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COMPETITION TRIBUNAL

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

AND IN THE MATTER OF the proposed amalgamation of Praxair, Inc. and Linde Aktiengesellschaft pursuant to which the companies will combine their respective businesses and become subsidiaries of a newly formed holding company;

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

B E T W E E N :

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENTREGISTRÉ FILED / PRODUIT CT-2018-013 Date: October 26, 2018 Andrée Bernier for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT.	# 2

THE COMMISSIONER OF COMPETITION

Applicant

– and –

PRAXAIR, INC. and LINDE AKTIENGESELLSCHAFT

Respondents

CONSENT AGREEMENT

RECITALS:

A. Praxair, Inc. and Linde Aktiengesellschaft have entered into a Business Combination Agreement pursuant to which they will combine their respective businesses and become subsidiaries of a newly formed holding company, Linde plc, which will be owned by Praxair and Linde’s respective shareholders (the “Transaction”).

B. The Commissioner has concluded that the Transaction is likely to result in a substantial lessening of competition in markets for the supply of specific Industrial Gases in Canada, and that the implementation of this Agreement is necessary to ensure that any substantial lessening of competition will not result from the Transaction.

C. Respondents do not admit but will not for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner’s conclusions that (i) the Transaction is likely to result in a substantial lessening of

competition in markets for the supply of specific Industrial Gases in Canada; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening of competition will not result from the Transaction.

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

THEREFORE Respondents and the Commissioner agree as follows:

I. DEFINITIONS

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

- (a) **“Act”** means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- (b) **“Affiliate”** has the meaning given to it in subsection 2(2) of the Act;
- (c) **“Agreement”** means this Consent Agreement, including the schedules hereto, and references to a “Part”, “Section”, “Paragraph” or “Schedule” are, unless otherwise indicated, references to a part, section, paragraph or schedule of or to this Agreement;
- (d) **“Business Day”** means a day on which the Competition Bureau’s Gatineau, Quebec office is open for business;
- (e) **“Closing”** means the completion of the Transaction under the Transaction Agreement;
- (f) **“Closing Date”** means the date on which Closing occurs;
- (g) **“Commissioner”** means the Commissioner of Competition appointed under the Act and includes his authorized representatives;
- (h) **“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;
- (i) **“Consent”** means any approval, consent, ratification, waiver, or other authorization;
- (j) **“Direct Cost”** means a cost not to exceed the cost of labour, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant product, assistance or service and are, in the view of the

Monitor, reasonably consistent in nature, scope and magnitude with past practices and generally accepted industry practices;

- (k) **“Divested Business”** means the business of Linde Canada Limited, including the production, sale, purification, blending, transfilling, distribution, and research and development, in Canada, of Industrial Gases;
- (l) **“Divestiture”** means the sale, conveyance, transfer, assignment or other disposal of the Divestiture Assets to a Purchaser pursuant to this Agreement and with the prior approval of the Commissioner, such that Respondents will have no direct or indirect interest in the Divestiture Assets;
- (m) **“Divestiture Agreement”** means a binding and definitive agreement between Respondent or Respondents and a Purchaser to effect the Divestiture pursuant to this Agreement and subject to the prior approval of the Commissioner;
- (n) **“Divestiture Applicant”** means the Divestiture Trustee;
- (o) **“Divestiture Assets”** means all of the right, title and interest in, to and under, or relating to, the tangible assets, Intangible Assets, property and undertaking owned or used or held by Linde Canada Limited for use in, or relating to, the Divested Business, including, but not limited to, plants, transfill stations, warehouses, retail branches, tractor trucks, cryo-trailers, gas depots and tanks, cylinders, Governmental Authorizations, Records and customer contracts, in each case, operating from the Linde Canada Limited locations identified in Appendix I hereto;
- (p) **“Divestiture Process Agreement”** means the agreement described in Section 6 of this Agreement;
- (q) **“Divestiture Trustee”** means the Person appointed pursuant to Part III of this Agreement (or any substitute appointed thereto) and any employees, agents or other Persons acting for or on behalf of the Divestiture Trustee;
- (r) **“Divestiture Trustee Sale”** means the Divestiture to be conducted by the Divestiture Trustee pursuant to Part III of this Agreement;
- (s) **“Divestiture Trustee Sale Period”** means the 12 month period commencing upon expiry of the Initial Sale Period;
- (t) **“First Reference Date”** shall have the meaning set out in Paragraph 22(d) of this Agreement;
- (u) **“Gases”** means acetylene, argon, carbon dioxide, helium, hydrogen, krypton, neon, nitrogen, nitrous oxide, oxygen, or xenon, including any mixtures thereof;

- (v) **“Governmental Authorizations”** means any Consent, license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body pursuant to any legal requirement.
- (w) **“Hold Separate Employees”** means those employees of Respondents who are employed in connection with the Divestiture Assets, and **“Hold Separate Employee”** means any one of them;
- (x) **“Hold Separate Period”** means the period that commences at Closing and ends upon the completion of the Divestiture;
- (y) **“Industrial Gases”** means Gases that are used in, but not limited to, industrial, medical and research applications;
- (z) **“Initial Sale Period”** means the period that commences at Closing and ends at the time set out in Confidential Schedule A to this Agreement;
- (aa) **“Intangible Assets”** means intellectual property of any nature and kind used exclusively in connection with the Divestiture Assets or Divested Business, including:
 - (i) patents, copyrights, trademarks and software;
 - (ii) trade dress, industrial designs, distinguishing guises, trade secrets, know-how, techniques, data, inventions, practices, methods and other confidential or proprietary technical, business, research, development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
 - (iii) rights to obtain and file for patents and registrations thereof; and
 - (iv) rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;

provided that with respect to other intellectual property used in connection with the Divestiture Assets or Divested Business, Respondents shall not assert any intellectual property rights against Purchaser;

provided further that Intangible Assets do not include, except as expressly provided otherwise in the Messer Divestiture Agreement, the trademarks or images of Linde (or other companies owned or controlled by Linde), or the related corporate logos thereof or general registered images or symbols by which Linde (or other companies owned or controlled by Linde) can be identified;

- (bb) **“Linde”** means Linde Aktiengesellschaft and its Affiliates and their directors, officers, employees, agents, representatives, successors and assigns, including Linde plc;
- (cc) **“Linde plc”** means the entity that will be formed upon the amalgamation of Linde and Praxair, in accordance with the terms and conditions set forth in the Transaction Agreement, and its Affiliates.
- (dd) **“Messer”** means Messer Canada Inc. and its Affiliates and their directors, officers, employees, agents, representatives, successors and assigns;
- (ee) **“Messer Divestiture Agreement”** means the “Americas Sale and Purchase Agreement” among Linde, Praxair, MG Industries GmbH and Messer dated July 16, 2018, and all exhibits, attachments, agreements and schedules thereto, and any amendments thereto that have been approved by the Commissioner;
- (ff) **“Monitor”** means Grant Thornton LLP or any other Person appointed pursuant to Part X of this Agreement (or any substitute appointed thereto), and any employees, agents or other Persons acting for or on behalf of the Monitor, provided that if no Monitor is appointed Monitor means the Commissioner;
- (gg) **“Monitor Agreement”** means the agreement described in Section 34 of this Agreement;
- (hh) **“Person”** means any individual, corporation or partnership, sole proprietorship, trust or other unincorporated organization capable of conducting business, and any Affiliates thereof;
- (ii) **“Praxair”** means Praxair Inc. and its Affiliates and their directors, officers, employees, agents, representatives, successors and assigns, including Linde plc;
- (jj) **“Praxair Canada”** means the Canadian operations of Praxair, including the operations of its subsidiary corporation Praxair Canada Inc.;
- (kk) **“Purchaser”** means a Person that acquires the Divestiture Assets pursuant to this Agreement and a Divestiture Agreement;
- (ll) **“Records”** means records within the meaning of subsection 2(1) of the Act;
- (mm) **“Respondents”** means Linde and Praxair;
- (nn) **“Second Reference Date”** shall have the meaning set out in Paragraph 22(e) of this Agreement;

- (oo) **“Third Party”** means any Person other than the Commissioner, Respondents or a Purchaser;
- (pp) **“Transaction”** means the transaction described in the first recital to this Agreement;
- (qq) **“Transaction Agreement”** means the Business Combination Agreement, dated June 1, 2017, by and among Praxair, Inc., Linde Aktiengesellschaft, Zamalight PLC, Zamalight Holdco LLC and Zamalight Subco, Inc.; and
- (rr) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.).

II. OBLIGATION TO COMPLETE DIVESTITURE

- [2] Respondents shall use commercially reasonable efforts to complete the Divestiture.
- [3] During the Initial Sale Period, Respondents shall use commercially reasonable efforts to complete the Divestiture to Messer pursuant to the Messer Divestiture Agreement or otherwise in accordance with the provisions of this Part and Confidential Schedule A and subject to Part IV.
- [4] During the Initial Sale Period, Respondents shall provide to the Commissioner and to the Monitor no later than 10 days after the end of every month a written report describing the progress of their efforts to effect the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. Respondents shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of Respondents’ efforts to complete the Divestiture. An officer or other duly authorized representative of a Respondent shall certify that he or she has examined the information provided in any such response and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

III. DIVESTITURE TRUSTEE SALE PROCESS

- [5] In the event that Respondents fail to complete the Divestiture during the Initial Sale Period, the Commissioner shall appoint a Divestiture Trustee to complete the Divestiture in accordance with this Agreement. Such appointment may be made at any time prior to the expiry of the Initial Sale Period or on such later date as the Commissioner determines.
- [6] Within 10 days after the appointment of the Divestiture Trustee, Respondents shall submit to the Commissioner for approval the terms of a proposed Divestiture Process Agreement with the Divestiture Trustee and the Commissioner that confers on the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the Divestiture.

- [7] Within 5 Business Days after receipt of the proposed Divestiture Process Agreement referred to in Section 6, the Commissioner shall advise Respondents whether or not he approves the terms of the proposed Divestiture Process Agreement. If the Commissioner does not approve the terms of the proposed Divestiture Process Agreement, he shall prescribe alternative terms that Respondents shall incorporate into a final Divestiture Process Agreement with the Divestiture Trustee and the Commissioner.
- [8] Without limiting the Commissioner's discretion to require additional terms, Respondents consent to the following terms and conditions regarding the Divestiture Trustee's rights, powers and duties, and shall include such terms in the Divestiture Process Agreement:
- (a) The Divestiture Trustee shall complete the Divestiture 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 Respondents as are reasonably available at that time; however, the Divestiture shall not be subject to any minimum price. The Divestiture Trustee's opinion of what constitutes favourable terms and conditions and what constitutes reasonably available terms and conditions, is subject to review and approval by the Commissioner.
 - (c) Subject to oversight and approval by the Commissioner, the Divestiture Trustee shall have full and exclusive authority during the Divestiture Trustee Sale Period:
 - (i) to complete the Divestiture in accordance with the provisions of this Part;
 - (ii) to solicit interest in a possible Divestiture by whatever process or procedure the Divestiture Trustee believes is suitable to allow a fair opportunity for one or more prospective good faith Purchasers to offer to acquire the Divestiture Assets, and for greater certainty, in determining whether to pursue negotiations with a prospective Purchaser, may have regard to the approval criteria in Section 23;
 - (iii) to enter into a Divestiture Agreement with a Purchaser that will be legally binding on Respondents;
 - (iv) to negotiate reasonable commercial covenants, representations, warranties and indemnities to be included in a Divestiture Agreement; and
 - (v) to employ, at the expense of Respondents, such consultants, accountants, legal counsel, investment bankers, business brokers,

appraisers, and other representatives and assistants as the Divestiture Trustee believes are necessary to carry out the Divestiture Trustee's duties and responsibilities.

- (d) Where any Person makes a good faith inquiry respecting a possible purchase of Divestiture Assets, the Divestiture Trustee shall notify such Person that the Divestiture is being made and shall provide to such Person a copy of this Agreement, with the exception of the provisions hereof that are confidential pursuant to Section 59 of this Agreement.
- (e) Where, in the opinion of the Divestiture Trustee, a Person has a good faith interest in purchasing Divestiture Assets and has executed a confidentiality agreement, in a form satisfactory to the Commissioner, with the Divestiture Trustee protecting any Confidential Information that such Person may receive in the course of its due diligence review of the Divestiture Assets, the Divestiture Trustee shall:
 - (i) promptly provide to such Person all information respecting the Divestiture Assets that is determined by the Divestiture Trustee to be relevant and appropriate;
 - (ii) permit such Person to make reasonable inspection of the Divestiture Assets and of all financial, operational or other non-privileged Records and information, including Confidential Information, that may be relevant to the Divestiture; and
 - (iii) give such Person as full and complete access as is reasonable in the circumstances to the personnel involved in managing the Divestiture Assets.
- (f) The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets.
- (g) The Divestiture Trustee shall provide to the Commissioner and to the Monitor, every 60 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, and the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. The Divestiture Trustee shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of the Divestiture Trustee's efforts to complete the Divestiture.
- (h) The Divestiture Trustee shall notify Respondents and the Commissioner immediately upon the signing of any letter of intent or agreement in principle relating to the Divestiture Assets, and shall provide to Respondents a copy of any executed Divestiture Agreement upon receipt of

the Commissioner's approval of the Divestiture contemplated in such Divestiture Agreement.

- [9] Respondents shall not be involved in the Divestiture process during the Divestiture Trustee Sale Period or in any negotiations with prospective Purchasers undertaken by the Divestiture Trustee, nor will Respondents have contact with prospective Purchasers during the Divestiture Trustee Sale Period.
- [10] Subject to any legally recognized privilege, Respondents shall provide to the Divestiture Trustee full and complete access to all personnel, Records, information (including Confidential Information) and facilities relating to the Divestiture Assets, to enable the Divestiture Trustee to conduct its own investigation of the Divestiture Assets and to provide access and information to prospective Purchasers.
- [11] Respondents shall take no action that interferes with or impedes, directly or indirectly, the Divestiture Trustee's efforts to complete the Divestiture.
- [12] Respondents shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. Respondents shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Divestiture Trustee on behalf of Respondents.
- [13] Respondents will do all such acts and execute all such documents, and will cause the doing of all such acts and the execution of all such documents as are within 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 Respondents.
- [14] Respondents shall be responsible for all reasonable fees and expenses properly charged or incurred by the Divestiture Trustee in the course of carrying out the Divestiture Trustee's duties and responsibilities under this Agreement. The Divestiture Trustee shall serve without bond or security, and shall account for all fees and expenses incurred. Respondents shall pay all reasonable invoices submitted by the Divestiture Trustee within 30 days after receipt and, without limiting this obligation, Respondents shall comply with any agreement it reaches with the Divestiture Trustee regarding interest on late payments. In the event of any dispute: (i) such invoice shall be subject to the approval of the Commissioner; and (ii) Respondents shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Divestiture Trustee by Respondents shall be paid out of the proceeds of the Divestiture.
- [15] Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection

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

- [16] Respondents shall indemnify the Commissioner and hold the Commissioner harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability.
- [17] If the Commissioner determines that the Divestiture Trustee has ceased to act or has failed to act diligently, the Commissioner may remove the Divestiture Trustee and appoint a substitute Divestiture Trustee. The provisions of this Agreement respecting the Divestiture Trustee shall apply in the same manner to any substitute Divestiture Trustee.
- [18] Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner; provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commissioner.
- [19] The Commissioner may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Divestiture Trustee may receive from the Commissioner in connection with the performance of the Divestiture Trustee's duties.
- [20] Notwithstanding any term of this Agreement, the rights, powers and duties of the Divestiture Trustee under this Agreement shall not expire until the Divestiture is completed.

IV. COMMISSIONER APPROVAL OF DIVESTITURE

- [21] The Divestiture shall be made to a single Purchaser and may proceed only with the prior approval of the Commissioner in accordance with this Part. For greater certainty, if a Divestiture is a notifiable transaction nothing in this Agreement affects the operation of Part IX of the Act. The Commissioner approves a Divestiture to Messer pursuant to the Messer Divestiture Agreement, and this Part and Parts VI and VII of this Agreement shall not apply in respect of that Divestiture.
- [22] The Divestiture Applicant shall comply with the following process for seeking and obtaining a decision of the Commissioner regarding his approval of a proposed Divestiture:

- (a) The Divestiture Applicant shall promptly:
 - (i) inform the Commissioner of any negotiations with a prospective Purchaser that may lead to a Divestiture; and
 - (ii) forward to the Commissioner copies of any agreement that is signed with a prospective Purchaser, including non-binding expressions of interest.
- (b) The Divestiture Applicant shall immediately notify the Commissioner that it intends to enter a Divestiture Agreement with a prospective Purchaser, or has entered into an agreement that, if approved by the Commissioner, will be a Divestiture Agreement within the meaning of this Agreement. If the Divestiture Applicant has entered into or intends to enter into more than one agreement in respect of the same Divestiture Assets, the Divestiture Applicant shall identify the agreement in respect of which it seeks the Commissioner's approval and the remainder of this Part shall apply only to that agreement unless the Divestiture Applicant designates a substitute agreement.
- (c) The notice described in Paragraph 22(b) shall be in writing and shall include: the identity of the proposed Purchaser; the details of the proposed Divestiture Agreement and any related agreements; and information concerning whether and how the proposed Purchaser would, in the view of the Divestiture Applicant, likely satisfy the terms of this Agreement.
- (d) Within 14 days following receipt of the notice described in Paragraph 22(b), the Commissioner may request additional information concerning the proposed Divestiture from any or all of Respondents, the Monitor, the prospective Purchaser and, in the Divestiture Trustee Sale Period, the Divestiture Trustee. These Persons shall each provide any additional information requested from them. When they have provided a complete response to the Commissioner's request, these Persons shall comply with the following procedures:
 - (i) the Divestiture Trustee shall provide written confirmation to the Commissioner that the Divestiture Trustee has provided to the Commissioner all additional information requested from the Divestiture Trustee;
 - (ii) the Monitor shall provide written confirmation to the Commissioner that the Monitor has provided to the Commissioner all additional information requested from the Monitor;
 - (iii) an officer or other duly authorized representative of Respondents shall certify that he or she has examined the additional information provided by Respondents in response to the Commissioner's request

and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects; and,

- (iv) an officer or other duly authorized representative of the prospective Purchaser shall certify that he or she has examined the additional information provided by the prospective Purchaser in response to the Commissioner's request and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

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

- (e) Within 7 days after the First Reference Date, the Commissioner may request further additional information concerning the proposed Divestiture from any or all of the Persons identified in Paragraph 22(d). These Persons shall each provide any further additional information requested from them. When they have provided a complete response to the Commissioner's request, if any, these Persons shall comply with the procedures outlined in Paragraph 22(d) in regard to the further additional information provided. The date on which the last of the Divestiture Trustee, Respondents, the Monitor and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the "**Second Reference Date**".
- (f) The Commissioner shall notify the Divestiture Applicant of the approval of, or the objection to, the proposed Divestiture as soon as possible, and in any event within 14 days after the date on which the Commissioner receives the notice described in Paragraph 22(b) or, if he requests any additional information under Paragraph 22(d) or further additional information under Paragraph 22(e), within 14 days after the later of:
 - (i) the First Reference Date; and
 - (ii) the Second Reference Date, if any.
- (g) The Commissioner's determination as to whether to approve a proposed Divestiture shall be in writing.

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

- (a) the proposed Purchaser is fully independent of and operates at arm's length from Respondents;

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

V. HOLD SEPARATE

[24] During the Hold Separate Period:

- (a) Respondents shall hold the Divestiture Assets separate, apart and independent of Praxair Canada; and
- (b) Praxair Canada shall not exercise direction or control over, or influence directly or indirectly, the Divestiture Assets.

[25] Without limiting the generality of Section 24 above, Respondents shall:

- (a) maintain and hold the Divestiture Assets in good condition and repair, normal wear and tear excepted, and to standards at least equal to those that existed prior to the date of this Agreement;
- (b) take all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of the Divestiture Assets at least equal to those that existed prior to the date of this Agreement;
- (c) not knowingly take or allow to be taken any action that adversely affects the competitiveness, operations, financial status or value of the Divestiture Assets;
- (d) not alter or cause to be altered, to any material extent, the management of the Divestiture Assets as it existed prior to the date of this Agreement, except with the prior approval of the Monitor;
- (e) not terminate or alter any employment, salary or benefit agreements, as they existed at the date of this Agreement, for Persons employed in connection with the Divestiture Assets, except with the prior approval of the Monitor;

- (f) ensure that the Divestiture Assets are staffed with sufficient employees to ensure their viability and competitiveness, including by replacing any departing employees with other qualified employees subject to the prior approval of the Monitor; and
- (g) maintain inventory levels and payment terms consistent with the practices of Linde that existed, with respect to the Divestiture Assets, prior to the date of this Agreement.

[26] Respondents shall implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Monitor in consultation with the Commissioner of access and data controls to prevent unauthorized access to or dissemination of Confidential Information. The system shall include the following protocols:

- (a) The Monitor shall review all proposed communications between the Divested Business and Praxair Canada before such communications occur.
- (b) Praxair Canada's employees shall not receive, have access to or use any Confidential Information respecting the Divestiture Assets.
- (c) No Hold Separate Employee shall receive, have access to or use any Confidential Information relating to Praxair Canada's businesses.

VI. THIRD PARTY CONSENTS

[27] It shall be a condition in any Divestiture Agreement (whether negotiated by Respondents or by the Divestiture Trustee) that Respondents shall, as a condition of closing, obtain any consents and waivers from Third Parties that are necessary to permit the assignment to, and assumption by, a Purchaser of all material contracts, approvals and authorizations relating to the Divestiture Assets; provided, however, that Respondents 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 ARRANGEMENTS

[28] Respondents, or the Divestiture Trustee on behalf of Respondents, at the option of the Purchaser and subject to the approval of the Commissioner, shall enter into:

- (a) a transition services agreement to provide transition services to the Purchaser for a period not to exceed two years from the Divestiture date and that may be terminated by the Purchaser at any time, without cost or penalty to the Purchaser, upon commercially reasonable notice to Respondents. The transition services provided shall be at no greater than Respondents' Direct Costs for such services as are necessary in the opinion of the Monitor to transfer the Divestiture Assets to the Purchaser and enable the Purchaser to

operate the Divestiture Assets in a manner consistent with the purposes of this Agreement;

- (b) a supply agreement to supply the Purchaser with gases or products necessary for the viability, marketability and competitiveness of the Divested Business for a period not to exceed three years from the Divestiture date and that may be terminated by the Purchaser at any time, without cost or penalty to the Purchaser, upon commercially reasonable notice to Respondents. The gases or products supplied by Respondents to the Purchaser pursuant to such supply agreement shall be at a cost consistent with the internal pricing practices of Linde for the fiscal year prior to the Transaction; and
- (c) a licence agreement for intellectual property that relates to the operation of the Divested Business that is shared with, or also pertains to businesses operated by Linde other than the Divested Business, and is sufficient for the Purchaser to operate the Divested Business in a manner consistent with the practices of Linde that existed prior to the date of this Agreement (excluding, for avoidance of doubt, the trademarks or images of Linde (or other companies owned or controlled by Linde), or the related corporate logos thereof or general registered images or symbols by which Linde (or other companies owned or controlled by Linde) can be identified.

VIII. EMPLOYEES

[29] Respondents (during the Initial Sale Period) and the Divestiture Trustee (during the Divestiture Trustee Sale Period) shall provide to any prospective Purchaser, the Commissioner and the Monitor information relating to the employees whose responsibilities involve the operation of the Divestiture Assets, 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.

[30] Respondents shall:

- (a) not interfere, directly or indirectly, with any negotiations by a Purchaser to employ any employees whose responsibilities involve the operation of the Divestiture Assets;
- (b) not offer any incentive to such employees to decline employment with the Purchaser or to accept other employment with Respondents;
- (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) except as otherwise provided in the Messer Divestiture Agreement, pay or transfer to or maintain for the employees subsequently employed by the Purchaser all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of Respondents.

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

IX. FAILURE OF DIVESTITURE TRUSTEE SALE

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

X. MONITOR

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

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

[35] Within 5 Business Days after receipt of the proposed Monitor Agreement referred to in Section **[34]**, the Commissioner shall advise Respondents whether or not he approves the terms of the proposed Monitor Agreement. If the Commissioner does not approve the terms of the proposed Monitor Agreement, he shall prescribe alternative terms for the Monitor Agreement that Respondents shall incorporate into a final Monitor Agreement with the Monitor and the Commissioner.

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

- (a) The Monitor shall have the power and authority to monitor Respondents' compliance with this Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Agreement and in consultation with the Commissioner.
 - (b) The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, legal counsel and other representatives and assistants as the Monitor believes are necessary to carry out the Monitor's duties and responsibilities.
 - (c) The Monitor shall have no obligation or authority to operate or maintain the Divestiture Assets.
 - (d) The Monitor shall act for the sole benefit of the Commissioner, maintain all confidences and avoid any conflict of interest. The Monitor may act in this capacity for other competition authorities in other jurisdictions that have granted conditional approval of the Transaction and require monitoring of Respondents' compliance with such conditions. Such appointments by other competition authorities shall not constitute a conflict of interest.
 - (e) The Monitor shall have no duties of good faith (except as required by law), of a fiduciary nature, or otherwise, to Respondents.
 - (f) The Monitor shall provide to the Commissioner within 15 days after the end of every month after the date of the Monitor's appointment until the Divestiture is complete and thereafter annually on or before the anniversary of the Divestiture, a written report concerning performance by Respondents of their obligations under this Agreement. The Monitor shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding Respondents' compliance.
- [37] Subject to any legally recognized privilege, Respondents shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Respondents' compliance with this Agreement.
- [38] Respondents shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor Respondents' compliance with this Agreement.
- [39] Respondents shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. Respondents shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Monitor on behalf of Respondents.
- [40] Respondents may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an

appropriate confidentiality agreement in a form satisfactory to the Commissioner; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commissioner.

- [41] 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.
- [42] Respondents shall be responsible for all reasonable fees and expenses properly charged or incurred by the Monitor in the course of carrying out the Monitor's duties under this Agreement. The Monitor shall serve without bond or security, and shall account for all fees and expenses incurred. Respondents shall pay all reasonable invoices submitted by the Monitor within 60 days after receipt and, without limiting this obligation, Respondents shall comply with any agreement it reaches with the Monitor regarding interest on late payments. In the event of any dispute: (i) such invoice shall be subject to the approval of the Commissioner; and (ii) Respondents shall promptly pay any invoice approved by the Commissioner. Any outstanding monies owed to the Monitor by Respondents shall be paid out of the proceeds of the Divestiture.
- [43] Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Monitor.
- [44] 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.
- [45] The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with this Agreement.

XI. COMPLIANCE

- [46] Within 5 Business Days after the Closing Date, Respondents shall provide written confirmation to the Commissioner of the date on which the Transaction was completed.
- [47] Respondents shall provide a copy of this Agreement to each of its own and its Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Agreement, within 30 days after the

date of registration of this Agreement. Respondents shall ensure that its directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting Respondents' responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.

[48] Respondents shall not, without the prior written approval of the Commissioner directly or indirectly acquire control over or a significant interest in

- (a) for a period of 5 years after the date when the Divestiture is completed, a substantial part of the Divested Business, or
- (b) for a period of 10 years after the date when the Divestiture is completed, all or substantially all of the Divestiture Assets.

[49] 6 months after the date of registration of this Agreement and annually thereafter on the 6 month anniversary of the date of registration, and at such other times as the Commissioner may require, Respondents shall file an affidavit or certificate, substantially in the form of Schedule B to this Agreement, certifying its compliance with Parts VII, VIII and XI of this Agreement and setting out the following information in detail:

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

[50] If any of Respondents, the Divestiture Trustee or the Monitor becomes aware that there has been a breach or possible breach of any of the terms of this Agreement, such Person shall, within 5 Business Days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach, provided that notification of a possible breach is not required if such Person determines within those 5 Business Days that it could not reasonably be considered a breach of any of the terms of this Agreement. Respondents shall provide confirmation of its compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to Section 49 of this Agreement.

[51] Respondents shall notify the Commissioner at least 30 days prior to:

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

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

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

XII. DURATION

[53] 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.

XIII. NOTICES

[54] A notice or other communication required or permitted to be given under this Agreement is valid if it is:

- (a) in writing and delivered by personal delivery, registered mail, courier service, facsimile or electronic mail; and
- (b) addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

if to the Commissioner:

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

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

with a copy to:

Executive Director and Senior General Counsel

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

if to Praxair:

Rob Morrison
Deputy General Counsel
Praxair, Inc.
10 Riverview Dr.
Danbury, Connecticut 06810
USA
Email address: Rob_Morrison@praxair.com

with a copy to:

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

If to Linde:

Dr. Johannes Dittrich
Head of Data Privacy and Legal Operations
Linde AG
Klosterhofstrasse 1, 80331 Munich
Germany
Phone +49.89.35757-1493
Email johannes.dittrich@linde.com

with a copy to:

Omar Wakil
Torys LLP
79 Wellington Street West
Suite 3000, Toronto Dominion Centre
Toronto, ON M5K 1N2

- [55] A notice or other communication under this Agreement is effective on the day that it is received by the receiving party and is deemed to have been received as follows:
- (a) if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;
 - (b) if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip; or
 - (c) if it is delivered by electronic mail, when the recipient, by an email sent to the email address for the sender stated in this Section or by a notice delivered by another method in accordance with this Section, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section.

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

- [56] Notwithstanding Sections 54 and 55, a notice or other communication that is not communicated in accordance with Sections 54 and 55 is valid if a representative of the party to this Agreement that is the recipient of such communication confirms the receipt of such communication and does not, at the time of such confirmation, request that it be delivered differently.

XIV. GENERAL

- [57] 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.
- [58] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. Respondents hereby consent to such registration. Following the filing of this Agreement, the Commissioner shall promptly issue a letter to Respondents indicating that, subject to the implementation of this Agreement, the Commissioner does not intend to make an application under section 92 of the Act in respect of the Transaction.
- [59] Information in Confidential Schedule A shall be made public upon the expiry of the Initial Sale Period.

- [60] The Commissioner may, after informing Respondents, extend any of the time periods contemplated by this Agreement other than Sections 48 and 53. If any time period is extended, the Commissioner shall promptly notify Respondents of the revised time period.
- [61] Nothing in this Agreement precludes Respondents or the Commissioner from bringing an application under section 106 of the Act. Respondents will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions that: (i) the Transaction is likely to result in a substantial lessening of competition in markets for the supply of specific Industrial Gases in Canada; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening of competition will not result from the Transaction.
- [62] Respondents attorn to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.
- [63] Until Closing, Linde shall preserve the Divestiture Assets in a manner consistent with Part V of this Agreement.
- [64] This Agreement constitutes the entire agreement between the Commissioner and Respondents, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
- [65] 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.
- [66] In the event of a dispute regarding compliance with or the interpretation, implementation or application of this Agreement, the Commissioner or Respondents may apply to the Tribunal for directions or an order. In the event of any discrepancy between the English language version of this Agreement and the French language version of this Agreement, the English language version of this Agreement shall prevail. In no event shall any dispute suspend the Initial Sale Period or the Divestiture Trustee Sale Period.
- [67] 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 26th day of October, 2018

COMMISSIONER OF COMPETITION

[Original signed by Matthew Boswell]

Name: Matthew Boswell
Title: Interim Commissioner of Competition

PRAXAIR, INC.

[Original signed by Robert Morrison]

I/We have authority to bind the corporation

Name: Robert Morrison
Title: Deputy General Counsel

LINDE AKTIENGESELLSCHAFT

[Original signed by Aldo Belloni]

I/We have authority to bind the corporation

Name: Prof. Dr. Aldo Belloni
Title: CEO

[Original signed by Sven Schneider]

I/We have authority to bind the corporation

Name: Dr. Sven Schneider
Title: CFO

APPENDIX I

Location	Facility Type
800 Highway 22, Trail, BC, V1R 4L5	ASU Plant
161 Bickford Lane, Courtright (Sarnia), ON, N0N 1H0	Argon Facility
1980 St. Patrice East, Magog, QC, J1X 3W5	Hydrogen Plant
45 Boulevard de L'aero Port, Bromont, QC, J2L 2X4	Nitrogen generator
875 King Edward St., Winnipeg, MB, R3H 0P8	Filling station
7905 51st Street S.E., Calgary, AB, T2C 2Z3	Filling station
10097 201st, Langley, BC, V1M 3G4	Filling station
2090 Steeles Ave East, Brampton, ON, L6T 1A7	Filling station
5555 Boulevard des Grandes Prairies, Montreal, QC, H1R 1B4	Filling station
579 Godin Avenue, Quebec, QC, G1M 3G7	Filling station
24 Somers Drive Moncton, NB, E1H 3C9	Filling station
796 Boulevard Rouyn, QC, J9X 7B1	Filling station
1980 St. Patrice East, Magog, QC, J1X 3W5	Filling station
12143 68 Street, Edmonton, AB, T5B 1P9	Specialty gas plant
330 Industrial Parkway, Aurora, ON, L4G 3V7	Specialty gas plant
530 Watson Street East, Whitby, ON, L1N 1A7	Specialty gas plant
5860 Chedworth Way, Mississauga, ON, L5R 0A2	Head Office
5860 Chedworth Way, Mississauga, ON, L5R 0A2	Warehouse
850 rue Fernand-Dufour, Quebec, QC, G1M 3B1	Warehouse
10212 - 93rd Ave, Fort St. John, BC, V1J 5A7	Retail Branch
10097 201st Street, Langley, BC, V1M 3G4	Retail Branch
1333 Kipp Road, Nanaimo, BC, V9X 1R3	Retail Branch
538 Hillside Avenue, Victoria, BC, V8T 1Y9	Retail Branch
4610-80th Avenue South East, Calgary, AB, T2C 3A3	Retail Branch
6739 50 Street, Edmonton, AB, T6B 3M6	Retail Branch
321 MacDonald Crescent, Fort McMurray, AB, T9H 4B7	Retail Branch
10915 - 86 Ave, Grand Prairie, AB, T8V 8K2	Retail Branch
1309 8th Street, Nisku, AB, T9E 7M4	Retail Branch
4-7620 Edgar Industrial Drive, Red Deer, AB, T4P 3R2	Retail Branch
875 King Edward Street, Winnipeg, MB, R3H 0P8	Retail Branch
6201C 50 Avenue, Lloydminster, SK, S9V 2G4	Retail Branch
665 McDonald Street, Regina, SK, S4N 4X1	Retail Branch
720 51st Street East, Unit A, Saskatoon, SK, S7K 4K4	Retail Branch
30 Saunders Road, Unit 5 and 6, Barrie, ON, L4N 9A8	Retail Branch
340 Bell Boulevard, Belleville, ON, K8P 5H7	Retail Branch
14 Monica Lane, Bracebridge, ON, P1L 1V3	Retail Branch
2090 Steeles Avenue East, Brampton, ON, L6T 1A7	Retail Branch
1450 California Avenue, Brockville, ON, K6V 5V5	Retail Branch
45 Raglin Place, Cambridge, ON, N1R 7J2	Retail Branch
940 Richmond Street, Chatham, ON, N7M 5K3	Retail Branch
11 Creditstone Road, Unit 1, Concord, ON, L4K 2P1	Retail Branch

PUBLIC VERSION

704 Rosemount Avenue, Cornwall, ON, K6J 3E5	Retail Branch
88 North Queen Street, Etobicoke, ON, M8Z 2C9	Retail Branch
35 Terry Fox Drive, Kingston, ON, K7L 4V8	Retail Branch
A-234 Exeter Road, London, ON, N6L 1A3	Retail Branch
293 Whitfield Crescent, Midland, ON, L4R 5E3	Retail Branch
1810 Seymour Street, North Bay, ON, P1B 8J1	Retail Branch
1101 Parisien Street, Ottawa, ON, K1B 3R6	Retail Branch
1935-17th Street East, Owen Sound, ON, N4K 5P5	Retail Branch
320 Boundary Road Unit 110, Pembroke, ON, K8A 7W5	Retail Branch
101 Duff Drive, Unit 1, Sarnia, ON, N7W 1A7	Retail Branch
2 Cushman Road, St. Catharines, ON, L2M 6S8	Retail Branch
4 Commerce Court, Stoney Creek, ON, L8E 4G3	Retail Branch
63 Griffith Road West, Stratford, ON, N5A 6S4	Retail Branch
1476 Falconbridge Road, Unit 1, Sudbury, ON, P3A 488	Retail Branch
855 Algonquin Boulevard East, Timmins, ON, P4N 7H1	Retail Branch
611 Colby Drive, Unit 1, Waterloo, ON, N2V 1A1	Retail Branch
530 Watson Street East, Whitby, ON, L1N 1A7	Retail Branch
1935 Provincial Road, Windsor, ON, N8W 5V7	Retail Branch
532 rue Principale Sud, Amos, QC, J9T 3K5	Retail Branch
1341 rue Manic, Chicoutimi, QC, G7K 1G7	Retail Branch
560, rue Cormier, Drummondville, QC, J2C 5C4	Retail Branch
850, rue Fernand-Dufour, Québec, QC, G1M 3B1	Retail Branch
110-900, boul Pierre-Bertrand, Québec, QC, G1M 3K2	Retail Branch
31, rue Carrier, Granby, QC, J2J 2M6	Retail Branch
1025, boul de la Carriere, Hull, QC, J8Y 6W5	Retail Branch
989 rue Raoul Charrette, Joliette, QC, J6E 8S4	Retail Branch
930, rue Bergar Chomeday, Laval, QC, H7L 5A1	Retail Branch
2111 4 e rue, Levis, QC, G6W 5M6	Retail Branch
16, rue Nottaway, Matagami, QC, JOY 2A0	Retail Branch
21 Des Arrivages, Riviere-du-Loup, QC, G5R OL4	Retail Branch
305 boulevard industriel, Rouyn-Noranda, QC, J9X 6P2	Retail Branch
2720B, St-Patrick, Montreal, QC, H3K 1 B8	Retail Branch
5555 boul des Grandes Prairies, Montréal, QC, H1R 1B4	Retail Branch
510 du Québec, Sept-Îles, QC, G4R 1J9	Retail Branch
15, 550, boul. Lacroix, St-Georges de Beauce, QC, G5Y 1R7	Retail Branch
4635 rue Fortier, St-Hubert, QC, J3Y 7L3	Retail Branch
720 St. Jacques, St-Jean-sur-Richelieu, QC, J3B 2M7	Retail Branch / Cylinder Retest Facility
5615, rue Vanden Abeele, St. Laurent, QC, H4S 1S1	Retail Branch
1240 Galt Est, Sherbrooke, QC, J1G 1Y5	Retail Branch
1650 rue St. Denis, Sorel-Tracy, QC, J3R 2A9	Retail Branch
201, Henry-Bessemer, Bois des Filion, QC, J6Z 4S9	Retail Branch
2835, rue Sidbec Nord, Trois-Rivières, QC, G8Z 3X8	Retail Branch
1450 4th Street, Val d'Or, QC, J9P 6X2	Retail Branch
579 avenue Godin, Ville Vanier, QC, G1M 3G7	Retail Branch

PUBLIC VERSION

1940 Hall Court, Bathurst, NB, E2A 4W7	Retail Branch
24 Somers Road, Moncton, NB, E1 H 3C9	Retail Branch
60 Raddall Ave., Unit #2 Dartmouth. NS, B3B 1T2	Retail Branch

**CONFIDENTIAL SCHEDULE A
INITIAL SALE PERIOD**

[CONFIDENTIAL]

SCHEDULE B

FORM OF COMPLIANCE CERTIFICATION/AFFIDAVIT

I, **[name]**, of **[place]**, hereby certify¹ in accordance with the terms of the Registered Consent Agreement dated • between Praxair, Inc., Linde Aktiengesellschaft and the Commissioner of Competition, that:

1. I am the **[title]** of **[Respondent]**, and have personal knowledge of the matters deposed to herein, unless they are stated to be on information and belief, in which cases I state the source of such information and believe it to be true.
2. On **[date]**, Praxair, Inc. and Linde Aktiengesellschaft entered into a Consent Agreement (the “Consent Agreement”) with the Commissioner of Competition (the “Commissioner”) in connection with their merger (the “Transaction”).
3. The Transaction closed on **[date]** (the “Closing Date”).²
4. The Divestiture (as defined in the Consent Agreement) to **[Purchaser]** was completed on **[date]**.
5. Pursuant to Section 49 of the Consent Agreement, Respondents are required to file **[annual reports/reports when requested by the Commissioner]** certifying its compliance with Parts VII, VIII and XI of the Consent Agreement.

Oversight of Compliance

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

Closing Date

7. Pursuant to Section 46 of the Consent Agreement, Respondents are 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 47 of the Consent Agreement, Respondents are 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 of

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

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

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

9. Pursuant to Section 47 of the Consent Agreement, Respondents are required to ensure that its directors, officers, employees and agents with responsibility for any obligations under the Consent Agreement receive sufficient training respecting Respondents' responsibilities and duties under the Consent Agreement. The following training has been provided: **[provide list of who was trained and by whom as well as a general statement of the content of the training]**

Transitional Support Arrangements

10. Pursuant to Section 28 of the Consent Agreement, Respondents are required to enter into certain transitional support agreements. **[Describe the transitional support agreements, and confirm compliance with each.]**

Employees

11. Sections 29 and 30 of the Consent Agreement require Respondents to take various steps in regard to its employees whose responsibilities involved the operation of the Divestiture Assets. Respondents have fully complied with the terms of those Sections and, more particularly:

[Note: Describe steps taken to facilitate employee transfer to Purchaser, having regard to the terms of Sections 29 and 30; provide data on the # of employees who have transferred to the Purchaser.]

Notification of Breach

12. Based on my personal knowledge and my inquiries of [provide names], I am not aware of any breach or possible breach of any of the terms of the Consent Agreement within the meaning of Section 50 of the Consent Agreement.

DATED ●.

Commissioner of Oaths

Name and Title of Certifying Officer