

**PUBLIC**

CT-2007-008

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**AND IN THE MATTER OF** the proposed acquisition by James Richardson International Limited of certain grain elevators and crop input facilities and related assets of Saskatchewan Wheat Pool Inc (Agricore United);

**AND IN THE MATTER OF** the filing and registration of a Consent Agreement, pursuant to section 105 of the *Competition Act*.

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

**Applicant**

- and -

**JAMES RICHARDSON INTERNATIONAL LIMITED**

**Respondent**

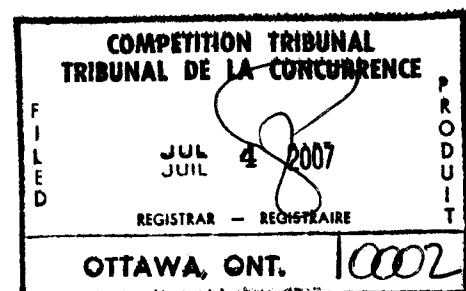
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**CONSENT AGREEMENT**

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**WHEREAS** SWP acquired over 75% of AU's shares on May 29, 2007 and took control of the Board of Directors of AU on June 13, 2007;

**AND WHEREAS** SWP and JRI have entered into an acquisition agreement pursuant to which JRI has offered to acquire certain grain elevators and crop input facilities and related assets of AU (the "Acquisition");



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**AND WHEREAS** the Commissioner has concluded, and JRI has agreed, that the Acquisition is likely to result in a substantial lessening and/or prevention of competition in certain markets for grain handling services in Western Canada;

**AND WHEREAS** JRI has agreed to resolve the competition concerns identified by the Commissioner by selling its primary grain elevator located in Glossop, Manitoba and AU's primary grain elevator in Swan River, Manitoba;

**AND WHEREAS** the Commissioner is satisfied that the implementation of this Consent Agreement will be sufficient to ensure that a substantial lessening and/or prevention of competition will not result from the Acquisition;

**AND WHEREAS** JRI will not contest the jurisdiction of the Tribunal for the purposes of this Agreement or any proceeding initiated by the Commissioner relating to this Agreement, including an application to vary or rescind this Agreement under section 106 of the Act;

**AND WHEREAS** the Commissioner and JRI agree that, upon the signing of the Agreement, the Commissioner may file it with the Tribunal for immediate registration or at such later time as the Commissioner may decide within the three year period following the Closing Date.

**NOW THEREFORE** JRI and the Commissioner have agreed to the terms of this Consent Agreement as follows:

**I. DEFINITIONS**

1. For the purposes of this Consent Agreement, the capitalized terms have the following meanings:

- (a) “**Act**” means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- (b) “**Affiliate**” has the meaning given to it in subsection 2 (2) of the Act;

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- (c) **“Acquisition”** means the offer by JRI to purchase certain grain elevators and crop input facilities and related assets of AU;
- (d) **“AU”** means Agricore United, an agri-business in Canada created on November 1, 2001 by the merger of Agricore Cooperative Ltd. and United Grain Growers Ltd.;
- (e) **“Closing Date”** means the date on which JRI will acquire certain grain elevators and crop facilities and related assets of AU;
- (f) **“Commissioner”** means the Commissioner of Competition, appointed pursuant to section 7 of the Act;
- (g) **“Confidential Information”** means competitively sensitive information not independently known to a Person from sources other than the entity to which the information pertains including, without limiting the generality of the foregoing, any and all competitively sensitive information pertaining to the operation of any assets to be divested pursuant to this Agreement including, but not limited to, competitively sensitive manufacturing, operations and financial information, operating costs and revenues, customer lists, price lists, marketing methods, patents, technologies, processes or other trade secrets;
- (h) **“Consent Agreement”** means this consent agreement entered into by JRI and the Commissioner pursuant to section 105 of the Act, together with all Schedules and Appendices attached hereto;
- (i) **“Divest”** means to implement a Divestiture of the Divestiture Assets to be divested pursuant to this Agreement;
- (j) **“Divestiture”** means the sale, transfer, assignment or other disposal of the Divestiture Assets (either the Glossop Elevator or the Swan River Elevator) such that JRI will thereafter have no further direct or indirect interest except upon the consent of the Commissioner;

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- (k) **“Divestiture Agreement”** means any agreement contemplated by Parts VII, VIII and IX of this Agreement between JRI or the Divestiture Trustee and a Purchaser to accomplish the Divestiture;
- (l) **“Divestiture Assets”** means (i) the asset identified as the primary elevator in Glossop (“Glossop Elevator”) Manitoba presently owned by JRI and (ii) the asset identified as the primary elevator in Swan River (“Swan River Elevator”), Manitoba presently owned by AU;
- (m) **“Divestiture Trustee”** means the divestiture trustee appointed pursuant to Part IX of this Agreement;
- (n) **“Divestiture Trustee Sale”** means a Divestiture to be conducted by the Divestiture Trustee pursuant to Part IX of this Agreement;
- (o) **“Hold Separate Manager”** means the Person appointed pursuant to Part IV of this Agreement, and any employees, agents or other persons acting for or on behalf of the Hold Separate Manager;
- (p) **“Hold Separate Monitor”** means the Person appointed pursuant to Part V of the Agreement, and any employees, agents or other persons acting for or on behalf of the Hold Separate Monitor;
- (q) **“Hold Separate Period”** means, subject to paragraphs 4 and 5, the period necessary to complete the Divestiture contemplated by this Agreement;
- (r) **“Initial Sale Period”** means the period referred to in Confidential Schedule “A”;
- (s) **“JRI”** means James Richardson International Limited, an agri-business existing under the laws of Canada, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates under its control;

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- (t) **“Person”** means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity;
- (u) **“Permitted Person”** means a Person who is permitted to receive Confidential Information from the Hold Separate Manager as described in paragraph 17 of the Consent Agreement;
- (v) **“Purchaser”** means any Person(s) who purchases one or both of the Divestiture Assets in accordance with any procedure for the Divestiture set out in this Agreement;
- (w) **“Respondent”** means JRI;
- (x) **“SWP”** means Saskatchewan Wheat Pool Inc., an agri-business existing under the laws of Canada;
- (y) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act* (Canada), R.S.C. 1985, c. 19 (2nd Supp.), as amended;
- (z) **“Trustee Sale Period”** means the period ending ninety (90) days after the Trustee is empowered to sell the assets to be divested or such longer period as directed by the Commissioner.

## II. APPLICATION

- 2. The provisions of this Agreement apply to:
  - (a) JRI;
  - (b) The Divestiture Trustee;

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- (c) All other Persons acting in concert or participating with one or more of the persons identified in (a) and/or (b) above with respect to the matters referred to in this Agreement;
- (d) The Hold Separate Monitor;
- (e) The Hold Separate Manager;
- (f) The Commissioner;
- (g) Any Purchaser and such Purchaser's successors and assigns.

### **III. AGREEMENT**

- 3. JRI shall Divest the Divestiture Assets in accordance with this Consent Agreement.

### **IV. HOLD SEPARATE FOR SWAN RIVER ELEVATOR**

- 4. This part shall only take effect on July 17, 2007 or such later date as the Commissioner may determine.

5. The Commissioner shall appoint a Hold Separate Manager to manage and operate the Swan River Elevator independently of JRI, such appointment to be effective on July 17 or such later date as the Commissioner shall determine. The Hold Separate Period will begin at the effective time of such appointment and shall terminate when the Swan River Elevator has been Divested. The restrictions in Parts IV, V, and VII, of this Agreement regarding the communication of Confidential Information related to the Swan River Elevator shall not limit the communication of Confidential Information related to the Swan River Elevator to a Purchaser of the asset, where the communication of such Confidential Information is reasonably necessary in order to facilitate the completion of the Divestiture, or to personnel of JRI or third parties described in paragraph 17

below all of whom must be approved by the Commissioner who have executed a confidentiality agreement as contemplated by paragraph 17 below (such personnel of JRI or third parties thereafter being Permitted Persons for the purposes of paragraph 17 below).

6. JRI shall be responsible for all fees and expenses charged or incurred by the Hold Separate Manager.

7. JRI shall:

- (a) Take all reasonable steps to ensure that the Swan River Elevator is maintained independent of JRI, subject to other provision of the Consent Agreement, including transferring to the Hold Separate Manager all rights, powers and authorities necessary for him to perform his duties and responsibilities under this Agreement;
- (b) Not exercise any direction or control, direct or indirect, over the management or operations of the Swan River Elevator except to the extent that JRI must communicate with the employees at the Swan River Elevator in order to ensure its compliance with this Agreement and except as otherwise expressly provided in this Agreement; and
- (c) Cause the operational manager(s) of the Swan River Elevator to follow the instructions and directions of the Hold Separate Manager given pursuant to the provisions of this Agreement.

8. The Hold Separate Manager shall be responsible for the management of the Swan River Elevator and shall report directly to the Hold Separate Monitor. During the term of the Consent Agreement, the Hold Separate Manager shall not be involved, in any way, in the operations of the other businesses of JRI.

9. The Hold Separate Manager shall have no financial interests that may be affected by JRI's revenues, profits or profit margins, except that the Hold Separate Manager's compensation for managing the Swan River Elevator shall include economic incentives for him to operate the Swan

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River Elevator at no less than current rates of operation, to achieve the objectives of this Agreement, and to maintain, and make reasonable efforts to enhance, the competitiveness and customer base of the Swan River Elevator.

10. In addition to those Persons employed within the Swan River Elevator, the Hold Separate Manager may engage such Persons as are reasonably necessary to assist him in managing and operating the Swan River Elevator, including, without limitation, Persons providing administrative services, such as finance personnel, information technology personnel, employee relations personnel, legal services personnel, public relations personnel, regulatory personnel, supply personnel, earnings consolidation and analysis personnel, business performance personnel, and customer relations personnel. All costs associated therewith shall be borne by JRI.

11. The Hold Separate Manager will have the responsibility and resources to implement existing sales, marketing, research and development and product development plans relating to the Swan River Elevator and to modify existing plans consistent with goals and objectives approved before the date of the Consent Agreement, with the approval of the Hold Separate Monitor. The Hold Separate Manager otherwise will not have access to any JRI confidential marketing materials.

12. The Hold Separate Monitor shall be permitted, with the approval of the Commissioner, to remove the Hold Separate Manager for cause. If the Hold Separate Manager ceases to act in his role, the Commissioner shall select a substitute manager and transfer to the substitute manager all rights, powers and authorities necessary to permit such substitute Hold Separate Manager to perform his duties and responsibilities pursuant to this Agreement.

13. Pending the completion of the Divestiture, the Hold Separate Manager, with oversight and direction from the Hold Separate Monitor, shall take all necessary steps to preserve the independence and competitive viability of the Swan River Elevator, including but not limited to giving all necessary instructions to cause the Swan River Elevator under his or her management, and any employees or agents of the Swan River Elevator, to:



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- (a) Operate the Swan River Elevator independently of JRI subject to other provisions of the Consent Agreement;
- (b) Operate the Swan River Elevator in compliance with all applicable laws;
- (c) Maintain all material registrations, permits and approvals necessary for the operation of the Swan River Elevator;
- (d) Use commercially reasonable efforts to maintain and enhance the competitiveness and the customer base of the Swan River Elevator and, in particular, to continue to solicit business;
- (e) Maintain and hold the Swan River Elevator in good condition and repair, normal wear and tear excepted, and to standards at least equal to those maintained by AU prior to the date of the execution of the Consent Agreement;
- (f) Establish all fees, deductions, discounts, credits or allowances with respect to the goods and services provided by the Swan River Elevator;
- (g) Take all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of the Swan River Elevator at the level that exists at the date of the Consent Agreement;
- (h) Except with the approval of the Hold Separate Monitor and of the Commissioner, ensure that the Swan River Elevator does not engage in any type of business other than the type of business conducted as of the date of the Consent Agreement;
- (i) Not communicate any Confidential Information related to the Swan River Elevator to anyone other than the Hold Separate Monitor, the Commissioner, or as otherwise expressly permitted herein;

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- (j) Not knowingly take or allow to be taken any action that materially and adversely affects the competitiveness, operations or financial status of the Swan River Elevator;
  - (k) Not curtail marketing, sales, promotional or other activities of the Swan River Elevator in connection with the solicitation of existing or prospective customers;
  - (l) Not to alter, or cause to be altered, the direct management of the Swan River Elevator as it existed prior to the date of the Consent Agreement, except as may be necessary to comply with the terms of the Consent Agreement or to replace employees (as listed in Confidential Schedule “B”) that may resign; and
  - (m) Not terminate or alter any current employment, salary or benefit agreements for any employees working (as listed in Confidential Schedule “B”) in the Swan River Elevator.
14. In addition to the foregoing, JRI shall provide the Swan River Elevator with sufficient financial resources:
- (a) As are appropriate in the judgment of the Hold Separate Manager, with the concurrence of the Hold Separate Monitor, to operate the Swan River Elevator at least at current rates of operation and to carry on, at least at their scheduled pace, all capital projects, research and development plans, business plans and promotional activities contemplated in the Swan River Elevator’s most recent budgets prior to the Closing Date;
  - (b) To continue, at least at their scheduled pace, any additional expenditures for the Swan River Elevator authorized prior to the Closing Date;
  - (c) To perform all maintenance to the Swan River Elevator including maintenance to, and replacement of any parts or components as required; and

- (d) To maintain the viability, competitive vigour, and marketability of the Swan River Elevator.

15. JRI shall indemnify the Hold Separate Manager and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the duties of the Hold Separate Manager, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defence of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from malfeasance, gross negligence or bad faith by the Hold Separate Manager.

16. The Hold Separate Manager, and any employee of the Swan River Elevator, shall not communicate any Confidential Information acquired in the performance of their duties to any Person except to the extent required or permitted by this Agreement. The Hold Separate Manager and any managers of the Swan River Elevator will each execute a confidentiality agreement in the form required by the Commissioner.

17. The Hold Separate Manager may provide Confidential Information (with a copy to the Commissioner as required) to:

- (a) Any Person employed by the external auditors of JRI and Swan River, as the case may be; and
- (b) Senior accountants employed by JRI (the “Permitted Persons”) only for the purposes of preparing standard financial and regulatory reports, tax returns and benefits administration, and to comply with applicable law and governmental authorities in Canada or the United States, provided that:
- (c) Employees of JRI responsible for marketing, finance and/or logistics as agreed between JRI and the Hold Separate Monitor, with approval of the Commissioner.

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- (i) Prior to disclosure of any Confidential Information, each Permitted Person shall execute a confidentiality agreement in the form required by the Commissioner; and

The Permitted Persons shall use the Confidential Information only for the purposes permitted by this Agreement and shall not disclose such information to any other Person, including employees of JRI or Swan River.

18. JRI shall not, directly or indirectly, receive or have access to, or use or continue to use, any Confidential Information relating to the Swan River Elevator, except as may be necessary to comply with the terms of this Agreement or as expressly permitted by this Agreement.

19. The Swan River Elevator shall be staffed with sufficient employees to maintain the viability and competitiveness of the Swan River Elevator. Employees of the Swan River Elevator shall include (i) all personnel performing responsibilities primarily in connection with the Swan River Elevator as of the date of the Consent Agreement; and (ii) any persons hired from other sources as required in the opinion of the Hold Separate Manager with the approval of the Hold Separate Monitor. To the extent that any employees of the Swan River Elevator leave or have left employment with respect to the Swan River Elevator prior to the termination of the Hold Separate Period, the Hold Separate Manager, with the approval of the Hold Separate Monitor, may replace departing or departed employees with persons who have similar experience and expertise, or determine not to replace such departing employees. However a determination not to replace such employees shall require prior approval by the Commissioner.

20. JRI shall not, during the Hold Separate Period, offer employees at the Swan River Elevator positions elsewhere within JRI, other than at Swan River Elevator, until the Purchaser has had a reasonable opportunity to offer employment. A Purchaser shall have the option of offering employment to or retaining any employees at the Swan River Elevator. JRI shall not interfere with the employment by the Purchaser of such employees; shall not offer any incentive to such employees to decline employment with the Purchaser or to accept other employment with JRI; and shall remove any impediments that may deter such employees from accepting employment with the

Purchaser including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the Purchaser, and JRI shall ensure the payment, or the transfer for the account of the employee, of all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled.

21. JRI shall ensure that employees of the Swan River Elevator receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which those employees would have been otherwise entitled.

22. For a period of one (1) year following completion of the Divestiture, JRI shall not employ or make offers of employment to employees of the Swan River Elevator who have accepted offers of employment with the Purchaser of the asset unless the individual employee has been terminated by the Purchaser.

23. Notwithstanding the requirements of paragraph 20, the Hold Separate Manager may offer a bonus or severance to employees that continue their employment with the Swan River Elevator until termination of the Hold Separate Period. The terms of the bonus or severance shall be determined by the Hold Separate Manager acting reasonably, with the concurrence of the Hold Separate Monitor, and shall be in addition to any other bonus or severance to which the employees would otherwise be entitled.

**V. HOLD SEPARATE MONITOR FOR SWAN RIVER ELEVATOR**

24. On July 17, or such later date as the Commissioner may determine, the Commissioner may appoint a Hold Separate Monitor responsible for monitoring the compliance of JRI and the Hold Separate Manager with this Agreement. JRI shall be responsible for all fees and expenses charged or incurred by the Hold Separate Monitor or any substitute Hold Separate Monitor appointed pursuant to this Agreement.

25. If the Hold Separate Monitor ceases to act or fails to act diligently and in a manner which is consistent with this Agreement, the Commissioner may unilaterally appoint a substitute Hold Separate Monitor.

26. The Hold Separate Monitor shall have full and complete access to all personnel, books, records, documents and facilities of the Swan River Elevator and to any other relevant information of JRI as the Hold Separate Monitor may request. JRI and the Hold Separate Manager shall cooperate with any request of the Hold Separate Monitor and neither JRI, nor the Hold Separate Manager, shall interfere with the Hold Separate Monitor's execution of its obligations herein.

27. The Hold Separate Monitor shall serve without bond or other security, at the expense of JRI, on such reasonable and customary terms and conditions as are agreed, with the approval of the Commissioner. The Hold Separate Monitor shall have the authority to engage, at the cost and expense of JRI, such consultants, accountants, lawyers, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Monitor's duties and responsibilities under this Agreement. The Hold Separate Monitor shall account for all expenses incurred, including fees for his services, and such account shall be subject only to the approval of the Commissioner.

28. JRI shall indemnify the Hold Separate Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the duties of the Hold Separate Monitor, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defence of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from malfeasance, gross negligence or bad faith by the Hold Separate Monitor.

29. The Hold Separate Monitor shall report in writing to the Commissioner (i) no later than thirty (30) days after being appointed and every thirty (30) days thereafter until any and all Divestitures contemplated by this Agreement are completed, (ii) no later than thirty (30) days from the date all obligations in this Agreement are satisfied, and (iii) at any other time as requested by the Commissioner or her staff, concerning JRI's and the Hold Separate Manager's compliance with this Agreement. The Hold Separate Monitor shall provide such report forthwith.

30. Neither JRI nor the Hold Separate Manager shall exert or attempt to exert any influence, direction or control over the Hold Separate Monitor.

31. This Agreement shall not be construed as providing the Hold Separate Monitor with ownership, management, possession, charge or control of the Swan River Elevator.

32. The Hold Separate Monitor shall execute a confidentiality agreement in the form required by the Commissioner in which the Hold Separate Monitor will undertake not to disclose any competitively sensitive or proprietary information acquired in the performance of the Hold Separate Monitor's duties to any person except to the Commissioner.

33. If the Hold Separate Monitor considers that JRI or the Hold Separate Manager is in default of any of the terms of this Agreement, the Hold Separate Monitor shall immediately notify the Commissioner of the breach, who shall forthwith give notice to JRI and the Hold Separate Manager setting out the particulars of the default.

34. For the purpose of determining or securing compliance with this Agreement, and subject to any valid claim to a legally recognized privilege, the Commissioner may require, upon written request, JRI and the Hold Separate Manager to permit any duly authorized representative of the Commissioner, and such advisors and experts as the Commissioner directs as per the notice served:

(a) upon a minimum of three (3) business days notice to JRI or the Hold Separate Manager, access during office hours of JRI or the Hold Separate Manager, to inspect the Divestiture Assets (including both the Glossop Elevator and the Swan River Elevator) and inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under control of JRI or the Hold Separate Manager relating to compliance with this Agreement; and

(b) Upon a minimum of seven (7) business days notice to JRI or the Hold Separate Manager, and without restraint or interference from JRI, to interview directors, officers or employees of JRI or the Hold Separate Manager(s) on matters in the

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possession or under the control of JRI or the Hold Separate Manager(s) relating to compliance with this Agreement.

**VI. PRESERVATION OF THE GLOSSOP ELEVATOR**

35. Pending Divestiture of the Divestiture Assets, whether by JRI or the Divestiture Trustee, JRI shall continue to be responsible for the management of the Glossop Elevator.

36. JRI shall provide resources to the Glossop Elevator sufficient to maintain sales, marketing and business plans existing at date of the Consent Agreement, relating to the Glossop Elevator.

37. Pending Divestiture of the Glossop Elevator, JRI shall take such steps as are reasonable and necessary to preserve the competitive viability of the Glossop Elevator, including:

- (a) Operating the Glossop Elevator in compliance with all applicable laws;
- (b) Maintaining all material licences, registrations, permits and approvals necessary for the operation of the Glossop Elevator;
- (c) Using commercially reasonable efforts to maintain and enhance the competitiveness and the customer base of the Glossop Elevator and in particular, to continue to solicit business;
- (d) Maintaining and holding the Glossop Elevator in good condition and repair, normal wear and tear excepted, and to standards at least equal to those maintained prior to the date of the Consent Agreement;
- (e) Establishing all fees, deductions, discounts, credits or allowances with respect to the goods and services provided by the Glossop Elevator;



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- (f) Taking all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of the Glossop Elevator at the level that exists at the date of the Consent Agreement;
  - (g) Ensuring that the Glossop Elevator does not engage in any type of business other than the type of business conducted as of the date of the Consent Agreement;
  - (h) Not communicating any Confidential Information related to the Glossop Elevator to anyone other than the Commissioner, or to a prospective Purchaser to the extent that such is necessary for due diligence or as otherwise permitted herein;
  - (i) Not knowingly taking or allowing to be taken any action that materially and adversely affects the competitiveness, operations or financial status of the Glossop Elevator;
  - (j) Not materially curtailing marketing, sales, promotional or other activities of the Glossop Elevator in connection with the solicitation of existing or prospective customers;
  - (k) Not altering, or causing to be altered, the direct management of the Glossop Elevator as it existed prior to the date of the Consent Agreement, except as may be necessary to comply with the terms of this Agreement or to replace employees that may resign all subject to the Consent of the Commissioner; and
  - (l) Not terminating or altering any current employment, salary or benefit agreements for any employees working in the Glossop Elevator.
38. In addition to the foregoing, JRI shall provide sufficient financial resources to:
- (a) Operate the Glossop Elevator at least at current rates of operation and to carry on, at least at their scheduled pace, all capital projects, research and development plans, business plans and promotional activities contemplated in the Glossop River Elevator's most recent budgets prior to the date of the Consent Agreement;

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- (b) Continue, at least at their scheduled pace, any additional expenditures for the Glossop Elevator authorized prior to the date of the Consent Agreement;
- (c) Perform all maintenance to, and replacements of, the Glossop Elevator to the level that existed prior to the date of the Consent Agreement; and
- (d) Maintain the viability and marketability of the Glossop Elevator at the level immediately prior to the date of the Consent Agreement.

39. The Glossop Elevator shall be staffed with sufficient employees to maintain the viability and competitiveness of the Glossop Elevator. Employees of the Glossop Elevator shall include all personnel listed in Confidential Schedule "B". To the extent that any employees of the Glossop Elevator leave or have left employment with respect to the Glossop Elevator prior to the Divestiture of the Glossop Elevator, JRI shall replace departing or departed employees with persons who have similar experience and expertise, or determine not to replace such departing or departed employees with the prior approval of the Commissioner.

40. JRI shall not, prior to the Divestiture of the Glossop Elevator, offer Persons who are primarily employed in connection with the Glossop Elevator (as listed in Confidential Schedule "B") positions with JRI until the Purchaser of the Glossop Elevator has had a reasonable opportunity to offer employment to such Persons. A Purchaser shall have the option of offering employment to, or retaining, any such employees of the Glossop Elevator. JRI shall not interfere with the employment by the Purchaser of such employees; shall not offer any incentive to such employees to decline employment with the Purchaser or to accept other employment with JRI; and shall remove any impediments that may deter such employees from accepting employment with the Purchaser including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the Purchaser, and JRI shall ensure the payment, or the transfer for the account of the employee, of 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 JRI.

41. For a period of one (1) year following completion of the Divestiture of the Glossop Elevator, JRI shall not employ or make offers of employment to persons employed at the Glossop Elevator who have accepted offers of employment with the Purchaser of the Glossop Elevator unless the individual employee has been terminated by the Purchaser.

42. JRI shall ensure that persons employed at the Glossop Elevator receive their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which those employees would have been otherwise entitled.

## **VII. DIVESTITURE PROCEDURE**

43. The sale of the Divestiture Assets shall be completed on the following general terms:

- (a) By sale, assignment, transfer, sale of shares or other disposition necessary to ensure that, by completion of the Divestiture, JRI has, directly or indirectly, no remaining title, right or interest in the Divestiture Assets;
- (b) By way of disposition of the Divestiture Assets pursuant to this Agreement as a going concern;
- (c) To a Purchaser who is at arm's length to JRI and who meets the following criteria:
  - (i) The Purchaser shall effect the purchase with a demonstrated commitment to carrying on the business and competing effectively in the grain handling services business in Western Canada; and
  - (ii) The Purchaser shall have the managerial, operational and financial capability to compete effectively in the grain handling services business in Western Canada;

- (d) By way of a public tender, bidding or other procedure to allow a fair opportunity, within the constraints of this Agreement including mandated timeframes for divestiture, for one or more *bona fide* prospective Purchasers to obtain notice of the Divestiture and to offer to acquire one or both the assets to be divested pursuant to this Agreement.

The compliance of the Divestiture with these foregoing terms shall be considered and approved solely by the Commissioner. In addition, the Commissioner will also take into account the likely impact of the Divestiture on competition in deciding whether or not to approve the Divestiture. The decision of the Commissioner as to whether to approve the Divestiture shall be in writing.

44. Any Person making a *bona fide* inquiry of JRI or the Trustee, as the case may be, regarding the possible purchase by that Person or its principal of any of the Divestiture Assets pursuant to this Agreement shall be notified that the sale is being made pursuant to this Agreement and shall be provided with a copy of this Agreement, with the exception of the provisions that continue to be confidential at that time.

45. Subject to paragraph 46 below, any prospective Purchaser with a *bona fide* interest in purchasing the Divestiture Assets pursuant to this Agreement shall:

- (a) Be furnished with all pertinent information regarding the Divestiture Asset(s) that the purchaser is interested in purchasing within fourteen (14) days of a request therefore; and
- (b) Be permitted to make such reasonable inspection of the Divestiture Asset(s) in question and of all financial, operational or other non-privileged documents and information which may be relevant to the Divestiture, except for any documents which at the time of request for the inspection of such documents the Commissioner has agreed not be disclosed or such documents that have been made the subject of an order of confidentiality of the Tribunal.

46. Access by a prospective Purchaser to the information identified in paragraph 45 of this Agreement shall be conditional on the execution of a standard confidentiality agreement in the form required by the Commissioner containing, among other things, non-solicitation terms relating to personnel and suppliers.

47. JRI shall provide reasonable and ordinary commercial representations and warranties to the Purchaser.

48. JRI shall allow the Purchaser of the Divestiture Assets an opportunity to employ those persons employed primarily in relation to the Divestiture Assets (the "Employees") as follows:

(a) not later than fourteen (14) days, or such other period as may be agreed upon by the Purchaser and JRI, before the date of the Divestiture of the Divestiture Assets (or either of them), JRI shall, to the extent permissible under applicable laws,

- (i) provide to the Purchaser a list of all the Employees;
- (ii) allow the Purchaser an opportunity to interview the Employees for purposes of determining whether or not to offer them employment; and
- (iii) allow the Purchaser to inspect the personnel files and other documentation relating to the Employees; and

(b) JRI shall, to the extent permissible under applicable laws,

- (i) not offer any incentive to any Employee to decline employment with the Purchaser,
- (ii) remove any contractual impediments with JRI that may deter any Employee from accepting employment with the Purchaser, including, but not limited to, any non-compete or confidentiality provisions of employment relating specifically to the Divestiture Assets that would affect the ability of the Employee to be employed by the Purchaser,
- (iii) not interfere with the employment by the Purchaser of any Employee, and

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- (iv) continue employee benefits offered by JRI until the Divestiture has been completed, including regularly scheduled raises and bonuses, and regularly scheduled vesting of all pension benefits.

49. Nothing in paragraph 10 of this Agreement is intended to diminish any of JRI's or a Purchaser's obligations under any applicable labour laws or relevant collective bargaining agreements.

### **VIII. INITIAL SALE PERIOD**

50. The Initial Sale Period commences on Closing and ends at the time prescribed in the Confidential Schedule "A".

51. JRI shall provide the Commissioner with progress reports regarding the Divestiture every two (2) weeks and shall, within three (3) business days, respond to any further requests from the Commissioner for additional information regarding the Divestiture. In addition, JRI shall notify the Commissioner forthwith of any negotiations with a prospective Purchaser that may lead to a sale and to forward copies to the Commissioner of any legal agreement which it signs with a prospective Purchaser, including non-binding expressions of interest.

52. JRI shall notify the Commissioner of any proposed Divestiture no less than thirty (30) days prior to the date upon which any binding offer by a proposed Purchaser expires, unless the Commissioner otherwise agrees.

53. Within ten (10) days of the receipt of the notice described in the immediately preceding paragraph, the Commissioner may request additional information concerning the proposed Divestiture.

54. The Commissioner shall notify JRI within five (5) days of the receipt of all of the required additional information requested, as referred to in the immediately preceding paragraph, of the approval of, or the objection to, the proposed Divestiture.

55. If the Commissioner does not require additional information as a result of the notification of JRI referred to in paragraph 52, the Commissioner shall notify JRI within twenty (20) days of the approval of, or the objection to, the proposed Divestiture.

**IX. DIVESTITURE TRUSTEE SALE PROVISIONS**

56. The Commissioner may appoint the Divestiture Trustee pursuant to this Part thirty (30) days before the expiry of the Initial Sale Period. Upon appointment of the Divestiture Trustee, JRI and the Hold Separate Manager shall, subject to the requirements of paragraph 57 below, provide complete access to the Divestiture Trustee to all information relating to the Divestiture Assets then in their possession or control. The Commissioner's appointment of the Divestiture Trustee shall be on the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

- (a) The Divestiture Trustee will be a Person(s) with experience and expertise in acquisitions and divestitures and may be the same Person as the Hold Separate Monitor;
- (b) Subject to the exclusive oversight and approval by, and in consultation with, the Commissioner, the Divestiture Trustee shall have the exclusive authority to control the Divestiture Process as described in Part VII of this Agreement by whatever procedure the Divestiture Trustee believes, in its sole discretion, is suitable to effect the Divestiture in the time allotted under the conditions in the Consent Agreement; and
- (c) The Divestiture Trustee's obligations and powers under the Consent Agreement shall not expire until the Divestiture is completed;

57. The Divestiture Trustee shall execute a confidentiality agreement in the form required by the Commissioner and shall refrain from communicating any Confidential Information to anyone except to the extent reasonably required to effect the Divestiture.

58. The Divestiture Trustee shall have ninety (90) days in which to accomplish the Divestiture. The Trustee Sale Period may be extended at the sole discretion of the Commissioner.

59. The Trustee shall offer for sale the Divestiture Assets.

60. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the assets that remain to be divested or to any other information deemed relevant by the Divestiture Trustee to effect the Divestiture. JRI shall take all necessary steps to assist the Divestiture Trustee in its accomplishment of the Divestiture.

61. JRI and the Hold Separate Manger shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. Upon the appointment of the Divestiture Trustee, JRI shall identify a person responsible for responding to such requests from the Divestiture Trustee.

62. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favourable terms and conditions available at that time, and, if necessary to effect the Divestiture, shall sell the Divestiture Assets at no minimum price. The Divestiture Trustee's opinion of what constitutes the most favourable terms and conditions is subject only to the Commissioner's approval.

63. The Divestiture Trustee shall have the sole authority to determine and to impose all reasonable and ordinary commercial representations and warranties for the purpose of effecting the Divestiture.

64. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of JRI on such reasonable and customary terms and conditions as the Commissioner may determine.



65. The Divestiture Trustee shall have the authority to engage, at the cost and expense of JRI, such consultants, accountants, lawyers, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities.

66. JRI will not be included in the Divestiture process, including negotiation, nor will JRI have contact with prospective Purchasers, unless approved by the Commissioner. However, the Divestiture Trustee may consult with JRI where the former considers such consultation to be appropriate.

67. JRI shall pay all invoices submitted by the Divestiture Trustee on a monthly basis. Any outstanding monies owed to the Divestiture Trustee by JRI shall be paid out from any proceeds of the Divestiture.

68. JRI 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 for, or defence of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from malfeasance, gross negligence or bad faith by the Divestiture Trustee.

69. If the Divestiture Trustee ceases to act or fails to act diligently or otherwise in accordance with this Agreement or any agreement between the Commissioner and the Divestiture Trustee, the Commissioner may appoint a substitute Divestiture Trustee in the same manner as provided for in this Part for appointment of the initial Divestiture Trustee.

70. The Divestiture Trustee shall have no obligation or authority to operate or maintain the assets to be divested by the Divestiture Trustee.

71. The Divestiture Trustee shall report in writing to the Commissioner every twenty-one (21) days, and upon the Commissioner's request within three (3) days, concerning the Divestiture Trustee's efforts to accomplish the Divestiture. Such reports shall contain reasonable detail on the

steps being taken by the Divestiture Trustee to effect the divestiture, including but not limited to, the identity of prospective Purchasers, the status of negotiations with such prospective Purchasers, and any additional information requested by the Commissioner.

72. The Divestiture Trustee shall notify the Commissioner in writing, of any proposed Divestitures. Such notice shall include:

- (a) The identity of the proposed Purchaser;
- (b) The details of the proposed transaction; and
- (c) Information concerning whether, in the view of the Divestiture Trustee, the proposed Purchaser would satisfy the terms of the Consent Agreement.

73. The Divestiture Trustee shall also notify JRI in writing, of any proposed Divestitures. Such notice shall include:

- (a) The identity of the proposed Purchaser; and
- (b) The details of the proposed transaction.

74. Within ten (10) days of the receipt of the notice described in the immediately preceding paragraph, the Commissioner may request additional information concerning the proposed Divestiture.

75. The Commissioner shall notify the Trustee within five (5) days of the receipt of all of the required additional information requested, as referred to in the immediately preceding paragraph, of the approval of, or objection to, the proposed Divestiture.

76. If the Commissioner does not require additional information as a result of the notification of the Trustee referred to in paragraph 72, the Commissioner shall notify the Trustee within twenty (20) days of the acceptance of, or objection to, the proposed Divestiture.

77. As the Divestiture Trustee's primary obligation is to divest the Divestiture Assets to a Person(s) approved by the Commissioner, JRI may not object to, or challenge, the Divestiture Trustee Sale on any grounds other than malfeasance, gross negligence or bad faith on the part of the Divestiture Trustee in fulfilling its obligations hereunder. If JRI objects to the terms and conditions of a Divestiture that have been proposed by the Divestiture Trustee on the grounds of malfeasance, gross negligence or bad faith by the Divestiture Trustee, JRI or the Commissioner may apply to the Tribunal for directions.

78. All proceeds of any Divestiture Trustee Sale shall be paid to JRI or as JRI may direct.

79. Where the Commissioner or JRI has objected to a proposed Divestiture Trustee Sale, it shall not be completed without the approval of the Tribunal.

**X. FAILURE OF DIVESTITURE**

80. If the Divestiture Assets have not been divested within the Trustee Sale Period (including any extensions), or if the Commissioner is of the opinion that the Divestiture will not likely be completed prior to the expiry of the Trustee Sale Period, the Commissioner may apply to the Tribunal for such order as is necessary to effect the Divestiture, including an order that other asset(s) be offered for sale or additional steps be taken to effect the Divestiture.

**XI. NOTIFICATION**

81. JRI shall provide a copy of this Agreement to each of its officers, employees, or agents that has managerial responsibility for any obligations under this Agreement, no later than fifteen (15) days from the date this Agreement is registered.

82. Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement, shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the parties:

(a) If to the Commissioner:

The Commissioner of Competition  
Competition Bureau  
Industry Canada  
Place du Portage, 19<sup>th</sup> floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9  
Attention: Melanie L. Aitken, Senior Deputy Commissioner of Competition  
(Mergers)  
Tel: 819-994-1863  
Fax: 819-994-0998

With a copy to:

Director and Senior General Counsel,  
Competition Law Division  
Department of Justice  
Place du Portage, 22<sup>nd</sup> floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9  
Attention: Jeff Richstone

(b) If to JRI:

Jean-Marc Ruest  
Vice President, Corporate Affairs and General Counsel

James Richardson International Limited  
Richardson Building  
One Lombard Place  
Winnipeg, MB R3B 0X8

With a copy to

Osler, Hoskin & Harcourt LLP  
Box 50, 1 First Canadian Place  
Toronto, Ontario  
Canada M5X 1B8

Attention: Paul Crampton and Christopher Naudie

Fax: 416-862-6666

## **XII. DURATION**

83. JRI shall be bound by the terms of the Consent Agreement until the Divestiture is completed and all other obligations of JRI have been discharged in accordance with this Agreement, or until the Tribunal orders otherwise.

## **XIII. GENERAL**

84. Confidential terms in this Agreement shall be made public when the Trustee Sale Period commences, or when the Divestiture has been completed, whichever is first.

85. The Commissioner and JRI agree that, upon the signing of the Consent Agreement, the Commissioner may file it with the Tribunal for immediate registration or at such later time as the Commissioner may decide within the three (3) year period following the Closing Date.

86. The Commissioner may agree to extend any of the time periods contemplated within the Consent Agreement. JRI and the Commissioner may mutually agree to amend the Consent Agreement in any manner pursuant to subsection 106 (1) of the Act.

87. The computation of any time periods contemplated by the Consent Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21. For the purpose of this Agreement, the definition of "holiday" in the *Interpretation Act* shall include Saturday.

88. The Consent Agreement constitutes the entire agreement between the Commissioner and JRI with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral.

89. Notwithstanding any term of the Consent Agreement, nothing in the Consent Agreement shall be construed to abrogate the notification obligations set out in Part IX of the Act.

90. In the event of a dispute as to the interpretation, application or implementation of the Consent Agreement, the Commissioner, the Divestiture Trustee, or JRI shall be at liberty to apply to the Tribunal for a further Order.

91. The Consent Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.

Commissioner of Competition

“Sheridan Scott”

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“Sheridan Scott”

James Richardson International Limited

“Jean-Marc Ruest”

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“Jean-Marc Ruest”

**CONFIDENTIAL SCHEDULE "A"**

**[CONFIDENTIAL]**

**CONFIDENTIAL SCHEDULE "B"**

**[CONFIDENTIAL]**