

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 of substantially all of the assets of Andrukow Group Solutions Inc. and related vendors by Crop Production Services (Canada) Inc.;

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

BETWEEN :

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT Registered / Enregistré Date: September 1, 2016 CT- 2016-012 Andrée Bernier for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT.	# 2

THE COMMISSIONER OF COMPETITION

Applicant

– and –

CROP PRODUCTION SERVICES (CANADA) INC.

Respondent

CONSENT AGREEMENT

RECITALS:

A. Crop Production Services (Canada) Inc. (“CPS”) proposes to acquire substantially all of the assets of Andrukow Group Solutions Inc. and related vendors (the “Transaction”).

B. The Commissioner has concluded that the Transaction is likely to result in a substantial lessening and/or prevention of competition in the retail supply of anhydrous ammonia, urea and/or urea ammonium nitrate (UAN) in certain areas in Alberta and Saskatchewan, and that the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction.

C. CPS does 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 and/or

prevention of competition in the retail supply of anhydrous ammonia, urea and/or urea ammonium nitrate in certain areas in Alberta and Saskatchewan; 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.

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 CPS 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) **“Andrukow”** means Andrukow Group Solutions Inc., and the related vendors identified in the Transaction Agreement, and their Affiliates, and their directors, officers, employees, agents, representatives, successors and assigns;
- (e) **“Business Day”** means a day on which the Competition Bureau’s Gatineau, Quebec office is open for business;
- (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, and that is

owned by or pertains to a Person or a Person's business, and includes, but is not limited to, manufacturing, operations and financial information, customer lists, price lists, contracts, cost and revenue information, marketing methods, patents, technologies, processes, or other trade secrets;

- (j) **"CPS"** means Crop Production Services (Canada) Inc. and its Affiliates and their directors, officers, employees, agents, representatives, successors and assigns;
- (k) **"CPS's Continuing Employees"** means those employees of CPS who are not employed in connection with the Hold Separate Assets;
- (l) **"Designated Personnel"** means the employees of CPS listed in Schedule D to this Agreement, as modified from time to time by agreement of CPS and the Commissioner, who shall have signed a confidentiality agreement in a form satisfactory to the Commissioner;
- (m) **"Divested Andrukow Agri-Products Businesses"** means the Andrukow agri-products retail businesses at Sedgewick and Wainwright, Alberta;
- (n) **"Divested Business"** means the Divested CPS Agri-Products Businesses and the Divested Andrukow Agri-Products Businesses;
- (o) **"Divested CPS Agri-Products Businesses"** means the CPS agri-products retail businesses at Marwayne and St. Paul, Alberta;
- (p) **"Divestiture"** means the sale, conveyance, transfer, assignment or other disposal of the Divestiture Assets to a Purchaser or Purchasers pursuant to this Agreement and with the prior approval of the Commissioner, such that CPS will have no direct or indirect interest in the Divestiture Assets;
- (q) **"Divestiture Agreement"** means a binding and definitive agreement between CPS and a Purchaser to effect the Divestiture pursuant to this Agreement and subject to the prior approval of the Commissioner;
- (r) **"Divestiture Applicant"** means CPS during the Initial Sale Period or the Divestiture Trustee during the Divestiture Trustee Sale Period;
- (s) **"Divestiture Assets"** means all of the right, title and interest in, to and under, or relating to, the tangible assets, Intangible Assets, property and undertaking owned or used by CPS or held by CPS for use in, or relating to, the Divested Business;
- (t) **"Divestiture Process Agreement"** means the agreement described in Section 6 of this Agreement;

- (u) **“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;
- (v) **“Divestiture Trustee Sale”** means the Divestiture to be conducted by the Divestiture Trustee pursuant to Part III of this Agreement;
- (w) **“Divestiture Trustee Sale Period”** means the 6 month period commencing upon expiry of the Initial Sale Period;
- (x) **“First Reference Date”** shall have the meaning set out in Paragraph 22(d) of this Agreement;
- (y) **“Hold Separate Assets”** means the assets of the Divested Andrukow Agri-Products Businesses;
- (z) **“Hold Separate Employees”** means those employees of CPS who are employed in connection with the Hold Separate Assets, and **“Hold Separate Employee”** means any one of them;
- (aa) **“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;
- (bb) **“Hold Separate Period”** means the period that commences at Closing and ends upon the completion of the Divestiture of the Divested Andrukow Agri-Products Businesses;
- (cc) **“Initial Sale Period”** means the period that commences at Closing and ends at the time set out in Confidential Schedule A to this Agreement;
- (dd) **“Intangible Assets”** means intellectual property of any nature and kind used in connection with or relating to the Divestiture Assets or Divested Business, including:
 - (i) patents, copyrights, trademarks and software;
 - (ii) trade dress, industrial designs, distinguishing guises, trade secrets, know-how, techniques, data, inventions, practices, methods and other confidential or proprietary technical, business, research, development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
 - (iii) rights to obtain and file for patents and registrations thereof; and

- (iv) rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;
- (ee) **“Management Agreement”** means the agreement described in Section 26 of this Agreement;
- (ff) **“Monitor”** means the Person appointed pursuant to Part XI 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 XI of this Agreement Monitor means the Commissioner;
- (gg) **“Monitor Agreement”** means the agreement described in Section 46 of this Agreement;
- (hh) **“Person”** means any individual, corporation or partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business, and any Affiliates thereof;
- (ii) **“Preservation Assets”** means the assets of the Divested CPS Agri-Products Businesses;
- (jj) **“Purchaser”** means a Person that acquires Divestiture Assets pursuant to this Agreement and a Divestiture Agreement;
- (kk) **“Records”** means records within the meaning of subsection 2(1) of the Act;
- (ll) **“Second Reference Date”** shall have the meaning set out in Paragraph 22(e) of this Agreement;
- (mm) **“Third Party”** means any Person other than the Commissioner, CPS or a Purchaser;
- (nn) **“Transaction”** means the transaction described in the first recital to this Agreement;
- (oo) **“Transaction Agreement”** means the Purchase and Sale Agreement between CPS, Andrukow and related entities dated April 27, 2016; and
- (pp) **“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] CPS shall use commercially reasonable efforts to complete the Divestiture.

- [3] During the Initial Sale Period, CPS 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, CPS shall provide to the Commissioner and to the Monitor every 21 days a written report describing the progress of its 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. CPS shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of CPS's efforts to complete the Divestiture. An officer or other duly authorized representative of CPS 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 CPS fails to complete the Divestiture during the Initial Sale Period, the Commissioner shall appoint a Divestiture Trustee to complete the Divestiture in accordance with this Agreement. Such appointment may be made at any time prior to the expiry of 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, CPS 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.
- [7] Within 5 Business Days after receipt of the proposed Divestiture Process Agreement referred to in Section 6, the Commissioner shall advise CPS 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 CPS 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, CPS consents 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 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 that are as favourable to CPS 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 CPS;
 - (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 CPS, 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 72 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 Divestiture Assets that is determined by the Divestiture Trustee to be relevant and appropriate;
 - (ii) permit such Person to make reasonable inspection of the 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 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 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 CPS and the Commissioner immediately upon the signing of any letter of intent or agreement in principle relating to the Divestiture Assets, and shall provide to CPS a copy of any executed Divestiture Agreement upon receipt of the Commissioner's approval of the Divestiture contemplated in such Divestiture Agreement.
- [9] CPS 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 CPS have contact with prospective Purchasers during the Divestiture Trustee Sale Period.
- [10] Subject to any legally recognized privilege, CPS 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 Divestiture Assets, to enable the Divestiture Trustee to conduct its own investigation of the Divestiture Assets and to provide access and information to prospective Purchasers.

- [11] CPS shall take no action that interferes with or impedes, directly or indirectly, the Divestiture Trustee's efforts to complete the Divestiture.
- [12] CPS 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. CPS shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Divestiture Trustee on behalf of CPS.
- [13] CPS 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 its 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 CPS.
- [14] CPS 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. CPS shall pay all reasonable invoices submitted by the Divestiture Trustee within 30 days after receipt and, without limiting this obligation, CPS shall comply with any agreement it reaches 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) CPS shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Divestiture Trustee by CPS shall be paid out of the proceeds of the Divestiture.
- [15] CPS 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] CPS 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] CPS 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] The 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 that 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 CPS, 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 CPS shall certify that he or she has examined the additional information provided by CPS 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, CPS, 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, CPS, 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 fully independent of and operates at arm’s length from CPS;
- (b) CPS 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 anhydrous ammonia, urea and/or urea ammonium nitrate, as applicable, in the

relevant areas of Alberta and Saskatchewan (Daysland, Sedgewick, Amisk, Wainwright, Provost, Paradise Valley, Dewberry/Marwayne and/or St. Paul, as applicable); 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

[24] During the Hold Separate Period, CPS shall:

- (a) hold the Hold Separate Assets separate, apart and independent of CPS 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.

[25] Prior to or at Closing, the Commissioner shall appoint a Hold Separate Manager, responsible for managing and operating the Hold Separate Assets independently of CPS during the Hold Separate Period.

[26] Within 5 Business Days after the appointment of the Hold Separate Manager, CPS 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 CPS during the Hold Separate Period in accordance with this Agreement.

[27] Within 5 Business Days after receipt of the proposed Management Agreement referred to in Section 26, the Commissioner shall advise CPS 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 CPS shall incorporate into a final Management Agreement with the Hold Separate Manager and the Commissioner.

[28] Without limiting the Commissioner's discretion to require additional terms, CPS consents 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 CPS other than in respect of the Hold Separate Assets.
- (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 CPS, 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 28(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 alter any employment, salary or benefit agreements, as they existed at the date of this Agreement, for Persons employed 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 that existed, with respect to the Hold Separate Assets, prior to the date of this Agreement.
 - (e) CPS 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, and CPS shall comply with any such request. If the Monitor believes that CPS has not provided, is 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 CPS must provide. CPS shall comply with any determination made by the Commissioner on this issue.
 - (f) The Hold Separate Manager shall have no financial interests affected by CPS's revenues, profits or profit margins, except that CPS shall provide to the Hold Separate Manager reasonable incentives to undertake this position. Such incentives shall be sufficient 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 CPS's 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.
- [29] CPS 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. CPS shall pay all reasonable invoices submitted by the Hold Separate Manager within 30 days after receipt and, without limiting this obligation, CPS shall comply with any agreement it reaches 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) CPS shall promptly pay any invoice approved by the Commissioner.

- [30] CPS 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.
- [31] 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.
- [32] CPS 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. The system shall include the following protocols:
- (a) The Monitor shall approve all proposed communications between the Hold Separate Manager and CPS before such communications occur and shall be copied on all such communications.
 - (b) CPS's Continuing Employees shall not receive, have access to or use any Confidential Information respecting the Hold Separate Assets. If any of CPS's 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 CPS's Continuing Employees.
 - (c) Notwithstanding Paragraph 32(b), Designated Personnel of CPS may receive 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, operate information

technology systems and comply with this Agreement. Designated Personnel identified as having responsibility for information technology systems or finance may receive detailed financial and operational information relating to the Hold Separate Assets to the extent necessary to operate such information technology systems, comply with securities laws, prepare tax returns, prepare, administer and process insurance coverage and any related claims, administer employee benefits, defend litigation or comply with this Agreement. Any such information shall be: (i) reviewed 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 Section.

- (d) Neither the Hold Separate Manager nor any Hold Separate Employee shall receive, have access to or use any Confidential Information relating to CPS's businesses other than the Hold Separate Assets.

VI. PRESERVATION OBLIGATION

[33] In order to preserve the Preservation Assets pending completion of the Divestiture, CPS shall maintain the economic viability, marketability and competitiveness of the Preservation Assets and related business, and shall comply with any decision of or direction given by the Monitor that relates to preservation of the Preservation Assets. Without limiting the generality of the foregoing, CPS 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 and the Commissioner;
- (e) maintain all approvals, registrations, consents, licences, permits, waivers, and other authorizations that are, in Monitor's view subject to consultation

with CPS, advisable for the operation of the Preservation Assets and related business;

- (f) take commercially reasonable steps to 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 year prior to this Agreement;
- (g) not curtail marketing, sales, promotional or other activities of the Preservation Assets or related business, 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 alter any employment, salary or benefit agreements, as they existed at the date of this Agreement, for Persons employed 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 CPS 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 and related business.

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

- (a) create any new encumbrances on the Preservation Assets or related business, 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 or related business, except as necessary to comply with this Agreement; or

- (c) make any material changes to the Preservation Assets or related business, except as required to comply with this Agreement.

[35] CPS 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 CPS has not provided, is 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 CPS must provide. CPS shall comply with any determination made by the Commissioner on this issue.

VII. THIRD PARTY CONSENTS

[36] It shall be a condition in any Divestiture Agreement (whether negotiated by CPS or by the Divestiture Trustee) that CPS 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 Divestiture Assets; provided, however, that CPS may satisfy this requirement by certifying that the Purchaser has executed agreements directly with one or more Third Parties which make such assignment and assumption unnecessary.

VIII. TRANSITIONAL SUPPLY ARRANGEMENTS

[37] Subject to Section 40, at the option of the Purchaser (the “**Option**”), for up to 2 years following the Divestiture, CPS shall sell to the Purchaser of the Sedgewick business the amount of anhydrous ammonia requested by the Purchaser, up to a total annual amount listed in Confidential Schedule C (the “**Prescribed Volume**”), at a price based on CPS’s published price list and that is, in any event, not to exceed the price that is charged to CPS’s retail outlets in Alberta for similar sales on similar terms at equivalent locations on equivalent order dates and delivery dates.

[38] The Purchaser shall provide CPS a volume forecast by month and delivery point by June 30th for the upcoming fall season and by December 31st for the upcoming spring season.

[39] The Purchaser shall notify CPS of the volumes, delivery points, and delivery dates to which it will also commit contractually by submitting a completed and binding purchase order by the last day of February for the upcoming spring season and August 31st for the upcoming fall season (collectively the “**Commitment Dates**”). For greater certainty, if the Purchaser does not make such a contractual commitment by a Commitment Date, the Purchaser will no longer have its Option referred to in Section 37 for the applicable season. CPS shall deliver from any of its supply points the committed volumes in the monthly amounts in accordance

with the dates and the delivery point(s) specified by the Purchaser in its purchase order.

- [40] CPS may proportionately reduce the Prescribed Volume in the event of supply disruptions experienced by CPS, including plant shutdowns, plant turnarounds for maintenance, production volume reductions and force majeure events. CPS shall promptly notify the Commissioner, the Monitor and the Purchaser if a supply disruption will require a curtailment of the Prescribed Volume.

IX. EMPLOYEES

- [41] CPS (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 involve the operation of the Divestiture Assets (including the Hold Separate 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.

- [42] CPS shall:

- (a) not interfere, directly or indirectly, with any negotiations by a Purchaser to employ any employees whose responsibilities involve the operation of the Divestiture Assets;
- (b) not offer any incentive to such employees to decline employment with the Purchaser or to accept other employment with CPS;
- (c) remove any impediment that may deter such employees from accepting employment with the Purchaser;
- (d) waive any non-compete or confidentiality provisions of employment or other contracts that could impair the ability of such employees to be employed by the Purchaser; and
- (e) pay or transfer to or maintain for the employees subsequently employed by the 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 CPS.

- [43] For a period of one year following completion of the Divestiture, CPS 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 who has accepted an offer of employment with the Purchaser unless such Person's employment has been terminated by the Purchaser.

X. FAILURE OF DIVESTITURE TRUSTEE SALE

[44] 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; or (ii) such order as is necessary to ensure that the Transaction is not likely to prevent or lessen competition substantially.

XI. MONITOR

[45] The Commissioner shall appoint a Monitor, responsible for monitoring compliance by CPS 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 CPS's compliance with this Agreement.

[46] Within 5 Business Days after the appointment of the Monitor, CPS 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 CPS with this Agreement.

[47] Within 5 Business Days after receipt of the proposed Monitor Agreement referred to in Section 46, the Commissioner shall advise CPS 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 CPS shall incorporate into a final Monitor Agreement with the Monitor and the Commissioner.

[48] CPS consents to the following terms and conditions regarding the Monitor's rights, powers and duties:

(a) The Monitor shall have the power and authority to monitor CPS's 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 CPS, 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 or Hold Separate 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, of a fiduciary nature, or otherwise, to CPS.
 - (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 the anniversary of the Divestiture, a written report concerning performance by CPS of its obligations under this Agreement. The Monitor shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding CPS's compliance.
- [49] Subject to any legally recognized privilege, CPS shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring CPS's compliance with this Agreement.
- [50] CPS shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor CPS's compliance with this Agreement.
- [51] CPS shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. CPS shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Monitor on behalf of CPS.
- [52] CPS 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.
- [53] 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.
- [54] CPS 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. CPS shall pay all reasonable invoices submitted by the Monitor within 30 days after receipt and, without limiting this obligation, CPS shall comply with any agreement it reaches 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) CPS shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Monitor by CPS shall be paid out of the proceeds of the Divestiture.

- [55] CPS 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.
- [56] 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.
- [57] The Monitor shall serve for such time as is necessary to monitor CPS's compliance with this Agreement.

XII. COMPLIANCE

- [58] Within 5 Business Days after the Closing Date, CPS shall provide written confirmation to the Commissioner of the date on which the Transaction was completed.
- [59] CPS shall provide a copy of this Agreement to each of its own and its 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. CPS shall ensure that its directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting CPS's responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.
- [60] CPS shall not, for a period of 10 years after the date when the Divestiture is completed, directly or indirectly acquire any interest in the Divestiture Assets, without the prior written approval of the Commissioner.
- [61] For a period of 3 years after the date when the Divestiture is completed, CPS 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 agri-products retail outlet within 50 km of Daysland, Sedgewick, Amisk, Wainwright, Provost, Paradise Valley, Dewberry or St. Paul, Alberta where urea, urea

ammonium nitrate, and anhydrous ammonia fertilizer sales make up more than 10% of gross revenues; or

- (b) consummate any merger or other combination relating to an agri-products business within 50 km of Daysland, Sedgewick, Amisk, Wainwright, Provost, Paradise Valley, Dewberry or St. Paul, Alberta where urea, urea ammonium nitrate, and anhydrous ammonia fertilizer sales make up more than 10% of the gross revenues of the business.

If a transaction described in (a) or (b) is one for which notice is not required under section 114 of the Act, CPS shall supply to the Commissioner the information described in section 16 of the *Notifiable Transactions Regulations* at least 30 days before completing such transaction. CPS 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 CPS instead of such information. The Commissioner may, within 30 days after receiving the information described in this Section, request that CPS 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, CPS 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 CPS has supplied all such requested information in the form specified by the Commissioner.

[62] 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, CPS shall file an affidavit or certificate, substantially in the form of Schedule B to this Agreement, certifying its compliance with Parts VIII, IX and XII 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.

[63] If any of CPS, the Hold Separate Manager, the Divestiture Trustee or the Monitor becomes aware that there has been a breach or possible breach of any of the terms of this Agreement, such Person shall, within 5 Business Days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible 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. CPS shall provide confirmation of its compliance with this provision

in all affidavits and certificates of compliance filed with the Commissioner pursuant to Section 62 of this Agreement.

[64] CPS shall notify the Commissioner at least 30 days prior to:

- (a) any proposed dissolution of CPS; or
- (b) any other change in CPS 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 CPS's incorporating statute.

[65] For purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, CPS shall, upon written request given at least 5 Business Days in advance to CPS, permit any authorized representative(s) of the Commissioner, without restraint or interference:

- (a) to access, during regular office hours of CPS on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of CPS related to compliance with this Agreement, which copying services shall be provided by CPS at its expense; and
- (b) to interview such officers, directors or employees of CPS as the Commissioner requests regarding such matters.

XIII. DURATION

[66] This Agreement shall become effective on the date when it is registered, and shall remain in effect for 10 years following the Divestiture, except that:

- (a) Parts II, III, IV, V, VI and VII of this Agreement shall be effective only until the Divestiture is completed; and
- (b) Part VIII of this Agreement shall be effective only until the transitional supply arrangement is completed.

XIV. NOTICES

[67] 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: jonathan.chaplan@canada.ca

if to CPS:

Tom Mix
Agrium Inc.
13131 Lake Fraser Drive SE
Calgary, Alberta T2J 7E8
Fax: (403) 225-7609
E-mail address: tom.mix@agrium.com

with a copy to:

Brian Facey
Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000
Toronto ON M5L 1A9
Fax: (416) 863-2653
Email address: brian.facey@blakes.com

- [68]** 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.

[69] Notwithstanding Sections 67 and 68, a notice or other communication that is not communicated in accordance with Sections 67 and 68 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.

XV. GENERAL

[70] 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.

[71] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. CPS hereby consents to such registration. Following the filing of this Agreement, the Commissioner shall promptly issue a letter to CPS 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.

[72] Information in Confidential Schedule A shall be made public upon the expiry of the Initial Sale Period. Information in Confidential Schedule C shall be made public after the expiry of this Agreement.

[73] The Commissioner may, after informing CPS, extend any of the time periods contemplated by this Agreement other than Sections 60, 61, 65 and 66. If any time

period is extended, the Commissioner shall promptly notify CPS of the revised time period.

- [74] Nothing in this Agreement precludes CPS or the Commissioner from bringing an application under section 106 of the Act. CPS 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 anhydrous ammonia, urea and/or urea ammonium nitrate in certain areas in Alberta and Saskatchewan; 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.
- [75] CPS attorns to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.
- [76] Until Closing, CPS shall make reasonable efforts to ensure that Andrukow preserves the Hold Separate Assets in a manner consistent with Part V of this Agreement.
- [77] This Agreement constitutes the entire agreement between the Commissioner and CPS, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
- [78] 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.
- [79] In the event of a dispute regarding compliance with or the interpretation, implementation or application of this Agreement, the Commissioner or CPS 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.
- [80] 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 31ST day of August, 2016

COMMISSIONER OF COMPETITION

[Original signed by John Pecman]

Name: John Pecman

Title: Commissioner of Competition

CROP PRODUCTION SERVICES (CANADA) INC.

[Original signed by Jeff Tarsi]

I have authority to bind the corporation

Name: Jeff Tarsi

Title: Vice President

**CONFIDENTIAL SCHEDULE A
INITIAL SALE PERIOD**

[CONFIDENTIAL]

SCHEDULE B

FORM OF COMPLIANCE CERTIFICATION/AFFIDAVIT

I, **[name]**, of **[place]**, hereby certify¹ in accordance with the terms of the Registered Consent Agreement dated • between Crop Production Services (Canada) Inc. (“CPS”) and the Commissioner of Competition, that:

1. I am the **[title]** of CPS, 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]**, CPS entered into a Consent Agreement (the “Consent Agreement”) with the Commissioner of Competition (the “Commissioner”) in connection with the acquisition by CPS of substantially all of the assets of Andrukow Group Solutions Inc. and related vendors (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 62 of the Consent Agreement, CPS 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 58 of the Consent Agreement, CPS 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 59 of the Consent Agreement, CPS is required to provide a copy of the Consent Agreement to each of its own and its Affiliates’ directors, officers, employees and agents having managerial responsibility for any obligations under the Consent Agreement, within 3 Business Days after the date

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.

of registration of the Consent Agreement. The Consent Agreement was circulated by **[whom]** to **[provide list]** on **[dates]**.

9. Pursuant to Section 59 of the Consent Agreement, CPS is required to ensure that its directors, officers, employees and agents with responsibility for any obligations under the Consent Agreement receive sufficient training respecting CPS's 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]**

Transitional Supply Arrangements

10. Pursuant to Part VIII of the Consent Agreement, CPS is required to provide anhydrous ammonia supply at the request of the Purchaser of the Sedgewick business. **[Describe compliance with volume, pricing and delivery commitments.]**

Employees

11. Sections 41 and 42 of the Consent Agreement require CPS to take various steps in regard to its employees whose responsibilities involved the operation of the Divestiture Assets. CPS 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 41 and 42; 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 63 of the Consent Agreement.

DATED ●.

Commissioner of Oaths

Name and Title of Certifying Officer

CONFIDENTIAL SCHEDULE C

ANNUAL AA SUPPLY COMMITMENT VOLUMES

[CONFIDENTIAL]

SCHEDULE D

DESIGNATED PERSONNEL

Information Technology & Finance: Kaye Reitzenstein, Darren Gardner, Trent Hansen, Stacey Kuskie, Sumer Krier, Todd Glaza, Eric Rose, Willie Linder, Kerrin Kerney, Kelli Pierce, Mindi Lee, Cyndi Clark, Whitney Semmens, Shaun Phelps, David Jansen, James Clark, Crystal Mock, Kerry Sheetz, Cara Hertneky, Rachel Hall, Colin Korson, Mike Gates, Ronda Schwab, Kari Koldeway, Nik Bjelland-Miller, Brenda Woods, Lisa Magruder, Jill Smith, Ava Schreiner, BJ Paul, Gail Tomlinson;

Corporate Development & Strategy: Matt Cherry, Simon Leung;

Legal: Tom Mix, David Kramer, Nathan Hillier;

Employee Health, Safety & Security: Henry Ens;

Tax: Karen Rowbottom, Ed Baines; and

Human Resources: Cheryl Skiba, Kelsey Schaeffer, Seona Noseworthy.