

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 Loblaw Companies Limited of all of the outstanding shares of Shoppers Drug Mart Corporation;

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 :

COMMISSIONER OF COMPETITION

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT March 21, 2014 CT-2014-003 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 1

Applicant

– and –

LOBLAW COMPANIES LIMITED

Respondent

CONSENT AGREEMENT

RECITALS:

A. Loblaw Companies Limited (“Loblaw”) proposes to acquire all of the issued and outstanding common shares of Shoppers Drug Mart Corporation (the “Transaction”);

B. The Commissioner has concluded that: (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in certain local geographic areas for the retail sale of pharmacy products and services, including prescription drugs, Over-the-Counter products (“OTC”, as further defined below) and Behind-the-Counter products (“BTC”, as further defined below) and associated health care products and services (all of which are collectively, “Pharmacy Products”, as further defined below), and/or the retail sale of drug-store type merchandise (“DTM”, as further defined below), and in respect of certain policies, programs, agreements or arrangements of Loblaw as

described in this Agreement; 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;

C. Loblaw 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 as described above; 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 shall (i) affect the Commissioner's ability to pursue any other investigation or inquiry or to commence any proceeding or seek any remedy with respect to Loblaw conduct or the effects thereof under any provision of the Act, other than in respect of the effects of the Transaction under section 92 of the Act; (ii) condone any existing policy, program, agreement, arrangement or conduct of Loblaw, whether mentioned in this Agreement or not; or (iii) be used by either the Commissioner or Loblaw as an admission against the other in a pleading, in evidence or in argument or in any other manner in a proceeding between them before the Tribunal under sections 75, 76, 77, 79 or 90.1 of the Act.

THEREFORE Loblaw 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) **"Active Ad Match Program"** means any program or policy under which Loblaw proactively decides to adjust the retail price of a product in response to the flyer promotional retail price of another retailer for that product;
- (c) **"Ad Collision Program"** means any program or policy under which Loblaw requests financial compensation from a Supplier on the basis that Loblaw has identified a product in another retailer's flyer promotional materials that is advertised or promoted at a lower retail price than the same product is advertised or promoted in Loblaw's flyer promotional materials within the same or an overlapping time period;
- (d) **"Affiliate"** means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act.
- (e) **"Agreement"** means this Consent Agreement, including 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;

- (f) **“BTC”** or **“Behind-the-Counter”** means non-prescription drugs requiring professional intervention from the pharmacist at the point of sale and, in some cases, referral to a practitioner. For greater certainty, it includes all drugs to which Schedule II of NAPRA's National Drug Schedules is applicable;
- (g) **“Business Day”** means a day on which the Competition Bureau's Gatineau, Quebec office is open for business;
- (h) **“Closing”** means the completion of the Transaction;
- (i) **“Closing Date”** means the date on which Closing occurs;
- (j) **“Commissioner”** means the Commissioner of Competition appointed under the *Competition Act*;
- (k) **“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;
- (l) **“Cosmetics”** includes mass, prestige and ultra-prestige brands of cosmetics;
- (m) **“Divested Business”** means the businesses identified in Schedules A1, A2 and A3 to this Agreement ;
- (n) **“Divestiture”** means
 - (i) the sale, conveyance, transfer, assignment or other disposal of the Divestiture Assets, such that Loblaw will have no direct or indirect interest in the Divestiture Assets; or
 - (ii) the replacement of a Loblaw Pharmacy Business with an Independent Pharmacy Business owned and operated by a Purchaser,

pursuant to this Agreement and with the prior approval of the Commissioner;

- (o) **“Divestiture Agreement”** means a binding and definitive agreement between Loblaw and a Purchaser to effect the Divestiture pursuant to this Agreement and subject to the prior approval of the Commissioner;
- (p) **“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 Loblaw for use in, or relating to, the Divested Business;
- (q) **“Divestiture Process Agreement”** means the agreement described in Section 14 of this Agreement;
- (r) **“Divestiture Trustee”** means the Person appointed pursuant to Part V of this Agreement (or any substitute appointed thereto) and any employees, agents or other Persons acting for or on behalf of the Divestiture Trustee;
- (s) **“Divestiture Trustee Sale”** means the Divestiture to be conducted by the Divestiture Trustee pursuant to Part V of this Agreement;
- (t) **“Divestiture Trustee Sale Period”** means the period that commences upon the expiry of the Initial Sale Period and ends at the time provided for in Confidential Schedule C to this Agreement;
- (u) **“DTF”** includes all food products that are typically sold in drug stores;
- (v) **“DTM”** means merchandise, other than Pharmacy Products, that is typically sold in a drug store and includes DTF, HABA and Cosmetics;
- (w) **“Exempt Product Category”** refers to the following product categories or sub-categories as further detailed in Schedule G:
 - 1. Haircare & Grooming;
 - 2. Skincare & Oralcare;
 - 3. Health (including Vitamins, First Aid, Family Planning, Eye & Ear Care, Foot Care, Diet, Nutrition and Incontinence);
 - 4. Baby Care;
 - 5. Fragrances & Seasonal Bath and Body Care;
 - 6. OTC;
 - 7. BTC;
 - 8. Colour Cosmetics; and
 - 9. Water/Pop/Alt Beverage (except in respect of Suppliers’ products covered by a pre-existing Threshold Deal as at the Closing Date).
- (x) **“Exempt Supplier”** means a Supplier that, during Loblaw’s previous fiscal year, supplied product to Loblaw with a total cost of less than \$4.0 million exclusive of all applicable taxes;
- (y) **“Fill Rate Penalty”** means any financial compensation required by Loblaw from a Supplier for failure to achieve established fill rate

standards (i.e., a measure of the quantity actually delivered by the Supplier as a percentage of the quantity ordered by Loblaw over a certain period of time);

- (z) **“First Reference Date”** shall have the meaning set out in Paragraph 3(c) of this Agreement;
- (aa) **“HABA”** means health and beauty products, including vitamins, deodorant, soaps, dental care, baby care, hair care, razors and skin care products;
- (bb) **“includes”** means “includes, without limitation” and “including” has a corresponding meaning;
- (cc) **“Independent Pharmacy Business”** means a business operated by a Purchaser that sells Pharmacy Products at retail within the premises of a Loblaw-bannered store that has been approved by the Commissioner under the terms of this Agreement and which has independent decision-making in respect of pricing, services, product selection and other indicia of competitiveness as the Commissioner considers appropriate;
- (dd) **“Interpretation Act”** means the *Interpretation Act*, R.S.C. 1985, c. I-21, as amended;
- (ee) **“Initial Sale Period”** means the period that commences on the Closing Date and ends at the time set out in Schedule B to this Agreement;
- (ff) **“Loblaw”** means Loblaw, its directors, officers, employees, agents, representatives, successors and assigns; and all joint ventures, subsidiaries, divisions, groups, banners and Affiliates controlled by Loblaw, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- (gg) **“Loblaw Pharmacy Business”** means the retail sale of Pharmacy Products within the physical premises of a Loblaw store specified in Schedules A1, A2 and A3 to this Agreement;
- (hh) **“Loblaw Programs”** means Active Ad Match Program, Ad Collision Program, Fill Rate Penalty, Supply Chain Fee/Penalty and Threshold Deal;
- (ii) **“Material Contracts, Approvals and Authorizations”** means the contracts, licences, approvals, permits and authorizations which are necessary to continue the competitive viability of the Divestiture Assets;
- (jj) **“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;

- (kk) **“Monitor Agreement”** means the agreement described in Section 38 of this Agreement;
- (ll) **“NAPRA”** means the National Association of Pharmacy Regulatory Authorities and includes any successor organization;
- (mm) **“OTC”** and **“Over-the-Counter”** mean pharmaceutical products that are to be sold from the self-selection area of a pharmacy that is operated under the direct supervision of a pharmacist. For greater certainty, it includes all drugs to which Schedule III of NAPRA's National Drug Schedules is applicable;
- (nn) **“Parties”** means the Commissioner and Loblaw collectively, and **“Party”** means any one of them;
- (oo) **“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;
- (pp) **“Pharmacy Products”** means pharmacy products and services, including prescription drugs, OTC and BTC, and associated health care products and services and includes the items in NAPRA National Drug Schedules I, II and III;
- (qq) **“Preservation Assets”** means the assets identified in Schedules A1, A2 and A3 to this Agreement;
- (rr) **“Purchaser”** means a Person that acquires Divestiture Assets or becomes the owner and operator of an Independent Pharmacy Business pursuant to this Agreement and a Divestiture Agreement, and includes any Person who subsequently acquires a Divestiture Asset or the right to own and operate an Independent Pharmacy Business;
- (ss) **“Records”** means records within the meaning of subsection 2(1) of the Act;
- (tt) **“Relevant Local Area”** means the area that is within 5 kilometres of the Divested Businesses;
- (uu) **“Second Reference Date”** shall have the meaning set out in Paragraph 3(d) of this Agreement;
- (vv) **“SDM Store”** means a store operated under the Shoppers Drug Mart name or banner;
- (ww) **“Supplier”** means a person that supplies a product to Loblaw for retail sale;

- (xx) **“Supply Chain Fee/Penalty”** means financial charges levied by Loblaw on a Supplier for the Supplier’s failure to achieve defined supply chain logistics standards;
- (yy) **“Threshold Deal”** means those terms, arrangements or agreements between Loblaw and a Supplier that require the Supplier to provide pre-determined financial compensation (whether by amount or formula) to Loblaw to ensure that Loblaw achieves a stated margin for the volumes of its sales affected as a result of Loblaw adjusting its price based on the flyer promotional retail price of another retailer under the Active Ad Match Program, whether or not Loblaw and that Supplier subsequently alter or amend any such terms, arrangements or agreements;
- (zz) **“Third Party”** means any Person other than the Commissioner, Loblaw or a Purchaser;
- (aaa) **“Transaction”** means the transaction described in the first recital to this Agreement; and
- (bbb) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.);

II. COMMISSIONER APPROVAL OF DIVESTITURE

- [2] The Divestiture may proceed only with the prior approval of the Commissioner in accordance with this Part.
- [3] Loblaw (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) Loblaw 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 agreement that is signed with a prospective Purchaser, including non-binding expressions of interest.
 - (b) Loblaw or the Divestiture Trustee, as the case may be, shall immediately notify the Commissioner that it intends to enter into 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 Loblaw 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 Loblaw, the Divestiture Trustee, the Monitor 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) an officer or other duly authorized representative of Loblaw shall certify that he or she has examined any additional information provided by Loblaw 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;
 - (ii) 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;
 - (iii) the Monitor shall provide written confirmation to the Commissioner that the Monitor has provided to the Commissioner all additional information requested from the Monitor; and
 - (iv) 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 Loblaw, the Divestiture Trustee, the Monitor, and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the **"First Reference Date"**.

- (d) Within 7 days after the First Reference Date, the Commissioner may request further additional information concerning the proposed Divestiture from any or all of Loblaw, the Divestiture Trustee, the Monitor 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)-(iv) in

regard to the further additional information provided. The date on which the last of Loblaw, the Divestiture Trustee, the Monitor 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 Loblaw 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 that 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 14 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 Loblaw;
 - (b) Loblaw will have no direct or indirect interest in the Divestiture Assets following the Divestiture, subject to Section 60 below;
 - (c) any entity in which Loblaw or an Affiliate of Loblaw has a significant interest, including Choice Properties REIT, will have no direct or indirect interest in the Divestiture Assets following the Divestiture, which, for greater certainty, shall not restrict Loblaw or an Affiliate of Loblaw from owning or leasing the premises used in the operation of an Independent Pharmacy Business, subject to Section 60 below and Confidential Schedule E;
 - (d) the proposed Purchaser is committed to carrying on the Divested Business;
 - (e) the proposed Purchaser has the managerial, operational and financial capability to compete effectively in the retail sale of the relevant products and services; and

- (f) in respect of a Divestiture of a Loblaw Pharmacy Business, the Purchaser will also operate a viable Independent Pharmacy Business on terms satisfactory to the Commissioner.

III. PRESERVATION OBLIGATION

[5] In order to preserve the Preservation Assets prior to any Divestiture, Loblaw 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.

[6] Without limiting the generality of Section 5 above, Loblaw shall:

- (a) provide such resources as may be necessary to respond to competition to the Preservation Assets prior to any Divestiture, in accordance with Loblaw's normal course practice;
- (b) 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;
- (c) maintain quality and service standards for customers of, and the range of products offered by, 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;
- (d) 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;
- (e) 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;
- (f) not terminate or alter any employment, salary or benefit agreements, as they existed at the date of this Agreement, for material Persons employed in the Preservation Assets, except with the prior approval of the Monitor;
- (g) 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;
- (h) maintain inventory levels and payment terms materially consistent with the practices that existed, with respect to the Preservation Assets, prior to the

date of this Agreement; and

- (i) not enter into, withdraw from, amend or otherwise take steps to alter any obligations in material Loblaw contracts relating exclusively to the Preservation Assets, except as necessary to comply with this Agreement, and to the extent that material Loblaw contracts relating to both the Preservation Assets and to other Loblaw stores are entered into, withdrawn from, amended or altered, ensure that any affected Preservation Assets receive treatment at least as favourable as Loblaw assets within the Relevant Local Area of such Preservation Assets in connection with any such contracts.
- [7] Loblaw 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 Loblaw 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 Loblaw must provide. Loblaw shall comply with any determination made by the Commissioner on this issue.
- [8] Until the Divestiture closing date, Loblaw shall provide all in-store management level employees, and pharmacists, that are associated with each of the Preservation Assets with reasonable financial incentives to continue in their positions and to manage, market and promote each of the Preservation Assets as may be necessary to preserve the marketability, viability and competitiveness of each Preservation Asset pending the Divestiture. Such incentives shall include a continuation of all employee benefits offered by Loblaw or Shoppers Drug Mart Corporation until the Divestiture closing date, including regularly scheduled raises, bonuses, and additional incentives as may be necessary to prevent the diminution of each of the Preservation Assets' competitiveness.
- [9] In addition to those Persons employed in connection with the Preservation Assets on the Closing Date, Loblaw shall employ such other Persons as the Monitor determines are necessary to manage and operate the Preservation Assets.
- [10] For the purpose of this Part, if there is no Monitor, Loblaw 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. DIVESTITURE DURING THE INITIAL SALE PERIOD

- [11] Loblaw 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 to this Agreement.

- [12] Loblaw 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. Loblaw shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of Loblaw's efforts to complete the Divestiture. An officer or other duly authorized representative of Loblaw 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.

V. DIVESTITURE TRUSTEE SALE PROCESS

- [13] In the event that Loblaw 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.
- [14] Within 5 Business Days after the appointment of the Divestiture Trustee, Loblaw 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 and powers necessary to permit the Divestiture Trustee to effect the Divestiture.
- [15] Within 5 Business Days after receipt of the proposed Divestiture Process Agreement referred to in Section 14, the Commissioner shall advise Loblaw 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 Loblaw shall incorporate into a final Divestiture Process Agreement with the Divestiture Trustee and the Commissioner.
- [16] Without limiting the Commissioner's discretion to require additional terms, Loblaw consents to the following terms and conditions regarding the Divestiture Trustee's rights, powers, duties, authority 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 Loblaw 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;
 - (iii) to enter into a Divestiture Agreement with a Purchaser that will be legally binding on Loblaw;
 - (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 Loblaw, 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 71 and 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 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 Loblaw 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 Loblaw a copy of any executed Divestiture Agreement upon receipt of the Commissioner's approval of the Divestiture contemplated in such Divestiture Agreement.
- [17] Loblaw 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 Loblaw have contact with prospective Purchasers during the Divestiture Trustee Sale Period.
- [18] Subject to any legally recognized privilege, Loblaw 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.
- [19] Loblaw shall take no action that interferes with or impedes, directly or indirectly, the Divestiture Trustee's efforts to complete the Divestiture.

- [20] Loblaw shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. Loblaw shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Divestiture Trustee on behalf of Loblaw.
- [21] Loblaw 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 Loblaw.
- [22] Loblaw 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 compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the timely completion of the Divestiture contemplated by 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) Loblaw shall promptly pay any account approved by the Commissioner.
- [23] Loblaw shall pay all reasonable invoices submitted by the Divestiture Trustee within 30 days after receipt. Any outstanding monies owed to the Divestiture Trustee by Loblaw shall be paid out of the proceeds of the Divestiture.
- [24] Loblaw 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.
- [25] Loblaw 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.
- [26] 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.

- [27] Loblaw 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.
- [28] 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.
- [29] Notwithstanding any term of this Agreement, the obligations and powers of the Divestiture Trustee under this Agreement shall not expire until the Divestiture are completed.

VI. THIRD PARTY CONSENTS

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

VII. TRANSITIONAL SUPPORT ARRANGEMENTS

- [31] At the option of a Purchaser, and subject to the oversight of the Monitor, for up to 6 months following the Divestiture, Loblaw shall supply to the Purchaser all products (other than control brand or private label products and other products that may only be sold by Loblaw or SDM Stores pursuant to agreements with Suppliers) necessary to carry on the Divested Business in the regular and ordinary course of business and in accordance with past practice, at a price based on Loblaw's normal-course pricing practices, and that is, in any event, not to exceed the price that is charged to Loblaw's retail outlets for similar sales on similar terms at equivalent locations on equivalent order dates and delivery dates.

VIII. INDEPENDENT OPERATOR AGREEMENT AMENDMENT

- [32] Loblaw has entered into an agreement with the operator of each such store listed in Confidential Schedule F (each, an "**Operator**") containing provisions providing for the purchase of products from Loblaw (each, a "**Buying Agreement**"). Within 30 days of the Closing Date, Loblaw shall ensure that each Buying Agreement is

amended such that the Operator may terminate the Buying Agreement by providing 60 days notice and without incurring any financial penalty.

IX. EMPLOYEES

[33] Loblaw (during the Initial Sale Period) and the Divestiture Trustee (during the Divestiture Trustee Sale Period) shall provide to any prospective Purchaser and to the Commissioner information relating to the store-level employees engaged in 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. Loblaw 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 Loblaw;
- (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 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 Loblaw.

[34] For a period of one (1) year following completion of the Divestiture, Loblaw 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.

[35] Notwithstanding the provisions of this Part IX, in the event that Loblaw's compliance with this Part IX would otherwise constitute a breach of its obligations under a collective bargaining agreement to which it is a party, its compliance with the terms of such collective bargaining agreement will be deemed to not constitute a breach of this Part IX, provided that, if such a circumstance arises, Loblaw shall:

- (a) notify the Commissioner within 3 Business Days of the exercise of the collective bargaining right leading to the conflict between compliance with this Part IX and the collective bargaining agreement; and

- (b) within 10 Business Days of giving notice under Paragraph (a) above, take such action as is reasonably necessary and practicable to address the impact that compliance with its obligations under the relevant collective bargaining agreement has on the viability, marketability and competitiveness of one or more of the Divestiture Assets up to the time of the completion of the associated Divestiture.

X. FAILURE OF DIVESTITURE TRUSTEE SALE

- [36] If, by the end of the Divestiture Trustee Sale Period, as described in Confidential Schedule C, 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

- [37] The Commissioner shall appoint a Monitor, responsible for monitoring compliance by Loblaw 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 Loblaw's compliance with this Agreement.
- [38] Within 5 Business Days after the appointment of the Monitor, Loblaw 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 and powers necessary to permit the Monitor to monitor compliance by Loblaw with this Agreement.
- [39] Within 5 Business Days after receipt of the proposed Monitor Agreement referred to in Section 38, the Commissioner shall advise Loblaw 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 Loblaw shall incorporate into a final Monitor Agreement with the Monitor and the Commissioner.
- [40] Loblaw consents to the following terms and conditions regarding the Monitor's rights, powers, duties, authority and responsibilities, and shall include such terms in the Monitor Agreement:
 - (a) The Monitor shall have the power and authority to monitor Loblaw'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 Loblaw, 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 Loblaw.
 - (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 Loblaw of its obligations under this Agreement. The Monitor shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding Loblaw's compliance.
- [41] Subject to any legally recognized privilege, Loblaw shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Loblaw's compliance with this Agreement.
- [42] Loblaw shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor Loblaw's compliance with this Agreement.
- [43] Loblaw shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. Loblaw shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Monitor on behalf of Loblaw.
- [44] Loblaw 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.
- [45] 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.

- [46] Loblaw 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) Loblaw shall promptly pay any account approved by the Commissioner.
- [47] Loblaw shall pay all reasonable invoices submitted by the Monitor within 30 days after receipt. Any outstanding monies owed to the Monitor by Loblaw shall be paid out of the proceeds of the Divestiture.
- [48] Loblaw 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.
- [49] Loblaw 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 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.
- [50] 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.
- [51] The Monitor shall serve such time as is necessary to monitor Loblaw's compliance with this Agreement.

XII. ONGOING LOBLAW OBLIGATIONS – INDEPENDENT PHARMACY BUSINESSES

- [52] Where Loblaw effects the Divestiture of a Loblaw Pharmacy Business under this Agreement, the following obligations shall apply during the term of this Agreement:
- (a) Loblaw shall ensure that a viable Independent Pharmacy Business continues to operate within each affected Loblaw store;
 - (b) Following the Divestiture of a Loblaw Pharmacy Business, Loblaw shall not take any steps that may prevent or hinder the ability of an Independent Pharmacy Business to compete effectively and vigorously with other participants in the Relevant Local Area, including any SDM Store and Loblaw store.

This paragraph shall not apply to a Divestiture where Loblaw divests an entire Loblaw store.

XIII. ONGOING LOBLAW OBLIGATIONS – SUPPLIERS

[53] For a period of 5 years after the Closing Date, Loblaw shall not enter into a Threshold Deal in respect of any products covered by Exempt Product Categories.

[54] For a period of 5 years after the Closing Date, Loblaw shall not:

- (a) enter into any new Threshold Deal, or amend or renew any pre-existing Threshold Deal, to apply to purchases of products for its SDM Stores;
- (b) require or induce any Supplier to enter into any new Threshold Deal, or amend or renew any pre-existing Threshold Deal, using the volume of products purchased from any Supplier for retail sale at its SDM Stores;
- (c) include volume of products purchased from any Supplier for retail sale at its SDM Stores in calculating any financial compensation under any Threshold Deal; and
- (d) apply its Ad Collision Program to any products advertised or promoted by its SDM Stores in respect of purchases of products for its SDM Stores.

[55] For a period of 2 years after the Closing Date, in respect of Exempt Suppliers, Loblaw:

- (a) shall not charge a Fill Rate Penalty;
- (b) shall not charge any new Supply Chain Fee/Penalty; and
- (c) shall not require a reduction in the current cost of a product, or any additional non-promotional financial commitment,
 - (i) unless the cost reduction or additional non-promotional financial commitment is based on a reduction in the cost of one or more commodities contained in the Exempt Supplier's product, or
 - (ii) except to request that the Exempt Supplier sell its products to Loblaw at the lower of its price sold to SDM Stores or its price sold to Loblaw either during the third quarter of its 2013 fiscal year or at a later time prior to Closing.

[56] Within 90 days after the Closing Date and thereafter for the duration of this Agreement, Loblaw shall ensure that all Loblaw Programs are provided or made available to all Suppliers by written publication and that Loblaw provides any affected Suppliers with confirmation in writing of the applicability of each Loblaw Program to that Supplier. However, this paragraph shall not require Loblaw to

disclose the specific terms of supply with any specific Supplier, or competitively sensitive commercial information, to the general public or to any other Supplier.

XIV. COMPLIANCE

- [57] Within 5 Business Days after the Closing Date, Loblaw shall provide written confirmation to the Commissioner of the date on which the Transaction was completed.
- [58] Within 3 Business Days after the date of registration of this Agreement, Loblaw 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. Loblaw shall ensure that its directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting Loblaw's responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.
- [59] Loblaw 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.
- [60] For a period of 3 years after the date when the Divestiture is completed, Loblaw 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, or consummate any merger or other combination relating to, any business engaged in the retail sale of Pharmacy Products in a Relevant Local Area for each Divested Business set out in Schedule A1;
 - (b) acquire any assets or shares of, or any other interest in, or consummate any merger or other combination relating to, any business engaged in the retail sale of DTM in the Relevant Local Area for each Divested Business set out in Schedule A2; or
 - (c) acquire any assets or shares of, or any other interest in, or consummate any merger or other combination relating to, any business engaged in the retail sale of DTM or Pharmacy Products in the Relevant Local Area for each Divested Business set out in Schedule A3.

If a transaction described in (a) or (b) is one for which notice is not required under section 114 of the Act, Loblaw shall supply to the Commissioner the information described in section 16 of the *Notifiable Transactions Regulations* at least 30 days before completing such transaction. Loblaw shall certify such 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 Loblaw 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, Loblaw 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 Loblaw has supplied all such requested information in the form specified by the Commissioner.
- [61] One month after the date of registration of this Agreement, and annually thereafter no later than 30 days after the end of Loblaw's fiscal year, Loblaw shall file an affidavit or certificate, substantially in the form of Schedule D to this Agreement, certifying its compliance with Parts III, VII, VIII, XI, XII and XIII 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;
 - (c) the names and titles of employees who have oversight of compliance; and
 - (d) in affidavits or certificates filed in 2015 and 2016, a list of Exempt Suppliers and their respective total sales to Loblaw, determined as at the end of Loblaw's immediately preceding fiscal year.
- [62] If any of Loblaw, 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. Loblaw shall provide confirmation of its compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to section 61 of this Agreement.
- [63] Loblaw shall notify the Commissioner at least 30 days prior to:
- (a) any proposed dissolution of Loblaw;
 - (b) any other change in Loblaw including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of Loblaw's incorporating statute, if such change may affect compliance obligations arising out of this Agreement.
- [64] For the period commencing when this Agreement is registered and ending 10 years after the Divestiture is completed, for purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, Loblaw shall, upon written request given at least 2 Business Days in advance to Loblaw, permit any authorized representative(s) of the Commissioner, without restraint or interference:

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

XV. DURATION

[65] 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, and VI of this Agreement shall be effective only until the Divestiture is completed.

XVI. NOTICES

[66] 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 copies 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@bc-cb.gc.ca

if to Loblaw:

Loblaw Companies Limited
1 President's Choice Circle
Brampton, Ontario L6Y 5S5

Attention: Executive Vice President, Chief Legal Officer
Fax: (416) 922-8500
Email address: gordon.currie@loblaw.ca

with a copy to:

Borden Ladner Gervais LLP
Scotia Plaza
40 King Street West, 44th Floor
Toronto, Ontario M5H 3Y4

Attention: Robert Russell
Fax: (416) 361-7060
Email address: russell@blg.com

- [67] 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.

[68] Notwithstanding Sections 66 and 67, a notice, report, consent, approval, written confirmation or other communication that is not communicated in accordance with Sections 66 and 67 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.

XVII. GENERAL

[69] 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.
- (c) **Recitals** – The Parties agree that the recitals to this Agreement shall be binding upon the Parties and form part of this Agreement.

[70] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. Loblaw hereby consents to such registration.

[71] Information in Confidential Schedule B shall be made public upon the expiry of the Initial Sale Period.

[72] Information in Confidential Schedules C, E and F shall be made public upon the completion of the Divestiture.

[73] The Commissioner may, after informing Loblaw, extend any of the time periods contemplated by this Agreement. If any time period is extended, the Commissioner shall promptly notify Loblaw of the revised time period.

[74] Nothing in this Agreement precludes Loblaw or the Commissioner from bringing an application under section 106 of the Act. Loblaw 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 sale of Pharmacy Products and/or the retail sale of DTM, and in respect of certain policies and programs of Loblaw as described in this Agreement; 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] Loblaw 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] This Agreement, constitutes the entire agreement between the Commissioner and Loblaw, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
- [77] 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.
- [78] In the event of a dispute regarding the interpretation, implementation or application of this Agreement, the Commissioner or Loblaw 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.
- [79] 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 20th day of March, 2014

COMMISSIONER OF COMPETITION

[Original signed by John Pecman]

Name: John Pecman

Title: Commissioner of Competition

LOBLAW COMPANIES LIMITED

[Original signed by Sarah Davis]

Name: Sarah Davis

Title: CFO

[Original signed by Gordon Currie]

Name: Gordon Currie

Title: Chief Legal Officer

I/We have authority to bind the corporation

SCHEDULE A1

LIST OF DIVESTED BUSINESSES – PHARMACY PRODUCTS

Westlock	Sale of SDM: 10030 106 STREET Simply (Store Number 2342)
Bay Roberts	Independent Operator for Rx: DOM BAY ROBERTS (Store Number 0906)
Carbonear	Independent Operator for Rx: DOM CARBONEAR (Store Number 0913)
Almonte	Independent Operator for Rx: PATRICE'S YIG ALMONTE (Store Number 889)
Embrun	Independent Operator for Rx: EMBRUN YIG EMBRUN (Store Number 827)
Ingersoll	Independent Operator for Rx: YIG INGERSOLL (Store Number 424)
Listowel	Independent Operator for Rx: ZEHR'S LISTOWEL (Store Number 0535)
Port Perry	Independent Operator for Rx: VOS' YIG PORT PERRY (Store Number 835)
Prescott	Independent Operator for Rx: O'REILLY'S YIG PRESCOTT (Store Number 831)
Tillsonburg	Independent Operator for Rx: ZEHR'S TILLSONBURG (Store Number 0570)

SCHEDULE A2

LIST OF DIVESTED BUSINESSES – DTM

<p>Dalhousie</p>	<p>Sale of LCL: DALHOUSIE SE DALHOUSIE (Store Number 0615)</p>
<p>Petrolia</p>	<p>Sale of SDM: PETROLIA (Store Number 1035)</p>

SCHEDULE A3

LIST OF DIVESTED BUSINESSES – PHARMACY PRODUCTS AND DTM

Devon	Sale of SDM: SOUTHPORT COMMON (Store Number 2330)
Innisfail	Sale of SDM: HENDAY CENTRE (Store Number 2362)
Sechelt	Sale of SDM: TRAIL BAY MALL (Store Number 2220)
Barrington Passage	Sale of LCL: MARTIN'S NF BARRINGTON (Store Number 2710)
St. Stephen	Sale of SDM: ST. STEPHEN (Store Number 579)
Tantallon	Sale of SDM: ST. MARGARET'S CROSSROADS (Store Number 2018)
Montague	Sale of SDM: MONTAGUE (Store Number 104)
Aylmer	Sale of SDM: AYLMER (Store Number 1068)
Blenheim	Sale of LCL: DS RON'S NF BLENHEIM (Store Number 1322)
Chelmsford	Sale of SDM: CHELMSFORD (Store Number 1454)

Elmira	Sale of LCL: PAUL AND ADELE'S NF ELMIRA (Store Number 715)
Exeter	Sale of SDM: EXETER (Store Number 1073)
Kingsville	Sale of SDM: MAIN & WIGLE (Store Number 1119)
Mount Forest	Sale of SDM: MOUNT FOREST (Store Number 1001)
Port Hope	Sale of SDM: BARRETT & ONTARIO (Store Number 1208)

CONFIDENTIAL SCHEDULE B

INITIAL SALE PERIOD

[CONFIDENTIAL]

**CONFIDENTIAL SCHEDULE C
DIVESTITURE TRUSTEE SALE TERMS**

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

1. I am the **[title]** of **[Loblaw]**, 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]**, **[Loblaw]** 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 **61** of the Consent Agreement, Loblaw is required to file **[annual reports/reports when requested by the Commissioner]** certifying its compliance with Parts VII, VIII, XI, XII and XIII 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 **57** of the Consent Agreement, Loblaw 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 **58** of the Consent Agreement, Loblaw 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 **58** of the Consent Agreement, Loblaw is required to ensure that its directors, officers, employees and agents with responsibility for any obligations under the Consent Agreement receive sufficient training respecting Loblaw’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 Support Arrangements

10. **[Describe any compliance obligations arising from the Loblaw’s transitional support commitments, and confirm compliance with each – to be tailored to specific terms of consent agreement.]**

Employees

11. Section **33** of the Consent Agreement requires Loblaw to take various steps in regard to its employees whose responsibilities involved the operation of the Divestiture Assets. Loblaw has fully complied with the terms of this Section and, more particularly:

[Note: Describe steps taken to facilitate employee transfer to Purchaser, having regard to the terms of Section 33; 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 paragraph **62** of the Consent Agreement.

Exempt Suppliers

13. Attached as Schedule “[*]” is a list of persons that supplied products to Loblaw for retail sale that, during Loblaw’s fiscal year 20[XX], supplied product to Loblaw with a total cost of less than \$4.0 million exclusive of all applicable taxes; and each supplier’s total sales to Loblaw for the same period.

DATED ●.

Commissioner of Oaths

Name and Title of Certifying Officer

CONFIDENTIAL SCHEDULE E
CONTINUED INTEREST IN THE DIVESTITURE ASSETS

[CONFIDENTIAL]

**CONFIDENTIAL SCHEDULE F
INDEPENDENT OPERATOR AGREEMENTS**

[CONFIDENTIAL]

SCHEDULE G

EXEMPT PRODUCT CATEGORIES

HAIRCARE & GROOMING	3001	HAIR CARE
HAIRCARE & GROOMING	3002	STYLING
HAIRCARE & GROOMING	3003	HAIR COLOUR
HAIRCARE & GROOMING	3005	APPLIANCES
HAIRCARE & GROOMING	3006	HAIR ACCESSORIES
HAIRCARE & GROOMING	3007	FEMININE PADS
HAIRCARE & GROOMING	3008	LINERS
HAIRCARE & GROOMING	3009	TAMPONS
HAIRCARE & GROOMING	3010	RAZOR AND BLADES
HAIRCARE & GROOMING	3011	DISPOSABLE RAZORS
HAIRCARE & GROOMING	3012	MENS SHAVE CREAMS
HAIRCARE & GROOMING	3013	WOMEN'S SHAVE
HAIRCARE & GROOMING	3014	MENS AFTER SHAVE
HAIRCARE & GROOMING	3016	DEPILATORIES
HAIRCARE & GROOMING	3018	MEN'S HAIRDRESSING
HAIRCARE & GROOMING	3019	MENS SKIN CARE
HAIRCARE & GROOMING	3023	TRIAL & TRAVEL
HAIRCARE & GROOMING	3037	ELECTRIC SHAVERS
HAIRCARE & GROOMING	3099	ALL OTHERS
SKINCARE & ORALCARE	3201	TOOTHPASTE
SKINCARE & ORALCARE	3202	BREATH FRESHENERS/MOUTHWASH
SKINCARE & ORALCARE	3203	MANUAL TOOTHBRUSHES

SKINCARE & ORALCARE	3204	POWER TOOTHBRUSHES
SKINCARE & ORALCARE	3205	WHITENING AGENTS
SKINCARE & ORALCARE	3206	BAR SOAPS
SKINCARE & ORALCARE	3207	BODY WASH
SKINCARE & ORALCARE	3208	LIQUID SOAP
SKINCARE & ORALCARE	3209	DEODORANTS
SKINCARE & ORALCARE	3210	FACIAL SKIN CARE
SKINCARE & ORALCARE	3211	BODY LOTIONS
SKINCARE & ORALCARE	3212	SUNCARE
SKINCARE & ORALCARE	3213	LIP CARE
SKINCARE & ORALCARE	3214	HAND SANITIZERS
SKINCARE & ORALCARE	3215	WIPES
SKINCARE & ORALCARE	3216	DENTAL FLOSS
SKINCARE & ORALCARE	3217	DENTURE CLEANSERS
SKINCARE & ORALCARE	3218	DENTURE ADHESIVES
SKINCARE & ORALCARE	3220	MISC.
SKINCARE & ORALCARE	3237	LADIES SHAVE GELS
SKINCARE & ORALCARE	3261	BODY WASH
HEALTH	7805	FIRST AID
HEALTH	7810	EYE & EAR CARE
HEALTH	7815	FAMILY PLANNING
HEALTH	7820	FOOT CARE
HEALTH	7825	VITAMINS/ MINERALS/ SUPPLEMENT
HEALTH	7830	INCONTINENCE
HEALTH	7835	LIP CARE

HEALTH	7840	SPORTS ENERGY
HEALTH	7850	MEDICAL NUTRITION
HEALTH	7860	DIET
HEALTH	7899	OTHER
BABY CARE	2605	DIAPERS
BABY CARE	2606	TRAINING PANTS
BABY CARE	2610	BABY FOOD
BABY CARE	2620	BABY CEREALS
BABY CARE	2625	TEETHING BISCUITS
BABY CARE	2630	BABY MILK
BABY CARE	2635	BABY NEEDS
BABY CARE	2636	BABY WIPES
BABY CARE	2640	FEEDING & NURSING
BABY CARE	2650	BABY HARDLINES
FRAGRANCES & SEASONAL	3401	FRAGRANCE PRESTIGE
FRAGRANCES & SEASONAL	3402	FRAGRANCE MASS
FRAGRANCES & SEASONAL	3403	BATH AND BODY CARE
FRAGRANCES & SEASONAL	3412	CHRISTMAS
FRAGRANCES & SEASONAL	3413	OTHER SEASONAL
FRAGRANCES & SEASONAL	3415	BACK TO SCHOOL
FRAGRANCES & SEASONAL	3420	HOLIDAY
FRAGRANCES & SEASONAL	3499	ALL OTHERS
OTC	2905	COUGH & COLD
OTC	2910	PAIN PREPARATIONS
OTC	2915	STOMACH

PUBLIC VERSION

OTC	2920	MEDICAL SUPPLIES
OTC	2925	ALLERGY
OTC	2930	WOMEN'S HEALTH
OTC	2935	MEDICAL HAIR
OTC	2940	MEDICAL SKIN
OTC	2945	HOME HEALTH CARE
OTC	2950	DIABETIC
OTC	2955	SMOKING CESSATION
OTC	2960	MEDICAL EYE / EAR
OTC	2965	HUMIDIFIERS & THERMOMETERS
OTC	2999	OTHER
BTC	2802	DISPENSARY ITEMS
BTC	2805	COUGH, COLD, ALLERGY
BTC	2810	PAIN PREPARATIONS
BTC	2815	STOMACH
BTC	2835	MEDICAL HAIR
BTC	2840	MEDICAL SKIN
BTC	2845	DIABETIC
BTC	2855	VITAMINS
BTC	2865	ORAL CARE
BTC	2880	DIETITIAN SERVICES
BTC	2899	ALL OTHERS
COLOUR COSMETICS	3101	COSMETICS- FRANCHISED LINES
COLOUR COSMETICS	3102	COSMETICS- BUDGET LINES
COLOUR COSMETICS	3103	COSMETICS BAGS

COLOUR COSMETICS	3104	IMPLEMENTS
COLOUR COSMETICS	3105	NAIL TREATMENTS
COLOUR COSMETICS	3106	COSMETIC ACCESSORIES
COLOUR COSMETICS	3107	DISCONTINUED
COLOUR COSMETICS	3109	COSMETICS - FACIAL SKIN CARE
COLOUR COSMETICS	3110	COSMETICS - BUDGET LINES
COLOUR COSMETICS	3191	COSMETICS (COMPETITORS)
WATER/POP/ALT BEVERAGE	405	WATER
WATER/POP/ALT BEVERAGE	410	CARBONATED SOFT DRINKS
WATER/POP/ALT BEVERAGE	415	ALTERNATIVE BEVERAGES
WATER/POP/ALT BEVERAGE	420	ISOTONICS
WATER/POP/ALT BEVERAGE	495	DEPOSITS AND RETURNS

Note: “Fragrances & Seasonal” means core Fragrances & Bath / Body products and seasonal listings of Fragrances and Bath / Body products.