained and by whom as well as a general statement of the content of the training]**

Contracts and Transitional Supply

10. Part VII of the Consent Agreement requires Respondents to take certain measures in respect of customer contracts, and propane supply to the Divested Business. **[Describe measures taken and confirm compliance.]**

Employees

11. Sections 45 and 46 of the Consent Agreement require Respondents to take various steps in regard to its employees whose responsibilities involved the operation of the Divestiture Assets. Respondents has fully complied with the terms of those Sections and, more particularly:

[Note: Describe steps taken to facilitate employee transfer to Purchaser, having regard to the terms of Sections 45 and 46; provide data on the # of employees who have transferred to the Purchaser.]

Notification of Breach

12. Based on my personal knowledge and my inquiries of [provide names], I am not aware of any breach or possible breach of any of the terms of the Consent Agreement within the meaning of Section 67 of the Consent Agreement.

DATED ●.

Commissioner of Oaths

Name and Title of Certifying Officer

SCHEDULE E

DESIGNATED PERSONNEL

Human Resources, Payroll and Pension and Benefits: Julien Houle, Tanya Kalinowski

Accounts Payable and Receivable Systems: Gail Berquist, Andrew Fitzsimons, Martina Davidson, Tammy Brooks, Jey Thiagarajah

Information Technology Services: Virginia Schulz, Lindsey Patzer

Supply Chain and Inventory Management Services: Edmond Ptok, Sohail Bashir, Ryan Denton, Jason Helfrich

Occupational Health and Safety: Graham Thomas

Financial Services: Inder Minhas, Michael Stoutley-Henderson, Mark Rose, Suzy Chen, Loveleen Thind, Brian DeMille, Theresa Keysell, Celeste O'Brien, Erin Seaman, Dan Swatridge, Winnie Wu, Ben Bowes, Beth Summers

Legal and Regulatory Compliance Services: Darren Hribar, Miriam Levin

M&A: John Engelen

Investor Relations: Rob Dorrان, Michelle Shulman

Administrative Support: Mary-Anne Good