

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 Agrium Inc. and/or its affiliates of certain agri-products assets from Glencore International plc and/or its affiliates;

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

B E T W E E N :

THE COMMISSIONER OF COMPETITION

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT CT-2013-006 April 23, 2014 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 4

Applicant

– and –

AGRIUM INC.

Agrium

CONSENT AGREEMENT

RECITALS:

A. Agrium Inc. and/or its affiliates (“Agrium”) proposes to directly or indirectly acquire 217 agri-products retail outlets, related anhydrous ammonia bullet tank stations and three related dry storage facilities from Glencore International plc and/or its affiliates (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 certain agri-products 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. Agrium 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 certain agri-products in certain areas of 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.

THEREFORE Agrium 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 an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
- (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) **“Agrium”** means Agrium Inc., its directors, officers, employees, agents, representatives, successors and assigns; and all joint ventures, subsidiaries, divisions, groups and Affiliates controlled by Agrium Inc., and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- (e) **“Agrium Divested AA Businesses”** means the Agrium retail anhydrous ammonia businesses identified in Schedule A;
- (f) **“Agrium Divested Agri-Products Businesses”** means the Agrium agri-products retail businesses identified in Schedule A;
- (g) **“Agrium’s Continuing Employees”** means those employees of Agrium who are not employed in connection with the Hold Separate Assets;
- (h) **“Business Day”** means a day on which the Competition Bureau’s Gatineau, Quebec office is open for business;
- (i) **“Closing”** means the completion of the Transaction under the Support and Purchase Agreement dated March 19, 2012, between Glencore International plc, 8001979 Canada Inc., 8115222 Canada Inc. and Agrium, as amended;
- (j) **“Closing Date”** means the date on which Closing occurs;
- (k) **“Commissioner”** means the Commissioner of Competition appointed under the *Competition Act*;

- (l) **“Commitment Dates”** shall have the meaning set out in Section 41 of this Agreement;
- (m) **“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;
- (n) **“Designated Personnel”** means the employees of Agrium (and their successors in the same capacity) listed in Confidential Schedule F, who shall have signed a confidentiality agreement in a form satisfactory to the Commissioner only;
- (o) **“Divested Business”** means the Agrium Divested AA Businesses, the Viterra Divested AA Businesses, the Agrium Divested Agri-Products Businesses and the Viterra Divested Agri-Products Businesses;
- (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 Agrium will have no direct or indirect interest in the Divestiture Assets;
- (q) **“Divestiture Agreement”** means a binding and definitive agreement between Agrium and a Purchaser to effect the Divestiture or part of the Divestiture pursuant to this Agreement and subject to the prior approval of the Commissioner;
- (r) **“Divestiture Assets”** means all of the right, title and interest in, to and under, or relating to, the assets, property and undertaking owned or used or held by Agrium for use in, or relating to, the Divested Business;
- (s) **“Divestiture Process Agreement”** means the agreement described in Section 23 of this Agreement;
- (t) **“Divestiture Trustee”** means the Person appointed pursuant to Part VI 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 VI of this Agreement;
- (v) **“Divestiture Trustee Sale Period”** means the period that commences upon expiry of the Initial Sale Period and ends at the time provided for in Confidential Schedule B to this Agreement;

- (w) **“First Reference Date”** shall have the meaning set out in Paragraph 3(c) of this Agreement;
- (x) **“Hold Separate Assets”** means the Viterra Divested Agri-Products Businesses and Viterra’s retail agri-products businesses at Camrose, Craddock, Cudworth and Medicine Hat;
- (y) **“Hold Separate Employees”** means those employees of Agrium who are employed 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 III 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, in respect of any Hold Separate Assets, upon the completion of the Divestiture of the corresponding Divestiture Assets;
- (bb) **“Interpretation Act”** means the *Interpretation Act*, R.S.C. c. I-21, as amended;
- (cc) **“Initial Sale Period”** means the period that commences at Closing and ends at the time set out in Confidential Schedule B to this Agreement;
- (dd) **“Management Agreement”** means the agreement described in Section 7 of this Agreement;
- (ee) **“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;
- (ff) **“Monitor Agreement”** means the agreement described in Section 47 of this Agreement;
- (gg) **“Option”** shall have the meaning set out in Section 39 of this Agreement;
- (hh) **“Parties”** means the Commissioner and Agrium collectively, and **“Party”** means any one of them;
- (ii) **“Person”** means any individual, sole proprietorship, partnership, joint venture, firm, corporation, unincorporated organization, trust, or other business or government entity, and any subsidiaries, divisions, groups or Affiliates thereof;
- (jj) **“Prescribed Volumes”** shall have the meaning set out in Section 39 of this Agreement;

- (kk) **“Preservation Assets”** means the Agrium Divested AA Businesses and the Agrium Divested Agri-Products Businesses;
- (ll) **“Purchaser”** means a Person that acquires Divestiture Assets pursuant to this Agreement and a Divestiture Agreement;
- (mm) **“Records”** means records within the meaning of subsection 2(1) of the Act;
- (nn) **“Relevant Local Areas”** means the areas that are within 35 kilometres of the sites listed in Schedule A;
- (oo) **“Second Reference Date”** shall have the meaning set out in Paragraph 3(d) of this Agreement;
- (pp) **“Third Party”** means any Person other than the Commissioner, Agrium or a Purchaser;
- (qq) **“Transaction”** means the transaction described in the first recital to this Agreement;
- (rr) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.);
- (ss) **“Viterra”** means Viterra Inc., its directors, officers, employees, agents, representatives, successors and assigns; and all joint ventures, subsidiaries, divisions, groups and Affiliates controlled by Viterra Inc., and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- (tt) **“Viterra Divested AA Businesses”** means the Viterra retail anhydrous ammonia businesses identified in Schedule A;
- (uu) **“Viterra Divested Agri-Products Businesses”** means the Viterra agri-products retail businesses identified in Schedule A; and
- (vv) **“Viterra Divested Assets”** means the Viterra Divested AA Businesses and the Viterra Divested Agri-Products Businesses.

II. COMMISSIONER APPROVAL OF DIVESTITURE

- [2] The Divestiture may proceed only with the prior approval of the Commissioner in accordance with this Part.
- [3] Agrium (during the Initial Sale Period) or the Divestiture Trustee (during the Divestiture Trustee Sale Period), as the case may be, shall comply with the following process for seeking and obtaining a decision of the Commissioner regarding his approval of a proposed Divestiture:

- (a) Agrium or the Divestiture Trustee, as the case may be, 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 agreements that are signed with a prospective Purchaser, including non-binding expressions of interest.
- (b) Agrium or the Divestiture Trustee, as the case may be, 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. Such notice 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 Agrium or the Divestiture Trustee, likely satisfy the terms of this Agreement.
- (c) Within 7 days following receipt of the notice described in Paragraph 3(b), the Commissioner may request additional information concerning the proposed Divestiture from any or all of Agrium, the Divestiture Trustee, the Monitor, the Hold Separate Manager and the prospective Purchaser. 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 Agrium shall certify that he or she has examined any additional information provided by Agrium to the Commissioner 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 any additional information provided by the Hold Separate Manager to the Commissioner 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 any additional information provided by the prospective Purchaser to the Commissioner 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, Agrium, Monitor, Hold Separate Manager and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the **“First Reference Date”**.

- (d) Within 5 Business Days after the First Reference Date, the Commissioner may request further additional information concerning the proposed Divestiture from any or all of Agrium, the Divestiture Trustee, the Monitor, the Hold Separate Manager and the prospective Purchaser. 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 3(c)(i)-(v) in regard to the further additional information provided. The date on which the last of the Divestiture Trustee, Agrium, Monitor, Hold Separate Manager and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the **“Second Reference Date”**.
- (e) The Commissioner shall notify Agrium or the Divestiture Trustee, as the case may be, of the approval of, or the objection to, the proposed Divestiture as soon as possible, and in any event within 7 days after the date on which the Commissioner receives the notice described in Paragraph 3(b) or, if he requests any additional information under Paragraph 3(c) or further additional information under Paragraph 3(d), within 7 days after the later of:
 - (i) the First Reference Date; and
 - (ii) the Second Reference Date, if any.
- (f) The Commissioner’s determination as to whether to approve a proposed Divestiture shall be in writing.

[4] The Commissioner has sole discretion to determine whether to approve a proposed Divestiture. In exercising such discretion, 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 Agrium;
- (b) Agrium will have no direct or indirect interest in the Divestiture Assets following the Divestiture, subject to Section 62 below;
- (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 or agri-products, as the case may be; 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.

III. HOLD SEPARATE

[5] During the Hold Separate Period, Agrium shall:

- (a) hold the Hold Separate Assets separate, apart and independent of Agrium and shall vest the Hold Separate Manager with all rights, powers and authority 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.

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

[7] Within 5 Business Days after the appointment of the Hold Separate Manager, Agrium shall submit to the Commissioner for approval the terms of a proposed Management Agreement with the Hold Separate Manager and the Commissioner that transfers to the Hold Separate Manager all rights, powers and authority necessary to permit the Hold Separate Manager to conduct the business of the Hold Separate Assets independently of Agrium during the Hold Separate Period in accordance with this Agreement.

- [8] Within 5 Business Days after receipt of the proposed Management Agreement referred to in Section 7, the Commissioner shall advise Agrium 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 Agrium shall incorporate into a final Management Agreement with the Hold Separate Manager and the Commissioner.
- [9] Agrium consents to the following terms and conditions regarding the Hold Separate Manager's rights, powers, authority, duties and responsibilities, 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 Agrium 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 Agrium, 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 9(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 materially and 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 materially consistent with the practices of Agrium that existed, with respect to the Hold Separate Assets, prior to the date of this Agreement.
- (e) Agrium 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 Agrium shall comply with any such request. If the Monitor believes that Agrium 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 Agrium must provide. Agrium shall comply with any determination made by the Commissioner on this issue.
- (f) The Hold Separate Manager shall have no financial interests affected by Agrium's revenues, profits or profit margins, except that Agrium 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 determines 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 Agrium'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.
- [10] Agrium 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. In the event of any dispute: (i) such account shall be subject to the approval of the Commissioner only; and (ii) Agrium shall promptly pay any account approved by the Commissioner.
- [11] Agrium 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.
- [12] 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.
- [13] Agrium 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 be entitled to review all proposed communications between the Hold Separate Manager and Agrium before such communications occur, and shall be copied on all such communications.
 - (b) Agrium's Continuing Employees shall not receive, have access to or use any Confidential Information respecting the Viterro Divested Assets. If any of Agrium's Continuing Employees possesses Confidential Information respecting the Viterro Divested 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, together with a signed statement confirming that he or she is no longer in possession of any Records containing Confidential Information respecting the Viterro Divested Assets; and (ii) submit to the Monitor a signed

statement confirming that he or she undertakes not to share any Confidential Information respecting the Viterra Divested Assets with any of Agrium's Continuing Employees.

- (c) Notwithstanding Paragraph 13(b), Designated Personnel of Agrium may receive aggregate financial and operational information relating to the Viterra Divested Assets only to the extent necessary to comply with securities laws, prepare financial and regulatory reports, prepare tax returns, prepare, administer and process insurance coverage and any related claims, 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 Viterra Divested Assets to the extent necessary to operate such information technology systems, comply with securities laws, prepare financial and regulatory reports, 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. If required by the Monitor, Designated Personnel shall sign a confidentiality agreement in a form satisfactory to the Commissioner.
- (d) Neither the Hold Separate Manager nor any Hold Separate Employee shall receive, have access to or use any Confidential Information relating to Agrium's businesses other than the Hold Separate Assets. Agrium shall provide the list of Designated Personnel set out in Confidential Schedule F, as updated from time to time, to the Hold Separate Manager and Hold Separate Employees.
- (e) Agrium shall be entitled to and the Hold Separate Manager shall, on request, provide to Agrium any information (including Confidential Information) in respect of Hold Separate Assets that are not Viterra Divested Assets.

[14] For the purpose of this Part, if there is no Monitor, the Hold Separate Manager shall report to and be subject to the oversight of the Commissioner, who shall have the rights, powers and authorities of the Monitor under this Part. Where the prior approval of the Monitor is required and there is no Monitor, such prior approval may be obtained from the Commissioner and the Commissioner may make any determination that could have otherwise been made by the Monitor under this Part.

IV. PRESERVATION OBLIGATION

[15] In order to preserve the Preservation Assets, prior to the Divestiture Agrium shall, subject to the oversight of the Monitor, manage and maintain the operation of the Preservation Assets 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 Preservation Assets.

[16] Without limiting the generality of Section 15 above, Agrium shall:

- (a) maintain and hold the Preservation 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;
- (b) take all 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 those that existed prior to the date of this Agreement;
- (c) not knowingly take or allow to be taken any action that, in the view of the Monitor, materially and adversely affects the competitiveness, operations, financial status or value of the Preservation Assets;
- (d) not alter or cause to be altered, to any material extent, the management of the Preservation Assets as it existed prior to the date of this Agreement, except with the prior approval of the Monitor;
- (e) 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, except with the prior approval of the Monitor;
- (f) 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 subject to the prior approval of the Monitor;
- (g) maintain inventory levels and payment terms materially consistent with the practices of Agrium that existed, with respect to the Hold Separate Assets, prior to the date of this Agreement; and
- (h) not 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.

[17] Agrium shall provide sufficient financial resources, including general funds, capital funds, working capital and reimbursement for any operating, capital or

other losses, to comply with its obligations under this Part. If the Monitor believes that Agrium has not provided, is not providing or will not provide sufficient financial and other resources under this Section, the Monitor shall forthwith refer the matter to the Commissioner, who shall make a final determination respecting the financial and other resources that Agrium must provide. Agrium shall comply with any determination made by the Commissioner on this issue.

- [18] In addition to those Persons employed in connection with the Preservation Assets on the Closing Date, Agrium shall employ such other Persons as the Monitor determines are necessary to manage and operate the Preservation Assets.
- [19] For the purpose of this Part, if there is no Monitor, Agrium shall report to and be subject to the oversight of the Commissioner, who shall have the rights, powers and authorities of the Monitor under this Part. Where the prior approval of the Monitor is required and there is no Monitor, such prior approval may be obtained from the Commissioner and the Commissioner may make any determination that could have otherwise been made by the Monitor under this Part.

V. INITIAL SALE PERIOD

- [20] Agrium shall use commercially reasonable efforts to complete the Divestiture during the Initial Sale Period in accordance with the provisions of this Part and Confidential Schedule B.
- [21] Agrium 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. Agrium shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of Agrium's efforts to complete the Divestiture. An officer or other duly authorized representative of Agrium 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 his knowledge and belief, correct and complete in all material respects.

VI. DIVESTITURE TRUSTEE SALE PROCESS

- [22] In the event that Agrium 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.
- [23] Within 5 Business Days after the appointment of the Divestiture Trustee, Agrium shall submit to the Commissioner for approval the terms of a proposed Divestiture Process Agreement with the Divestiture Trustee and the Commissioner that

transfers to the Divestiture Trustee all rights, powers and authority necessary to permit the Divestiture Trustee to effect the Divestiture.

[24] Within 5 Business Days after receipt of the proposed Divestiture Process Agreement referred to in Section 23, the Commissioner shall advise Agrium 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 Agrium shall incorporate into a final Divestiture Process Agreement with the Divestiture Trustee and the Commissioner.

[25] Agrium consents to the following terms and conditions regarding the Divestiture Trustee's rights, powers, authority, duties and responsibilities, 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 Agrium 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 only.
- (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;
 - (iii) to enter into a Divestiture Agreement with a Purchaser that will be legally binding on Agrium;
 - (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 Agrium, 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 Sections 74, 75 and 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 only, 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 Divestiture Trustee's appointment and thereafter every 21 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 Agrium 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 Agrium a copy of any executed Divestiture Agreement upon receipt of

Commissioner approval of the Divestiture contemplated in such Divestiture Agreement.

- [26] Agrium 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 Agrium have contact with prospective Purchasers during the Divestiture Trustee Sale Period.
- [27] Subject to any legally recognized privilege, Agrium 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.
- [28] Agrium shall take no action that interferes with or impedes, directly or indirectly, the Divestiture Trustee's efforts to complete the Divestiture.
- [29] Agrium 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. Agrium shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Divestiture Trustee on behalf of Agrium.
- [30] Agrium 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 Agrium.
- [31] Agrium 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. In the event of any dispute: (i) such account shall be subject to the approval of the Commissioner only; and (ii) Agrium shall promptly pay any account approved by the Commissioner.
- [32] Agrium shall pay all reasonable invoices submitted by the Divestiture Trustee within 30 days after receipt. Any outstanding monies owed to the Divestiture Trustee by Agrium shall be paid out of the proceeds of the Divestiture.
- [33] Agrium 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.

- [34] 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.
- [35] Agrium 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 only; provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commissioner.
- [36] 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.
- [37] Notwithstanding any term of this Agreement, the obligations and powers of the Divestiture Trustee under this Agreement shall not expire until the Divestiture is completed.

VII. THIRD PARTY CONSENTS

- [38] It shall be a condition in any Divestiture Agreement (whether negotiated by Agrium or by the Divestiture Trustee) that Agrium 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 Agrium 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

- [39] Subject to Section 42, at the option of the Purchaser(s) (the "**Option**"), for up to 4 years following the Divestiture, Agrium shall sell to the Purchaser the amount of anhydrous ammonia requested by the Purchaser, up to a total annual amount of 19,348 tonnes, subject to the maximum annual amounts per location listed in Confidential Schedule E (the "**Prescribed Volumes**"), at a price based on Agrium's published price list and that is, in any event, not to exceed the price that

is charged to Agrium's retail outlets in Alberta and Saskatchewan for similar sales on similar terms at equivalent locations on equivalent order dates and delivery dates.

- [40] Each Purchaser shall provide Agrium 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.
- [41] Each Purchaser shall notify Agrium of the volumes, delivery points, and delivery dates to which it will also commit contractually by submitting a completed and binding Agrium 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, Purchaser will no longer have its Option referred to in Section 39 for the applicable season. Agrium 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(s) in its purchase order.
- [42] Agrium may proportionately reduce the Prescribed Volumes for each Purchaser in the event of supply disruptions experienced by Agrium, including plant shutdowns, plant turnarounds for maintenance, production volume reductions and force majeure events. Agrium shall promptly notify the Commissioner, the Monitor and the Purchaser(s) if a supply disruption will require a curtailment of Prescribed Volumes.

IX. EMPLOYEES

- [43] Agrium (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 and to the Commissioner information relating to the employees whose responsibilities involve the operation of the 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. Agrium shall:
- (a) not interfere, directly or indirectly, with any negotiations by a Purchaser to employ any such employees;
 - (b) not offer any incentive to such employees to decline employment with the Purchaser or to accept other employment with Agrium;
 - (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 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 Agrium.

[44] For a period of 1 year following completion of the Divestiture, Agrium 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

[45] 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

[46] The Commissioner may appoint a Monitor, responsible for monitoring compliance by Agrium 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 power and duty to monitor all aspects of Agrium's compliance with this Agreement.

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

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

- [49]** Agrium consents to the following terms and conditions regarding the Monitor's rights, powers, authority, duties and responsibilities, and shall include such terms in the Monitor Agreement:
- (a) The Monitor shall have the power and authority to monitor Agrium'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 Agrium, 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, of a fiduciary nature, or otherwise, to Agrium.
 - (f) The Monitor shall provide to the Commissioner every 30 days after the date of the Monitor's appointment, a written report concerning performance by Agrium of its obligations under this Agreement. The Monitor shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding Agrium's compliance.
- [50]** Subject to any legally recognized privilege, Agrium shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Agrium's compliance with this Agreement.
- [51]** Agrium shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor Agrium's compliance with this Agreement.
- [52]** Agrium shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. Agrium shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Monitor on behalf of Agrium.
- [53]** Agrium 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 only; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commissioner.

- [54] 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.
- [55] Agrium 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. In the event of any dispute: (i) such account shall be subject to the approval of the Commissioner only; and (ii) Agrium shall promptly pay any account approved by the Commissioner.
- [56] Agrium shall pay all reasonable invoices submitted by the Monitor within 30 days after receipt. Any outstanding monies owed to the Monitor by Agrium shall be paid out of the proceeds of the Divestiture.
- [57] Agrium 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.
- [58] 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.
- [59] The Monitor shall serve for such time as is necessary to monitor Respondent's compliance with this Agreement.

XII. COMPLIANCE

- [60] Within 5 Business Days after the Closing Date, Agrium shall provide written confirmation to the Commissioner of the date on which the Transaction was completed.
- [61] Agrium shall provide a copy of this Agreement to each of its own and its Affiliates' directors, officers and employees having managerial responsibility for any obligations under this Agreement, within 3 Business Days after the date of registration of this Agreement. Agrium shall ensure that its directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting Agrium's responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.

- [62] Agrium 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.
- [63] For a period of 3 years after the date when the Divestiture is completed, Agrium 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 in a Relevant Local Area where urea and anhydrous ammonia fertilizer sales make up more than 10% of gross revenues; or
 - (b) consummate any merger or other combination relating to the agri-products business in a Relevant Local Area where urea and anhydrous ammonia fertilizer sales make up more than 10% of gross revenues.

If a transaction described in (a) or (b) is one for which notice is not required under section 114 of the Act, Agrium shall supply to the Commissioner the information described in section 16 of the *Notifiable Transactions Regulations* at least 30 days before completing such transaction. Agrium shall certify its own information in the same manner as would be required if section 118 of the Act applied. The Commissioner may, within 30 days after receiving the information described in section 16 of the *Notifiable Transactions Regulations*, request that Agrium 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, Agrium 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 Agrium has supplied all such requested information in the form specified by the Commissioner.

- [64] 6 months after the date of registration of this Agreement and annually for the duration of this Agreement, and at such other times as the Commissioner may require, Agrium shall file an affidavit or certificate, substantially in the form of Schedule D to this Agreement, certifying its compliance with Parts IX (for so long as Part IX applies) 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.

- [65] If any of Agrium, 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 2 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. Agrium shall provide confirmation of its compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to Section 64 of this Agreement.

[66] Agrium shall notify the Commissioner at least 30 days prior to:

- (a) any proposed dissolution of Agrium Inc.;
- (b) any other material change in Agrium including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of Agrium's incorporating statute, if such change may affect compliance obligations arising out of this Agreement.

[67] For the period commencing when this Agreement is registered and ending when the Divestiture is completed, for purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, Agrium shall, upon written request given at least 2 Business Days in advance to Agrium, permit any authorized representative(s) of the Commissioner, without restraint or interference:

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

XIII. DURATION

[68] 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 Parts II, III, IV, V, VI and VII of this Agreement shall be effective only until the Divestiture is complete.

XIV. NOTICES

[69] For a notice, report, consent, approval, written confirmation or other communication required or permitted to be given under this Agreement to be valid,

- (a) it must be in writing and the sending party must use one of the following methods of delivery: (1) personal delivery; (2) registered mail; (3) courier service; (4) facsimile; or (5) electronic mail; and

- (b) it must be 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: MergerNotification@cb-bc.gc.ca

with a copy to:

Steve Sansom
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: steve.sansom@cb-bc.gc.ca

if to Agrium:

Tom Mix
Chief Counsel, Corporate
13131 Lake Fraser Drive S.E.
Calgary, Alberta T2J 7E8
Fax: (403) 225-7610
Email address: tom.mix@agrium.com

with a copy to:

Donald B. Houston
McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, Ontario M5K 1E6
Fax: (416) 868-0673
Email address: dhouston@mccarthy.ca

and

Oliver J. Borgers
McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, Ontario M5K 1E6
Fax: (416) 868-0673
Email address: oborgers@mccarthy.ca

- [70] A notice, consent or approval under this Agreement is effective on the day that it is received by the receiving Party. A notice, consent or approval 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;
 - (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 is received after 5:00 p.m. local time, or on a day that is not a Business Day, then the notice shall be deemed to have been received on the next Business Day.

- [71] Notwithstanding Sections 69 and 70, a notice, report, consent, approval, written confirmation or other communication that is not communicated in accordance with Sections 69 and 70 is valid if a representative of the Party to this Agreement that is the recipient of such communication confirms the receipt and sufficiency of such communication.

XV. GENERAL

- [72] 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.

- [73] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. Agrium hereby consents to such registration.
- [74] Information in Confidential Schedule B shall be made public upon the expiry of the Initial Sale Period.
- [75] Information in Confidential Schedule C shall be made public as provided for in Confidential Schedule C.
- [76] Information in Confidential Schedules E and F shall be made public after the expiry of this Agreement.
- [77] The Commissioner may, after informing Agrium, extend any of the time periods contemplated by this Agreement, other than the time periods in Part VIII, Part IX, Sections 62 and 63, and Part XIII. If any time period is extended, the Commissioner shall promptly notify Agrium of the revised time period.
- [78] Nothing in this Agreement precludes Agrium or the Commissioner from bringing an application under section 106 of the Act. Agrium 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 agri-products; 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] Agrium attorns 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 Agrium, 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 the interpretation, implementation or application of this Agreement, the Commissioner or Agrium 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 5th day of September, 2013

COMMISSIONER OF COMPETITION

[Original signed by John Pecman]

Name: John Pecman

Title: Commissioner of Competition

AGRIUM INC.

[Original signed by Patrick Freeman]

I/We have authority to bind the
corporation

Name: Patrick Freeman

Title: Vice President, Corporate Development & Strategy

SCHEDULE A

DIVESTED AA BUSINESSES AND DIVESTED AGRI-PRODUCTS BUSINESSES

The following are the Agrium Divested AA Businesses:

- Agrium Canora
- Agrium Kinistino
- Agrium North Battleford
- Agrium Prince Albert
- Agrium Yorkton

The following are the Agrium Divested Agri-Products Businesses:

- Agrium Bow Island
- Agrium Eaglesham
- Agrium Lacombe

The following are the Viterra Divested AA Businesses:

- Viterra Camrose
- Viterra Craddock
- Viterra Cudworth
- Viterra Medicine Hat

The following are the Viterra Divested Agri-Products Businesses:

- Viterra Alix
- Viterra Alliance
- Viterra Edenwold
- Viterra Vauxhall

SCHEDULE B

INITIAL SALE PERIOD AND DIVESTITURE TRUSTEE SALE PERIOD

The Initial Sale Period shall commence at Closing and shall expire 5 months and 15 days after the Closing Date.

The Divestiture Trustee Sale Period shall commence at the expiry of the Initial Sale Period, and shall expire 3 months thereafter, subject to Confidential Schedule C.

CONFIDENTIAL SCHEDULE C

[CONFIDENTIAL]

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 **[Agrium]** and the Commissioner of Competition, that:

1. I am the **[title]** of **[Agrium]**, 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]**, **[Agrium]** entered into a Consent Agreement (the “Consent Agreement”) with the Commissioner of Competition (the “Commissioner”) in connection with **[describe Transaction]** (the “Transaction”).
3. The Transaction closed on **[date]** (the “Closing Date”).
4. The Divestiture (as defined in the Consent Agreement) to **[Purchaser]** was completed on **[date]**.
5. Pursuant to Section 64 of the Consent Agreement, Agrium is required to file annual reports certifying its compliance with Parts IX and XII 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 60 of the Consent Agreement, Agrium 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 61 of the Consent Agreement, Agrium 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 certificate should be certified by a Commissioner for taking affidavits.

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

9. Pursuant to Section 61 of the Consent Agreement, Agrium is required to ensure that its directors, officers, employees and agents with responsibility for any obligations under the Consent Agreement receive sufficient training respecting Agrium'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]**

Employees

10. Sections 43 and 44 of the Consent Agreement require Agrium to take various steps in regard to its employees whose responsibilities involved the operation of the Divestiture Assets. Agrium has fully complied with the terms of these Sections and, more particularly:

[Note: Describe steps taken to facilitate employee transfer to Purchaser(s), having regard to the terms of Section 43; provide data on the # of employees who have transferred to the Purchaser.]

Notification of Breach

11. 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 65 of the Consent Agreement.

DATED ●.

Commissioner of Oaths

Name and Title of Certifying Officer

CONFIDENTIAL SCHEDULE E

[CONFIDENTIAL]

CONFIDENTIAL SCHEDULE F

[CONFIDENTIAL]