

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM 8-K**

CURRENT REPORT  
Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 20, 2011

**PRESTIGE BRANDS HOLDINGS, INC.**

(Exact name of registrant as specified in its charter)

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Delaware  
(State or other  
jurisdiction of  
incorporation)

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001-32433  
(Commission  
File Number)

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20-1297589  
(IRS Employer  
Identification No.)

90 North Broadway, Irvington, New York 10533  
(Address of principal executive offices, including zip code)

(914) 524-6810  
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Item 1.01 Entry into a Material Definitive Agreement.**

### **Business Sale and Purchase Agreement I**

On December 20, 2011, Prestige Brands Holdings, Inc., a Delaware corporation (the “Company”), entered into a definitive business sale and purchase agreement (“BSPA I”) with GlaxoSmithKline plc and certain of its affiliates (collectively, “GSK”) to acquire 15 over-the-counter (OTC) pharmaceutical brands sold in North America, including related contracts, trademarks and inventory, for \$615 million in cash, subject to a post-closing inventory adjustment. Among the brands the Company agreed to acquire are the BC(R), Goody’s(R), and Ecotrin(R) brands of pain relievers; Beano(R), Gaviscon(R), Phazyme(R), Tagamet(R) and Fiber Choice(R) GI brands; and the Sominex(R) sleep aid brand. The closing of the acquisition contemplated by BSPA I is subject to customary legal and regulatory closing conditions, including clearance under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”), and the Company closing on its committed financing for the acquisition.

BSPA I contains customary representations and warranties as well as indemnification provisions which, except in limited circumstances, survive for 18 months from the closing date and are capped at 15% of the purchase price not allocable to the acquired inventory. The Company’s liability under BSPA I generally is capped at \$40 million in connection with the termination of the agreement due to the Company’s material non-compliance or breach of its obligations under the agreement.

If the Company is unable to satisfy the financing condition under BSPA I on or before the date on which the acquisition may close under its terms and GSK elects to terminate BSPA I, then the Company will be obligated to pay a termination fee of \$25 million to GSK.

This summary of BSPA I does not purport to be complete and is qualified in its entirety by reference to the provisions of BSPA I, a copy of which is filed as Exhibit 2.1 to this Current Report on Form 8-K and incorporated herein by reference.

### **Business Sale and Purchase Agreement II**

As of December 20, 2011, the Company entered into a definitive business sale and purchase agreement (“BSPA II”) with GlaxoSmithKline plc and certain of its affiliates to acquire Debrox (R) and Gly-Oxide (R) brands, each of which are over-the-counter (OTC) pharmaceutical brands, including related trademarks and inventory, for \$45 million in cash, subject to a post-closing inventory adjustment. The closing of the acquisition is subject to customary legal and regulatory closing conditions, including the assignment and license of certain intellectual property rights. The Company may terminate BSPA II on or after April 30, 2012 if the Company has not drawn on its committed financing by such date.

BSPA II contains customary representations and warranties as well as indemnification provisions which, except in limited circumstances, survive for 18 months from the closing date and are capped at 15% of the purchase price not allocable to the acquired inventory. The Company’s liability under BSPA II generally is capped at \$25 million in connection with the termination of the agreement due to the Company’s material non-compliance or breach of its obligations under the agreement.

This summary of BSPA II does not purport to be complete and is qualified in its entirety by reference to the provisions of BSPA II, a copy of which is filed as Exhibit 2.2 to this Current Report on Form 8-K and incorporated herein by reference.

### **Commitment Letter**

On December 20, 2011, the Company entered into a commitment letter (the “Commitment Letter”) with Citibank Global Markets Inc. (together with its affiliates, “Citi”), Morgan Stanley Senior Funding, Inc. (“Morgan Stanley”) and Royal Bank of Canada (“RBOC” and together with Citi and Morgan Stanley, the “Initial Lenders”). Under the Commitment Letter, Citi, Morgan Stanley and RBOC have committed to, severally and not jointly, provide up to the aggregate principal amount of \$960 million.

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Pursuant to the Commitment Letter and subject to the conditions set forth therein, the Initial Lenders will provide (i) a seven-year senior secured term loan facility in an aggregate principal amount of \$620 million, (ii) a five-year senior secured revolving credit facility in an aggregate principal amount of \$50 million and (iii) a one-year senior unsecured bridge facility in an aggregate principal amount of \$290 million (collectively, the "Credit Facilities"). The Company may issue up to \$290 million in senior unsecured notes in a Rule 144A offering in lieu of the bridge facility. The proceeds of the term loan and the bridge facility (and/or the unsecured notes) will be used by the Company, among other things, to pay the consideration in connection with the respective closing of each acquisition and to refinance the Company's existing credit facility.

The commitment of the Initial Lenders to provide the Credit Facilities is subject to certain conditions, including the consummation of the acquisition contemplated by and in accordance with the terms of BSPA I, the absence of a Material Adverse Change (as defined in BSPA I) and certain other customary closing conditions.

This summary of the Commitment Letter does not purport to be complete and is qualified in its entirety by reference to the provisions of the Commitment Letter, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

#### **Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

See Exhibit Index immediately following the signature page to this Current Report on Form 8-K.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**PRESTIGE BRANDS HOLDING, INC.**

Date: December 27, 2011

By: /s/ Eric S. Klee  
Eric S. Klee  
Secretary and General Counsel

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## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
2.1	Business Sale and Purchase Agreement, dated December 20, 2011, between GlaxoSmithKline LLC, GlaxoSmithKline plc and certain of its affiliates described in Schedule 1 thereto and Prestige Brands Holdings, Inc.
2.2	Business Sale and Purchase Agreement, dated as of December 20, 2011, between GlaxoSmithKline LLC, GlaxoSmithKline Consumer Healthcare L.P., GlaxoSmithKline plc and Prestige Brands Holdings, Inc.
10.1	Commitment Letter, dated December 20, 2011, by and among Citibank Global Markets Inc., Morgan Stanley Senior Funding, Inc., Royal Bank of Canada and Prestige Brands Holdings, Inc.

· Portions of this exhibit have been omitted pursuant to a request for confidential treatment filed with the Commission under Rule 24b-2 under the Securities Exchange Act of 1934, as amended. The omitted confidential material has been filed separately with the Securities and Exchange Commission. The location of the confidential information is indicated in the exhibit with brackets and asterisks ([\*\*\*]).

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CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO CERTAIN PORTIONS OF THIS AGREEMENT. CONFIDENTIAL PORTIONS HAVE BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

DATED 20 December 2011

**GLAXOSMITHKLINE LLC AND OTHERS**

and

**PRESTIGE BRANDS HOLDINGS, INC.**

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**BUSINESS SALE AND PURCHASE AGREEMENT**  
in relation to certain over-the-counter consumer healthcare brands  
and supporting business

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Slaughter and May  
One Bunhill Row  
London EC1Y 8YY  
(RJZS/CVKB)

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## CONTENTS

	<b>Page</b>
1. Interpretation	1
2. Sale and purchase of the Business and Business Assets	31
3. Conditions	34
4. Delayed Completion	37
5. Purchaser's Right to Terminate	40
6. Pre-Completion undertakings	40
7. Consideration	43
8. Completion Current Asset Statement and adjustments	45
9. Intra-Group Guarantees	46
10. Sales Tax	46
11. Completion	47
12. Compensation Payment	48
13. Action after Completion	50
14. Wrong Pockets	50
15. Third party consents for the transfer of Business Assets	52
16. Business Inventory	53
17. Transfer of Business Contracts and Shared Business Contracts	54
18. Assumed and Excluded Liabilities	62
19. Apportionment	66
20. Transfer of Regulatory Permits	68
21. Receivables	69
22. Insurance	70
23. Seller's Warranties and Purchaser's remedies	71
24. Purchaser's warranties	72
25. Business Records and Business Information	73

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26.	Intellectual Property	74
27.	Seller's undertakings	79
28.	Business Sellers' undertaking	82
29.	Purchaser's undertakings	83
30.	Certain funds	85
31.	Payments	91
32.	No set-off	92
33.	Effect of Completion	92
34.	Assignment	92
35.	Further assurance	93
36.	Entire agreement	94
37.	Capacity of Seller and Purchaser	95
38.	Remedies and waivers	95
39.	Indemnification and conduct of claims	95
40.	Notices	98
41.	Announcements	100
42.	Confidentiality	100
43.	Costs and expenses	102
44.	Counterparts	102
45.	Invalidity	102
46.	Contracts (Rights of Third Parties) Act 1999	103
47.	Choice of governing law	103
48.	Jurisdiction	103
49.	Agent for service	104

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## SCHEDULES AND ATTACHMENTS

Schedule 1 (The Business Sellers)	105
Schedule 2 (Conditions)	106
Schedule 3 (Conduct of Business before Completion)	107
Schedule 4 (Completion arrangements)	109
Schedule 5 (The Warranties)	111
Schedule 6 (Seller's limitations on liability)	120
Schedule 7 (Initial Cash Consideration)	127
Schedule 8 (Completion Current Asset Statement)	128
Schedule 9 (The Products)	133
Schedule 10 (Business Contracts and Shared Business Contracts)	146
Schedule 11 (Intellectual Property)	152
Schedule 12 (The Business Domain Names)	271
Schedule 13 (The Regulatory Permits)	277
Schedule 14 (Seller's Bank Account)	283
Schedule 15 (Purchaser's Bank Account)	284
Schedule 16 (Permitted Financing Conditions)	285
Attachment 1 (GSK Marks)	288
Attachment 2 (Transitional Manufacturing and Supply Agreement)	289
Attachment 3 (Press Announcements)	290
Attachment 4 (Management Presentation)	291
Attachment 5 (GSK Group Reorganisation Plans)	292
Attachment 6 (Business Domain Name Assignments)	293
Attachment 7 (Business Intellectual Property Assignments)	294
Attachment 8 (Bill of Sale and Assignment and Assumption of Obligations and Liabilities Agreement)	295

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**AGREED FORM DOCUMENTS**

Bill of Sale and Assignment and Assumption of Obligations and Liabilities Agreement	-	see Attachment 8
Business Domain Name Assignments	-	see Attachment 6
Business Intellectual Property Assignments	-	see Attachment 7
Management Presentation	-	see Attachment 4
Press Announcements	-	see Attachment 3
Transitional Manufacturing and Supply Agreement	-	see Attachment 2

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THIS AGREEMENT is made the 20<sup>th</sup> day of December, 2011

**BETWEEN:**

1. **GLAXOSMITHKLINE LLC**, a company incorporated under the laws of the state of Delaware, United States of America, (under number 4746253) whose registered office is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808, United States of America (the “**Seller**”);

**AND**

2. **THE PERSONS** whose names and addresses are set out in Schedule 1 (together the “**Business Sellers**” and each a “**Business Seller**”);

**AND**

3. **GLAXOSMITHKLINE PLC**, a company incorporated in England and Wales (registered number 03888792) whose registered office is at 980 Great West Road, Brentford, Middlesex TW8 9GS, United Kingdom (“**GSK PLC**”).

**AND**

4. **PRESTIGE BRANDS HOLDINGS, INC.**, a company incorporated in Delaware, US, whose principal place of business is at 90 North Broadway, Irvington, NY 10533, US (the “**Purchaser**”).

**WHEREAS:**

- (A) Certain members of the GSK Group (as defined in this Agreement) carry on the Business (as defined in this Agreement).
- (B) The Business Sellers have agreed to sell, and the Seller has agreed to procure the sale of, and the Purchaser has agreed to purchase, or procure the purchase of, and pay, or procure payment, for the Business and the Business Assets (as defined in this Agreement) as a going concern for the consideration and on the terms set out in this Agreement.

**NOW IT IS AGREED** as follows:

**1. Interpretation**

- 1.1 In this Agreement and the Schedules and Attachments to it:

“**Affiliate**” in relation to any person, means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned person;

“**Agreed Form**” in relation to any document means the document in a form agreed by the parties to this Agreement and initialled

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for the purposes of identification by or on behalf of the Purchaser and the Seller;

**“Agreed Rate”**

means a rate of 2 per cent. per annum above the base rate from time to time of Barclays Bank PLC;

**“Antitrust Laws”**

means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, the Competition Act (Canada), as amended, and all other applicable laws issued by a Governmental Entity that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or prevention or lessening of competition through merger or acquisition and “**Antitrust Law**” shall mean any of them;

**“Antitrust Proceeding”**

has the meaning given in Clause 3.9(B);

**“Antitrust Review”**

has the meaning given in Clause 3.3;

**“Associated Undertaking”**

in relation to any person, means any Undertaking in which (a) that person, (b) any subsidiary or subsidiary undertaking of that person, (c) any holding company of that person or (d) any subsidiary or subsidiary undertaking of any such holding company (“**Party A**”) has an interest from time-to-time of twenty (20) per cent. or more, the question of whether such an interest exists to be determined by whether Party A:

- (i) has an interest in twenty (20) per cent. or more of the shares of such Undertaking; or
- (ii) is entitled, through shareholding or otherwise, to receive twenty (20) per cent. or more of the income of such Undertaking on any distribution by it of all of its income or is entitled to receive twenty (20) per cent. or more of the assets of such Undertaking on a winding up; or
- (iii) holds, through shareholding or otherwise, twenty (20) per cent. or more of the voting rights in such Undertaking;

**“Assumed Liabilities”**

has the meaning given in Clause 18.2;

**“Assurance”**

means any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity, guarantee or commitment of any nature whatsoever;

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<b>“Audited Carve-Out Accounts”</b>	audited statements of net assets to be sold and related statements of revenue and direct operating expenses for the fiscal years ended 31 December 2008, 31 December 2009 and 31 December 2010 in relation to the business described in, and in substantially the form of, the Draft Carve-Out Accounts (prepared on the basis of note 2 (basis of preparation and accounting policies) accompanying such audited statements, which shall be in substantially the form of the corresponding note in the Draft Carve-Out Accounts);
<b>“Bill of Sale and Assignment and Assumption of Obligations and Liabilities Agreement”</b>	means the bill of sale and assignment and assumption of obligations and liabilities agreement, in the Agreed Form, pursuant to which the transfer of the Business Assets and the Assumed Liabilities will be effected at Completion;
<b>“Borrowings”</b>	means any borrowings, overdrafts and indebtedness in the nature of funding borrowings, or arrangements having the commercial effect of funding borrowing;
<b>“Brand Activation Grids”</b>	means the brand activation grids in respect of the Products, appended to the Disclosure Letter;
<b>“Brands”</b>	means the Cornerstone Brands and the Portfolio Brands;
<b>“Business”</b>	means the business carried on in respect of the Commercialising of the Products under the Brands as carried on by the relevant members of the GSK Group, in each case as at Completion, including the Business Assets <u>but</u> excluding the Excluded Assets;
<b>“Business Assets”</b>	has the meaning given in Clause 2.2;
<b>“Business Contract Transferor”</b>	means any member of the GSK Group who is party to a Business Contract or Shared Business Contract (whether or not identified as such in Schedule 10) and <b>“Business Contract Transferors”</b> means more than one of, or all, such entities (as the context requires);
<b>“Business Contracts”</b>	means: <ul style="list-style-type: none"> <li>(i) all the contracts, arrangements, agreements, engagements, guarantees, licences, purchase orders, customer orders, packaging contracts and other commitments listed in Part A of Schedule 10; and</li> <li>(ii) any and all contracts, arrangements, agreements, engagements, guarantees, licences, purchase orders, customer orders, packaging contracts and</li> </ul>

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other commitments (but excluding any such contracts, arrangements, agreements, engagements, guarantees, licences, purchase orders, customer orders, packaging contracts and other commitments which may be between members of the GSK Group) in each case relating exclusively to the Business and to which a member of the GSK Group may become (itself or through an agent) a party during the Pre-Completion Period, and “**Business Contract**” shall mean any of such contracts;

**“Business Current Asset Adjustment Amount”**

means the amount, expressed in Dollars, calculated by deducting the Provisional Current Asset Amount from the Completion Current Asset Amount, and such amount may be a positive or negative amount;

**“Business Day”**

means a day (other than a Saturday or Sunday) on which banks are open for business (other than solely for trading and settlement in Euro) in London and New York City, but excluding each day in the period between 24 December and 1 January (inclusive) in any year;

**“Business Domain Name Assignments”**

means the assignments in the Agreed Form of Attachment 6 in respect of the Business Domain Names;

**“Business Domain Names”**

means the internet domain names listed in Schedule 12;

**“Business Financial Information Date”**

means 30 September 2011;

**“Business Goodwill”**

means all the goodwill in relation to the Business;

**“Business Information”**

means all Information owned by any Business Seller or any member of the GSK Group at Completion which is used exclusively in, or arises exclusively out of, the Business, but only to the extent the same is in the possession or control of a member of the GSK Group immediately prior to the Completion Time and is readily discoverable (after reasonable enquiry and investigation) by the relevant member of the GSK Group;

**“Business Intellectual Property”**

means all Intellectual Property owned by any Business Seller or any member of the GSK Group which is used exclusively in the Business as at Completion, including the:

- (i) patents and patent applications listed in Part A of

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Schedule 11; and

- (ii) Trade Mark registrations and applications for Trade Mark registrations listed in Part A of Schedule 11,

but excluding (a) any Excluded IPR and (b) any Unexploited Business IPR;

**“Business Intellectual Property Assignments”**

means the assignments in the Agreed Form of Attachment 7 in respect of the Transferring Business IPR which is the subject of a registration or an application for registration;

**“Business Inventory”**

means all released and packed inventory of Products in finished form beneficially owned by any member of the GSK Group in any location at the Completion Time but excluding all released and packed inventory of Products in finished form held at any manufacturing site owned or operated by any member of the GSK Group at the Completion Time (which Products will not be sold pursuant to this Agreement but will be sold pursuant to the Transitional Manufacturing and Supply Agreement);

**“Business Records”**

means:

- (i) all books and records containing Business Information or on which Business Information is recorded (including, without limitation, all documents and other material, whether human or computer or machine readable);
- (ii) those documents comprising the Data Room;
- (iii) all clinical studies and regulatory files (in either case, in any form or medium) which are proprietary to the Business Sellers and which are used exclusively in, or arise exclusively out of, the Business; and
- (iv) the deeds, documents of title, certificates and records, in each case to the extent relating to the Transferring Business IPR; and
- (v) artwork proprietary to the Business Sellers which is used exclusively in the Business immediately prior to the Completion Time,

in each case (other than in respect of the items specified in paragraph (ii) of this definition) to the extent in the possession or control of, and readily discoverable (following reasonable enquiry and investigation) by, a member of the GSK Group immediately prior to the Completion Time, but excluding any Excluded Business Records;

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<b>“Canadian Assumed Liabilities”</b>	means the Assumed Liabilities to the extent the same relate to the Canadian Business;
<b>“Canadian Business”</b>	means the Business to the extent carried on by GCHI as at the Completion Date;
<b>“Canadian Business Assets”</b>	means the Business Assets to the extent the same relate to the Canadian Business;
<b>“Canadian Sales Tax”</b>	means any Sales Tax charged, assessed, imposed or provided for under the law of Canada;
<b>“Certificate of Pharmaceutical Product”</b>	means a certificate of pharmaceutical product substantially in the form published by the World Health Organisation in connection with the “WHO Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce”;
<b>“Comfort Letter End Date”</b>	means 10 February 2011 or such later date (i) on which independent accountants delivering customary “comfort” letters in connection with the offering of Unsecured Notes are able to give “negative assurance” comfort or (ii) to which the Purchaser’s Funding Banks may agree upon request by the Purchaser in accordance with Clause 30.10(A);
<b>“Commercialise”</b>	means to advertise, promote, market, distribute and/or sell a product and “ <b>Commercialising</b> ” and “ <b>Commercialisation</b> ” (and other derivatives of such words) shall be construed accordingly;
<b>“Commitment”</b>	has the meaning given in Clause 3.9(C);
<b>“Competition Condition”</b>	means the Condition set out in paragraph 1 of Schedule 2;
<b>“Completion”</b>	means completion of the sale and purchase of the Business Assets under this Agreement;
<b>“Completion Current Asset Amount”</b>	means the aggregate amount, expressed in Dollars, of the Business Inventory as at immediately prior to the Completion Time, to be shown in the Completion Current Asset Statement prepared in accordance with Schedule 8,

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which amount may not be negative;

**“Completion Current Asset Statement”**

means the completion current asset statement relating to the Business prepared in accordance with Clause 8 and Schedule 8, in the format set out in paragraph 5 of Schedule 8;

**“Completion Date”**

means:

- (i) 31 January 2012; or
- (ii) if a Competition Condition is not satisfied or waived in accordance with this Agreement by 31 January 2012, the date which falls three (3) Business Days following the date on which the Competition Condition shall have been satisfied or waived in accordance with this Agreement unless the parties agree that, in the interests of their mutual convenience, such date should be the last Business Day of the calendar month in which such Competition Condition is so satisfied or waived; or
- (iii) if (a) the Marketing Period has not ended (in accordance with this Agreement) on or before 1 February 2012, or (b) the Marketing Period has not ended on or before the date on which Completion would otherwise occur pursuant to paragraph (ii) of this definition above, the date which falls three (3) Business Days following the date on which the Marketing Period shall have ended in accordance with this Agreement unless the parties agree that, in the interests of their mutual convenience, such date should be the last Business Day of the calendar month in which such Competition Condition is so satisfied or waived,

PROVIDED THAT if the date on which Completion would otherwise occur pursuant to either paragraph (ii) or paragraph (iii) of this definition would cause the Required Financial Information delivered by the Seller to the Purchaser (pursuant to sub-Clause 30.11(A)) to expire and not be effective pursuant to Rule 3-12 of Regulation S-X, the parties shall use all reasonable endeavours to proceed to Completion on such date as the parties may agree, being a date which would fall prior to the date on which such Required Financial Information would otherwise expire;

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<b>“Completion Time”</b>	means 9.00 a.m. (in each location where the relevant Business Seller(s), member(s) of the GSK Group, or member(s) of the Purchaser’s Group (as applicable) is or are located) on the Completion Date;
<b>“Conditions”</b>	means the Competition Condition and the Financing Condition, and <b>“Condition”</b> shall be construed accordingly;
<b>“Confidential Information”</b>	means all information held in any form or media whatsoever which is of a confidential nature and not in the public domain, including know-how which is confidential in nature and trade secrets;
<b>“Consideration Allocation Statement”</b>	means the statement allocating the Initial Cash Consideration (or, if amended in accordance with Clause 7.9, the Final Cash consideration) among: <ul style="list-style-type: none"> <li>(i) the Canadian Business Inventory;</li> <li>(ii) the Canadian Business Intellectual Property;</li> <li>(iii) the Other Canadian Business Assets;</li> <li>(iv) the UK Business Assets;</li> <li>(v) the US Business Inventory;</li> <li>(vi) the US Business Intellectual Property; and</li> <li>(vii) the Other US Assets,</li> </ul> prepared in accordance with Clause 7 and in the format set out in Schedule 7;
<b>“Contract Long Stop Date”</b>	means the Business Day immediately following the date which falls [***] months after the Completion Date, or such other date as the parties may agree;
<b>“Cornerstone Brands”</b>	means the brands listed in Part A of Schedule 9;
<b>“CTA 2010”</b>	means the Corporation Tax Act 2010;
<b>“Data Room”</b>	means those documents, information and materials listed on the index attached to the Disclosure Letter, as such documents were contained on the Project Prism Intralinks datasite as at 17 December 2011;
<b>“Debt Amount”</b>	means US\$ 910,000,000;

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<b>“Debt Commitment Letter”</b>	has the meaning given in Clause 30.1(A);
<b>“Debt Financing”</b>	means the debt financing facilities which the Purchaser’s Financing Banks have committed to make available to the Purchaser pursuant to the Debt Commitment Letter;
<b>“Delayed Items”</b>	has the meaning given in Clause 4.1;
<b>“Designated Purchaser”</b>	means a company in the Purchaser’s Group designated by the Purchaser as the purchaser of some or all of the Business Assets;
<b>“Disclosure Letter”</b>	means the letter of the same date as this Agreement written by the Seller to the Purchaser for the purposes of paragraph 10 of Schedule 6;
<b>“Draft Carve-Out Accounts”</b>	means the draft statements of net assets to be sold and related statements of revenue and direct operating expenses for the fiscal years ended 31 December 2008, 31 December 2009 and 31 December 2010 provided by the Seller to the Purchaser on the date of this Agreement;
<b>“Draft Carve-Out Interim Accounts”</b>	means the draft statements of net assets to be sold and related statements of revenue and direct operating expenses for the fiscal periods 1 January 2010 to 30 September 2010 and 1 January 2011 to 30 September 2011 provided by the Seller to the Purchaser on the date of this Agreement;
<b>“Draft Completion Current Asset Statement”</b>	has the meaning given in paragraph 4.1 of Schedule 8;
<b>“Draft Consideration Allocation Statement”</b>	has the meaning given in Clause 7.5;
<b>“Encumbrance”</b>	means any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention or any other agreement or arrangement the effect of which is the creation of security, or any other right to acquire or option, any right of first refusal or any right of pre-emption, or any agreement or arrangement to create any of the same, and <b>“Unencumbered”</b> shall be construed accordingly;
<b>“ETA”</b>	means the Excise Tax Act (Canada);
<b>“Exchange Rate”</b>	means, in relation to any currency to be converted into or from Dollars for the purposes of this Agreement, the spot rate of exchange (closing mid-point) for that currency into or, as the case may be, from Dollars in respect of the relevant date, as published in the London edition of <i>The</i>

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*Financial Times* first published after the relevant date or, where no such rate of exchange is published in respect of the relevant date, at the rate quoted by Barclays Bank PLC as at the close of business in London on the relevant date;

**“Excluded Assets”**

has the meaning given in Clause 2.2;

**“Excluded Business Contracts”**

means:

- (a) all the contracts, arrangements, agreements, engagements, guarantees, licences, purchase orders, customer orders, packaging contracts and other commitments which in each case relate both:
  - (i) to the Business, or any part of the Business to be transferred to the Purchaser (or any Designated Purchaser) on Completion; and
  - (ii) to any other business of the GSK Group, any part of the Business which is not transferred to the Purchaser (or any Designated Purchaser) on Completion, any product other than the Products, or any Excluded Asset,  
  
and to which a member of the GSK Group is (itself or through an agent) a party or the benefit of which is held in trust for, or has been assigned to, any member of the GSK Group (and including, for the avoidance of doubt and without limitation to the generality of the foregoing, any such contracts, arrangements, agreements, licences and other commitments entered into between a member of the GSK Group and a third party, which are used to provide transitional services to the Purchaser (and/or the relevant member(s) of the Purchaser’s Group) under the terms of the Transitional Services Agreement); and
- (b) any contracts, agreements and other arrangements with any agent, sales intermediary, distributor, customer, end user, pharmacy or retail asset,

but excluding in any case the Business Contracts and the Shared Business Contracts in existence at the date hereof;

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**“Excluded Business Records”**

means:

- (i) any and all books and records and Information (including any books and records and Information which would otherwise fall within paragraph (ii) of the definition of “**Business Records**”) which are not used exclusively in, or do not arise exclusively out of, the Business (including any Information relating to any Shared Business Contracts and any Information relating to, or comprising, any Shared Formulations);
- (ii) any and all books and records and Information relating to any Excluded Asset (other than Excluded Business Records) or Excluded Liability;
- (iii) any and all books and records and Information (including any books and records and Information which would otherwise fall within paragraphs (ii) and (iii) of the definition of “**Business Records**”) which relate to, or are required by any member of the GSK Group in order to carry out their respective obligations in connection with, the Transitional Services Agreement or the Transitional Manufacturing and Supply Agreement, PROVIDED THAT all such material and information shall, to the extent that it is not otherwise an Excluded Business Record, cease to be an Excluded Business Record upon the expiry of such obligations;
- (iv) any and all books and records and Information (including any books and records and Information which would otherwise fall within paragraphs (i) (ii) or (iii) of the definition of “**Business Records**”) which any member of the GSK Group is required by law to retain PROVIDED THAT the Purchaser shall be entitled to receive a copy of such information or material to the extent that such material or information relates exclusively to the Business; and
- (v) any and all books and records and Information (including any books and records and Information which would otherwise fall within paragraphs (i), (ii) or (iii) of the definition of “**Business Records**”) which contain information in which any member of the GSK Group has legal privilege;

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<b>“Excluded IPR”</b>	means:
	(i) any Intellectual Property which is owned by any Business Seller or any member of the GSK Group and used (other than exclusively) in the Business at Completion (including any Shared Marks and any Intellectual Property in any Shared Formulations); and
	(ii) the GSK Marks;
<b>“Excluded Liabilities”</b>	has the meaning given in Clause 18.3;
<b>“Existing Facilities”</b>	means the Purchaser’s existing senior secured credit facility and any and all other facilities or borrowings which are required to be refinanced, prepaid or repaid as a condition to drawdown of the Debt Financing and <b>“Existing Facility”</b> means any such facility or borrowing;
<b>“Existing Facilities Refinancing”</b>	means the prepayment in full of all amounts outstanding under or in respect of the Existing Facilities on the Completion Date;
<b>“FDA”</b>	means the United States Food and Drug Administration;
<b>“Final Cash Consideration”</b>	has the meaning given in Clause 7.2;
<b>“Financing Agreements”</b>	means the Debt Commitment Letter and each definitive agreement entered into in respect of the Debt Financing in accordance with Clause 30.4(B);
<b>“Financing Condition”</b>	means the Condition set out paragraph 2 of Schedule 2;
<b>“Gaviscon Rights”</b>	means the Intellectual Property and know how relating to artwork, brochures, graphics, marketing displays, commercials, promotions, and advertisements, in each case used in connection with the Products Commercialised by the Business under the ‘Gaviscon’ brand in Canada at the Completion Time;
<b>“GCHI”</b>	means GlaxoSmithKline Consumer Healthcare Inc.;
<b>“GCHLP”</b>	means GlaxoSmithKline Consumer Healthcare, L.P., a limited partnership formed in accordance with the Delaware Revised Uniform Limited Partnership Act, 6 Del. <u>C.</u> § 17-101, et seq;
<b>“Good Manufacturing Practice” or “GMP”</b>	means current practices for the Manufacture of the relevant Product as required at the time of Manufacture by applicable law and regulation of any Governmental

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Entity in any country in which the relevant Product is Manufactured or is to be Commercialised, including without limitation, where such Product is a Medicinal Product to be Commercialised in the United States, the principles detailed in the U.S. Current Good Manufacturing Practices, 21 C.F.R. Parts 210 and 211, as such practices are interpreted by the applicable provisions of the Quality Management System;

**“Governmental Entity”**

means any court, administrative body, local authority or other governmental or quasi-governmental entity with competent jurisdiction, any supra-national, national, federal, state, municipal, provincial or local governmental, regulatory or administrative authority, agency, commission, court, tribunal, arbitral body, self-regulated entity, private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority or other governmental entity;

**“Gross Price”**

means US\$ 601,156,000, which amount includes the Non-Compete Consideration;

**“Group”**

means the Purchaser’s Group and/or the GSK Group (as the context requires);

**“GSK Business”**

means the business of any member of the GSK Group (but excluding the Business) as at or following Completion;

**“GSK Group”**

means the Seller, the Seller’s Affiliates and the Seller’s Associated Undertakings from time-to-time (including, for the avoidance of doubt, GCHLP);

**“GSK Group Confidential Information”**

means all information (other than to the extent that it relates exclusively to the Business) which is not in the public domain in whatever form held:

- (i) relating to any member of the GSK Group or the business of any such member;
- (ii) supplied by or on behalf of any member of the GSK Group to the Purchaser or any other member of the Purchaser’s Group; or
- (iii) supplied in confidence to any member of the GSK Group by any third party;

**“GSK Group Insurance Policies”**

means insurance policies taken out and maintained by or on behalf of members of the GSK Group and “GSK

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**Group Insurance Policy**” shall be construed accordingly;

**“GSK Group Reorganisation Plans”**

means the plans relating to a proposed reorganisation of the GSK Group, as summarised in the document forming Attachment 5;

**“GSK Marks”**

means:

- (i) any of the words, letter combinations, marks, logos, devices or symbols set out in Attachment 1;
- (ii) any words, letter combinations, marks, logos, devices or symbols confusingly similar to those set out in Attachment 1;
- (iii) any name, mark, logo, device or symbol which includes or consists of the words, letter combinations, marks, logos, devices or symbols described in (i) or (ii) of this definition; and
- (iv) the corporate name of any member of the GSK Group,

in each case whether registered or unregistered and **“GSK Mark”** shall be construed accordingly;

**“GSK Product”**

means any product Commercialised by or on behalf of any member of the GSK Group at any time on or after Completion;

**“HSR Act”**

Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended;

**“Information”**

means the following information (in whatever form held):

- (i) formulae, designs, specifications, drawings, know-how, manuals and instructions;
- (ii) customer lists, sales, marketing and promotional information;
- (iii) correspondence, orders and enquiries;
- (iv) business plans and forecasts; and
- (v) technical or other expertise;

**“Information Memorandum”**

means the information memorandum dated July 2011 relating to the Business prepared by the GSK Group and

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Goldman Sachs International and provided to the Purchaser;

**“Information Technology”**

means computer hardware, software and networks;

**“Initial Cash Consideration”**

has the meaning given in Clause 7.1;

**“Intellectual Property”**

means patents, Trade Marks, rights in designs, copyrights (including rights in computer software), database rights, topography rights and plant variety rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;

**“Interim Review Carve-Out Accounts”**

means the unaudited statements of net assets to be sold and related statements of revenue and direct operating expenses for the fiscal periods 1 January 2010 to 30 September 2010 and 1 January 2011 to 30 September 2011 in relation to the business described in, and in substantially the form of, the Draft Interim Carve-Out Accounts (prepared on the basis of note 2 (basis of preparation and accounting policies) accompanying such unaudited statements), which shall be in substantially the form of the corresponding note in the Draft Carve-out Interim Accounts);

**“International Financial Reporting Standards”**

means the body of pronouncements issued by the International Accounting Standards Board (IASB), including International Financial Reporting Standards and interpretations approved by the IASB, International Accounting Standards and Standing Interpretations Committee interpretations approved by the predecessor International Accounting Standards Committee;

**“IRC”**

means the United States Internal Revenue Code of 1986;

**“ITA”**

means the Income Tax Act (Canada);

**“Licensed Goods”**

means the items of Business Inventory that are the subject of the licence set out in Clause 26.2(B);

**“Losses”**

includes, in respect of any matter, event or circumstance, all demands, claims, actions, proceedings, damages, payments, fines, penalties, losses, costs (including reasonable legal costs), expenses (including non-recoverable Tax), disbursements or other liabilities, in any case of any nature whatsoever;

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**“Management Plan”** has the meaning given in the Information Memorandum and includes the contents of Paragraph D “FY2011E and the Management Plan (FY2012-16E)” of Part VI “Financial Overview” of the Information Memorandum;

**“Management Presentation”** means the management presentation briefing document in the Agreed Form of Attachment 4;

**“Manufacture” or “Manufacturing” or “Manufactured”** means, as applicable, all the production, packaging, labelling, warehousing, quality control testing, waste disposal and quality release of products;

**“Marketing Period”** means the first period of [\*\*\*] consecutive Business Days commencing on the latest of:

- (i) the date of this Agreement;
- (ii) [\*\*\*]; and
- (iii) the date on which the Purchaser has received the Required Financial Information,

PROVIDED THAT the Marketing Period will not be deemed to have commenced if: (w) (i) the Marketing Period is not completed prior to [\*\*\*] or (ii) a Competition Condition is not satisfied or waived in accordance with this Agreement on the Comfort Letter End Date, in which case the Marketing Period shall not be deemed to commence until (A) the Marketing Period would have otherwise commenced in accordance with the terms hereof and (B) the receipt by the Purchaser of audited statements of net assets to be sold and related statements of revenue and direct operating expenses in relation to the business described in the Draft Carve-Out Accounts for the fiscal year ending 31 December 2011; (x) prior to the completion of the Marketing Period, the auditors providing the audit contained in the Required Financial Information shall have withdrawn their audit opinion, in which case the Marketing Period shall not be deemed to commence unless and until a new unqualified audit opinion is issued with respect thereto by such auditors or another independent public accounting firm reasonably acceptable to the Purchaser; (y) the Marketing Period is not completed prior to 31 March 2012, in which case the Marketing Period shall not be deemed to commence until the receipt by the Purchaser of updated Required Financial Information that would be required under Rule 3-12 of Regulation S-X to permit a registration statement using such financial statements to be declared effective by the SEC on the last day of such new twenty

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(20) consecutive Business Day period; or (z) the Seller issues a public statement indicating (i) its intent to restate any historical financial statements of the Seller or any portion of such financial statements that is reasonably expected to have a material impact on the Business or the Required Financial Information, or (ii) that any such restatement is under consideration or may be a possibility, in which case the Marketing Period shall not be deemed to commence unless and until, at the earliest, such restatement has been completed and the relevant Required Financial Information have been amended or the Seller has announced that it has concluded that no restatement of the Required Financial Information shall be required in accordance with generally accepted accounting principles (which may include IFRS) applicable to the Seller's financial statements;

**“Material Adverse Change”**

means any matter, change, event or circumstance arising or occurring after [\*\*\*] that, individually or in the aggregate, is materially adverse or is reasonably likely to be materially adverse to the business, assets, financial condition, future prospects or results of operations of the Business taken as a whole, but shall exclude any matter, change, event or circumstance to the extent resulting or arising from:

- (i) any change that is generally applicable to, or generally affects, the industries or markets or geographic areas in which the Business operates or arises from or relates to changes in Law or accounting rules or changes in any authoritative interpretation of any Law by any Governmental Entity;
- (ii) any change in the United States' or world's financial, securities or currency markets or general economic or political conditions or changes in prevailing interest rates or exchange rates;
- (iii) any terrorist activity, attack, war, riot, insurrection, other armed conflict or civil disorder or effects of weather or natural disasters or acts of God or other calamity, crisis or geopolitical event;
- (iv) the execution of this Agreement, the public announcement thereof or the pendency or consummation of the transactions contemplated hereby (including any cancellations of or delays in customer orders or other decreases in

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customer demand, any reduction in revenues, and any disruption in supplier, distributor, customer or similar relationships);

- (v) the bankruptcy, insolvency or other financial distress of any customers, distributors or suppliers or the Business;
- (vi) the taking of any action expressly required by this Agreement or otherwise taken with the written consent of the Purchaser hereunder; and
- (vii) any failure of the Business or the GSK Group to meet any projections or forecasts for any period (it being understood that the facts underlying such failure may be taken into consideration in determining whether a Material Adverse Change has occurred to the extent such underlying facts are not excluded from consideration by reason of the foregoing paragraphs (i) to (vi) (inclusive)),

PROVIDED THAT the exceptions in (i), (ii) and (iii) shall only be taken into account if the Business is not adversely affected in a disproportionate manner relative to other comparable businesses operating in the same industry and geography as the Business;

**“Material Adverse Effect”**

means a material adverse effect on the financial condition or future prospects of the Business taken as a whole;

**“Material Contract”**

means any Business Contract or any Shared Business Contract which in each case:

- (i) is in existence at the date of this Agreement;
- (ii) is for the Commercialisation and/or Manufacture of any Product; and
- (iii) calls for payments by any party thereto in excess of US\$ [\*\*\*] (excluding Sales Tax) in any twelve month period,

but excluding any purchase or customer orders for inventory or services placed in accordance with the normal practice of the Business (including purchase and customer orders in respect of which the counterparty is a member of the GSK Group);

**“Medicinal Product”**

means, in the case of a Product to be Commercialised in the United States, a “Drug product” as defined in U.S.

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Current Good Manufacturing Practices, 21 C.F.R. Parts 210 section 210.3 or, in the case of a Product to be Commercialised in the European Union or elsewhere, a Medicinal Product as defined in Article 1(2) of Directive 2001/83/EC;

<b>“NDA”</b>	means a “new drug application”, as such term is used in the Federal Food, Drug and Cosmetic Act (as amended), and the rules and regulations thereunder and “ <b>NDA</b> s” shall be construed accordingly;
<b>“Non-Canadian Sales Tax”</b>	means any Sales Tax other than Canadian Sales-Tax;
<b>“Non-Commercialised Mark”</b>	means any Trade Mark registration and application for Trade Mark registration for a Brand which constitutes Unexploited Business IPR;
<b>“Non-Compete Consideration”</b>	means an amount equal to US\$ [***];
<b>“Novation”</b>	has the meaning given in sub-Clause 17.1(A);
<b>“Occurrence Policies”</b>	means the insurance policies taken out and maintained by or on behalf of members of the GSK Group under which claims may be made after Completion in respect of events arising or occurring prior to Completion and “ <b>Occurrence Policy</b> ” shall be construed accordingly;
<b>“OTC Monograph”</b>	means an over-the-counter drug monograph, as more fully described in 21 C.F.R. sections 330 et seq.;
<b>“OTC Product”</b>	a product approved by a relevant Governmental Entity as a medicine available for purchase by customers ‘over-the counter’ (i.e. without the need for a prescription from a physician or other health care professional);
<b>“Overlapping Products”</b>	means (1) with respect to the Purchaser, the products sold under its [***] ® brand in Canada; or (2) with respect to the Business, the products sold under its [***] ® brand in Canada;
<b>“Permitted Encumbrances”</b>	means security interests arising in the ordinary course of business or by operation of law, security interests arising under sales contracts with title retention provisions, equipment leases with third parties entered into in the ordinary course of business, security interests for Taxes and other governmental charges which are not due and payable or which may thereafter be paid without penalty, which do not individually or in aggregate materially impair the continued use and operation of the assets to which

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	they relate in the context of the Business;
<b>“Permitted Financing Conditions”</b>	has the meaning given in Schedule 16 and <b>“Permitted Financing Condition”</b> shall be construed accordingly;
<b>“Portfolio Brands”</b>	means the brands listed under Part B of Schedule 9;
<b>“Post-Completion Date”</b>	means the date falling sixty (60) days after the Completion Date;
<b>“Pre-Completion Period”</b>	has the meaning given in Clause 6.2;
<b>“Press Announcements”</b>	means the press announcements to be issued by each of the Seller and the Purchaser in the Agreed Form of Attachment 3;
<b>“Proceedings”</b>	means any proceeding, suit or action arising out of or in connection with this Agreement, whether contractual or non-contractual, or the negotiation, existence, validity or enforceability of this Agreement;
<b>“Products”</b>	means the products listed in Schedule 9 in the SKU forms and in the territories set out for each such product in such Schedule, and <b>“Product”</b> shall be construed accordingly;
<b>“Property”</b>	means freehold, fee simple, leasehold, or other immovable property or real property;
<b>“Proposed Transaction”</b>	has the meaning given in Clause 3.3;
<b>“Provisional Current Asset Amount”</b>	means US \$ 13,844,000;
<b>“Purchaser’s Bank Account”</b>	means the bank account of the Purchaser, details of which are set out in Schedule 15;
<b>“Purchaser’s Financing Banks”</b>	means (i) Citigroup Global Markets Inc. of 390 Greenwich Street, New York, New York 10013, United States, (ii) Morgan Stanley Senior Funding, Inc. of 1585 Broadway, New York, New York 10036, United States; and (iii) Royal Bank of Canada of One Liberty Plaza, New York, New York 10006, United States;
<b>“Purchaser’s Group”</b>	means the Purchaser, the Purchaser’s Affiliates and the Purchaser’s Associated Undertakings from time-to-time;
<b>“Purchaser’s Solicitors”</b>	means Baker & McKenzie LLP, of 100 New Bridge Street, London EC4V 6JA, United Kingdom and 815 Connecticut Ave. N.W., Washington D.C. 20006, United States;

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<b>“Purchaser’s Transaction Documents”</b>	has the meaning given in Clause 24.1(A);
<b>“Quality Management System”</b>	means GSK’s system of quality management controls designed to ensure regulatory compliance and to assure product safety, quality and efficacy in GSK’s operations with regard to the manufacture and supply of investigational materials or products for sale or distribution and implemented pursuant to GSK’s Corporate Policy entitled Quality Management System (POL-GSKF-514);
<b>“Receivables”</b>	means all outstanding payments due to the Seller or to any other member of the GSK Group in respect of the period up to the Completion Time for goods or services supplied or rights licensed by it or on its behalf in the ordinary and usual course of carrying on the Business (and in each case including such part of such amounts as relate to Sales Tax);
<b>“Regulatory Permit Holder”</b>	means any member of the GSK Group holding one or more of the Regulatory Permits at Completion and <b>“Regulatory Permit Holders”</b> shall be construed accordingly
<b>“Regulatory Permits”</b>	means each of the Warranted Regulatory Permits and Unwarranted Regulatory Permits and <b>“Regulatory Permit”</b> shall be construed accordingly;
<b>“Relevant GSK Group Employee”</b>	means any employee of any member of the GSK Group who is entitled to a gross fixed annual salary in excess of US\$ [***] per annum (or its equivalent in local currency at exchange rates prevailing at the date of this Agreement) who: <ul style="list-style-type: none"> <li>(i) is, or has been, directly or indirectly involved in the Business or its sale; or</li> <li>(ii) is, has been, or will be, directly or indirectly involved in the Transitional Services Agreement, the Transitional Manufacturing and Supply Agreement or the preparation and/or implementation of the Separation Plan;</li> </ul>
<b>“Relevant Part”</b>	has the meaning given in sub-Clause 17.1(B);
<b>“Relevant Period”</b>	means the period of three (3) calendar years ended on the date of this Agreement;

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**“Remaining Items”**

means the Business Assets and Assumed Liabilities other than the Delayed Items;

**“Required Financial Information”**

means (i) audited statements of net assets to be sold and related statements of revenue and direct operating expenses in relation to the business described in the Draft Carve-Out Accounts for the three most recent fiscal years ending at least 90 days prior to the Completion Date (for the avoidance of doubt, provided that Completion occurs prior to 31 March 2012, such requirement shall be satisfied by the delivery of the Audited Carve-Out Accounts); (ii) the Interim Review Carve Out Accounts and unaudited statements of assets to be sold and related statements of revenue and direct operating expenses in relation to the business described in the Draft Carve-Out Interim Accounts for each subsequent completed fiscal quarter (other than the fourth fiscal quarter of the Business’ fiscal year) ending on or after 31 March 2012 and ended at least 45 days before the Completion Date, which unaudited financial information shall have been reviewed by the independent auditors of the Seller (for the avoidance of doubt, provided that Completion occurs prior to 31 March 2012, such requirement shall be satisfied by the delivery of the Interim Review Carve-Out Accounts); and (iii) the following information necessary to prepare a customary preliminary offering memorandum in connection with a private placement of the Unsecured Notes (as defined in the Debt Commitment Letter) or for the Purchaser’s Financing Banks to receive customary “comfort” letters (including “negative assurance” comfort) from independent accountants in connection with the offering of Unsecured Notes: (a) information necessary to prepare a customary management’s discussion and analysis of the financial condition and results of operations of the business described in the financial statements delivered in accordance with (i) and (ii) above as at the end date of the most recent unaudited financial statements delivered in accordance with (ii) above and the two most recent audited financial statements delivered in accordance with (i) above, in each case compared against the same date in the previous year (for the avoidance of doubt, provided that Completion occurs prior to 31 March 2012, such requirement shall be satisfied by the delivery of such discussion and analysis as at 30 September 2011 (compared against 30 September 2010), 31 December 2010 (compared against 31 December 2009) and 31 December 2009 (compared against 31 December 2008)) and (b) to the extent not already provided above, historical sales data of the business described in the Draft Carve-Out Financial

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Statements for the two fiscal years immediately preceding the first fiscal year in respect of which audited financial statements have been delivered in accordance with (i) above, provided that such sales data shall not be audited or otherwise reviewed by any independent accountants (for the avoidance of doubt, provided that Completion occurs prior to 31 March 2012, such requirement shall be satisfied by the delivery of such historical sales data for the fiscal years ended 31 December 2006 and 31 December 2007);

**“Restricted Product Markets”**

means the OTC Product markets for each of:

- (i) [\*\*\*] products;
- (ii) [\*\*\*] products containing the ingredient [\*\*\*];
- (iii) [\*\*\*] products indicated for [\*\*\*]; and
- (iv) [\*\*\*],

and **“Restricted Product Market”** shall mean each such OTC Product market;

**“Restricted Territories”**

means the United States or Canada or Puerto Rico and **“Restricted Territory”** shall mean any of such territories;

**“Sales Tax”**

means any sales, goods, services, turnover, value-added, or similar Tax, including (for the avoidance of doubt and without limitation):

- (i) any sales Tax imposed under the law of any of the United States of America or the law of Puerto Rico;
- (ii) any goods and services Tax or harmonized sales Tax imposed under the provisions of the ETA, any sales Tax imposed under An Act Respecting the Quebec Sales Tax and any other similar Tax imposed under the laws of any province or territory of Canada; and
- (iii) any Tax imposed by any Member State of the European Union in conformity with the Directive of the Council of the European Union on the common system of value added tax (2006/112/EC);

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“SEC”	means the US Securities and Exchange Commission;
“Seller’s Bank Account”	means the bank account of the Seller, details of which are set out in Schedule 14;
“Seller’s Solicitors”	means Slaughter and May of One Bunhill Row, London EC1Y 8YY and, for the purposes of Clause 3 only, Sidley Austin LLP of One South Dearborn Street, Chicago, Illinois 60603, United States;
“Seller’s Transaction Documents”	has the meaning given in paragraph 1.2 of Schedule 5;
“Senior Employee”	means any employee of any member of the Purchaser’s Group who is entitled to a gross fixed annual salary in excess of US\$ [***] per annum (or its equivalent in local currency at exchange rates prevailing at the date of this Agreement) who: <ul style="list-style-type: none"> <li>(i) is, or has been, directly or indirectly involved in the acquisition of the Business; or</li> <li>(ii) is, or will be, directly or indirectly involved in the Transitional Services Agreement, the Transitional Manufacturing and Supply Agreement or the preparation and/or implementation of the Separation Plan;</li> </ul>
“Separation”	has the meaning given in sub-Clause 17.1(B);
“Separation Plan”	has the meaning given to it in the Transitional Services Agreement;
“Service Document”	has the meaning given in Clause 49.4;
“Shared Business Contracts”	means: <ul style="list-style-type: none"> <li>(i) all the contracts, arrangements, agreements, engagements, guarantees, licences, purchase orders, customer orders and other commitments set out in Part B of Schedule 10;</li> <li>(ii) any and all contracts, arrangements, agreements, engagements, guarantees, licences, purchase orders, customer orders and other commitments which in each case relate both: <ul style="list-style-type: none"> <li>(a) to the Business, or any part of the Business to be transferred to the Purchaser (or any Designated Purchaser)</li> </ul> </li> </ul>

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on Completion; and

- (b) to any other business of the GSK Group, any part of the Business which is not transferred to the Purchaser (or any Designated Purchaser) on Completion, any product other than the Products, or any Excluded Asset,

to which any member of the GSK Group may become a party during the Pre-Completion Period,

and “**Shared Business Contract**” shall mean any of them;

**“Shared Formulation Know-How”**

means know-how owned by the Seller (or a member of the GSK Group) in respect of the Shared Formulations;

**“Shared Formulations”**

means any formulations owned by the Seller or a member of the GSK Group which, at the Completion Date are used (i) by the Seller or a member of the GSK Group in relation to the manufacture of products other than Products and (ii) in the Business in respect of the Products, and “**Shared Formulation**” shall be construed accordingly;

**“Shared Marks”**

means the Trade Mark registrations and applications for Trade Mark registrations for any of the Brands which have been applied to products Commercialised by a member of the GSK Group other than in respect of a Product and “**Shared Mark**” shall be construed accordingly;

**“SKU”**

means a stock keeping unit and “**SKUs**” shall be construed accordingly;

**“Tax” or “Taxation”**

means all taxes, levies, duties, imposts and any charges, deductions or withholdings in the nature of tax including (without limitation) taxes on gross or net income, profits or gains, social security contributions and taxes on receipts, sales, use, occupation, development, franchise, employment, value added and personal property, together with all penalties, charges and interest relating to any of them, regardless of whether any such taxes, levies, duties, imposts, charges, deductions, withholdings, penalties and interest are chargeable directly or primarily;

**“Tax Authority”**

means any taxing, revenue or other authority competent to impose or collect any liability to Tax;

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“ <b>Tax Warranties</b> ”	means the Warranties in paragraph 16 of Schedule 5;
“ <b>Termination Date</b> ”	means 30 April 2012;
“ <b>Third Party Arrangement</b> ”	means any agreement or arrangement entered into between the Seller (or any member of the GSK Group) and a third party in respect of any Non-Commercialised Mark prior to the Completion Date;
“ <b>Third Party Proceedings</b> ”	means litigation or arbitration, administrative or criminal proceedings which have been properly issued in the relevant court or tribunal of competent jurisdiction or under the relevant rules applicable to such arbitration (as the case may be) and validly served on the relevant member of the GSK Group;
“ <b>Trade Marks</b> ”	means trade marks, service marks, logos, devices, symbols, get up and/or trade dress (or any combination thereof) and “ <b>Trade Mark</b> ” shall be construed accordingly;
“ <b>Transfer Taxes</b> ”	means all stamp, transfer, registration, and other similar Taxes, duties and charges (including, for the avoidance of doubt and without limitation, any real estate transfer Tax or other Tax relating to the sale, transfer or registration of real estate) and all notarial fees payable or assessed in connection with, or directly or indirectly as a result of, this Agreement or the sale or purchase of the Business Assets under this Agreement;
“ <b>Transferring Business IPR</b> ”	means the Business Intellectual Property and the Unexploited Business IPR;
“ <b>Transitional Manufacturing and Supply Agreement</b> ”	means the transitional manufacturing and supply agreement in the Agreed Form forming Attachment 2;
“ <b>Transitional Services</b> ”	means the transitional services to be supplied to the Purchaser (and/or the relevant member(s) of the Purchaser’s Group) under the terms of the Transitional Services Agreement and the Transitional Manufacturing and Supply Agreement;
“ <b>Transitional Services Agreement</b> ”	means the transitional services agreement between GlaxoSmithKline L.L.C., GlaxoSmithKline Consumer Healthcare Inc. and MedTech Products Inc. dated the same date as this Agreement;
“ <b>Unexploited Business IPR</b> ”	means the: <ul style="list-style-type: none"> <li>(i) patents and patent applications listed in Part B of</li> </ul>

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Schedule 11;

(ii) Trade Mark registrations and applications for Trade Mark registrations listed in Part B of Schedule 11; and

(iii) copyright registrations listed in Part B of Schedule 11;

**“Unwarranted Regulatory Permits”**

means each of the NDAs, approvals, licences, permits, certificates, registrations, formulary listings, exemptions and authorisations issued by Governmental Entities and which are listed in Part B of Schedule 13 and **“Unwarranted Regulatory Permit”** shall be construed accordingly;

**“United States” or “US”**

means the United States of America, its territories, possessions, any state of the United States of America and the District of Columbia;

**“US Assets”**

means those Assets to be sold under the terms of this Agreement by the Business Sellers other than GCHI and GSK PLC;

**“VDD Report”**

means the financial vendor due diligence report relating to the Business prepared by KPMG LLP and dated 26 August 2011 (including volume 4 of such report dated 9 September 2011);

**“Warranted Regulatory Permits”**

means each of NDAs, approvals, licences, permits, certificates, registrations, formulary listings, exemptions and authorisations relating exclusively to the Business issued by Governmental Entities and which are listed in Part A of Schedule 13 and **“Warranted Regulatory Permit”** shall be construed accordingly;

**“Warranties”**

means the warranties set out in Schedule 5; and

**“Working Hours”**

means 9.00 a.m. to 5.00 p.m. on a Business Day.

1.2 In this Agreement and the Schedules and Attachments to it, unless otherwise specified:

- (A) references to Clauses, sub-Clauses, paragraphs, sub-paragraphs, Schedules and Attachments are to clauses, sub-clauses, paragraphs and sub-paragraphs of, and schedules or attachments to, this Agreement;
- (B) headings to Clauses, Schedules and Attachments are for convenience only and do not affect the interpretation of this Agreement;

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- (C) the Schedules and Attachments form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the Schedules and the Attachments;
- (D) a reference to any statute, regulation or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, consolidated, amended, modified, extended or re-enacted except to the extent that any such consolidation, amendment, modification, extension or re-enactment after the date of this Agreement would increase or extend the liability of any person under or pursuant to this Agreement;
- (E) references to a “**company**” shall be construed so as to include any corporation or other body corporate, wherever and however incorporated or established;
- (F) references to a “**person**” shall be construed so as to include any individual, firm, company, corporation, body corporate, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (G) use of any gender includes the other genders;
- (H) references to the singular shall include the plural and vice-versa;
- (I) a “**holding company**” and a “**subsidiary**” mean a holding company and subsidiary as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Companies Act 2006, as a member of another company even if its shares in that other company are registered in the name of (i) another person (or its nominee), whether by way of security or in connection with the taking of security, or (ii) its nominee;
- (J) a “**subsidiary undertaking**” means a subsidiary undertaking as defined in section 1162 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1162(2)(b) and (d) of the Companies Act 2006, as a member of another company even if its shares in that other company are registered in the name of (i) another person (or its nominee), whether by way of security or in connection with the taking of security, or (ii) its nominee;
- (K) the expressions “**allotment**”, “**debentures**” and “**Undertaking**” shall have the meaning given in the Companies Act 2006;
- (L) a person shall be treated as being connected with another if that person is connected with another within the meaning of sections 1122 and 1123 CTA 2010;
- (M) any question as to whether a person “**controls**” another (including for the purposes of the definition of “**Affiliate**”) shall be determined in accordance with

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the provisions of section 1124 CTA 2010 (and “**controlled**” shall be construed accordingly);

- (N) references to writing shall include any modes of reproducing words in a legible and non-transitory form, and accordingly shall exclude e-mail and other transitory modes;
- (O) references to times of day are to New York time;
- (P) any reference to a “**day**” (including within the phrase “**Business Day**”) shall mean a period of 24 hours running from midnight to midnight;
- (Q) references to the knowledge, information, belief or awareness of the Seller or any similar expression shall be construed as a reference to the actual knowledge, awareness, information or belief of:
  - (i) David Redfern (Chief Strategy Officer, Corporate Strategy and Development), Jo LeCouillard (Vice President, Head of Corporate Development), Alan Burns (Director, Corporate Development), Hope D’Oyley Gay (Vice President and Associate General Counsel, Legal Operations, Business Development Transactions) and Susan Trent (Acting Vice President, Consumer Healthcare, North American Strategy) (in each case, in respect of all matters);
  - (ii) Terry Dixon (Assistant General Counsel, Legal Operations, Global Trade Marks) and Theodore Furman (Vice President, Global Consumer Healthcare and Ophthalmology, Global Patents) (in each case, only in respect of matters relating to Intellectual Property, know-how and, in each case, contracts, arrangements and engagements relating thereto);
  - (iii) Paul Hunter (Project Director, Global Marketing Systems) (only in respect of matters relating to Information Technology and contracts, arrangements and engagements relating thereto);
  - (iv) Dora Monserrate (Director, US Regulatory Affairs) (only in respect of matters relating to Regulatory Permits issued in the United States);
  - (v) Jennifer Denomme (Director, Scientific Affairs) (only in respect of matters relating to Regulatory Permits issued in Canada); and
  - (vi) Deborah Winter (Director, Tax Planning, Global Tax) (only in respect of Tax matters),

each such person having made reasonable enquiry;

- (R) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be treated as including what most nearly approximates in that jurisdiction to the English legal term;

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- (S) references in any Warranty, in this Clause 1 or in Schedule 3 to any monetary sum expressed in Dollars shall, where such sum is referable in whole or in part to a particular jurisdiction, be deemed to be a reference to an equivalent amount in the local currency of that jurisdiction translated at the Exchange Rate on the date of this Agreement or, if such day is not a Business Day, on the Business Day immediately preceding such day;
- (T) where any amount in any local currency is required to be converted into Dollars for the purposes of calculating the “**Provisional Current Asset Amount**”, expressed in Dollars, such amount shall be translated into Dollars at the Exchange Rate for that local currency on the date which is five (5) Business Days prior to the Completion Date or, if such day is not a Business Day, on the Business Day immediately preceding such day;
- (U) where any amount in any local currency is required to be converted into Dollars for the purposes of calculating the “**Completion Current Asset Amount**”, expressed in Dollars, such amount shall be translated into Dollars at the Exchange Rate for that local currency on the Completion Date;
- (V) where it is necessary to determine whether a monetary limit or threshold set out in paragraph 1 of Schedule 6 has been reached or exceeded (as the case may be) and the value of the relevant claim or any of the relevant claims or any part of the relevant threshold is expressed in a currency other than Dollars (as the case may be), the value of each such claim or the relevant threshold, as the case may be, shall be translated into Dollars at the Exchange Rate on the date of notification of the relevant claim;
- (W) (i) the rule known as the *ejusdem generis* rule shall not apply and accordingly general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
- (ii) the use of the words “**includes**” or “**including**” shall be deemed to say also “**without limitation**”; and
- (iii) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (X) any indemnity or covenant to pay (the “**Payment Obligation**”) being given on an “**after-Tax basis**” or expressed to be “**calculated on an after-Tax basis**” means that the amount payable pursuant to such Payment Obligation (the “**Payment**”) shall be calculated in such a manner as will ensure that, after taking into account:
- (i) any Tax required to be deducted or withheld from the Payment;
- (ii) the amount and timing of any additional Tax which becomes payable by the recipient of the Payment (or a member of the GSK Group or the

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Purchaser's Group, as the case may be) as a result of the Payments being subject to Tax in the hands of that person; and

- (iii) the amount and timing of any Tax benefit which is obtained by the recipient of the Payment (or a member of the GSK Group or the Purchaser's Group, as the case may be) to the extent that such Tax benefit is attributable to the matter giving rise to the Payment Obligation or to the receipt of the Payment,

which amount and timing is to be determined by the auditors of the recipient at the shared expense of both relevant parties and is to be certified as such to the party making the Payment, the recipient of the Payment is in the same position as that in which it would have been if the matter giving rise to the Payment Obligation had not occurred;

- (Y) unless specified to the contrary, references to "**indemnify**" and "**indemnifying**" any person against any circumstance include indemnifying and holding that person harmless on an after-Tax basis and:
  - (i) the provisions of Clause 39 shall apply to such indemnification;
  - (ii) references to the Purchaser indemnifying each member of the GSK Group shall constitute undertakings by the Purchaser to the Seller for itself and on behalf of each other member of the GSK Group; and
  - (iii) references to the Seller indemnifying each member of the Purchaser's Group shall constitute undertakings by the Seller to the Purchaser for itself and on behalf of each other member of the Purchaser's Group;
- (Z) references to "**Dollars**" or "**US\$**" are to the lawful currency of the United States, references to "**£**" are to the lawful currency of the United Kingdom and references to "**Euro**" are to the lawful currency of the member states of the European Union that have adopted the single currency in accordance with the Treaty Establishing the European Community, as amended by the Treaty of the European Union; and
- (AA) other than in Clause 43 of this Agreement, references to "costs" and/or "expenses" incurred by a person shall not include any amount in respect of such costs or expenses for which either that person or any member of its Group for the purposes of any Sales Tax is entitled to credit.

## 2. Sale and purchase of the Business and Business Assets

2.1 On the terms and subject to the conditions set out in this Agreement:

- (A) the Seller agrees to procure the sale of the entire legal and beneficial ownership in the Business, free from all Encumbrances and as a going concern, and of the entire legal and beneficial ownership in the Business Assets listed in Clause 2.2, free from all Encumbrances;

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- (B) each Business Seller agrees to sell the entire legal and beneficial ownership in the Business Assets listed in Clause 2.2 of which it is the legal and beneficial owner, free from all Encumbrances; and
- (C) the Purchaser agrees to purchase, or procure the purchase by the relevant Designated Purchaser(s) of, the entire legal and beneficial ownership in the Business, free from all Encumbrances and as a going concern, and the entire legal and beneficial ownership in the Business Assets listed in Clause 2.2, free from all Encumbrances,

in each case, as at and with effect from Completion (or as otherwise provided in this Agreement).

2.2 For the purposes of Clause 2.1 and this Agreement,

- (A) the Business Goodwill;
- (B) the Business Inventory (which shall be transferred subject to and in accordance with the terms of Clause 16);
- (C) the benefit (subject to the burden) of the Business Contracts and Shared Business Contracts (which shall be transferred subject to and in accordance with the terms of Clause 17);
- (D) the Regulatory Permits (which shall be transferred subject to and in accordance with the terms of Clause 20);
- (E) the Transferring Business IPR (which shall be transferred subject to and in accordance with the terms of Clauses 2.5 and 26);
- (F) the Business Domain Names;
- (G) all Business Records and Business Information (which shall be transferred subject to and in accordance with the terms of Clause 25);
- (H) the benefit of any confidentiality or non-disclosure agreement entered into by the Seller, or any member of the GSK Group, with any third party in relation to, or in connection with, the sale and purchase of the Business; and
- (I) all other rights and assets (including any custom moulds relating to Products) used exclusively in the Business as at Completion,

together constitute the “**Business Assets**”, PROVIDED THAT there shall be excluded therefrom those property rights and assets expressly excluded by the definition of any category of Business Assets listed above and the following assets (the “**Excluded Assets**”):

- (J) the Excluded Business Contracts;
- (K) the Excluded IPR;

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- (L) the Excluded Business Records;
- (M) the Receivables;
- (N) all plant and machinery in which the Seller or any other member of the GSK Group has any right, title or interest;
- (O) cash in hand or at bank and any current investments used in or held on account of that part of the Business carried on by each Business Seller;
- (P) subject to Clause 22, the benefit of any rights in respect of any insurance policy (whether issued by any third party or any other person) of any Business Seller or any other member of the GSK Group relating to the Business or any of the Business Assets;
- (Q) all current and former employees, consultants, individual independent contractors, temporary workers or similar individuals of the Seller or any other member of the GSK Group, and all such individuals who have or are currently performing services for the Seller or any other member of the GSK Group;
- (R) any and all causes of action and claims of any member of the GSK Group arising out of or relating to any Excluded Liability or any of the Excluded Assets listed in sub-Clauses 2.2(J) to 2.2(Q) (inclusive) and sub-Clauses 2.2(S) to 2.2(W) (inclusive);
- (S) any books and records or other information which relates to the sale or proposed sale of the whole or part of the Business including such information which relates to the negotiation of the transactions contemplated by this Agreement;
- (T) any asset the benefit of which is to be used by any member of the GSK Group to provide Transitional Services, PROVIDED THAT all such assets which are used exclusively in the Business as at the Completion Date shall be transferred to the Purchaser as soon as reasonably practicable thereafter (and in any event within twenty (20) Business Days following such cessation);
- (U) any Property in which the Seller or any other member of the GSK Group has any right, title or interest;
- (V) any deduction, relief, allowance or credit in respect of, and any repayment or right to a repayment of, any Tax that constitutes an Excluded Liability or otherwise relates to income, profit or gains arising, the value of any asset or assets, or an Event occurring, during the period ending on Completion; and
- (W) any obsolete or unusable Business Inventory, and any Business Inventory with an expiry date of less than eighteen months following the Completion Date.

2.3 Notwithstanding any other provision of this Agreement, each member of the GSK Group shall retain its respective rights, title and interest in and to, and no member of the Purchaser's Group shall obtain any rights, title or interest in or to (pursuant to this

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Agreement), the Excluded Assets and the Seller shall indemnify the Purchaser (and each member of the Purchaser's Group) against any and all Losses which it may suffer, sustain and/or incur in relation to or in connection with any of the Excluded Assets.

2.4 Part 1 Law of Property (Miscellaneous Provisions) Act 1994 shall not apply for the purposes of Clause 2.

2.5 Clause 2.1 shall operate as an assignment of such of the Transferring Business IPR as is not the subject of a registration or an application for registration with effect from Completion. Any Transferring Business IPR which is registered or which is the subject of an application for registration shall be assigned to the Purchaser pursuant to the Business Intellectual Property Assignments.

### 3. **Conditions**

3.1 The obligations of each party under this Agreement (other than those contained in this Clause 3, Clauses 4 to 6 (inclusive), Clause 24, Clauses 29.1 to 29.3 (inclusive), Clause 30, Clause 34, Clauses 36, 37 and 38 and Clauses 40 to 49 (inclusive)) are conditional in all respects upon the Conditions being satisfied or waived in accordance with this Agreement and there not being in effect any order of a Governmental Entity under an Antitrust Law that prohibits or enjoins Completion.

3.2 The Financing Condition may be waived by the Purchaser at any time. The Competition Condition may be waived, in whole or in part, only with the consent of the Seller and the Purchaser.

3.3 In the event that a Governmental Entity should provide written notice that it is reviewing, investigating or challenging, in whole or in part, the transactions contemplated by this Agreement (the "**Proposed Transaction**") under any Antitrust Law (an "**Antitrust Review**"), the Purchaser and Seller may, as each considers it advisable, make any submission and submit any materials and information (including complying with any requests for information) in response thereto, except where the Purchaser and Seller are required by an Antitrust Law to submit materials and information, in which case they shall, as soon as reasonably practicable after receiving such request, provide such materials and information to the Governmental Entity.

3.4 As promptly as practicable after the date hereof and in no event more than ten (10) Business Days after the date hereof, Purchaser and Seller shall file with the United States Federal Trade Commission ("**FTC**") and the Antitrust Division of the United States Department of Justice ("**DOJ**") the notifications and other information required to be filed under the HSR Act, with respect to the transactions contemplated hereby. Each party warrants that all such filings by it will be, as of the date filed, true and accurate and in accordance with the requirements of the HSR Act. Each of Purchaser and Seller agrees to make available to the other such information regarding its business, assets, and property (including, in the case of the Seller, the Business) as each of them may reasonably request as may be required of each of them to file any additional information requested by such agencies under the HSR Act. Neither Purchaser nor Seller shall withdraw its HSR filing without the other party's consent.

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3.5 The Purchaser shall use all commercially reasonable endeavours to procure satisfaction of the Competition Condition promptly after the date of this Agreement and in any event shall use commercially reasonable endeavours to procure satisfaction of the Competition Condition prior to the Termination Date. Such endeavours shall, without limitation but subject always to Clause 3.11, include the Purchaser taking, as promptly as practicable, all steps necessary, proper or advisable (including making filings and notifications within the periods required or otherwise legally allowed as well as complying with any requests for information) to obtain the consents, approvals or actions required in order to satisfy the Competition Condition PROVIDED THAT the Purchaser shall not be in breach of its obligations under Clause 3.4 if and to the extent that the Purchaser fails to make any filings or notifications or otherwise to submit any information where it is dependent on the Seller to provide information and the Seller has not supplied such information to the Purchaser or the Purchaser's Solicitors.

3.6 In addition, with respect to this Clause 3, each party shall:

- (A) notify the other party (or the other party's Solicitors), and provide copies to such other party (or the other party's Solicitors), of any communications (whether written or oral) with any Governmental Entity in relation to obtaining any Antitrust Approval or in relation to any Antitrust Review;
- (B) provide the other party (or the other party's Solicitors) with draft copies of all submissions and substantive communications intended to be sent to Governmental Entities at such time as will allow the other party a reasonable opportunity to provide comments on such submissions and communications before they are submitted or sent, (acting reasonably) agree such submissions and communications with the other party before they are submitted or sent, and provide the other party (or the other party's Solicitors) with copies of all such submissions and communications in the form submitted or sent;
- (C) so far as practicable, give the other party (or the other party's Solicitors) reasonable notice of, and reasonable opportunity to participate in, all meetings and telephone calls with any such Governmental Entity; and
- (D) notify the other party (or the other party's Solicitors) promptly on becoming aware that any of the consents or approvals specified in the Competition Condition have been obtained or that any Antitrust Review has been concluded or terminated by a Governmental Entity.

3.7 Any information to be provided by a party verbally or in writing (a "**Disclosing Party**" for the purposes of this Clause 3.7) to the other party (a "**Receiving Party**" for the purposes of this Clause 3.7) under any provision of this Clause 3 which is materially commercially sensitive to the Disclosing Party's existing business may be supplied to the Receiving Party's Solicitors on a "counsel to counsel" basis rather than to the Receiving Party (or to any member of the Receiving Party). All such written information or information shall be designated in writing to the Receiving Party's counsel as being transmitted on a "counsel to counsel" basis and all such verbal information shall be confirmed in writing to the Receiving Party's counsel as having been transmitted on a "counsel to counsel" basis.

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3.8 The Seller shall, and shall procure that the Business Sellers shall, co-operate with and provide reasonable assistance to the Purchaser to enable it to obtain any consents, approvals or actions required to satisfy the Competition Condition and to make any submissions or filings in respect of any Antitrust Review or to defend Antitrust Proceedings. The Purchaser shall co-operate with and provide reasonable assistance to the Seller to enable the Seller to make any submissions or filings in respect of any Antitrust Review or to defend Antitrust Proceedings.

3.9 If it becomes reasonably apparent to the Purchaser or to the Seller (who shall inform the Purchaser of this fact) that:

- (A) the FTC or DOJ is likely to issue a request for additional information or documentary material ("**Second Request**") with respect to the Proposed Transaction;
- (B) that a Governmental Entity intends or threatens to open an in-depth, "Phase II" or analogous investigation into the Proposed Transaction or to bring suit before any Governmental Entity to temporarily or permanently enjoin or prohibit the Proposed Transaction or to otherwise challenge the Proposed Transaction before any Governmental Entity under an Antitrust Law (an "**Antitrust Proceeding**"); or
- (C) that a Governmental Entity will only approve the Proposed Transaction or will only agree not to bring an Antitrust Proceeding subject to any undertakings, commitments, hold-separate arrangements, divestments, conditions, obligations, measures, undertakings and/or modifications, consents decrees, settlements or analogous procedures (each a "**Commitment**"),

the Purchaser shall promptly, and within the relevant time limits for doing so, offer, accept and agree to:

- (i) divest some or all of the Overlapping Products at no minimum price; and/or
- (ii) subject to Clause 3.11, any such other Commitment (or Commitments) as may be necessary,

so as to enable the satisfaction of the relevant Competition Condition or so as to avoid an Antitrust Proceeding, prior to compliance with such Second Request, the opening of such in-depth, "Phase II" or analogous investigation into the Proposed Transaction, or the commencement of any Antitrust Proceeding with respect to the Proposed Transaction.

3.10 Notwithstanding the Purchaser's obligations in Clause 3.9, if the FTC or DOJ should issue a Second Request, or if a Governmental Entity should open an in-depth, "Phase II" or analogous investigation into the Proposed Transaction or brings an Antitrust Proceeding with respect to the Proposed Transaction, the Purchaser shall, subject to Clause 3.11, offer, accept and agree to any Commitment (or Commitments) as may be necessary so as to enable the satisfaction of the Competition Condition and Completion as rapidly as possible and in any event prior to the Termination Date. In the event that

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Antitrust Proceedings are commenced by a Governmental Entity, without limiting the Purchaser's obligations set forth in this Clause 3.10 to offer a Commitment (or Commitments), the parties agree to work together in good faith to agree upon a course of action they agree will provide the highest likelihood that Completion can take place as soon as possible thereafter with respect to any Business Assets other than Canadian Business Assets.

- 3.11 The Purchaser shall negotiate any proposed Commitments acting reasonably and in good faith and not arbitrarily, but, save in respect of any divestment of an Overlapping Product, shall not be required to agree to any Commitment which, strategically or financially, could reasonably be expected to give rise to a material adverse effect on the prospects of the combined business of the Business and the Purchaser's existing operations, as determined by the Purchaser acting reasonably and in good faith and not arbitrarily.
- 3.12 In the event that any fact which makes the Competition Condition incapable of being satisfied on or before the Termination Date (taking account of, and without prejudice to, the parties' obligations under Clauses 3.4 to 3.11 (inclusive)) comes to the knowledge of any party at any time prior to Completion then that party shall notify the other parties of that fact and either the Seller or the Purchaser shall be entitled to terminate this Agreement by written notice to the other parties (PROVIDED THAT neither the Seller nor the Purchaser shall be entitled to terminate this Agreement where that party is in breach of its obligations under this Agreement where such breach has contributed materially to the non-satisfaction of the Competition Condition), and following the giving of such notice, the obligations of each party under this Agreement shall automatically terminate as provided in Clause 3.14.
- 3.13 In the event that the Conditions are not satisfied or waived on or before the Termination Date, or in the event that there is an order in effect by a Governmental Entity under an Antitrust Law that would prohibit Completion of the Proposed Transaction on the Termination date, this Agreement shall automatically terminate as provided in Clause 3.14.
- 3.14 In the event that this Agreement is terminated or terminates in accordance with Clause 3.12 or 3.13, then the obligations of each party under this Agreement (except for those contained in this Clause 3, Clause 24, Clauses 29.2 and 29.3, Clause 30, Clause 34, Clauses 36, 37 and 38 and Clauses 40 to 49 (inclusive)) shall automatically terminate PROVIDED THAT the rights and liabilities of the parties which have accrued prior to termination shall subsist. If the parties proceed to effect Completion notwithstanding that the Competition Condition has not been satisfied, the parties shall be deemed to have waived such Competition Condition.

#### 4. **Delayed Completion**

- 4.1 If there is in effect on the date on which Completion would otherwise occur any order of a Governmental Entity under an Antitrust Law that prohibits or enjoins Completion (a "**Prohibiting Order**") then, notwithstanding any other requirement of this Agreement to the contrary but provided that doing so does not violate the Prohibiting Order, the Seller and the Purchaser shall delay Completion solely with respect to those Business Assets and related Assumed Liabilities the proposed sale, purchase and assumption of which

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(as the case may be) has caused the relevant Governmental Entity to issue such Prohibiting Order (such Business Assets and related Assumed Liabilities being the “**Delayed Items**”). The Seller shall be entitled to make any form of offer or commitment to such Governmental Entity with regard to its products as it considers (in its sole discretion) to be necessary, desirable or appropriate to facilitate the Completion of the sale and purchase of the Remaining Items and, in connection therewith, the Purchaser shall, and shall procure that each member of the Purchaser’s Group shall, co-operate with and provide reasonable assistance to the Seller for the purposes of enabling the Seller to make any such offer or commitment.

- 4.2 The Seller and the Purchaser agree that so much of the Initial Cash Consideration as is determined in accordance with the following Clause 4.3 to be allocable to any Delayed Item (such amount being the “**Delayed Asset Consideration**”) will not be payable in accordance with the provisions of Clause 11 until completion of the sale and purchase of such Delayed Item pursuant to Clause 4.7 (each, a “**Delayed Asset Transfer**”).
- 4.3 For the purposes of determining the amount of the Delayed Asset Consideration, the Seller and the Purchaser agree that, promptly following the date on which (i) any Prohibiting Order is issued, or (ii) either the Seller or the Purchaser (or any member of their respective Groups) become aware that there is a reasonable possibility that a Prohibiting Order might be issued:
- (A) the Seller and the Purchaser shall use their reasonable endeavours to co-operate with each other to agree, promptly and in any event prior to Completion, that portion of the Initial Cash Consideration which is properly allocable to those Business Assets and Assumed Liabilities which would, in the circumstances described in Clause 4.1, constitute Delayed Items (and in connection therewith, each of the Seller and the Purchaser shall provide, or procure that there is provided, to the other and the other’s advisers, without charge, such reasonable access to all books and records and information relating to the Delayed Items as is reasonably necessary to agree and determine the allocation of the relevant amount of the Initial Cash Consideration to the relevant Delayed Items); and
  - (B) in circumstances where the Seller and the Purchaser fail to agree the amount of the Delayed Asset Consideration within ten (10) Business Days following the date on which (i) the relevant Prohibiting Order is issued or (ii) either the Seller or the Purchaser (or any member of their respective Groups) becomes aware that there is a reasonable possibility that the relevant Prohibiting Order might be issued, the Delayed Asset Consideration shall be deemed to be an amount equal to x per cent. of the Initial Cash Consideration where x is the percentage of the aggregate Business contribution for the financial period ended 31 December 2010 (as shown in the VDD Report (making necessary adjustments to reflect changes in the transaction perimeter)) which is attributable to the Brand(s) of which the Delayed Items form part.
- 4.4 Where the Completion Date for the purposes of effecting the sale and purchase of the Remaining Items would otherwise fall during the period in which the amount of the Delayed Asset Consideration is being determined in accordance with the foregoing Clause 4.3, such date shall be delayed until the earlier of: (i) the date falling immediately

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prior to the Termination Date or (ii) the date falling three (3) Business Days after (but not including) the date on which the Delayed Asset Consideration amount is determined in accordance with the foregoing Clause 4.3, PROVIDED THAT (for the avoidance of doubt) nothing in this Clause 4.4 shall operate to delay Completion of the sale and purchase of the Business Assets where a Prohibiting Order is not in effect on the date which, in accordance with the other provisions of this Agreement, would constitute the Completion Date.

- 4.5 From and after Completion, the Purchaser and the Seller shall, and shall procure that the relevant members of their respective Groups shall, continue to seek to obtain the lifting of the Prohibiting Order relating to the Delayed Items or the transfer thereof in accordance with the parties' respective obligations pursuant to Clause 3.
- 4.6 From and after Completion and until the Delayed Asset Transfer with respect to any Delayed Item occurs (a "**Delay Period**"), the relevant Business Seller will retain ownership of such Delayed Item and will operate the Business as it relates to such Delayed Item for the benefit of the GSK Group. During the Delay Period, neither Purchaser nor any member of the Purchaser's Group shall exercise any form of control over such Delayed Item and the Seller agrees and acknowledges that the provisions of Clause 6 shall continue to apply *mutatis mutandis* in respect of such Delayed Items for the duration of the Delay Period.
- 4.7 Subject to Clause 4.6, the completion of a transfer of each Delayed Item shall be effected on the date which falls three (3) Business Days following the date on which the lifting of the Prohibiting Order is obtained in accordance with this Agreement unless the parties agree that, in the interests of their mutual convenience, such date should be the last Business Day of the calendar month in which the lifting of the Prohibiting Order is so obtained in accordance with this Agreement (the "**Delayed Asset Transfer Date**"). Upon any Delayed Asset Transfer, the Delayed Asset Consideration in respect of that Delayed Item shall be payable in accordance with Clause 11, the provisions of which shall apply *mutatis mutandis* (and the provisions of Clause 8 shall also apply *mutatis mutandis* to adjust such Delayed Asset Consideration).
- 4.8 Unless otherwise specified in this Agreement, (i) any Delayed Asset Transfer Date shall be deemed to be the "**Completion Date**" and (ii) any Delayed Asset Transfer shall be deemed to be the "**Completion**", in respect of the completion of the sale and transfer of each Delayed Item for all purposes of this Agreement (including for purposes of the Assumed Liabilities constituting Delayed Items) and the provisions of this Agreement shall operate accordingly in respect of such Delayed Item.
- 4.9 At any time on or after the date that is the first anniversary of Completion and PROVIDED THAT the Purchaser has complied with its obligations pursuant to Clause 4.5, the Purchaser may, by delivery of written notice to Seller (an "**Abandonment Notice**"), elect to abandon the purchase of such Delayed Item with immediate effect. The delivery of an Abandonment Notice with respect to one Delayed Item will not preclude subsequent delivery of any Abandonment Notice with respect to any other Delayed Item.

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## 5. **Purchaser's Right to Terminate**

- 5.1 If a Material Adverse Change has arisen or occurred and is subsisting at Completion, or at any time prior to Completion a Material Adverse Change has arisen or occurred which is not capable of remedy prior to Completion, the Purchaser may terminate this Agreement with immediate effect by notice in writing to the Seller.
- 5.2 During the Pre-Completion Period, the Seller shall notify the Purchaser immediately upon becoming aware of any Material Adverse Change.
- 5.3 If the Purchaser becomes entitled to terminate this Agreement under Clause 5.1 and the Purchaser fails to serve written notice on the Seller in accordance with Clause 5.1, the Purchaser shall:
- (A) be deemed to have waived its right to terminate this Agreement pursuant to such Clause; and
  - (B) not be entitled to make any claim for damages or exercise any other right, power or remedy under this Agreement or otherwise provided by law in respect of the Material Adverse Change giving rise to such right to give notice to terminate.
- 5.4 This Agreement may not be rescinded, repudiated or terminated by any party (whether before or after Completion) otherwise than in accordance with (and to the extent permitted by) Clauses 3 or 5.1 or by an agreement in writing signed by all the parties hereto.
- 5.5 In the event that this Agreement is terminated or terminates in accordance with Clause 5.1 the obligations of each party under this Agreement (except for those contained in Clauses 24, Clauses 29.2 and 29.3, Clause 34, Clauses 36, 37 and 38 and Clauses 40 to 49 (inclusive)) shall immediately terminate PROVIDED THAT the rights and liabilities of the parties which have accrued prior to termination shall subsist.

## 6. **Pre-Completion undertakings**

- 6.1 Subject to the terms and conditions of this Agreement, the Seller and the Purchaser shall use all reasonable endeavours to procure that Completion occurs and, without prejudice to the generality of the foregoing, shall use all reasonable endeavours to cooperate with each other on and after the date of this Agreement to consummate the transactions contemplated by this Agreement.
- 6.2 Subject to Clause 6.4, between the date of this Agreement and Completion (both dates inclusive) (the "**Pre-Completion Period**"), the Seller shall exercise all rights available to it:
- (A) to procure that the Business will be carried on in the ordinary course in the same manner as it was operated during the six (6) months preceding the date of this Agreement and shall use all reasonable endeavours to maintain its trade and trade connections; and

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(B) in particular to procure that each applicable member of the GSK Group:

(i) uses all commercially reasonable endeavours:

- (a) to maintain and keep any Regulatory Permits and ensure that all filings and notifications required to be made in respect of the same are made in accordance with past practice during the six (6) months preceding the date of this Agreement; and
- (b) to progress, in accordance with past practice during the six (6) months preceding the date of this Agreement, any applications, submissions, filings or other correspondence initiated by such member of the GSK Group prior to the date of this Agreement relating to the grant of new NDAs, approvals, licences, permits, certificates, registrations, exemptions and/or authorisations in respect of the Business,

unless (in either case) requested by the Purchaser or required by any applicable Governmental Entity to amend, cancel or surrender any such Regulatory Permits, applications, submissions or filings;

- (ii) continues to Commercialise the Products in accordance with past practice during the six (6) months preceding the date of this Agreement and, in particular, shall not materially accelerate or increase the quantity of Products distributed to the relevant distributors, except where such acceleration or increase results from an actual increase in the orders of the relevant Products by the relevant distributor without an unusual or increased level of solicitation by a member of the Seller's Group intended to result in seasonably adjusted inventory levels of Products materially in excess of normal levels;
- (iii) maintains the level of Business Inventory held for use in the Business in accordance with past practice during the six (6) months preceding the date of this Agreement;
- (iv) complies with the Quality Management System to ensure that the Products sold by the Business comply with the applicable requirements of GMP;
- (v) notifies the Purchaser in writing of any actual safety issue in respect of any Product (as soon as reasonably practicable after becoming aware of the same) which issue the relevant member of the GSK Group, acting reasonably and in good faith, considers material in the context of the Manufacture or Commercialisation of such Product;
- (vi) continues to support trade marketing, advertising and promotion in relation to the Business in accordance with the relevant Brand Activation Grid;

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- (vii) pays all renewal and other official registry fees in relation to the Trade Marks included within the Business Intellectual Property and ensures that all filings and notifications required to be made in respect of the same are made in accordance with past practice during the twelve (12) months preceding the date of this Agreement, and progresses in accordance with past practice during the twelve (12) months preceding the date of this Agreement any applications or filings initiated by such member of the GSK Group prior to the date of this Agreement relating to the grant of new Trade Marks or the defence or the maintenance of Trade Marks included within the Business Intellectual Property; and
- (viii) notifies the Purchaser in writing as soon as reasonably practicable after becoming aware of any third party infringement of its Business Intellectual Property which has a material impact on the relevant Brand.

6.3 Subject to Clauses 6.2 and 6.4, during the Pre-Completion Period, the Seller shall exercise all rights available to it to procure that no member of the GSK Group will undertake any of the acts or matters listed in Schedule 3 in relation to the Business without the prior written consent of the Purchaser (such consent not to be unreasonably withheld or delayed).

6.4 Neither Clause 6.2 nor Clause 6.3 shall operate so as to restrict or prevent:

- (A) any matter reasonably undertaken in response to events beyond the control of any member of the GSK Group with the intention of minimising any adverse effect of such events where it is not reasonably practicable in the circumstances for the Seller to have obtained the consent of the Purchaser before such matter is undertaken PROVIDED THAT the Seller shall inform the Purchaser of the relevant matter and circumstances as soon as reasonably practicable after doing so;
- (B) the completion or performance of any obligations undertaken pursuant to any contract or arrangement entered into prior to the date of this Agreement to the extent that such completion or performance is due prior to Completion;
- (C) any matter undertaken at the written request of the Purchaser;
- (D) any matter contemplated by any Seller's Transaction Document or any action taken by any member of the GSK Group pursuant to any Seller's Transaction Document;
- (E) any action or omission which any member of the GSK Group is required to take or omit to take by any applicable law or regulation, any Tax Authority or Governmental Entity;
- (F) any matter or action undertaken in connection with the GSK Group Reorganisation Plans;
- (G) any disposal of Business Inventory, obsolete assets or redundant assets, or any payment of cash, in each case in the ordinary course of trading or in a manner

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which is not inconsistent with the operational, investment and/or financial plans of the GSK Group for the Pre-Completion Period as described in the Information Memorandum (including, without limitation, in the Management Plan, as set out therein) and/or the Management Presentation;

- (H) any matter necessary for the purposes of separating the Shared Business Contracts or the assets or business which relate to both the Business and the GSK Business in accordance with this Agreement or the Separation Plan;
- (I) any matter or action undertaken in response to (i) any notice, request, order, demand or correspondence received from any Governmental Entity in connection with any Product, or (ii) incidents concerning Products, in any such case in accordance with GSK's policies and procedures from time to time in force (including the Quality Management System), which matter or action may include, without limitation to the generality of the foregoing, instigating recalls of Products or issuing safety notifications in respect of relevant Products, PROVIDED HOWEVER THAT the Seller shall inform the Purchaser of the relevant matter or action as soon as reasonably practicable after undertaking the same; or
- (J) any repackaging of any Product PROVIDED THAT such repackaging is in compliance with applicable law and regulation.

## 7. Consideration

7.1 The initial aggregate consideration payable at Completion for the sale of the Business and the Business Assets shall be:

- (A) the payment by the Purchaser to the Seller (on behalf of itself and the other Business Sellers) of an amount equal to the aggregate of:
  - (i) the Gross Price; and
  - (ii) the Provisional Current Asset Amount,

(such aggregate amount being the “**Initial Cash Consideration**”, payable in accordance with Clause 11.3); and

- (B) the assumption by the Purchaser of the Assumed Liabilities.

7.2 Following agreement or determination of the Business Current Asset Adjustment Amount, the Initial Cash Consideration shall be adjusted in accordance with Clause 8 in order to determine the final aggregate cash consideration for the sale of the Business Assets (the “**Final Cash Consideration**”). The Final Cash Consideration may only be further adjusted as specifically provided elsewhere in this Agreement.

7.3 The Initial Cash Consideration, as adjusted to become the Final Cash Consideration, the assumption of the Assumed Liabilities and any other payment made under this Agreement to the Seller shall, in each case, be exclusive of any amounts in respect of Sales Tax.

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- 7.4 The Initial Cash Consideration shall be payable in accordance with Clause 11.3 and may be adjusted only under Clause 8 and the other terms of this Agreement, provided however that the Purchaser shall be permitted to withhold from the payment of the Initial Cash Consideration and the Business Current Asset Adjustment Amount any Tax required by law to be withheld or deducted from the Initial Cash Consideration, or as the case may be, the Business Current Asset Adjustment Amount.
- 7.5 The Purchaser shall prepare, or procure the preparation of, a draft of the Consideration Allocation Statement, which shall be delivered to the Seller within twenty-one (20) days of the date of this Agreement (the “**Draft Consideration Allocation Statement**”).
- 7.6 The Seller shall have a period of fifteen (15) days (the “**Consideration Allocation Statement Review Period**”) after the delivery to it of the Draft Consideration Allocation Statement to review the Draft Consideration Allocation Statement, and within such Consideration Allocation Statement Review Period may request (in writing) an adjustment to be made to any allocation set out therein. If no such written request is presented to the Purchaser within the Consideration Allocation Statement Review Period, then the Draft Consideration Allocation Statement shall be deemed to have been agreed and approved by the Seller and the Purchaser, shall be final and binding upon them and shall constitute the “**Consideration Allocation Statement**” for all purposes of this Agreement.
- 7.7 If any such written request as is referred to in Clause 7.6 is presented to the Purchaser within the Consideration Allocation Statement Review Period, then the Purchaser and the Seller shall attempt to resolve the matter in dispute between them in good faith negotiations. In the event that the Purchaser and the Seller fail to agree the matter in dispute between them within fifteen (15) days following delivery to the Purchaser of such a written request, and unless the Seller and the Purchaser agree in writing to extend the period in which they may agree such allocation, the Seller and the Purchaser agree that that each shall adopt its own allocation of the Initial Cash Consideration for all purposes (including Tax) and, for the avoidance of doubt, neither party shall have any liability to the other for any actions, claims, demands, proceedings, judgments, liabilities, loss, damages, payments, costs and expenses arising out of their failure to agree the Consideration Allocation Statement.
- 7.8 Following agreement or determination of the Consideration Allocation Statement, the agreed or determined allocation of the Initial Cash Consideration shall be adopted by the Seller and the Purchaser for all purposes (including Tax).
- 7.9 Following agreement or determination of the Completion Current Asset Statement in accordance with Schedule 8, the Purchaser and the Seller shall discuss in good faith to what extent (if any) the Consideration Allocation Statement should be amended to represent an agreed or determined allocation of the Final Cash Consideration.
- 7.10 Should the Purchaser and the Seller agree to amend the Consideration Allocation Statement in accordance with Clause 7.9, the allocation of the Final Cash Consideration thus agreed or determined shall be adopted by the Seller and the Purchaser for all purposes (including Tax).

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- 7.11 For the avoidance of doubt, it is understood and agreed by the parties that any valuation of assets and liabilities used in order to determine the allocation pursuant to this Clause 7 is not intended to be, and shall not be interpreted as, any assurance by any party as to the value of the assets and liabilities being transferred.
- 7.12 Within ninety (90) days of the determination of the Final Cash Consideration the Purchaser shall provide to the Seller a draft United States Internal Revenue Service Form 8594 (the "**Form 8594**") setting forth:
- (A) the allocation amongst the US Business Inventory the amount allocated to the US Inventory in the Consideration Allocation Statement;
  - (B) the allocation amongst the US Business Intellectual Property the amount allocated to the US Intellectual Property in the Consideration Allocation Statement; and
  - (C) the allocation amongst the Other US Assets the amount allocated to the Other US Assets in the Consideration Allocation Statement.
- 7.13 The Seller shall have thirty (30) days from the date it receives the draft Form 8594 to provide any comments thereon to the Purchaser. If the Seller does not provide any such comments within that thirty (30) day period, the Form 8594 shall be considered final (the "**Final Allocation**"). If the Seller responds with comments within the thirty day period, the Purchaser and the Seller shall seek to resolve any conflicts within the ten (10) day period following the Purchaser's receipt of the Seller's comments. Upon the expiry of that ten (10) day period, if the Purchaser and the Seller cannot agree to a Final Allocation, the matter will be referred to an accounting firm nationally recognised in the United States and which shall be:
- (A) chosen by agreement between the Purchaser and the Seller; and
  - (B) instructed jointly by the Purchaser and the Seller to determine the Final Allocation.
- 7.14 Following agreement or determination of the Final Allocation, the agreed or determined allocation shall be binding on the parties and the Purchaser and the Seller, or as the case may be, the relevant Business Seller and the Purchaser, shall not in any tax filing or in any tax proceeding take a position in relation to the amount allocated to any US Asset which is inconsistent with the Final Allocation.

## **8. Completion Current Asset Statement and adjustments**

- 8.1 The Seller and the Purchaser shall comply with their respective obligations in Schedule 8 in relation to the Completion Current Asset Statement.
- 8.2 If the Business Current Asset Adjustment Amount is a positive amount, the Purchaser shall (not later than seven (7) days after the date on which the Business Current Asset Adjustment Amount is agreed or determined in accordance with Schedule 8) pay to the Seller an amount equal to such Business Current Asset Adjustment Amount, together with an amount equivalent to interest thereon at the Agreed Rate (accrued daily and

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assuming a 365 day year) for the period from, and including, the Completion Date to, but excluding, the date of payment (and for such purposes, the Agreed Rate on the date on which the Business Current Asset Adjustment Amount is agreed or determined shall be deemed to be the Agreed Rate prevailing for the period from, and including, the date on which the Business Current Asset Adjustment Amount is agreed or determined to, but excluding, the date of payment).

8.3 If the Business Current Asset Adjustment Amount is a negative amount, the Seller shall (not later than seven (7) days after the date on which the Business Current Asset Adjustment Amount is agreed or determined in accordance with Schedule 8) pay to the Purchaser an amount equal to the Business Current Asset Adjustment Amount (expressed as a positive amount), together with an amount equivalent to interest thereon at the Agreed Rate (accrued daily and assuming a 365 day year) for the period from, and including, the Completion Date to, but excluding, the date of payment (and for such purposes, the Agreed Rate on the date on which the Business Current Asset Adjustment Amount is agreed or determined shall be deemed to be the Agreed Rate prevailing for the period from, and including, the date on which the Business Current Asset Adjustment Amount is agreed or determined to, but excluding, the date of payment).

8.4 The payment referred to in this Clause 8 shall constitute an adjustment to the Initial Cash Consideration and shall be made in immediately available funds in Dollars without any set off, restriction or condition by telegraphic transfer to the Purchaser's Bank Account (in the case of a payment by the Seller) or to the Seller's Bank Account (in the case of a payment by the Purchaser). For the avoidance of doubt, the provisions of Clause 30.1 shall apply to any such payment.

## **9. Intra-Group Guarantees**

9.1 The Purchaser, for itself and its successors and assigns, covenants that, at any time and from time to time on or after Completion, it will execute and deliver, or procure the execution and delivery of, all such instruments of assumption and acknowledgements or take such other action as the Seller may reasonably request in order to effect the release and discharge in full of any Assurance given by any member of the GSK Group to any person (including to another member of the GSK Group) in respect of any Assumed Liability, and the Purchaser's assumption of, and the substitution of an appropriate member of the Purchaser's Group as the primary obligor in respect of, each such Assurance shall be, in each case, on a non-recourse basis to the GSK Group. Pending such release and discharge, the Purchaser hereby agrees with the Seller (on behalf of itself and each member of the GSK Group) that it will assume and pay and discharge when due, and indemnify each member of the GSK Group against any and all Losses arising out of, all such Assurances.

## **10. Sales Tax**

10.1 The Purchaser, the Seller and each Business Seller shall cooperate to take all reasonable steps, claims or elections to minimise any Sales Tax payable under or in connection with this Agreement.

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- 10.2 Notwithstanding Clause 10.1, the Purchaser shall pay to the Seller and each Business Seller on demand:
- (A) an amount equal to 50% of any Non-Canadian Sales Tax:
    - (i) for which the Seller or that Business Seller (as the case may be) is liable to account to any Tax Authority in connection with or as a result of this Agreement or any transfer, sale, supply, use or transaction made pursuant to or envisaged or contemplated by this Agreement; and
    - (ii) which the Purchaser is unable to recover from that Tax Authority by way of credit or repayment; and
  - (B) an amount equal to any Canadian Sales Tax for which the Seller or that Business Seller (as the case may be) is liable to account to any Tax Authority in connection with or as a result of this Agreement or any transfer, sale, supply, use or transaction made pursuant to or envisaged or contemplated by this Agreement.
- 10.3 The Seller and each Business Seller shall provide the Purchaser with any valid documentation that may be required to enable the Purchaser to receive a credit or deduction for any Sales Tax arising in connection with or as a result of this Agreement or any transfer, sale, supply, use or transaction made pursuant to or envisaged or contemplated by this Agreement, where applicable under local law.
- 10.4 The Seller and the Business Sellers agreed to comply with all applicable bulk sale notice requirements and obtain all tax clearance certificates necessary to extinguish the Purchaser's liability for any pre-closing Taxes due and owing by any member of the GSK Group.
- 10.5 The amount of the Non-Compete Consideration shall be inclusive of any applicable amounts in respect of Sales Tax.
- 11. Completion**
- 11.1 Completion of the sale and purchase of the Business Assets shall take place at 3.00 p.m. (London time) on the Completion Date at the offices of the Seller's Solicitors at One Bunhill Row, London EC1Y 8YY.
- 11.2 At Completion, the Seller and the Purchaser shall do, or procure the carrying out of, those things respectively listed in respect of them in Schedule 4 (and for the purposes of this Clause 11.2, the Business Assets referred to in Clause 15.1 and the Business Contracts and Shared Business Contracts referred to in Clause 17.5 shall be deemed to have been acquired by the Purchaser (where applicable, on behalf of the relevant Designated Purchaser) for the purposes of determining whether the Seller has complied with its obligations pursuant to Schedule 4).
- 11.3 The Initial Cash Consideration shall be payable by or on behalf of the Purchaser in immediately available funds in Dollars at Completion as referred to in paragraph 1.2(B) of Schedule 4.

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- 11.4 Receipt of funds in accordance with Clause 11.3 shall constitute a good discharge of the Purchaser in respect of the payment of the Initial Cash Consideration but not, for the avoidance of doubt, in respect of the Purchaser's other obligations under Clause 8 or Clause 11.2.
- 11.5 The Purchaser shall not be obliged to complete the purchase of the Business Assets unless the Seller complies with all of its obligations under Clause 11.2.
- 11.6 The Seller shall not be obliged to complete the sale of the Business Assets unless the Purchaser complies with all of its obligations under Clause 11.2.
- 11.7 If the respective obligations of the Seller and/or the Purchaser under Clause 11.2 are not complied with on the Completion Date, the party which has complied with its obligations under Clause 11.2 may:
- (A) defer Completion by a period of not more than twenty-eight (28) days (so that the provisions of this Clause 11 shall apply to Completion as so deferred);
  - (B) waive all or any of the requirements contained or referred to in Clause 11.2 at its discretion and proceed to Completion so far as practicable (without limiting its rights under this Agreement and/or applicable Laws); or
  - (C) terminate this Agreement, without liability on its part.

## 12. Compensation Payment

- 12.1 If Completion does not occur on the Completion Date as a consequence of the Financing Condition not having been satisfied or waived and the Seller elects to terminate this Agreement in accordance with Clause 11.7(C) then, subject to the Purchaser not having breached any provision of Clause 30, the Purchaser shall pay to the Seller an amount equal to US\$ 25,000,000 (together with an amount in respect of any Sales Tax for which the Seller or any Business Seller is liable to account to any Tax Authority in respect of any supply for which that sum is deemed to be the consideration) (the "**Compensation Payment**").
- 12.2 The Compensation Payment shall be payable by or on behalf of the Purchaser in immediately available funds in Dollars to the Seller's Bank Account promptly following the date on which Completion was scheduled to occur (and in any event within five (5) Business Days following such date).
- 12.3 Notwithstanding any other provision in this Agreement, in the event that the Purchaser pays the Compensation Payment pursuant to this Clause 12, then, in the absence of fraud and save in the circumstances set out in Clause 12.7, the rights, obligations and liabilities (if any) of each party under this Agreement and each other Purchaser's Transaction Document or Seller's Transaction Document (whether arising in equity or law) shall automatically end (except for the provisions of Clauses 29.2, 29.3, 41, 42, 43, 47, 48 and 49 which shall survive any termination) regardless of whether such rights, obligations and/or liabilities have arisen or accrued before termination.

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- 12.4 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 12.7, each of the parties hereto expressly acknowledges and agrees that, with respect to any termination of this Agreement under circumstances in which the Compensation Payment is payable pursuant to this Clause 12, payment of the Compensation Payment shall constitute liquidated damages with respect to any claim for damages or any other claim which the Seller (which, for purposes of this Clause 12.4 shall be deemed to include each Business Seller) would otherwise be entitled to assert against the Purchaser, any member of the Purchaser's Group, any of the Purchaser's Financing Banks or any of their respective assets, with respect to any such termination of this Agreement, and shall constitute the sole and exclusive remedy with respect to any such termination of this Agreement of the Seller and each member of the GSK Group or other person against the Purchaser, any member of the Purchaser's Group or any of the Purchaser's Financing Banks for any loss suffered as a result of the failure of the transactions contemplated herein to be consummated, and upon payment of such amount, none of the Purchaser, nor any member of the Purchaser's Group, nor any of the Purchaser's Financing Banks shall have any further liability or obligation relating to or arising out of this Agreement.
- 12.5 The parties expressly acknowledge and agree that, in light of the difficulty of accurately determining actual damages with respect to the foregoing upon any such termination of this Agreement under circumstances in which the Compensation Payment is payable pursuant to this Clause 12, the right to such payment:
- (A) constitutes a reasonable estimate of the damages that will be suffered by reason of any such termination of this Agreement; and
  - (B) shall be in full and complete satisfaction of any and all damages arising as a result of any such termination of this Agreement.
- 12.6 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 12.7, each of the parties hereto expressly acknowledges and agrees that, with respect to any termination of this Agreement:
- (A) arising as a consequence of any material non-compliance or breach by the Purchaser of its obligations under this Agreement (including, for the avoidance of doubt and notwithstanding Clause 11.5, any failure of the Purchaser to comply with its obligations on the Completion Date in accordance with Clause 11 in circumstances in which the Seller is ready and able to comply with its obligations on the Completion Date in accordance with Clause 11); and
  - (B) in respect of which the Compensation Payment is not payable pursuant to this Clause 12,
- the total aggregate liability of the Purchaser, all members of the Purchaser's Group and all of the Purchaser's Financing Banks under this Agreement in respect of such termination, non-compliance or breach shall not in any event exceed an amount equal to US\$ 40,000,000.
- 12.7 Notwithstanding anything to the contrary contained in this Agreement, nothing in this Clause 12 shall relieve the Purchaser or any other member of the Purchaser's Group

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from liability for any wilful breach of their respective representations, warranties, covenants or agreements set forth in this Agreement or any Financing Agreement.

**13. Action after Completion**

- 13.1 To the extent that the provisions of Clause 16 do not apply, during the period from and including the Completion Date until and including the date falling three (3) months after the Completion Date, the Seller shall be entitled to send (or to procure that there is sent) to any third party supplier, customer and other business contact in respect of the Business one or more notices in such format as the Seller may reasonably determine informing them of the transfer of the Business PROVIDED THAT the contents of any such notice does not disclose information that is any more extensive than that contained in any Agreed Form announcement (including, for the avoidance of doubt, the Press Announcements).
- 13.2 The Seller shall procure that originals of all notices, correspondence, information, orders or enquiries relating solely to the Business and copies of the relevant parts of all notices, correspondence, information, orders or enquiries relating partly to the Business and partly to one or more of the remaining businesses or assets of the GSK Group which are received by any member of the GSK Group on or after Completion shall be passed as soon as practicable to the Purchaser.
- 13.3 The Purchaser shall procure that originals of all notices, correspondence, information, orders or enquiries relating solely to one or more of the remaining businesses or assets of the GSK Group and copies of the relevant parts of all notices, correspondence, information, orders or enquiries relating partly to the Business and partly to one or more of the remaining businesses or assets of the GSK Group which are received by any member of the Purchaser's Group on or after Completion shall be passed as soon as practicable to the relevant member of the GSK Group.
- 13.4 If, after Completion, it is determined by the United States Internal Revenue Service or by either the Purchaser or the Seller that any change is required to be made to the materials delivered pursuant to Clause 13.2, the Seller and the Purchaser shall discuss in good faith the changes required to be made and shall arrange for revised documents to be delivered within the time limits prescribed by applicable law.
- 13.5 Within thirty (30) days of Completion, the Purchaser and the Seller shall jointly execute an election under proposed subsection 56.4(7) of the ITA and the corresponding provisions of any applicable provincial statute. The election shall be made using the applicable prescribed form, if any, or otherwise filed in a manner acceptable to the Canada Revenue Agency or the applicable provincial Tax authorities, as the case may be. The Purchaser and the Seller agree that no portion of the purchase price allocable or payable for the Canadian Business Assets is specifically allocated to a restrictive covenant hereunder as defined in the proposed definition pursuant to the ITA.

**14. Wrong Pockets**

- 14.1 Without limiting sub-Clause 17.6(B)(i) or sub-Clause 17.7(C), all payments from third parties which are received by the Seller or any other member of the GSK Group on or after Completion, to the extent to which they relate to the Business sold, or any of the

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Business Assets transferred, pursuant to this Agreement and which do not constitute Excluded Assets shall be promptly paid over (and in any event within 10 Business Days of such receipt) to the Purchaser (or to such other member of the Purchaser's Group as the Purchaser may nominate) and, pending such payment, shall be held in trust (or procured to be held in trust) by the Seller or the applicable member of the GSK Group for the Purchaser (or such other member of the Purchaser's Group as the Purchaser may nominate).

- 14.2 All payments from third parties which are received by the Purchaser or by any other member of the Purchaser's Group on or after Completion, to the extent to which they relate to (i) one or more of the remaining businesses or assets of the GSK Group or (ii) any assets or liabilities of the GSK Group which did not form part of the Business Assets or the Assumed Liabilities (including, notwithstanding the provisions of Clauses 21.1 and 21.2, any money or items received by any member of the Purchaser's Group in respect of the Receivables or which constitute Excluded Assets) shall be promptly paid over (and in any event within 10 Business Days of such receipt) to the Seller (or to such other member of the GSK Group as the Seller may nominate) and, pending such payment, shall be held in trust (or procured to be held in trust) by the Purchaser or the applicable member of the Purchaser's Group for the Seller (or such other member of the GSK Group as the Seller may nominate).
- 14.3 Without prejudice to any other provision of this Agreement, the parties agree that they do not intend for members of the Purchaser's Group after Completion to be vested with, or otherwise to have under their possession or control, any property or asset (tangible or intangible and including any rights pursuant to any contracts, arrangements and undertakings including, without limitation, any licences of Intellectual Property or know-how, but otherwise excluding Intellectual Property and know-how) which was, in the twenty-four (24) months prior to the Completion Date, used by a member of the GSK Group other than exclusively in relation to the Business ("**Non-Business Assets**").
- 14.4 Without prejudice to any restriction or limitation on the extent of any party's obligations under this Agreement or to the provisions of Clause 26, if, after Completion, any party to this Agreement shall become aware that any Non-Business Asset is vested in, or otherwise under the possession or control of any member of the Purchaser's Group, then the transfer of that Non-Business Asset shall be regarded as void *ab initio* and the Purchaser shall, or shall procure that any other relevant member of the Purchaser's Group will, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form reasonably satisfactory to the Seller to vest such property or asset in, and transfer the possession and control of the same to, the Seller or a company nominated by the Seller as soon as reasonably practicable after so becoming aware.
- 14.5 Any property or asset transferred to the Seller or to any other member of the GSK Group pursuant to Clause 14.4 shall be transferred for an amount equal to the market value of such property or asset, which amount shall be paid by the Seller (on behalf of the relevant member of the GSK Group, as the case may be) to the Purchaser on the date of transfer of the property or asset and, at the same time, an equal and upwards adjustment shall be made by the Purchaser to the Seller as an adjustment to the consideration payable by the Purchaser under this Agreement and the amounts so payable shall be set off such that no funds shall flow in relation to that payment

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PROVIDED THAT the Seller shall indemnify the Purchaser (or the relevant member of the Purchaser's Group, as the case may be) in full in respect of any Tax which the Purchaser (or the relevant member of the Purchaser's Group, as the case may be) is liable to pay as a result of the transfer and/or the upward adjustment of the consideration which would not otherwise been liable to pay but for the transfer and/or the upward adjustment of the consideration.

**15. Third party consents for the transfer of Business Assets**

15.1 Where any consent, approval or agreement of any third party (other than of a relevant anti-trust authority required pursuant to Schedule 2) (a "**Third Party Consent**") is required for the transfer of any of the Business Assets (excluding any consent, approval or agreement required for the transfer of any Regulatory Permit, any Business Contract, any Shared Business Contract or the performance of any Business Contract or Shared Business Contract by the Purchaser or relevant Designated Purchaser) and such Third Party Consent has not been obtained at or before Completion:

- (A) the failure to obtain such Third Party Consent shall not delay Completion and the parties shall, subject to the terms and conditions of this Agreement, proceed to Completion; but
- (B) (subject to any transfer by operation of law) the sale of the relevant Business Asset shall not take effect, notwithstanding Completion, until that Third Party Consent has been obtained.

15.2 Following Completion and until the earliest of:

- (A) such date as the relevant Third Party Consent is obtained (the "**Third Party Consent Date**");
- (B) such date as any member of the GSK Group or any member of the Purchaser's Group receives a notice or other communication from the relevant third party whose Third Party Consent is required to the transfer of the relevant Business Asset positively refusing such Third Party Consent (the "**Third Party Refusal Date**"); and
- (C) the Contract Long Stop Date,

the Seller and the Purchaser shall procure that (in the case of the Seller) the relevant Business Seller(s) and (in the case of the Purchaser) the relevant Designated Purchaser(s) shall each use their respective reasonable endeavours to obtain the relevant Third Party Consent as soon as possible after Completion and the Seller or the Business Seller(s) shall be responsible for any costs and expenses paid or payable to any third party.

15.3 Following Completion and until the earliest of:

- (A) the relevant Third Party Consent Date;
- (B) the relevant Third Party Refusal Date; and

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(C) the Contract Long Stop Date,

the relevant Business Seller(s) shall be deemed to hold the benefit of the relevant Business Asset referred to in Clause 15.1 on trust for the relevant Designated Purchaser.

15.4 If any Third Party Consent:

(A) has not been obtained by the Contract Long Stop Date; or

(B) has been positively refused by the relevant third party whose Third Party Consent is required to the relevant Business Asset transfer (such refusal to be notified by the relevant member of the Purchaser's Group or GSK Group receiving such refusal to the Seller or the Purchaser (as applicable) as soon as reasonably possible following receipt),

the relevant Business Asset shall be deemed to have been excluded from the sale under this Agreement and the Purchaser acknowledges and agrees that the Purchaser, the relevant Designated Purchaser(s) or another member of the Purchaser's Group shall be solely responsible for procuring its own replacement or equivalent asset (if required) and that no member of the GSK Group shall have any responsibility for procuring any such replacement or equivalent asset.

15.5 If, pursuant to Clause 15.4, any Business Asset referred to in Clause 15.1 is excluded from the sale under this Agreement then, notwithstanding that (i) a value may have been attributed to the Business Asset so excluded in the calculation of the Initial Cash Consideration or the Final Cash Consideration, and/or (ii) the Purchaser, the relevant Designated Purchaser(s) or another member of the Purchaser's Group may incur costs, expenses or liabilities in procuring a replacement or equivalent asset, neither the Seller nor any other member of the GSK Group shall be liable to make any payment to the Purchaser, the relevant Designated Purchaser(s) or any other member of the Purchaser's Group, whether in respect of the amount, if any, of consideration apportioned to that Business Asset for the purposes of Clause 7, or any such costs, expenses or liabilities or otherwise, and neither the Purchaser, the relevant Designated Purchaser(s) nor any other member of the Purchaser's Group shall have any right to call for any adjustment to the Initial Cash Consideration or the Final Cash Consideration or for any equalisation, compensatory or other payment from the Seller (or any other member of the GSK Group) in respect of the Business Asset so excluded.

15.6 For the avoidance of doubt, the provisions of this Clause 15 shall not apply to the Business Contracts or the Shared Business Contracts, the transfer of which is governed by Clause 17, or the Regulatory Permits, the transfer of which is governed by Clause 20.

## 16. Business Inventory

16.1 The Seller shall procure that, at Completion, each relevant member of the GSK Group transfers to the Purchaser (or relevant Designated Purchaser, as the case may be) such Business Inventory as is beneficially owned by, or on behalf of, that member of the GSK Group at Completion (each such member of the GSK Group being a "Business

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**Inventory Transferor**”) with the intent that legal and beneficial title to, and risk in, the Business Inventory shall pass to the Purchaser (or relevant Designated Purchaser, as the case may be) at Completion.

16.2 Each Business Inventory Transferor shall be entitled to issue to the Purchaser (or relevant Designated Purchaser, as the case may be) appropriate invoices and other sales documentation in connection with the transfer at Completion of any Business Inventory by such Business Inventory Transferor (including, without limitation to the generality of the foregoing and for the avoidance of doubt, any Tax-related invoices in respect of the transfer of Business Inventory by the relevant Business Inventory Transferor), provided that, for the avoidance of doubt, no such invoice or documentation shall in any way cause or constitute an increase in the consideration otherwise payable under this Agreement for such Business Inventory.

## 17. **Transfer of Business Contracts and Shared Business Contracts**

### *Novation*

17.1 With effect from the date of this Agreement until and including the Contract Long Stop Date (or, where applicable, the relevant Contract Long Stop Date) the Seller shall procure that each Business Contract Transferor, and the Purchaser shall procure that each relevant Designated Purchaser, shall use all commercially reasonable endeavours to procure that with effect from Completion, or as soon as possible thereafter:

- (A) each of the Business Contracts is novated in favour of the relevant Designated Purchaser with the intent that, with effect from whichever is the later of Completion and the date of the relevant novation, the relevant Designated Purchaser shall perform the relevant Business Contract and be bound by it as if the relevant Designated Purchaser were a party to that Business Contract in lieu of the relevant Business Contract Transferor as from Completion or the date of novation (as applicable) (a “**Novation**”); and
- (B) an arrangement is entered into with the relevant counterparty to each Shared Business Contract, the effect of which shall be that the benefit and burden of the relevant part of the Shared Business Contract which relates exclusively to the Business (or the relevant part of the Business that is transferred to the Purchaser on Completion) (the “**Relevant Part**”) is severed from such Shared Business Contract and an agreement equivalent to such Shared Business Contract is entered into between the relevant counterparty and the relevant Designated Purchaser in respect of the Relevant Part (a “**Separation**”). For the avoidance of doubt, no part of any such Shared Business Contract shall be severed and transferred to any Designated Purchaser insofar as it relates to any GSK Business, any part of the Business which is not transferred to the Purchaser on Completion, any product other than the Products, or any Excluded Asset.

17.2 The Seller and the Purchaser hereby agree that their respective obligations pursuant to Clause 17.1 to procure that (i) (in the case of the Seller) each Business Contract Transferor, and (ii) (in the case of the Purchaser) each relevant Designated Purchaser, shall use all commercially reasonable endeavours to procure:

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(A) the Novation of each Business Contract; and/or

(B) the Separation of each Shared Business Contract,

means (without limitation or prejudice to the generality of the term “all commercially reasonable endeavours”) that, as from the date of this Agreement until and including the earliest of (x) the relevant Novation or Separation (as applicable), (y) the Contract Long Stop Date, and (z) (where applicable) the relevant Contract Long Stop Date:

(a) each relevant Business Contract Transferor:

- (i) shall be responsible for communicating with the relevant counterparty to a Business Contract or Shared Business Contract in respect of its Novation or Separation (respectively) and for promptly preparing, or procuring the preparation of, such draft documentation as is necessary to effect the relevant Novation or Separation;
- (ii) shall cooperate with the relevant Designated Purchaser with a view to procuring the Novation of such Business Contract(s) and/or the Separation of such Shared Business Contracts (as the case may be), in either case with effect from Completion or as soon as possible thereafter; and
- (iii) shall provide (and the Seller shall procure that members of the GSK Group provide) any information for the purposes of procuring such Novation and/or Separation reasonably requested by the relevant counterparty to such Business Contract(s) or Shared Business Contract(s); and

(b) each relevant Designated Purchaser:

- (i) shall cooperate with the relevant Business Contract Transferor with a view to procuring the Novation of such Business Contract(s) and/or the Separation of such Shared Business Contracts (as the case may be), in either case with effect from Completion or as soon as possible thereafter;
- (ii) shall provide (and the Purchaser shall procure that members of the Purchaser’s Group provide) as soon as is reasonably practicable any information for the purposes of procuring such Novation and/or Separation reasonably requested by the relevant counterparty to such Business Contract(s) or Shared Business Contract(s); and
- (iii) [\*\*\*].

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*Costs in effecting Novation or Separation*

17.3 [\*\*\*]

17.4 Subject to Clauses 17.2 and 17.3, the Seller shall procure that the relevant Business Contract Transferor, and the Purchaser shall procure that the relevant Designated Purchaser, shall each be liable for their own respective costs and expenses in procuring the Novation of the Business Contract(s) and/or the Separation of the Shared Business Contract(s) (as the case may be) to which each is, or (in the case of the relevant Designated Purchaser) is proposed to be, a party.

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*Failure to effect Novation or Separation*

- 17.5 In the event of any failure to procure (i) the Novation of any Business Contract in favour of the relevant Designated Purchaser and/or (as the case may be) (ii) the Separation of any Shared Business Contract, in either case with effect from Completion, such failure shall not delay Completion and the parties shall, subject to the terms and conditions of this Agreement, proceed to Completion and the provisions of Clauses 17.5 to 17.9 (inclusive) shall apply in respect of such Business Contracts and/or Shared Business Contracts until the earliest of (i) such time as the relevant Novation or Separation (as applicable) is effected, (ii) the Contract Long Stop Date, (iii) such time as the relevant Business Contract or Shared Business Contract expires or is terminated, or (iv) (where applicable) the relevant Contract Long Stop Date.
- 17.6 If the Novation of any Business Contract or the Separation of any Shared Business Contract has not been effected by the Completion Date, then from the Completion Date until the earliest of (i) such time as the relevant Novation or Separation (as applicable) is effected, (ii) the Contract Long Stop Date, (iii) such time as such Business Contract or Shared Business Contract expires or is terminated, or (iv) (where applicable) the relevant Contract Long Stop Date:
- (A) the obligation of the Seller and the Purchaser to procure respectively that the relevant Business Contract Transferor and relevant Designated Purchaser use all reasonable endeavours to procure the relevant Novation or Separation shall continue;
- (B) subject to Clause 17.7, the following provisions shall apply:
- (i) to the extent permitted under the terms of the relevant Business Contract or Shared Business Contract, the relevant Business Contract Transferor shall be deemed to hold the benefit of that Business Contract, or the benefit of the Relevant Part of that Shared Business Contract (as the case may be), on trust for the relevant Designated Purchaser and the benefit of that Business Contract, or the benefit of the Relevant Part of that Shared Business Contract, shall be provided promptly to the relevant Designated Purchaser;
- (ii) to the extent it is permitted under that Business Contract or Shared Business Contract, the relevant Designated Purchaser shall perform (or procure that there is performed by another member of the Purchaser's Group) for and on behalf of the relevant Business Contract Transferor (but at the Purchaser's expense) the obligations of the relevant Business Contract Transferor under that Business Contract or the Relevant Part of that Shared Business Contract (as the case may be) falling to be performed on or after Completion, provided in each case that reasonable written notice of such obligations is given to the relevant Designated Purchaser;
- (iii) in respect of any licence of Intellectual Property in a Business Contract or the Relevant Part of a Shared Business Contract, until the Novation or, as the case may be, Separation and transfer of the relevant licence

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is effected, the relevant Business Contract Transferor shall to the extent permitted under that Business Contract or Shared Business Contract, sub-license to the relevant Designated Purchaser (to the fullest extent possible) the benefit of that licence; and

- (iv) the Purchaser hereby undertakes to indemnify the Seller and each member of the GSK Group against any and all Losses arising from any act or omission of the relevant Designated Purchaser (or other relevant member of the Purchaser's Group) to perform or comply with (a) any obligation of the relevant Business Contract Transferor (or other member of the GSK Group) which falls to be performed or complied with on or after Completion, as referred to in sub-Clause 17.6(B)(ii) or (b) the terms of any sub-licence granted to the relevant Designated Purchaser under Clause 17.6(B)(iii) which are notified to the relevant Designated Purchaser in writing.

17.7 For the purposes of Clause 17.5, if the performance and discharge by the relevant Designated Purchaser of the obligations and liabilities under a Business Contract or Shared Business Contract would constitute a breach by the relevant Business Contract Transferor of the terms of such Business Contract or Shared Business Contract, the Seller shall procure that, until the earliest of (i) such time as the relevant Novation or Separation (as applicable) is effected, (ii) the Contract Long Stop Date, (iii) such time as such Business Contract or Shared Business Contract expires or is terminated, or (iv) (where applicable) the relevant Contract Long Stop Date, the relevant Business Contract Transferor (or other applicable member of the GSK Group) shall, from the Completion Date, continue as far as reasonably practicable to perform and discharge its obligations under such Business Contract or Shared Business Contract, PROVIDED THAT:

- (A) the Seller shall procure that the relevant Business Contract Transferor shall exercise its rights in respect of such Business Contract or in respect of the Relevant Part of such Shared Business Contract as the relevant Designated Purchaser may direct or approve (acting reasonably) and not otherwise and shall account to the relevant Designated Purchaser for any sums arising thereunder (excluding amounts in respect of Sales Tax for which the Business Contract Transferor or a member of its Group for the purposes of any Sales Tax is required to account);
- (B) the relevant Designated Purchaser (at its own expense) shall provide the relevant Business Contract Transferor with such documents, facilities and assistance (including licensing the relevant Business Contract Transferor any Intellectual Property owned by the relevant Designated Purchaser or relevant member of the Purchaser's Group) (or procure that the same is provided) and/or enter into such other arrangements (or procure that the same are entered into) as the Business Contract Transferor or the Seller shall reasonably deem necessary or require for the purpose of performing and discharging the Business Contract or Relevant Part of the Shared Business Contract (as applicable), in each case in such manner that the Business Contract Transferor is not in breach thereof;

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- (C) the Business Contract Transferor shall be deemed to hold the benefit of such Business Contract, or the Relevant Part of such Shared Business Contract, on trust for the relevant Designated Purchaser (if to do so would not constitute a breach of such Business Contract or Shared Business Contract) and such benefit will be provided promptly to the relevant Designated Purchaser; and
- (D) the relevant Designated Purchaser shall reimburse the Business Contract Transferor any costs and expenses reasonably incurred by the Business Contract Transferor, shall on behalf of the Business Contract Transferor discharge any liabilities in each case arising as part or as a result of such performance and discharge by the Business Contract Transferor, and shall provide all reasonable facilities and assistance to the Business Contract Transferor free of charge for such purpose and the Purchaser shall indemnify the Seller and each member of the GSK Group against any and all Losses, except to the extent that such Losses arise by reason of the Business Contract Transferor's wilful default or negligence in respect of its obligations under this Clause 17.

*Contract Long Stop Date*

17.8 Subject to Clauses 17.11 and 17.12, in relation to any Business Contract or Shared Business Contract, if:

- (A) the Novation or Separation (as applicable) of such Business Contract or Shared Business Contract has not been effected by the Contract Long Stop Date; or
- (B) at any time between the date of this Agreement and the Contract Long Stop Date, any request for a Novation or Separation (as applicable) of such Business Contract or Shared Business Contract is positively refused by the relevant counterparty (such refusal to be notified to the Purchaser by the Seller as soon as reasonably practicable following receipt thereof)) (a "**Third Party Refusal Notice**"); or
- (C) at any time between the date of this Agreement and the Contract Long Stop Date, the Purchaser or relevant Designated Purchaser positively refuses any [\*\*\*] (a "**Purchaser Refusal**"),

then the Seller (for itself and on behalf of the relevant Business Contract Transferor) may elect, in its absolute and unfettered discretion, as follows:

- (i) that the relevant Business Contract or Shared Business Contract (as applicable) shall continue until such time as the relevant Business Contract or Shared Business Contract expires or is terminated, and in such circumstances the provisions of either Clause 17.6 or Clause 17.7 (as applicable) shall continue to apply until such expiration or termination. Where the Seller has made such an election, it shall promptly notify the Purchaser accordingly and the Purchaser (for itself and on behalf of the relevant Designated Purchaser) may serve written

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notice on the Seller requesting it instead to terminate (or to procure the termination of) the relevant Business Contract (or to amend (or to procure the amendment of) the relevant Shared Business Contract such that the Relevant Part thereof shall be terminated) in accordance with the provisions of the following sub-Clause 17.8(ii) PROVIDED THAT where the Purchaser serves such a request:

- (a) any and all Losses arising in connection with such termination or amendment (including, without limitation to the generality of the foregoing, in respect of any early termination or similar fee or payment and all liabilities, costs, expenses and payments suffered or reasonably incurred by the relevant Business Contract Transferor in procuring such termination or amendment (as applicable)) shall be for the account of the Purchaser, which shall indemnify the Seller and each member of the GSK Group for all such Losses; and
  - (b) the Purchaser (or relevant member of the Purchaser's Group) shall be solely responsible for putting in place its own arrangements in respect of the matter the subject of such terminated Business Contract or amended Shared Business Contract and that no member of the GSK Group shall have any responsibility for putting in place any such arrangements; or
- (ii) subject to Clause 17.9, that the relevant Business Contract Transferor take such steps as it may deem necessary or desirable to terminate such Business Contract (or, if applicable, amend such Shared Business Contract such that the Relevant Part thereof shall be terminated):
- (a) in circumstances falling within sub-Clause 17.8(A), (y) as soon as practicable after the Contract Long Stop Date or (z) if possible, on the Contract Long Stop Date;
  - (b) in the case of receipt of a Third Party Refusal Notice, as soon as reasonably practicable following such receipt (whether before or after the Completion Date); and
  - (c) in the case of notification of a Purchaser Refusal, as soon as reasonably practicable following such notification (whether before or after the Completion Date),

and the Purchaser acknowledges and agrees that, in each case described in sub-Clause 17.8(ii), the Purchaser (or relevant member of the Purchaser's Group) shall be solely responsible for putting in place its own arrangements in respect of the matter the subject of such Business Contract or Shared Business Contract and that no member of the GSK Group shall have any responsibility for putting in place any such arrangements.

17.9 If, pursuant to Clause 17.8, the Seller elects to terminate or amend any Business Contract or Shared Business Contract in accordance with sub-Clause 17.8(ii), the Seller shall serve written notice on the Purchaser of such election no later than ten (10)

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Business Days prior to any step being taken to terminate or amend any such Business Contract or Shared Business Contract (as applicable).

- 17.10 If any Business Contract is terminated (or, in the case of a Shared Business Contract, amended such that the Relevant Part thereof is terminated) by the relevant Business Contract Transferor pursuant to Clause 17.8 then, notwithstanding that (i) a value may have been attributed to the Business Contract or Shared Business Contract so terminated or amended in the calculation of the Initial Cash Consideration or the Final Cash Consideration or (ii) the Purchaser, the relevant Designated Purchaser or any other member of the Purchaser's Group may incur costs, expenses or liabilities in putting in place replacement arrangements, neither the Seller, the Business Contract Transferor nor any other member of the GSK Group shall be liable to make any payment to the Purchaser, the relevant Designated Purchaser or any other member of the Purchaser's Group, whether in respect of the amount, if any, of consideration apportioned to that Business Contract or Shared Business Contract for the purposes of Clause 7 or otherwise, and neither the Purchaser, the relevant Designated Purchaser nor any other member of the Purchaser's Group shall have any right to call for any adjustment to the Initial Cash Consideration or the Final Cash Consideration or for any equalisation, compensatory or other payment from the Seller, the Business Contract Transferor or any other member of the GSK Group in respect of the Business Contract or Shared Business Contract so terminated or so amended.
- 17.11 Where the Novation or Separation of a Business Contract or Shared Business Contract (as applicable) constituting a Material Contract has not been effected by the relevant Contract Long Stop Date, the Seller and the Purchaser agree that the provisions of Clauses 17.8 to 17.10 (inclusive) shall not apply. Instead, the provisions of either Clause 17.6 or Clause 17.7 (as applicable) shall continue to apply after the relevant Contract Long Stop Date until such Business Contract or Shared Business Contract expires or is terminated.

*Regulatory Permits*

- 17.12 In relation to any Business Contract or Shared Business Contract, (i) if any Regulatory Permit required for the performance by the Purchaser (or the relevant Designated Purchaser) of its obligations relating to the relevant Business Contract or Shared Business Contract has not been transferred to, or otherwise obtained in the name of, a member of the Purchaser's Group by (a) the Completion Date, or (b) the date of the relevant Novation or Separation (if different) or (ii) if the terms of a Regulatory Permit prevent the Purchaser (or the relevant Designated Purchaser) from Commercialising, for so long as the relevant Regulatory Permit is held in the name of the Seller or the relevant Regulatory Permit Holder (as applicable), the relevant Products which are the subject of such Regulatory Permits, then until the relevant Regulatory Permit has been transferred to, or obtained in the name of, a member of the Purchaser's Group in accordance with Clause 20:
- (A) the obligation set out in Clause 20.1 relating to the transfer of the Regulatory Permit shall continue to apply;
- (B) the Novation or Separation (as the case may be) of the relevant Business Contract or Shared Business Contract shall not take effect and the Seller shall

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procure that, to the extent permitted under the relevant Business Contract or Shared Business Contract, the relevant Business Contract Transferor shall, from the Completion Date, continue to perform its obligations under such Business Contract or Shared Business Contract (as applicable); and

(C) the provisions of sub-Clauses 17.7(A) to 17.7(D) (inclusive) shall apply.

*General*

17.13 Nothing in this Clause 17 shall oblige the Seller to procure the Novation or Separation of any Business Contract or Shared Business Contract (as applicable) if such Novation or Separation would constitute a breach of such Business Contract or Shared Business Contract (as the case may be).

**18. Assumed and Excluded Liabilities**

18.1 Except as otherwise provided in this Agreement, the Purchaser (on behalf of the relevant Designated Purchasers) hereby undertakes to the Seller (for itself and as trustee for each other member of the GSK Group) that with effect from Completion, the Purchaser will (or will procure that the relevant Designated Purchaser or another member of the Purchaser's Group will) duly and properly perform, assume and pay and discharge when due, and indemnify the Seller and each member of the GSK Group against, any and all Losses arising in connection with the Assumed Liabilities.

18.2 Subject always to Clause 18.3, in this Agreement "**Assumed Liabilities**" means the following:

- (A) all obligations and liabilities of the Seller, the Business Contract Transferors and any other member of the GSK Group under the Business Contracts or Shared Business Contracts (as the case may be) to the extent that such obligations or liabilities:
  - (i) in the case of the Shared Business Contracts, relate to the Business; and
  - (ii) are incurred or fall due to be performed, or arise in respect of the period, at or after the Completion Time;
- (B) all obligations and liabilities arising in connection with any coupons, rebates, override arrangements or chargebacks relating to any Product sold at or after the Completion Time;
- (C) all liabilities arising in connection with the condition after the Completion Time of, or any defect arising after the Completion Time in, any Business Inventory;
- (D) all Losses in respect of any claim, action, demand, proceeding or investigation arising out of or relating to the Products (including, for the avoidance of doubt and without limitation, the Manufacture and Commercialisation of the Products), or the sale, use or lease of any of the Business Assets, but only to the extent

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that the circumstances giving rise to such Losses are referable to a period following Completion;

- (E) all other liabilities and obligations which are incurred or fall due to be performed, or arise in respect of the period, from and after the Completion Time in respect of the Business and the Business Assets,

but excluding the Excluded Liabilities.

18.3 Notwithstanding Clauses 18.1 and 18.2, the Seller (on behalf of each member of the GSK Group) hereby undertakes to the Purchaser (for itself and as trustee for each other member of the Purchaser's Group) that with effect from Completion, the Seller will (or will procure that another member of the GSK Group will), duly and properly perform, assume and pay and discharge when due, and indemnify the Purchaser and each member of the Purchaser's Group against, and all Losses arising in connection with the Excluded Liabilities.

18.4 In this Agreement, "**Excluded Liabilities**" means the following:

- (A) any obligations and liabilities under the Business Contracts or Shared Business Contracts (as the case may be) to the extent that such obligations or liabilities are incurred or fall due to be performed, or arise in respect of the period or should have been performed, before the Completion Time;
- (B) any act, neglect, default or omission in respect of any Business Contract or Shared Business Contract committed by the Seller, any Business Contract Transferor or any other member of the GSK Group occurring before the Completion Time;
- (C) any Tax Liability of any member of the GSK Group relating to any period ending on or before Completion;
- (D) all obligations and liabilities arising in connection with any coupons, rebates, override arrangements or chargebacks relating to any Product sold before the Completion Time;
- (E) all liabilities arising in connection with the condition before the Completion Time of, or any defect arising before the Completion Time in, any Business Inventory;
- (F) all Losses in respect of any claim, action, demand, proceeding or investigation arising out of or relating to the Products (including, for the avoidance of doubt and without limitation, the Manufacture and Commercialisation of the Products) or the sale, use or lease of any of the Business Assets, to the extent that the circumstances giving rise to such Losses are referable to a period before Completion
- (G) any obligations or liabilities whatsoever (including in relation to or in connection with any salaries, wages, pensions, benefits, termination or severance payments, or any other obligation or liability) in respect of any current and former employees, consultants, individual independent contractors, temporary

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workers or similar individuals of the Seller or any other member of the GSK Group, and all such individuals who have or are currently performing services for the Seller or any other member of the GSK Group employees (or previous employees) or alike of the GSK Group, all in relation to the Business;

- (H) any obligations or liabilities whatsoever in respect of any GSK Group-owned Property or environmental claims, actions, demands, proceedings or investigations affecting any member of the Purchaser's Group as a result of the Proposed Transaction;
- (I) all termination payments and other forms of compensation to be paid on the termination of any agent, sales intermediary or distributor arrangement of the Business which are referable to a period before Completion;
- (J) any liabilities or obligations in respect of the Excluded Assets; and
- (K) all other liabilities and obligations which are incurred or fall due to be performed or arise in the period before the Completion Time in respect of the Business and the Business Assets

18.5 Where, for the purposes of determining the extent to which (i) the Purchaser is responsible for Assumed Liabilities pursuant to the provisions of sub-Clause 18.2(B), and/or (ii) the Seller is responsible for Excluded Liabilities pursuant to the provisions of sub-Clause 18.4(D), it is necessary to allocate any liability or obligation between the period before, and the period from or after, the Completion Time, then such obligations and liabilities shall be allocated or apportioned by the Seller, acting reasonably, in accordance with the following:

- (A) in respect of turnover-related coupons, rebates, override arrangements or chargebacks, by calculating the amount of turnover generated:
  - (i) for the purposes of calculating the relevant Assumed Liabilities, after the Completion Time; and
  - (ii) for the purposes of calculating the relevant Excluded Liabilities, before the Completion Time,

during the period to which the relevant coupon, rebate, override arrangement or chargeback relates and then multiplying the total amount due under such coupon, rebate, override arrangement or chargeback by the percentage which the amount of turnover generated:

- (a) for the purposes of calculating the Assumed Liabilities, at or after the Completion Time; and
- (b) for the purposes of calculating the Excluded Liabilities, before the Completion Time,

represents of the total amount of turnover generated in the relevant period;

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- (B) in respect of non turnover-related coupons, rebates, override arrangements or chargebacks, on a time basis by calculating the number of days:
- (i) for the purposes of calculating the relevant Assumed Liabilities, from and including the Completion Date; and
  - (ii) for the purposes of calculating the relevant Excluded Liabilities, before the Completion Date,
- in the period to which the relevant coupon, rebate, override arrangement or chargeback relates and then multiplying the total amount due under such coupon, rebate, override arrangement or chargeback by the percentage which the number of days in the period:
- (a) for the purposes of calculating the Assumed Liabilities, from and including the Completion Date; and
  - (b) for the purposes of calculating the Excluded Liabilities, before the Completion Date,
- represents of the total number of days in the relevant period; and
- (C) in respect of any other liability or obligation to the extent not addressed above in this Clause 18.5, on a fair and equitable basis.
- 18.6 The Purchaser, for itself and its successors and assigns, covenants that, at any time and from time to time on or after Completion, it will execute and deliver, or procure the execution and delivery of, all such further instruments of assumption and acknowledgements or take such other action as the Seller may reasonably request in order to effect:
- (A) the release and discharge in full of the relevant member of the GSK Group in respect of any Assumed Liability;
  - (B) the assumption by a member of the Purchaser's Group of the Assumed Liabilities; and
  - (C) the substitution of a member of the Purchaser's Group as the primary obligor in respect of the Assumed Liabilities,
- in each case on a non-recourse basis to the GSK Group.
- 18.7 Notwithstanding Clause 18.1, the assumption by the Purchaser of the Assumed Liabilities shall be without prejudice to any rights which the Purchaser may have against any member of the GSK Group under this Agreement or under any Seller's Transaction Document to which a member of the GSK Group is a party.
- 18.8 Notwithstanding any provision to the contrary in this Agreement, the parties agree that their respective liability in relation to or in connection with any claim under this Clause 18 shall be without financial limitation.

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## 19. Apportionment

- 19.1 The Seller and the Purchaser acknowledge that certain costs or charges will have been incurred, which relate to the Business and/or the Business Assets, for a period after Completion (including, without limitation to the generality of the foregoing, the provision of goods and services and/or the licensing of rights to the Business) and for which payment may have been made (whether by deposit, prepayment or otherwise), or invoices received, by members of the GSK Group in the ordinary course of business (“**Prepayments**”) prior to Completion. To the extent that any Prepayment has been recorded (or, notwithstanding any failure to record, has fallen to be recorded) in the books and records of the relevant members of the GSK Group, as at Completion, the amount of such Prepayment shall be apportioned to the Purchaser and in any such case, the provisions of Clauses 19.4 to 19.10 (inclusive) shall apply.
- 19.2 The Seller and the Purchaser acknowledge that certain costs or charges will have been incurred, which relate to the Business and/or the Business Assets, for a period prior to Completion (including, without limitation to the generality of the foregoing, goods and services and/or the licensing of rights to the Business) and for which the relevant members of the GSK Group will not have been invoiced, nor will the relevant members of the GSK Group have paid any such amounts, on or prior to Completion (the amounts not so invoiced or paid being “**Accruals**”). To the extent that any Accrual has been recorded (or, notwithstanding any failure to record, has fallen to be recorded) in the books and records of the relevant members of the GSK Group, as at Completion, the amount of such Accrual shall be apportioned to the GSK Group to the extent that such amounts are paid by the Purchaser after Completion and in any such case, the provisions of Clauses 19.4 to 19.10 (inclusive) shall apply.
- 19.3 The Seller and Purchaser acknowledge that certain costs or charges will be incurred, which relate to the Business and/or the Business Assets, for the period after Completion (including, without limitation to the generality of the foregoing, goods and services and/or the licensing of rights to the Business) and for which the relevant members of the GSK Group are invoiced and are liable to pay such invoiced amounts (“**Post-Completion Costs**”). To the extent that any members of the GSK Group pays, or is liable to pay, such Post-Completion Costs, the amount of such Post-Completion Costs shall be apportioned to the Purchaser and in any such case, the provisions of Clauses 19.4 to 19.10 (inclusive) shall apply.
- 19.4 On the date on which the Seller delivers the Draft Completion Current Asset Statement to the Purchaser in accordance with paragraph 4.1 of Schedule 8, the Seller shall also deliver to the Purchaser a statement of all the Prepayments and Accruals as at the Completion Time, and all Post-Completion Costs incurred (the “**Initial Apportionment Statement**”), PROVIDED THAT, to the extent that any such Accruals are not capable of being quantified as at the time that the Initial Apportionment Statement is delivered (such Accruals being “**Outstanding Accruals**”), they shall not be included in such Initial Apportionment Statement and the provisions of Clause 19.8 shall instead apply. The Initial Apportionment Statement shall set out:
- (A) the amount of the Prepayments which is to be borne by the Purchaser in accordance with Clause 19.1;

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- (B) the amount of the Accruals which is to be borne by the Seller in accordance with Clause 19.2;
- (C) the amount of the Post-Completion Costs which is to be borne by the Purchaser in accordance with Clause 19.3; and
- (D) the amount to be paid by the Purchaser to the Seller, or by the Seller to the Purchaser (as the case may be), calculated on the basis set out in Clause 19.6,

and shall be accompanied by evidence from the Seller of the items set out in such Apportionment Statement.

19.5 The Purchaser shall have a period of twenty-one (21) days (the “**Initial Apportionment Statement Review Period**”) after the delivery to it of the Initial Apportionment Statement to review the Initial Apportionment Statement, and within such Initial Apportionment Statement Review Period may request (in writing) an adjustment to be made to any item set out therein and shall provide the Seller with such evidence as the Seller may reasonably require to support such request. If no such written request is presented to the Purchaser within the Initial Apportionment Statement Review Period, then the Initial Apportionment Statement shall be deemed to have been agreed and approved by the Seller and the Purchaser and shall be final and binding upon them.

19.6 If any such written request as is referred to in Clause 19.5 is presented to the Seller within the Initial Apportionment Statement Review Period, then the Purchaser and the Seller shall attempt to resolve the matter in dispute between them in good faith negotiations and the provisions of paragraphs 4.7 and 4.8 of Schedule 8 shall apply *mutatis mutandis*.

19.7 Within seven (7) days of agreement or determination of the Initial Apportionment Statement there shall be netted off:

- (A) an amount equal to any Accruals to be borne by the Seller (“**Amount A**”); against
- (B) an amount equal to any Prepayments and Post-Completion Costs to be borne by the Purchaser (“**Amount B**”),

and the resulting net amount shall:

- (a) if Amount A is greater than Amount B, be paid by the Seller to the Purchaser together with an amount equivalent to interest thereon at the Agreed Rate (accrued daily) for the period from the Completion Date to the date of payment; and
- (b) if Amount B is greater than Amount A, be paid (as a positive number) by the Purchaser to the Seller together with an amount equivalent to interest thereon at the Agreed Rate (accrued daily) for the period from the Completion Date to the date of payment.

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- 19.8 Subject to Clause 19.9, the Seller shall, on the date falling one hundred and twenty (120) days following the Completion Date, deliver to the Purchaser a further statement in respect of all the Outstanding Accruals as at the Completion Time and any additional Post-Completion Costs arising after the date of delivery of the Initial Apportionment Statement (the “**Final Apportionment Statement**”) and the provisions of Clauses 19.4 to 19.7 (inclusive) shall apply *mutatis mutandis* to the preparation, review, adjustments to and payments in respect of such Final Apportionment Statement as if references to the Initial Apportionment Statement were to the Final Apportionment Statement and references to Accruals were to Outstanding Accruals.
- 19.9 To the extent that any Outstanding Accruals are not capable of being quantified as at the time that the Final Apportionment Statement is delivered, the Seller and the Purchaser hereby agree that no further amount shall be considered as due, owing or payable between any member of the GSK Group and any member of the Purchaser’s Group (or vice versa) in respect of the Prepayments, Outstanding Prepayments, Accruals, Outstanding Accruals, or any Post-Completion Costs.
- 19.10 All payments referred to in this Clause 19 shall constitute an adjustment to the Initial Cash Consideration and shall be made in immediately available funds in Dollars without any set off, restriction or condition by telegraphic transfer to the bank account or accounts of the Purchaser or (as the case may be) the Seller. For the avoidance of doubt, the provisions of Clause 30.1 shall apply to any such payment.

## **20. Transfer of Regulatory Permits**

- 20.1 As soon as reasonably practicable following Completion, the Seller and the Purchaser shall file, or procure that there is filed, with the FDA and any and all other relevant Governmental Entities all information required in order to transfer any Regulatory Permits from the Seller (or the relevant Regulatory Permit Holder(s)) to the Purchaser (or the relevant Designated Purchaser), including any authorisation letters or notices and letters of acceptance. Without limiting the generality of the foregoing, promptly following Completion, the Purchaser and the Seller shall submit, or procure that there is submitted, to the FDA for each transferred Regulatory Permit constituting a NDA and each transferred Regulatory Permit constituting an abbreviated new drug application (an “**ANDA**”) the information required by 21 C.F.R. § 314.72. The Seller and the Purchaser shall each provide written confirmation to the other promptly following satisfaction of their respective obligations pursuant to the preceding sentences of this Clause 20.1.
- 20.2 For each transferred NDA, ANDA and each Product subject to an OTC Monograph, the Seller shall, as soon as reasonably practicable following Completion, update (or procure that there is updated) its drug product listing information with the FDA in order to delist the transferred Product and the Purchaser shall update (or procure that there is updated) its drug product listing information with the FDA to list the transferred Product, as specified in 21 C.F.R. § 207.30.
- 20.3 The Seller and the Purchaser shall use all reasonable endeavours to take any actions required by the relevant Governmental Entities to effect the transfer of any required Regulatory Permits from the Seller to the Purchaser (it being acknowledged that this obligation shall not require either party to take any actions which are properly attributable to the other party), and shall cooperate with each other in order to effectuate

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the foregoing transfer of Regulatory Permits in as efficient and timely a manner following Completion as is reasonably practicable.

- 20.4 Subject to Clause 20.5, the Seller and the Purchaser shall each be liable for their own respective costs and expenses in procuring the transfer of the Regulatory Permits in accordance with this Clause 20.
- 20.5 Notwithstanding Clause 20.4, the Purchaser agrees and acknowledges that it shall be responsible, at its own expense, from Completion for obtaining any other NDAs, consents, approvals, registrations, formulary listings, Drug Establishment Licenses, Natural Product Site Licenses, certificates, permits, licences, or other approvals, in each case, of applicable Governmental Entities, required for the continuation of the Business.
- 20.6 From and after Completion and until such time as the transfer of the relevant Regulatory Permit has been completed, to the extent the Seller or any other member of the GSK Group would be deemed to be responsible for any incident (including any safety issue) concerning any Product in respect of which it previously held the corresponding Regulatory Permit immediately prior to Completion, the Purchaser undertakes to take such actions and steps as the Seller may reasonably request and deem necessary in accordance with the practices, policies and procedures of the GSK Group during the six (6) month period preceding the date of this Agreement (or to procure the same of the relevant member of the Purchaser's Group), or to permit the Seller (or other relevant member of the GSK Group) to take such actions and steps as the Seller may reasonably request and deem necessary (as the case may be), in each case with a view to minimising the liability (if any) of the Seller (or relevant member of the GSK Group), in response to incidents (including safety issues) concerning such Products and, upon request, the parties shall provide, and shall procure the provision of, such help and assistance as may be necessary for the purposes of such actions or steps.
- 20.7 Nothing in this Clause 20 shall oblige any party to do or to procure any act or thing which violates any applicable law or regulation and the term "all reasonable endeavours" shall be construed accordingly.

## **21. Receivables**

- 21.1 The Purchaser shall not acquire, or procure the acquisition of the Receivables, and accordingly the Seller or, as the case may be, the other relevant members of the GSK Group (as applicable) shall remain entitled to the Receivables in accordance with the terms of this Clause 21.1.
- 21.2 The Purchaser agrees that the Seller (or such other member(s) of the GSK Group as the Seller may nominate) (each, a "**Collecting Seller**") shall be responsible for the collection of any of the Receivables and that:
- (A) each Collecting Seller shall be entitled to take such steps as it may think fit, acting reasonably and in good faith but not in a manner which is materially prejudicial to any member of the Purchaser's Group, to recover any Receivables;

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- (B) notwithstanding the foregoing sub-Clause 21.2(A), if any Collecting Seller commences any action or proceeding for debt collection in respect of any such Receivables, it shall give reasonable advance written notice thereof to the Purchaser, PROVIDED THAT, for the avoidance of doubt, the giving of any such notice (or failure to give such notice) shall not prejudice the right of the relevant Collecting Seller to commence any such action or proceeding;
  - (C) the Purchaser shall not take, and shall procure that no other member of the Purchaser's Group takes, any step to collect any of the Receivables (unless agreed in writing with the Seller or relevant Collecting Seller), and shall not do anything to hinder their collection by any Collecting Seller; and
  - (D) if the Purchaser or any other member of the Purchaser's Group should receive any communication or payment in respect of any Receivable, the Purchaser shall give, or shall procure that there are given, written details of any such communication or payment to the Seller as soon as reasonably practicable following receipt thereof.
- 21.3 In the event that, notwithstanding Clauses 21.1 and 21.2 above, on or after Completion the Purchaser or any other member of the Purchaser's Group receives any moneys or other items in respect of the Receivables, the provisions of Clause 14.2 shall apply.

## **22. Insurance**

- 22.1 Subject to the provisions of Clauses 22.2 to 22.4 (inclusive), the Purchaser acknowledges and agrees that:
- (A) upon Completion, all insurance cover provided in relation to the Business pursuant to the GSK Group Insurance Policies shall cease to cover the Business in respect of the period following Completion; and
  - (B) responsibility for procuring any insurance in relation to the Business which it acquires is, in respect of the period following Completion, the Purchaser's alone and is not the responsibility of any member of the GSK Group.
- 22.2 The provisions of Clause 22.1 shall be without prejudice to any accrued claims subsisting at Completion and arising in respect of the period to the Completion Date under any GSK Group Insurance Policy in respect of any Assumed Liability and for which neither the Purchaser nor any other member of the Purchaser's Group is insured under its policies. Subject to receiving such assistance from the Purchaser's Group as the Seller may reasonably request and to the Seller and each other relevant member of the GSK Group being indemnified by the Purchaser for any reasonable costs, losses and deductibles suffered or incurred by them in relation to any such accrued claims on terms satisfactory to the Seller (acting reasonably), the Seller shall take all reasonable steps (at the Purchaser's cost) to confer the benefit of any such claim on the relevant member of the Purchaser's Group. The provisions of this Clause 22.2 shall be subject to the provisions of Clause 22.3.
- 22.3 If either the Seller or any other member of the GSK Group receives any proceeds in from an insurer as a result of its actions pursuant to Clause 22.2 above, the Seller shall

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(or the Seller shall procure that the relevant member of the GSK Group shall) pay such proceeds or shall procure that such proceeds are paid, subject to the deduction of any Tax suffered on such proceeds and subject to the deduction of any other reasonable costs and expenses, losses or deductibles for which an indemnity was given pursuant to Clause 22.2 (to the extent not already reimbursed pursuant to such indemnity), to the Purchaser (if possible, by way of an adjustment to the Final Cash Consideration), PROVIDED THAT no payment shall be made to the extent that the Seller or any other member of the GSK Group has:

- (A) previously made a payment to any member of the Purchaser's Group pursuant to this Agreement in respect of such matter or any costs arising therefrom; or
- (B) itself any liability in respect of such matter.

22.4 Reasonable endeavours for the purposes of this Clause 22 shall not include undertaking or threatening litigation or other legal action or incurring any expenditure or liability without having been put in funds by or on behalf of the Purchaser prior to incurring such expenditure or liability.

### **23. Seller's Warranties and Purchaser's remedies**

23.1 Subject as provided in this Agreement, the Seller warrants to the Purchaser as at the date of this Agreement in the terms set out in Schedule 5.

23.2 The only Warranties given:

- (A) in respect of trade regulation are those contained in paragraph 9 of Schedule 5 and each of the other Warranties shall be deemed not to be given in relation to trade regulation;
- (B) in respect of Intellectual Property, Information Technology, know-how and, in each case, contracts, arrangements and engagements relating thereto are those contained in paragraph 12 of Schedule 5 and each of the other Warranties shall be deemed not to be given in relation to Intellectual Property or Information Technology or know-how and contracts, arrangements and engagements relating thereto (it being acknowledged by the Purchaser that no Warranties whatsoever are given in respect of the Unexploited Business IPR (and any contracts, arrangements and engagements relating thereto) and that nothing in this Agreement shall be or be deemed to be a condition, representation or warranty as to the existence, ownership, validity, enforceability or value of any of the Unexploited Business IPR (and any contracts, arrangements and engagements relating thereto)); and
- (C) in respect of the Warranted Regulatory Permits and the Warranted Third Party Regulatory Permits are those contained in paragraph 15 of Schedule 5 and each of the other Warranties shall be deemed not to be given in relation to either the Warranted Regulatory Permits or the Warranted Third Party Regulatory Permits (it being acknowledged by the Purchaser that no Warranties whatsoever are given in respect of either the Unwarranted Regulatory Permits or the Unwarranted Third Party Regulatory Permits ),

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PROVIDED THAT, notwithstanding the foregoing, the Warranties given in paragraphs 3.2 and 3.3 of Schedule 5 shall be deemed to be given in relation to each of the Business Assets.

- 23.3 In the absence of fraud, the liability of the Seller under or in relation to the Warranties shall be limited as set out in Schedule 6.
- 23.4 Any payment made by the Seller in respect of any claim under the Warranties shall be treated as a repayment of, and adjustment to, the Final Cash Consideration.
- 23.5 Save in accordance with Clause 3.12 or Clause 5.1, notwithstanding that the Purchaser becomes aware at any time (whether it does so by reason of any disclosure made in the Disclosure Letter or otherwise) that there has been any breach of the Warranties or any other term of this Agreement or that there may be a claim under any Assurance given by the Seller or any Business Seller under this Agreement, the Purchaser shall not be entitled to rescind or terminate this Agreement or treat it as rescinded or terminated but, shall be entitled to claim damages or exercise any other right, power or remedy under this Agreement or as otherwise provided by law. The Purchaser waives all and any rights of rescission in respect of this Agreement it may have (howsoever arising or deemed to arise) other than any such rights in respect of fraud.
- 23.6 Each of the Warranties shall be construed as a separate and independent warranty and, except where expressly provided to the contrary, shall not be limited or restricted, or widened or extended, by reference to or inference from the terms of any other Warranty.
- 23.7 The Purchaser acknowledges and agrees that the Seller makes no warranty (and, for the avoidance of doubt, gives no representation) as to the accuracy of the forecasts, estimates, projections, statements of intent or statements of opinion provided to the Purchaser (howsoever and whensoever provided), including without limitation, in the Information Memorandum, the VDD Report, the Data Room, the Management Presentation, the Disclosure Letter, the Transitional Services Agreement, any document appended, attached or provided pursuant to any Purchaser's Transaction Document or any Seller's Transaction Document (including, without limitation to the foregoing, in any SKU-level forecasts, statistical modelling, demand forecasts or any Product launch forecasts appended to or provided pursuant to the Transitional Services Agreement) or in any documents provided to the Purchaser or its advisers in the course of the Purchaser's due diligence exercise, and the Seller shall incur no liability for any loss incurred by any member of the Purchaser's Group with respect to such matters.

#### 24. **Purchaser's warranties**

- 24.1 The Purchaser warrants to the Seller (for itself and on trust for each of the Business Sellers) that:
- (A) it has the requisite capacity, power and authority to enter into and perform this Agreement and any other documents which are to be entered into pursuant to this Agreement to which it is a party (the "**Purchaser's Transaction Documents**");

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- (B) this Agreement constitutes and the Purchaser's Transaction Documents will, when executed by the Purchaser and/or any other member of the Purchaser's Group, as the case may be, constitute valid and binding obligations of the Purchaser and/or such other member of the Purchaser's Group, as the case may be, in accordance with the respective terms of each such document;
- (C) the execution and delivery of, and the performance by the Purchaser or any other member of the Purchaser's Group of their respective obligations under this Agreement and the Purchaser's Transaction Documents to which each is respectively a party will not:
  - (i) result in a breach of any provision of the memorandum or articles of association or by-laws or equivalent constitutional documents of the Purchaser or the relevant member of the Purchaser's Group;
  - (ii) result in a breach of, or constitute a default under, any instrument to which the Purchaser and/or the relevant member of the Purchaser's Group is a party or by which the Purchaser or the relevant member of the Purchaser's Group is bound where such breach or default is material to their ability to perform their obligations under this Agreement or under any of the Purchaser's Transaction Documents;
  - (iii) so far as the Purchase is aware, result in a breach of any existing order, judgment or decree of any court or Governmental Entity by which the Purchaser or the relevant member of the Purchaser's Group is bound where such breach is material to their ability to perform their obligations under this Agreement or under any of the Purchaser's Transaction Documents; or
  - (iv) save as contemplated by this Agreement, require the Purchaser or the relevant member of the Purchaser's Group to obtain any consent or approval of, or give any notice to or make any registration with, any Governmental Entity or other authority which has not been obtained or made at the date hereof both on an unconditional basis and on a basis which cannot be revoked; and
- (D) each Designated Purchaser is, and will at and immediately after Completion be, a member of the Purchaser's Group.

**25. Business Records and Business Information**

25.1 On Completion (or as soon as reasonably practicable thereafter (and in any event within twenty (20) Business Days thereof)), the Seller shall deliver to the Purchaser, or procure the delivery to the Purchaser of:

- (A) all the Business Records, but excluding (subject to the following sub-Clause 25.1(B)) the Excluded Business Records. Where a record ceases to be an Excluded Business Record pursuant to paragraph (iii) of the definition of Excluded Business Record, the Seller shall deliver such record to the Purchaser

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as soon as reasonably practicable following such cessation (and in any event within twenty (20) Business Days thereof); and

(B) copies of those parts of any Excluded Business Records falling within paragraph (i) of the definition thereof which relate to the Business.

25.2 The Purchaser acknowledges that the Seller and the Business Sellers may wish to inspect and/or copy the Business Records delivered to the Purchaser under this Agreement for the purpose of dealing with any report, return, statement, audit, filing or other requirement under any applicable law or regulation, its Tax affairs or any third party claim or otherwise reasonably required in respect of the GSK Business and, accordingly, the Purchaser shall, upon being given reasonable notice by the Seller and subject to the Seller and/or the relevant Business Sellers (as applicable) giving such undertaking(s) as to confidentiality as the Purchaser may reasonably require, make such Business Records available (or procure that the same are made available) to the Seller, the Business Sellers and/or their respective representatives and professional advisers for inspection (during Working Hours at the place where such Business Records are to be inspected) and copying (at the Seller's expense) in each case for and only to the extent necessary for such purpose and for a period of seven (7) years from Completion.

25.3 In respect of any Excluded Business Records or any accounting or Tax records which contain information which relates in part (but not exclusively) to the Business, the Seller shall, upon being given reasonable notice by the Purchaser and for a period of seven (7) years from Completion, make available (or procure that there is made available) to the Purchaser and/or its representatives and professional advisers for inspection (during Working Hours at the place where the relevant part of such Excluded Business Records is to be inspected) and copying (at the Purchaser's expense) that part of such Excluded Business Records (including accounting or Tax records) relating to the Business to the extent necessary to enable the Purchaser (or any other member of the Purchaser's Group) to carry on the Business (including for the purpose of dealing with any report, return, statement, audit, filing or other requirement under any applicable law or regulation, its Tax affairs or any third party claim or otherwise reasonably required in respect of the Business), PROVIDED THAT the Seller shall not be obliged to make available (or to procure that there are made available) any such Excluded Business Records to the extent that such Excluded Business Contracts contain legally privileged information which is confidential to any member of the GSK Group.

## 26. Intellectual Property

26.1 Save as expressly set out in this Clause 26 the Purchaser acknowledges and agrees on behalf of itself and each member of the Purchaser's Group that nothing in this Agreement shall operate as an agreement to transfer (nor shall transfer) any right, title or interest in or to, nor constitute any licence of, any of the GSK Marks, the Shared Marks or the Shared Formulations (or, in each case, any know-how relating thereto).

### GSK Marks

26.2 The Seller shall, with effect from Completion, procure the grant to the Purchaser of a non-exclusive, royalty-free, non-assignable licence (without the right to sub-license) to

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use the Green Marks, universal product codes, national drug codes, drug identification numbers and/or natural product numbers in each case owned by the Seller (or a member of the Green Group) on:

- (A) (in respect of the Green Marks only) any sales literature and stationery of the Business, in each case solely to the extent such materials bear any Green Marks as at the Completion Time, such licence to commence on the Completion Date and terminate on the date falling ninety (90) days after the Completion Date;
- (B) any Business Inventory, solely to the extent that such Business Inventory bears any Green Marks, universal product codes, national drug codes, drug identification numbers and/or natural product numbers (as applicable) as at the Completion Time, such licence to commence on the Completion Date and terminate on the date that is the earlier of (i) the date on which the last of the Business Inventory has been sold and (ii) the date falling one (1) year after the Completion Date; and
- (C) each Product supplied to the Purchaser pursuant to the Transitional Manufacturing and Supply Agreement, solely to the extent such Product bears any Green Marks, universal product codes, national drug codes, drug identification numbers and/or natural product numbers (as applicable) as at the date it is supplied to the Purchaser under the Transitional Manufacturing and Supply Agreement, such licence to commence on the date of supply of that Product and terminate on the date that is the earlier of (i) the date falling one (1) year after the date that Product is supplied to the Purchaser under the Transitional Manufacturing and Supply Agreement and (ii) the date falling eighteen (18) months after the Completion Date.

26.3 The Purchaser shall have no right to use any of the GSK Marks as part of a corporate or trading name and undertakes not to hold itself out or otherwise represent itself to be a member of, or to be associated or connected with any member or business venture of GSK Group.

26.4 Subject always to the terms of the Separation Plan agreed pursuant to the Transitional Services Agreement, the Purchaser shall (i) as soon as reasonably practicable (and in any event within ninety (90) days after Completion) prepare and use new sales literature and stationery which does not bear any of the Green Marks and (ii) as soon as reasonably practicable (and in any event within the period specified in Clause 26.2(C)) arrange for its artwork and packaging materials (including its own universal product codes, national drug codes, drug identification numbers and natural product numbers) to be applied in respect of the Products.

26.5 The Purchaser undertakes to comply with all applicable laws, regulations and decisions of any relevant court, tribunal, ombudsman or regulatory body (including, without limitation, any relevant Governmental Entity) from time to time relevant to the Licensed Goods.

26.6 If it is found that any goods supplied or intended to be supplied under any of the GSK Marks are not in conformity with any of the Purchaser's obligations under this

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Agreement in respect of such goods or supply, the Seller shall give Notice to the Purchaser to that effect and the Purchaser undertakes that, from the date ten (10) Business Days after such Notice is given, it shall not supply any of such non-conforming goods under any of the GSK Marks without first either conforming them to such obligations or obtaining the written consent of the Seller.

- 26.7 The Purchaser shall Notify the Seller in writing of all complaints made by any consumer association or pressure group and all other material complaints made by its customers or potential customers (including, without limitation, complaints referred to any court, tribunal, ombudsman or regulatory body (including any relevant Governmental Entity)) in relation to the goods provided by, or on behalf of, it under any of the GSK Marks.
- 26.8 The Purchaser acknowledges that all goodwill associated with the use of the GSK Marks by the Purchaser vests and shall vest in the Seller and that the Purchaser has no, and shall not by virtue of this Agreement obtain any, rights in any of the GSK Marks other than those expressly set out in this Clause 26. The Purchaser undertakes that it shall make no claim to such goodwill or, save as set out in this Agreement, to any rights in the GSK Marks.
- 26.9 Without prejudice to Clause 26.8, if any goodwill or proprietary right in relation to the GSK Marks vest in the Purchaser, the Purchaser shall, immediately upon becoming aware of the vesting of such goodwill or right, assign, or procure the assignment of, such goodwill or right to the Seller.
- 26.10 Without prejudice to the Purchaser's right to challenge the validity of any registrations of the GSK Marks, while any licence granted pursuant to Clause 26.2 remains in force, the Purchaser undertakes not to intentionally commit or omit any act or pursue any course of conduct, or assist any third party to pursue any course of conduct, which would be likely to:
- (A) bring any of the GSK Marks into disrepute;
  - (B) damage the goodwill or reputation attaching to any of the GSK Marks;
  - (C) prejudice the validity or enforceability of any of the GSK Marks (in respect of any goods or services); or
  - (D) dilute or reduce the value or strength of any of the GSK Marks or any registrations thereof.
- 26.11 The Purchaser shall indemnify, and keep indemnified, the Seller and each member of the GSK Group from and against all Losses incurred by the Seller and/or member of the GSK Group as a result of, or in connection with the grant of any licence pursuant to Clause 26.2 or the Purchaser using any of the Licensed Goods otherwise than in accordance with the provisions of Clauses 26.2 to 26.10 (inclusive).
- 26.12 The Purchaser acknowledges and agrees that the Seller may incur Losses constituted by:
- (A) damage to the goodwill or reputation attaching to;

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- (B) damage to the validity or enforceability of;
- (C) damage to or distortion of the image associated with; and/or
- (D) dilution of the value or strength of,

any of the GSK Marks (including registrations and applications for registration thereof) and that such Losses are reasonably foreseeable and shall be recoverable (both under the indemnity given in Clause 26.11 and otherwise under, and pursuant to, this Agreement), without limitation to what other Losses may be recoverable under or pursuant to this Agreement.

26.13 Subject to Clause 26.2 and without prejudice to the trade mark rights of the GSK Group, the Purchaser shall procure that for:

- (A) a minimum period of five (5) years following Completion; and
- (B) thereafter for so long as any member of the GSK Group continues to retain an interest in the GSK Marks,

no member of the Purchaser's Group shall use any GSK Mark in any business which competes with any of the GSK Group's business, any extensions thereof or developments thereto, or any other business of the Seller or any member of the GSK Group in which any GSK Mark is used.

#### Licensed Rights

26.14 The Seller shall, with effect from Completion, grant to the Purchaser (or procure the grant to the Purchaser of) a non-exclusive, perpetual, assignable, irrevocable, royalty free licence (with the right to sub-license) to use any:

- (A) Intellectual Property (excluding any Trade Marks, patents and rights in software); and
- (B) Shared Formulation (and any Shared Formulation Know-How),

in each case owned by the Seller (or a member of the GSK Group) at the Completion Time and used (but not exclusively) in the Business at the Completion Time (the "**Licensed Rights**") subject to, and in accordance with, Clauses 26.15 to 26.18 (inclusive) (the "**Licence**").

26.15 The Purchaser shall only use the Licensed Rights pursuant to the Licence in substantially the same manner as such Licensed Rights were used by the Seller (or a member of the GSK Group) in respect of a Product in the Business (including solely in relation to the territory and SKU form in which such Product is used) immediately prior to the Completion Time, save that the Purchaser shall be entitled to use the Licensed Rights outside of the Restricted Territories, solely for the purposes of having the relevant Product manufactured outside of the Restricted Territories and then exported back into the Restricted Territories, and not for the Commercialisation of the relevant Product in that manufacturing territory or elsewhere other than the Restricted Territories (subject

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always to the terms of any manufacture and/or supply arrangements entered into from time to time between a member of the GSK Group and a member of the Purchaser's Group in respect of the manufacture and/or supply of a Product to which the Licensed Rights relate (including the Transitional Manufacturing and Supply Agreement)).

- 26.16 The Purchaser shall not use the Licensed Rights except as expressly authorised under Clauses 26.14 to 26.18 (inclusive). Without prejudice to the generality of the foregoing, and for the avoidance of doubt, the Purchaser shall not be entitled to use the Licensed Rights in respect of any product other than the Product in which such rights were used by the Seller (or a member of the GSK Group) in the Business immediately prior to the Completion Time.
- 26.17 The Purchaser shall indemnify, and keep indemnified, the Seller and each member of the GSK Group from and against all Losses incurred by the Seller and/or member of the GSK Group as a result of, or in connection with, the Purchaser using the Licensed Rights otherwise than in accordance with the provisions of Clauses 26.14 to 26.16 (inclusive).
- 26.18 For the avoidance of doubt, the provisions of Clause 42 shall apply in respect of the Licence.

#### Wrong Pockets

- 26.19 If, after Completion, a member of the Purchaser's Group owns any Intellectual Property or rights in Information which was used, in the [\*\*\*] months prior to the Completion Date by a member of the GSK Group (or in any business operated by the GSK Group in the [\*\*\*] months prior to the Completion Date) other than exclusively in relation to the Business (including, for the avoidance of doubt, any GSK Marks, any Shared Marks, any Intellectual Property in any Shared Formulations or any rights in Information in any Shared Formulations), the Purchaser shall, or shall procure that the relevant member of the Purchaser's Group shall, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form reasonably satisfactory to the Seller to vest such Intellectual Property and/or rights in Information in, and transfer the possession and control of the same to, the Seller or a company nominated by the Seller, for nil consideration, as soon as reasonably practicable after becoming aware of the ownership of such rights.

#### Non-Commercialised Marks

- 26.20 The Purchaser shall, during the one (1) year period immediately following Completion, give the Seller reasonable advance written notice of any product which a member of the Purchaser's Group proposes to Commercialise under any Non-Commercialised Mark.
- 26.21 In relation to any Non-Commercialised Mark if:
- (A) during the two (2) month period immediately following the date on which the notice specified in Clause 26.20 is served on the Seller; or
  - (B) between the date of signing of this Agreement and the date falling three (3) months after the Completion Date,

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the Seller (acting reasonably and in good faith) notifies the Purchaser that the transfer of such Non-Commercialised Mark pursuant to this Agreement has placed, or is likely to place, the Seller (or any member of the GSK Group) in breach of any applicable Third Party Arrangement, the Purchaser shall transfer (or procure the transfer of) such Non-Commercialised Mark to the Seller or a company nominated by the Seller, for nil consideration.

### Gaviscon Rights

26.22 The Purchaser shall, with effect from the Completion Date, grant to the Seller (or procure the grant to the Seller of) a worldwide, non-exclusive, perpetual, assignable (including to a purchaser of the whole or part of the business to which the licence relates), irrevocable, royalty-free licence (with the right to sub-license) to use any of the Gaviscon Rights owned by the Purchaser (or a member of the Purchaser's Group), in respect of products Commercialised by any member of the GSK Group in the US and/or Puerto Rico under the 'Gaviscon' brand from time to time

### **27. Seller's undertakings**

27.1 The Seller undertakes to the Purchaser that, immediately following the execution of this Agreement, it will deliver to the Purchaser an original counterpart of the Transitional Services Agreement and the Disclosure Letter, duly executed on behalf of the Seller and/or the relevant member(s) of the GSK Group.

27.2 The Seller undertakes to the Purchaser that it shall not, and shall procure that each member of the GSK Group shall not (for as long as the relevant entity remains a member of the GSK Group), for a period of [\*\*\*] months from the Completion Date, solicit or entice away from the employment of any member of the Purchaser's Group any Senior Employee without the prior written consent of the Purchaser, other than:

- (A) any Senior Employee whose employment with the relevant member of the Purchaser's Group has then ceased or who has received notice terminating such employment; or
- (B) where such solicitation or enticement is as a result of an advertisement or advertisements not specifically targeted at such Senior Employees or as a result of an unsolicited approach to the Seller or any other member of the GSK Group from any such Senior Employee.

27.3 Subject to Clause 27.4:

- (A) the Seller undertakes to the Purchaser and to any member of the Purchaser's Group that, with the intention of transferring to the Purchaser and the relevant Designated Purchaser(s) the full benefit and value of the goodwill of, and the connections related to, the Business (and as a constituent part of this Agreement), to the extent legally permissible, it shall in consideration of the payment to it by the Purchaser of US\$ 1 use all reasonable endeavours to procure that, for a period of three (3) years from the Completion Date, no GSK Product shall be Commercialised, directly or indirectly, or in conjunction with or

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on behalf of any other person, (any Commercialisation through means of the internet being ignored for these purposes) by any other member of the GSK Group (i) in both a Restricted Product Market and a Restricted Territory and (ii) in such a manner as to compete with any Product being Commercialised, as at the date of this Agreement, in the relevant Restricted Product Market and the relevant Restricted Territory, to the extent that such Commercialisation relates in any way to or is undertaken in Canada; and

- (B) GSK PLC undertakes to the Purchaser and to any member of the Purchaser's Group that, with the intention of transferring to the Purchaser and the relevant Designated Purchaser(s) the full benefit and value of the goodwill of, and the connections related to, the Business (and as a constituent part of this Agreement), to the extent legally permissible, it shall in consideration of the payment to it by the Purchaser of the Non-Compete Consideration (which it shall receive for its own account and not as agent for or on behalf of any other person), use all reasonable endeavours to procure that, for a period of three (3) years from the Completion Date, no GSK Product shall be Commercialised, directly or indirectly, or in conjunction with or on behalf of any other person, (any Commercialisation through means of the internet being ignored for these purposes) by any member of the GSK Group (i) in both a Restricted Product Market and a Restricted Territory and (ii) in such a manner as to compete with any Product being Commercialised, as at the date of this Agreement, in the relevant Restricted Product Market and the relevant Restricted Territory, otherwise than to the extent that such Commercialisation relates in any way to or is undertaken in Canada.

27.4 The undertakings given in Clause 27.3 (as applicable) shall not be breached:

- (i) to the extent that any product Commercialised by or behalf of any member of the GSK Group is, as at the date of this Agreement, Commercialised in both a Restricted Product Market and a Restricted Territory;
- (ii) to the extent that the relevant member of the GSK Group is carrying out its obligations pursuant to any Sellers' Transaction Document;
- (iii) where, before the expiry of the relevant period specified in Clause 27.3 above, a Product which is Commercialised, as at the date of this Agreement, in both a Restricted Product Market and in a Restricted Territory is discontinued in such Restricted Product Market and/or in such Restricted Territory and, following such discontinuation, one or more GSK Products is/are Commercialised in both the same relevant Restricted Product Market and the relevant Restricted Territory as that in which such discontinued Product was Commercialised;
- (iv) where any member of the GSK Group holds or acquires shares (whether directly or indirectly but not carrying a voting interest of more than 20 per cent.) in a company which Commercialises any product in such a manner as to compete with any Product being Commercialised, as at the date of this Agreement, in both a Restricted Product Market and a Restricted Territory PROVIDED THAT the relevant member of the GSK Group does not directly control the Commercialisation of any such product;

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- (v) in the case of any acquisition as an incidental part of a larger transaction by any member of the GSK Group directly or indirectly, or in conjunction with or on behalf of another person of any business (whether by acquisition of shares, the whole or any part of the undertaking or assets of any third party or by other means) which involves the Commercialisation of any product which competes with any Product being Commercialised, as at the date of this Agreement, in both a Restricted Product Market and a Restricted Territory PROVIDED THAT the relevant member of the GSK Group does not directly or indirectly, or in conjunction with or on behalf of another person control the Commercialisation of any such product or, in the event that it does, the relevant member of the GSK Group assigns, sells, transfers or otherwise disposes of the relevant competing product(s) within one (1) year from completion of the relevant acquisition and, during such one (1) year period, the Seller shall not be in breach of its obligations pursuant to this Clause 27.3;
- (vi) in the case of any merger, joint venture or partnership arrangement between any member of the GSK Group and any third party where the resulting entity (the “**JV Entity**”) Commercialises any product in such a manner as to compete with any Product being Commercialised, as at the date of this Agreement, in both a Restricted Product Market and a Restricted Territory, PROVIDED THAT the relevant member of the GSK Group does not:
  - (a) directly or indirectly, or in conjunction with or on behalf of another person, control the Commercialisation of any such product; or
  - (b) hold an interest (whether direct or indirect and whether by way of holding of shares, voting rights or otherwise) of more than 20 per cent. in such JV Entity in circumstances where the Commercialisation of the relevant product contributes more than 20 per cent. of the gross annual revenues of such JV Entity; or
- (vii) where any third party acquires Control (as defined in the City Code on Takeovers and Mergers) of the Seller, by virtue of that third party’s then existing activities in Commercialising any product in such a manner as to compete with any Product being Commercialised, as at the date of this Agreement, in both a Restricted Product Market and a Restricted Territory, PROVIDED THAT the undertaking set out in sub-Clause 27.3(B) above shall continue to apply (following the acquisition of such Control) to the Seller and those Affiliates and Associated Undertakings of the Seller which are members of the GSK Group as at the date of this Agreement.

27.5 The Seller undertakes to the Purchaser that, with effect from the Completion Date but without limit in time thereafter, the Seller shall, or shall procure that the relevant member(s) of the GSK Group shall, use all reasonable endeavours to obtain any Certificate of Pharmaceutical Product requested in writing by the Purchaser in order to enable the Purchaser (or another member of the Purchaser’s Group), subject always to the Intellectual Property rights of any member of the GSK Group, to Commercialise a Product in a country. The Purchaser hereby agrees that it shall use all reasonable endeavours to provide (or procure that there is provided) to the Seller such cooperation as the Seller (or any other relevant member of the GSK Group) reasonably requests in

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connection with obtaining any such Certificate of Pharmaceutical Product. The Purchaser further agrees that:

- (A) it shall indemnify the Seller and each member of the GSK Group for all reasonable costs and expenses and all liabilities suffered by the relevant member in carrying out its obligations under this Clause 27.5; and
- (B) it shall indemnify the Seller and each member of the GSK Group in respect of such reasonable costs and expenses and such liabilities within thirty (30) Business Days of the delivery to the Purchaser of written notice requesting indemnification of the same and setting out, in reasonable detail, details of the costs, expenses and/or liabilities incurred or suffered for which indemnification is sought.

27.6 The Seller shall procure that, for a period of twelve (12) months after the Completion Date:

- (A) the Seller or a member of the GSK Group shall prepare, where reasonably requested to do so by the Purchaser and subject to reimbursement by the Purchaser of all reasonable costs and expenses of the GSK Group incurred in connection with the preparation of the same, financial data in relation to all periods beginning prior to Completion and ending prior to, on or after Completion required for financial accounts, management accounts or statutory accounts of the Purchaser or any other member of the Purchaser's Group and any data to the extent reasonably required for compliance by the Purchaser or any other member of the Purchaser's Group with any reporting requirements of any stock exchange or securities or other regulatory authority or under any applicable law, rule or regulation which shall each be delivered to the Purchaser as soon as reasonably practicable following the relevant request; and
- (B) the Purchaser and its accountants and agents shall upon reasonable notice, as soon as reasonably practicable, be given reasonable access during Working Hours at the relevant location to any employees, officers, advisers or premises of the Seller or a Business Seller and any of its books and records (or extracts thereof) which may reasonably be required by the Purchaser or any other member of the Purchaser's Group in connection with any report, return, statement, audit, filing or other requirement under any applicable law or regulation or otherwise reasonably required in respect of the Business.

27.7 Each undertaking contained in this Clause 27 shall be construed as a separate undertaking and if one or more of the undertakings is held by a court of competent jurisdiction to be against the public interest or unlawful or in any way an unreasonable restraint of trade, the remaining undertakings shall continue to bind the Seller.

**28. Business Sellers' undertaking**

The Business Sellers hereby undertake to the Purchaser that, where pursuant to the provisions of this Agreement the Seller agrees or undertakes to procure that the Business Sellers undertake or do a particular action, matter or thing or omit to take or do a particular action, matter or thing, such Business Seller will undertake, do, or omit to

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take or do that action, matter or thing (in each case, as applicable) in accordance with the relevant provision(s) of this Agreement.

**29. Purchaser's undertakings**

- 29.1 The Purchaser undertakes to the Seller that, immediately following the execution of this Agreement, it will deliver to the Seller an original counterpart of the Transitional Services Agreement and an acknowledgement of the Disclosure Letter, duly executed on behalf of the Purchaser and/or the relevant member(s) of the Purchaser's Group.
- 29.2 The Purchaser agrees and undertakes on behalf of itself and each other member of the Purchaser's Group that (in the absence of fraud, fraudulent misrepresentation or wilful concealment) it has no rights against and shall not make any claim against any employee, director, agent, officer or adviser of any member of the GSK Group on whom it may have relied before agreeing to any term of or entering into this Agreement or any other agreement or document entered into pursuant hereto (including, without prejudice to the generality of the foregoing, any such persons as are named in sub-Clause 1.2(Q)).
- 29.3 The Purchaser undertakes on behalf of itself and each member of the Purchaser's Group (and without prejudice to the confidentiality agreement referred to in Clause 42.4) that, subject to Clause 42.2, each member of the Purchaser's Group will treat as strictly confidential and not disclose to any person (other than (i) any employee, director, officer, agent, consultant or adviser of the Purchaser, (ii) other members of the Purchaser's Group, (iii) any employee, director, officer, agent, consultant or adviser of any member of the Purchaser's Group, (iv) any Purchaser's Financing Bank or its employees, directors, officers, agents or advisers, in any such case on a confidential basis) any GSK Group Confidential Information. The Purchaser acknowledges that any future use of GSK Group Confidential Information is at the risk of the Purchaser and other members of the Purchaser's Group and is without representation, warranty or liability of the part of any member of the GSK Group.
- 29.4 The Purchaser undertakes to the Seller that it shall not, and shall procure that each member of the Purchaser's Group shall not (for as long as the relevant entity remains a member of the Purchaser's Group), for a period of [\*\*\*] months from the Completion Date, solicit or entice away from the employment of any member of the GSK Group any Relevant GSK Group Employee without the prior written consent of the Seller, other than:
- (A) any Relevant GSK Group Employee whose employment with the relevant member of the GSK Group has then ceased or who has received notice terminating such employment; or
  - (B) where such solicitation or enticement is as a result of an advertisement or advertisements not specifically targeted at such Relevant GSK Group Employee or as a result of an unsolicited approach to the Purchaser or any other member of the Purchaser's Group from any such Relevant GSK Group Employee.
- 29.5 The Purchaser undertakes to the Seller that, with effect from the Completion Date but without limit in time thereafter, the Purchaser shall, or shall procure that the relevant

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member(s) of the Purchaser's Group shall, use all reasonable endeavours to obtain any Certificate of Pharmaceutical Product requested in writing by the Seller in order to enable:

- (A) the Seller (or another member of the GSK Group) to Commercialise any GSK Product in a country; or
- (B) any other Person who may, subsequent to the date hereof, acquire rights in respect of products Commercialised under the Brands in territories other than the United States, Puerto Rico and Canada, to Commercialise such products (a "CPP Third Party"),

(and for the avoidance of doubt, the Seller and the Purchaser hereby agree that the obligations imposed on the Purchaser pursuant to this Clause 29.5 shall not apply to the extent the Seller's request relates to the Commercialisation of any GSK Product or the Commercialisation of any product by a CPP Third Party (as applicable) in breach of the Intellectual Property rights of any member of the Purchaser's Group). The Seller hereby agrees that it shall use all reasonable endeavours to provide (or procure that there is provided, including, where relevant, by any relevant CPP Third Party) to the Purchaser such cooperation as the Purchaser (or any other relevant member of the Purchaser's Group) reasonably requests in connection with obtaining any such Certificate of Pharmaceutical Product. The Seller further agrees that:

- (aa) it shall indemnify each member of the Purchaser's Group (or shall procure that each member of the Purchaser's Group is indemnified, including, where relevant, by any CPP Third Party) for all costs, expenses and liabilities suffered or reasonably incurred by the relevant member in carrying out its obligations under this Clause 29.5; and
- (bb) it shall indemnify each member of the Purchaser's Group (or shall procure that each member of the Purchaser's Group is indemnified, including, where relevant, by any CPP Third Party) in respect of such costs, expenses and liabilities within thirty (30) Business Days of the delivery to the Seller of written notice requesting indemnification of the same and setting out, in reasonable detail, details of the costs, expenses and/or liabilities incurred or suffered for which indemnification is sought.

In circumstances where the Seller requests a Certificate of Pharmaceutical Product in order to enable a CPP Third Party to Commercialise products in accordance with this Clause 29.5, subject to the Seller providing to the Purchaser such contact details of the relevant CPP Third Party as the Purchaser may reasonably request (and without prejudice to the foregoing provisions of this Clause 29.5), the Purchaser agrees that it shall use reasonable endeavours to conduct such communications and exchanges as are required in order to obtain the relevant Certificate of Pharmaceutical Product directly with such CPP Third Party and shall not involve the Seller (or any other member of the GSK Group) for the purposes thereof.

29.6 The Purchaser shall procure that, for a period of twelve (12) months after the Completion Date:

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- (A) the Business shall prepare, where reasonably requested to do so by the Seller and subject to reimbursement by the Seller of all reasonable costs and expenses of the Business incurred in connection with the preparation of the same, financial data in relation to all periods beginning prior to Completion and ending prior to, on or after Completion required for financial accounts, management accounts or statutory accounts of the Seller or any other member of the GSK Group and any data to the extent reasonably required for compliance by the Seller or any other member of the GSK Group with any reporting requirements of any stock exchange or securities or other regulatory authority or under any applicable law, rule or regulation which shall each be delivered to the Seller as soon as reasonably practicable following the relevant request; and
- (B) each Seller and its accountants and agents shall on reasonable notice, as soon as reasonably practicable, be given reasonable access during Working Hours at the relevant location to any employees, officers, advisers or premises of the Business and any of its books and records which may reasonably be required by the Seller or any other member of the GSK Group in connection with any report, return, statement, audit, filing or other requirement under any applicable law or regulation or otherwise required in respect of the GSK business.
- 29.7 The Purchaser shall not, and shall procure that no member of the Purchaser's Group will, take any action to obtain or benefit from any repayment, credit or relief of or in respect of any Sales Tax or amount in respect of any VAT chargeable in respect of any supply for which the Non-Compete Consideration is deemed to be the consideration.
- 29.8 Each undertaking contained in this Clause 29 shall be construed as a separate undertaking and if one or more of the undertakings is held by a court of competent jurisdiction to be against the public interest or unlawful or in any way an unreasonable restraint of trade, the remaining undertakings shall continue to bind the Purchaser.
- 30. Certain funds**
- 30.1 The Purchaser warrants to the Seller at the date of this Agreement that:
- (A) the Seller has been provided with correct and complete copies of the commitment letter pursuant to which the Purchaser's Financing Banks have committed, subject to the terms and conditions set forth therein, to lend the Debt Amount and the fee letter relating thereto (redacted as to fees payable to the Purchaser's Financing Banks, the amounts of any possible "flex" to pricing, ratios or tranching, caps and pricing in respect of the securities demand) (the commitment letter and fee letter together with any replacement or amendment thereof and all exhibits, schedules and annexes to such letters being the "**Debt Commitment Letter**") and pursuant to which the Purchaser shall have sufficient cash resources in order to pay all amounts that are or may become due under this Agreement and the Purchaser's Transaction Documents (including any consideration adjustment amount under Clause 8) and in respect of the Existing Facilities Refinancing;

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- (B) the Debt Commitment Letter has been executed by all the parties thereto and is, and each other Financing Agreement will upon execution be, in full force and effect and all obligations assumed thereunder are legal, valid, binding and enforceable obligations except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganisation, restoration and other laws of general application affecting the rights and remedies of creditors; and (ii) general principles of equity (regardless of whether such enforcement is sought in a proceeding at law or in equity);
- (C) the Seller has been provided with correct and complete copies of the Existing Facilities;
- (D) the aggregate outstanding principal amount under the Existing Facilities is US\$196,000,000;
- (E) the terms and conditions of any engagement letter or fee letter in respect of the Unsecured Notes (as defined in the Debt Commitment Letter) (the “Notes Letters”) do not impose additional conditions or restrictions applicable to the advance, remittance or making available of any funds, monies or amounts referred to in the Debt Commitment Letter;
- (F) save for the Debt Commitment Letter and the Notes Letters, there are no other documents, agreements or arrangements in existence which relate to the terms and conditions under which any funds, monies or amounts referred to in the Debt Commitment Letter may be advanced, remitted or made available to the Purchaser; and
- (G) the Purchaser will have, at Completion and on the date on which any consideration adjustment amount becomes due under Clause 8, sufficient cash resources available to it (on an unconditional basis, save for the satisfaction of the Competition Condition, and after payment of all other amounts payable by the Purchaser on such date, including without limitation in respect of the Existing Facilities Refinancing) to satisfy its obligations under this Agreement and the Purchaser’s Transaction Documents (including, without prejudice to the generality of the foregoing, its obligation to pay any consideration due under this Agreement and any consideration adjustment amount under Clause 8).

30.2 The Purchaser undertakes to maintain the Debt Commitment Letter and, following its execution, each other Financing Agreement, in full force and effect and:

- (A) shall ensure that:
  - (i) there shall be no amendment, modification, termination, replacement, restatement, cancellation or other change made to the Debt Commitment Letter, any Financing Agreement or any Existing Facility; and
  - (ii) the terms and conditions of the Debt Financing provided under any Financing Agreement other than the Debt Commitment Letter shall not

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differ from the terms and conditions of the Financing under the Debt Commitment Letter in any way,

that could adversely affect the ability of the Purchaser to satisfy its obligations under this Agreement or otherwise prevent or adversely affect or delay Completion; and

- (B) shall not do any act or take any step or omit to do any act or take any step that could in any way:
  - (i) reduce the aggregate amount of the finance committed and available to be drawn by the Purchaser under the Financing Agreements below the amount which, having deducted all other amounts (if any) to be funded pursuant to any Financing Agreement (including for the avoidance of doubt in respect of the Existing Facilities), is sufficient to ensure that the Purchaser will be able to satisfy its obligations under this Agreement and the Purchaser's Transaction Documents;
  - (ii) reduce the period of time for which funds are available to be drawn by the Purchaser; or
  - (iii) otherwise adversely affect the ability of the Purchaser to draw funds under the Financing Agreements on the Completion Date or on which any consideration adjustment amount becomes due under Clause 8 sufficient to enable the Purchaser to satisfy its obligations under this Agreement, the Purchaser's Transaction Documents and in respect of the Existing Facilities Refinancing.

30.3 The Purchaser shall within two Business Days of written request by the Seller confirm whether it has received all Required Financial Information (and if it has not, shall specify what information remains outstanding). Failure by the Purchaser to specify the information which remains outstanding within two Business Days of such written request shall be deemed to constitute confirmation that all Required Financial Information has been delivered to the Purchaser.

30.4 The Purchaser shall use all commercially reasonable endeavours to:

- (A) obtain the Debt Financing on the terms and subject to the conditions described in the Debt Commitment Letter;
- (B) maintain in effect the Debt Commitment Letter and negotiate in good faith and use all commercially reasonable endeavours to enter into definitive agreements with respect to the Debt Financing on the terms and subject to the conditions reflected in the Debt Commitment Letter;
- (C) comply on a timely basis with all covenants, and satisfy on a timely basis all conditions, required to be complied with or satisfied by the Purchaser in the Debt Commitment Letter and in such other Financing Agreements;

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- (D) cause the Debt Financing to be consummated at such time or from time to time as is necessary for the Purchaser to satisfy its obligations under this Agreement and the Purchaser's Transaction Documents (including for the avoidance of doubt by drawing the Unsecured Bridge Facility (as defined in the Debt Commitment Letter) if the Unsecured Notes (as defined in the Debt Commitment Letter) are not at such time issued or capable of issuance);
  - (E) take all steps necessary under the terms of the Existing Facilities to effect the Existing Facilities Refinancing on the Completion Date; and
  - (F) pay any and all commitment or other fees in a timely manner that become payable by the Purchaser under the Debt Commitment Letter following the date of this Agreement, to the extent that the failure to pay such fees would reasonably be expected to adversely impact the availability of the financing thereunder.
- 30.5 The Purchaser further undertakes to the Seller that it shall take all action necessary to draw such amounts as it requires under the Financing Agreements on the Completion Date sufficient for the Purchaser to pay the amounts due to the Seller at Completion under this Agreement, the Purchaser's Transaction Documents and the Existing Facilities Refinancing (having deducted all other amounts (if any) to be funded pursuant to any Financing Agreement on such date), and shall draw such further amounts under the Financing Agreement to satisfy when due any consideration adjustment amount which becomes due from the Purchaser under this Agreement, and in each case to pay all fees (including any Sales Tax properly chargeable thereon) and expenses required to be paid in connection with the Debt Financing (having deducted all other amounts (if any) to be funded pursuant to any Financing Agreement on such date.
- 30.6 To the extent that such funds as referred to in Clauses 30.2, 30.3 and 30.5 are not capable of being drawn as a result of a failure of the relevant counterparty to perform its obligations under the Financing Agreements, the Purchaser undertakes to take all such actions (or procure that such action is taken) as is necessary to enforce its or any other member of the Purchaser's Group's rights against such counterparty under the relevant Financing Agreement.
- 30.7 If all or any portion of the Debt Financing becomes unavailable on the terms and conditions contemplated in the Debt Commitment Letter, the Purchaser shall use all commercially reasonable endeavours to obtain a new financing commitment letter and a new definitive agreement with respect thereto that provides for financing on terms (including structure, covenants and pricing) not materially less favourable (including the imposition of any new or additional conditions or restrictions on the operation of the Business or the business conducted by the Purchaser or any other member of the Purchaser's Group), in the aggregate, to the Purchaser or the Seller in an amount that is sufficient, when added to the portion of any financing that is available, to pay in cash all amounts that are or may become due under this Agreement and the Purchaser's Transaction Documents (including any consideration adjustment amount Clause 8) (the "**Alternative Financing**").

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- 30.8 The Purchaser shall keep the Seller reasonably informed on a timely basis of the status of, and any material developments relating to, the Financing Agreements and/or the Debt Financing, including by:
- (A) giving the Seller prompt notice of:
    - (i) any breach by any party to the Financing Agreements, or any documents related to the Debt Financing or the Alternative Financing, of which the Purchaser has become aware, or
    - (ii) any circumstances as consequence of which the Purchaser reasonably believes it may fail to (a) arrange the Debt Financing, (b) conclude or execute definitive documentation in respect of the Debt Financing, (c) satisfy any condition to draw down of the Debt Financing, or (d) draw down the Debt Financing; or
    - (iii) notwithstanding Clause 30.2, of any termination of any Financing Agreement or any documents related to the Debt Financing or the Alternative Financing; and
  - (B) providing to the Seller, on a confidential and timely basis, copies of all draft documentation relating to the Debt Financing and/or, if applicable, any Alternative Financing.
- 30.9 To the extent that such funds as are referred to in Clauses 30.2 and 30.3 are available and/or capable of being drawn by, or paid to, the Purchaser, the Purchaser undertakes to the Seller that it will take, perform, execute, sign, deliver and do all such actions, steps, documents, agreements, notices, communications and things as are necessary, and/or procure that the same are done, in order to draw down and receive such funds and complete the sale and purchase of the Business Assets pursuant to and in accordance with the terms of this Agreement.
- 30.10 If the Marketing Period is not completed prior to the Comfort Letter End Date or if on the Comfort Letter End Date a Competition Condition is not satisfied or waived in accordance with this Agreement, or if the Seller reasonably believes the Marketing Period will not complete prior to the Comfort Letter End Date or a Competition Condition will not be so satisfied or waived on the Comfort Letter End Date, the Purchaser shall:
- (A) at the request of the Seller, at the request of the Seller, request the Purchaser's Funding Banks to defer the Comfort Letter End Date, in which case the Comfort Letter End Date shall be such later date, if any, agreed to by the Purchaser's Funding Bank; and
  - (B) promptly upon request by the Seller, reimburse the Seller and other members of the Green Group for 50 per cent. (but in no event in an amount greater than £200,000) of all documented and reasonable out-of-pocket costs incurred by the Seller and other members of the Green Group in connection with the preparation and audit of the audited statements of net assets to be sold and related statements of revenue and direct operating expenses in relation to the business described in the Draft Carve-Out Accounts for the fiscal year ending

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31 December 2011 referred to in paragraph (w) of the definition of “Marketing Period” and such other actions as may reasonably be taken to seek to provide such comfort or further information as may be needed in connection with the Debt Financing in order to reach Completion promptly.

*Seller’s Debt Financing assistance*

- 30.11 The Seller undertakes to provide, and to cause its respective representatives to provide, to the Purchaser all reasonable cooperation reasonably requested by the Purchaser (on reasonable notice) that is necessary for the purposes of arranging the Debt Financing, including by using its reasonable endeavours:
- (A) to provide the Required Financial Information and any additional financial information relating to the Business required for the Purchaser to provide Purchaser’s Financing Banks with a customary preliminary offering memorandum in connection with the private placement of the Unsecured Notes (as defined in the Debt Commitment Letter) and provided that such information shall not include any final information on a brand-by-brand basis (other than sales and contribution data (where contribution is calculated under the basis of preparation defined in the Vendor Due Diligence Reports prepared by KPMG) in respect of specific brands requested by the Purchaser to the Seller in writing prior to the date of this Agreement);
  - (B) to participate in a reasonable number of meetings;
  - (C) to assist with the preparation of customary materials for rating agency presentations, bank information memoranda, offering documents, private placement memoranda and similar documents required in connection with the Debt Financing
  - (D) to obtain consents from the Seller’s accountants for use of their reports in any materials relating to the Debt Financing;
  - (E) to assist with obtaining customary accountants’ comfort letters and legal opinions as reasonably requested by the Purchaser for the purposes of the Debt Financing (including the private placement of the Unsecured Notes);
  - (F) to facilitate (subject to the occurrence of Completion and except in relation to the Transferring Business IPR) the pledge and perfection of security required for closing under the Financing Agreements;
  - (G) to procure that the Business takes such corporate actions (subject to the occurrence of Completion);
  - (H) to provide to the Purchaser’s Financing Banks (upon no less than 15 days’ prior notice) such documentation and other information reasonably requested by them which is in their reasonable determination, required by regulatory authorities with respect to the Business under applicable “know your client” and anti-money laundering rules and regulations, including the Patriot Act;

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- (I) to cooperate in assisting the Purchaser to procure, prior to the date that is fifteen (15) consecutive Business Days prior to the Completion Date corporate and facilities ratings for the debt financing contemplated by the Debt Commitment Letter; and
- (J) to assist the Purchaser in responding to comments of the SEC, if any, in order for the registration statement on Form S-4 to be declared effective by the SEC, including, where the effective date (as declared by the SEC) of the registration statement relating to the exchange offer to register the Unsecured Notes (as defined in the Debt Commitment Letter) with the SEC occurs on or after 31 March 2012, by the preparation and delivery of audited statements of net assets to be sold and related statements of revenue and direct operating expenses in relation to the business described in the Draft Carve-Out Accounts for the fiscal year ending 31 December 2011,

in each case as are reasonably necessary for the purposes of arranging the Debt Financing, PROVIDED THAT nothing herein shall require such cooperation to the extent it would interfere unreasonably or disproportionately with the Business.

30.12 The Seller hereby consents to the reasonable use of the Business's logos for the purposes of arranging the Debt Financing, PROVIDED THAT the Purchaser undertakes not to commit or omit any act or pursue any course of action, or assist or (to the extent it is able) permit any third party to pursue any course of conduct, which would be likely to result in such logos being used in a manner that may harm or disparage the Business or the reputation or goodwill of the Business or bring the Business into disrepute.

30.13 Notwithstanding anything to the contrary set forth in Clause 30.11, no member of GSK Group shall be required to pay any commitment or other similar fee in connection with the Debt Financing contemplated by the Debt Commitment Letter. The Purchaser shall indemnify and keep indemnified the Seller and each member of the GSK Group from and against any and all Losses suffered or incurred by any member of the GSK Group in connection with the arrangement of the Debt Financing (including any action taken in accordance with Clause 30.11) and any information utilized in connection therewith (other than information relating to the Business or other information furnished by or on behalf of the Seller). The Purchaser shall, promptly upon request by the Seller, reimburse Seller and other members of GSK Group for all documented and reasonable out-of-pocket costs incurred by Seller and other members of GSK Group in connection with Clause 30.11 (including for the avoidance of doubt all costs of vendor assistance from qualified accountants and auditors' costs incurred in connection with the preparation of audited financial statements under Clause 30.11(J)).

### **31. Payments**

31.1 The parties shall use all reasonable endeavours to cooperate to ensure that any amount payable by any party under this Agreement is, to the extent reasonable having regard to the Tax affairs of both parties, made in such a way as to ensure that the amount is not required by law to be paid subject to any deduction or withholding on account of Tax.

31.2 If, notwithstanding the parties' compliance with Clause 31.1, any amount payable by any party (whether paid on its own behalf or on behalf of a Business Seller or, as the case

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may be, a Designated Purchaser) under this Agreement (except for the Non-Compete Consideration and any payments of interest) is required by law to be paid subject to any deduction or withholding on account of Tax, the party which is obliged to make the payment (the “**Paying Party**”) shall be required to increase its payments to such amount as will ensure that, after the withholding or deduction on the increased amount is taken into account, the party to which the payment is to be made (whether to be received on its own behalf or on behalf of a Business Seller or, as the case may be, a Designated Purchaser) (the “**Receiving Party**”) receives and retains a set amount which is equal to that which the Receiving Party would have received and retained had no such withholding or deduction been required.

31.3 To the extent the Receiving Party subsequently receives and is entitled to retain and utilise a credit against, relief or remission for, or repayment of any Tax (any of the foregoing being referred to as a “saving”) in respect of such additional amount or the payment to which such additional amount relates, the Purchaser or, as the case may be, the Seller shall procure that the Receiving Party shall pay an amount to the Paying Party which the Receiving Party reasonably determines will leave it (after that payment) in the same after-Tax position as it would have been in but for its utilisation of the saving.

**32. No set-off**

Except as expressly provided under this Agreement, any payment to be made by any party under this Agreement shall be made in full without any set off, restriction, condition or deduction for or on account of any counterclaim.

**33. Effect of Completion**

Save as otherwise provided herein, any provision of this Agreement or of any other document referred to herein which is capable of being performed after but which has not been performed at or before Completion and all Warranties and other Assurances contained in, or entered into pursuant to, this Agreement shall (subject to Schedule 6) remain in full force and effect notwithstanding Completion.

**34. Assignment**

34.1 Obligations under this Agreement shall not be assignable.

34.2 Subject to the provisions of Clause 34.3 below, the benefits of this Agreement shall not be assignable except that any party may, upon giving written notice to the others, assign the benefit of this Agreement to a member of the GSK Group (in the case of the Seller or any Business Seller) or to a member of the Purchaser’s Group (in the case of the Purchaser or any Designated Purchaser) (a “**Permitted Assignee**”) PROVIDED THAT such assignment shall be without cost to, and shall not result in any increased liability, or any reduction in the rights, of, any of the other parties AND FURTHER PROVIDED THAT if such Permitted Assignee shall subsequently cease to be a member of the Purchaser’s Group or the GSK Group, as the case may be, the original assigning party shall procure that prior to the Permitted Assignee ceasing to be a member of the Purchaser’s Group or the GSK Group, as the case may be, it shall assign the benefit of this Agreement assigned to it to the party by whom such rights were originally assigned

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or (upon giving further written notice to the other parties) to another member of the Purchaser's Group or the GSK Group, as the case may be. Any purported assignment in contravention of this Clause shall be void.

- 34.3 Notwithstanding the provisions of Clause 34.2 or any other provisions of this Agreement, the Purchaser shall be entitled to grant security over its rights, or assign its rights by way of security, under this Agreement or any other Purchaser's Transaction Document (in each case, whether in whole or in part) for the purposes of the Debt Financing or any refinancing PROVIDED THAT any assignee of any such rights shall not be entitled to further assign them (in whole or in part) other than by way of enforcement of such security.
- 34.4 Without prejudice to the provisions of Clause 34.2 above, the parties hereby agree that where the Purchaser assigns the benefit of this Agreement to any other person, the rights of all members of the GSK Group under this Agreement against the Purchaser's Group shall be no less than such rights would have been had the assignment not occurred and the liabilities of all members of the GSK Group under this Agreement to the Purchaser's Group shall be no greater than such liabilities would have been had the assignment not occurred.
- 34.5 Without prejudice to the provisions of Clause 34.2 above, the parties hereby agree that where the Seller or any Business Seller assigns the benefit of this Agreement to any other person, the rights of all members of the Purchaser's Group under this Agreement against the GSK Group shall be no less than such rights would have been had the assignment not occurred and the liabilities of all members of the Purchaser's Group under this Agreement to the GSK Group shall be no greater than such liabilities would have been had the assignment not occurred.
- 34.6 Notwithstanding the provisions of Clause 34.2 and 34.3, no such assignment is permitted if such assignment shall result in the Purchaser or the Seller having to amend its respective notification and report form (if any) filed with any Governmental Entity pursuant to Clause 3 of this Agreement.
- 34.7 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and Permitted Assignees.

**35. Further assurance**

- 35.1 Without prejudice to any restriction or limitation on the extent of any party's obligations under this Agreement and except in relation to the Transferring Business IPR, each of the parties shall from time to time, so far as each is reasonably able, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form reasonably satisfactory to the party concerned as they may reasonably consider necessary to transfer the Business Assets to the Purchaser (or any other member of the Purchaser's Group) or otherwise to give the other party the full benefit of this Agreement.
- 35.2 Without prejudice to Clause 26, the Seller undertakes after Completion, and at the request of the Purchaser, to execute or procure the execution of all such documents as may reasonably be necessary to secure the vesting in the Purchaser (or a member of

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the Purchaser's Group) of the Transferring Business IPR, provided that the Purchaser undertakes to the Seller that it will be responsible for:

- (A) handling and managing all aspects of the process of recording (or applying to record) at the appropriate intellectual property registries or offices the change in ownership of the Transferring Business IPR (including (but not limited to) the preparation of all documents required for this purpose);
- (B) all costs reasonably and properly incurred by the Seller in complying with its obligations in this Clause 35.2; and
- (C) all other costs and expenses in respect of such vesting, including (but not limited to) the costs of effecting and recording the Business Intellectual Property Assignments at the appropriate intellectual property registries or offices (including, but not limited to, the costs of notarising or legalising the Business Intellectual Property Assignments for such purpose).

**36. Entire agreement**

36.1 This Agreement, the Disclosure Letter, the Transitional Services Agreement, the Transitional Manufacturing and Supply Agreement, the Business Intellectual Property Assignments and the Business Domain Name Assignments and any other documents entered into pursuant to this Agreement (the "**Transaction Documents**") constitute the whole and only agreement between the parties relating to the sale and purchase of the Business Assets and, save if and only to the extent expressly repeated in any of the Transaction Documents, supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating thereto.

36.2 The Purchaser acknowledges and agrees (for itself and on behalf of each other member of the Purchaser's Group) with the Seller (on behalf of themselves and each other member of the GSK Group) that:

- (A) it does not rely on and has not been induced to enter into any of the Transaction Documents on the basis of any Assurance (express or implied) made or given by or on behalf of any member of the GSK Group or any of their respective directors, officers, employees or advisers other than those expressly set out in the Transaction Documents or, to the extent that it has been, it has (in the absence of fraud) no rights or remedies in relation thereto and shall make no claim in relation thereto or against such parties;
- (B) no member of the GSK Group, or any of their respective directors, officers, employees or advisers, has given or made any Assurance other than those expressly set out in the Transaction Documents or, to the extent that they have, the Purchaser hereby (for itself and on behalf of each other member of the Purchaser's Group) unconditionally and irrevocably waives (in the absence of fraud) any claim which it might otherwise have had in relation thereto; and
- (C) any warranty or other rights which may be implied by law in any jurisdiction in relation to the sale of the Business Assets in such jurisdiction shall be excluded

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or, if incapable of exclusion, irrevocably waived and the Purchaser agrees to indemnify the Seller and each member of the GSK Group against any and all Losses arising or incurred as a result of claims under any such implied warranty or other rights by the Purchaser or any other member of the Purchaser's Group or their respective successors in title (including, without limitation, any provider of finance to the Purchaser).

36.3 This Agreement may only be varied by a document in writing and signed by each of the parties and expressed to be a variation to this Agreement. For this purpose, a variation to this Agreement shall include any addition, deletion, supplement or replacement, howsoever effected.

36.4 To the extent that any provision of any agreement entered into for the purposes of transferring Business Assets located in a particular jurisdiction or country is inconsistent with any provision of this Agreement, the provision of this Agreement shall prevail.

### 37. Capacity of Seller and Purchaser

37.1 The undertakings given by the Purchaser to, and agreements made by the Purchaser with, the Seller in this Agreement are given and made to and with the Seller for itself and as trustee for the relevant Business Seller (as applicable).

37.2 The undertakings given by the Seller to, and agreements made by the Seller with, the Purchaser in this Agreement are given and made to and with the Purchaser for itself and as trustee for the relevant Designated Purchaser.

### 38. Remedies and waivers

38.1 No delay or omission by any party to this Agreement in exercising any right, power or remedy provided by law or under this Agreement or any document referred to in it shall:

(A) impair or affect such right, power or remedy; or

(B) operate as a waiver of it.

38.2 The single or partial exercise of any right, power or remedy provided by law or under this Agreement or under any document referred to in it shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.

38.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law unless otherwise stated herein (including, without limitation, in Clause 23.5 and Clause 36.2).

### 39. Indemnification and conduct of claims

39.1 Subject to Clauses 39.4 and 39.3, if any assessment, action, claim, demand, proceeding or investigation is filed, brought, alleged or instituted by a third party (a "**Third Party Claim**") against any member of the GSK Group or, as the case may be, any member of the Purchaser's Group, (the "**Relevant Indemnified Party**") in respect of which an indemnity is to be sought from the Purchaser or, as the case may be, the

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Seller (the “**Relevant Indemnifying Party**”) pursuant to this Agreement, the Purchaser or, as the case may be, the Seller shall procure that the Relevant Indemnified Party shall:

- (A) as soon as practicable notify the Relevant Indemnifying Party thereof by written notice as soon as it appears to the Relevant Indemnified Party that any Third Party Claim received by or coming to the notice of the Relevant Indemnified Party may result in a claim for indemnification;
- (B) subject to the Relevant Indemnifying Party indemnifying the Relevant Indemnified Party against any Losses which may be incurred thereby, take such action and give such information and access to personnel, premises, chattels, documents and records to the Relevant Indemnifying Party and their professional advisers as the Relevant Indemnifying Party may reasonably request in order to investigate such Third Party Claim, and the Relevant Indemnifying Party shall be entitled to require any relevant company (being a member of the Purchaser’s Group (where the Relevant Indemnified Party is a member of the Purchasers’ Group) or a member of the GSK Group (where the Relevant Indemnified Party is a member of the GSK Group)) to take such action and give such reasonable information and assistance in order to avoid, dispute, resist, mitigate, settle, compromise, defend or appeal any claim in respect thereof or adjudication with respect thereto;
- (C) allow the Relevant Indemnifying Party to take the sole conduct of such actions, claims, proceedings, investigations and/or negotiations as the Relevant Indemnifying Party may reasonably deem appropriate in connection with any such assessment, claim or investigation in the name of the Relevant Indemnified Party or any such relevant company referred to above, and in that connection the Relevant Indemnified Party shall give or cause to be given to the Relevant Indemnifying Party all such assistance as it may reasonably require (at the cost of the Relevant Indemnifying Party, provided that such costs shall be reasonable) in avoiding, disputing, resisting, settling, compromising, defending or appealing any such claim, proceeding or investigation and shall instruct such legal or other professional advisers as the Relevant Indemnifying Party may nominate to act on behalf of the Relevant Indemnified Party or any relevant company, as appropriate, but to act in accordance with the Relevant Indemnifying Party’s instructions;
- (D) be entitled to participate in the defence of any Third Party Claim and to employ separate counsel to represent it at its own expense PROVIDED THAT the Relevant Indemnifying Party shall control the defence of the Third Party Claim;
- (E) make no admission of liability, agreement, settlement or compromise with any third party in relation to any such claim, investigation or adjudication without the prior written consent of the Relevant Indemnifying Party (such consent not to be unreasonably withheld or delayed); and
- (F) take all reasonable action to mitigate any loss suffered by it in respect of which a claim could be made for indemnification.

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- 39.2 The Relevant Indemnifying Party shall be entitled at any stage and in its absolute discretion to settle any such Third Party Claim (but without any admission of wrongdoing) after giving reasonable advance written notice to the Relevant Indemnified Party and provided that the Relevant Indemnified Party is discharged in full of its liabilities under such Third Party Claim.
- 39.3 Notwithstanding the provisions of Clauses 39.1 and 39.2, the Relevant Indemnifying Party shall not be entitled to assume the defence of any Third Party Claim (and shall be liable for the reasonable costs and expenses (including legal expenses) incurred by the Relevant Indemnified Party in defending such Third Party Claim) if the Third Party Claim seeks any relief other than damages (including any orders, injunctions or other equitable relief) against the Relevant Indemnified Party which the Relevant Indemnified Party reasonably determines cannot be separated from any related claim for damages. If such claim for other relief can be separated from the claim for damages, the Relevant Indemnifying Party shall be entitled to assume the defence of the claim for damages. Further, the Relevant Indemnifying Party shall not be entitled (on written notice from the Relevant Indemnified Party) to assume or continue the defence of any such claim, action and/or demand in the event that such claim, action and/or demand, or the Relevant Indemnifying Party's conduct of the defence thereof, has caused or could cause (in the opinion of the Relevant Indemnified Party, acting reasonably and in good faith) material damage to the reputation or goodwill of any member of the Purchaser's Group.
- 39.4 Notwithstanding the provisions of Clauses 39.1 and 39.2, in respect of any Third Party Claim for which an indemnity is to be sought by the Seller (or any other member of the GSK Group) from the Purchaser pursuant to Clause 18.1, the Purchaser shall, at the request of the Seller, have the option (at its sole discretion) to allow the Seller or such member of the GSK Group as the Seller may nominate) to take the sole conduct of such actions, claims, proceedings, investigations and/or negotiations as the Seller may deem appropriate in connection with any such Third Party Claim in the name of the Seller (or the name of the relevant member of the GSK Group) and in that connection the Purchaser shall give, or cause to be given, to the Seller all such assistance as it may reasonably require in avoiding, disputing, resisting, settling, compromising, defending or appealing any such claim, proceeding or investigation, PROVIDED THAT all Losses arising in connection with the Assumed Liability forming the subject of such Third Party Claim shall be for the account of the Seller (or relevant member of the GSK Group) and neither the Purchaser nor any other member of the Purchaser's Group shall have any liability to assume, pay, discharge when due, or indemnify any member of the GSK Group against, the Assumed Liability forming the subject of such Third Party Claim. The provisions of the foregoing sentence shall not affect, and shall be without prejudice to, any other obligation, liability, loss, damage, commitment, cost, expense or payment constituting an Assumed Liability pursuant to the provisions of Clause 18.2.
- 39.5 Notwithstanding the provisions of Clauses 39.1 and 39.2, in respect of any Third Party Claim for which an indemnity is to be sought by the Purchaser (or any other member of the Purchaser's Group) from the Seller pursuant to Clause 18.3, if the Purchaser reasonably determines that the conduct or outcome of such Third Party Claim could have a material adverse effect on its business (taken as a whole), then the Purchaser shall have the option (at its sole discretion) to take the sole conduct of such actions, claims, proceedings, investigations and/or negotiations as the Purchaser may deem

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appropriate in connection with any such Third Party Claim in the name of the Purchaser (or the name of the relevant member of the Purchaser's Group), PROVIDED THAT:

- (A) all Losses arising in connection with the Excluded Liability forming the subject of such Third Party Claim; and
- (B) all Losses arising in connection with any other Third Party Claim or series of related Third Party Claims with respect to related facts or circumstances,

shall be for the account of the Purchaser (or the relevant member of the Purchaser's Group) and neither the Seller nor any other member of the GSK Group shall have any liability to assume, pay, discharge when due, or indemnify any member of the Purchaser's Group against, any Excluded Liabilities forming the subject of such Third Party Claim or such related Third Party Claims. The provisions of the foregoing sentence shall not affect, and shall be without prejudice to, any other obligation, liability, loss, damage, commitment, cost, expense or payment constituting an Excluded Liability pursuant to the provisions of Clause 18.4.

**40. Notices**

40.1 Any notice or other communication given or made under, or in connection with the matters contemplated by, this Agreement shall only be effective if it is in writing. Faxes and e-mail are not permitted.

40.2 Any such notice or communication shall be sent to a party at its address and for the attention of the individual set out below:

<b>Name of party</b>	<b>Address</b>
GlaxoSmithKline PLC	980 Great West Road Brentford Middlesex TW8 9GS United Kingdom
For the attention of:	Company Secretary
With a copy to:	Vice President and Associate General Counsel GlaxoSmithKline 2301 Renaissance Boulevard King of Prussia, PA 19406 United States of America

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<b>Name of party</b>	<b>Address</b>
Any Business Seller	c/o 980 Great West Road Brentford Middlesex TW8 9GS United Kingdom
For the attention of:	Company Secretary
With a copy to:	Vice President and Associate General Counsel GlaxoSmithKline 2301 Renaissance Boulevard King of Prussia, PA 19406 United States of America
Prestige Brands Holdings, Inc.	90 North Broadway Irvington NY 10533 United States of America
For the attention of:	Ron Lombardi Chief Financial Officer
With a copy to:	Eric Klee Secretary and General Counsel Prestige Brands Holdings, Inc. 90 North Broadway Irvington NY 10533 United States of America

PROVIDED THAT a party may change its notice details on giving notice to the other party of the change in accordance with this Clause 40. That notice shall only be effective on the date falling five (5) clear Business Days after the notification has been received or such later date as may be specified in the notice.

40.3 Any notice or communication given or made under, or in connection with the matters contemplated by, this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

- (A) if delivered personally (for the avoidance of doubt, including by courier or registered post), on delivery;
- (B) if sent by first class inland (domestic) post, two (2) clear Business Days after the date of posting; and
- (C) if sent by airmail, six (6) clear Business Days after the date of posting.

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40.4 Any notice or communication given or made under, or in connection with the matters contemplated by, this Agreement outside Working Hours in the place to which it is addressed shall be deemed not to have been given until the start of the next period of Working Hours in such place.

#### **41. Announcements**

41.1 Subject to Clause 41.2, no announcement (other than the Press Announcements) concerning the sale or purchase of the Business and/or the Business Assets or any ancillary matter shall be made by any party without the prior written approval of the Seller and the Purchaser, such approval not to be unreasonably withheld or delayed.

41.2 Any member of the Purchaser's Group and any member of the GSK Group may make an announcement concerning the sale or purchase of the Business and/or the Business Assets or any ancillary matter if required by:

- (A) the applicable law of any relevant jurisdiction; or
- (B) any securities exchange or regulatory or governmental body or any Tax Authority to which any party is subject or submits, wherever situated (including, without limitation, the UK Listing Authority, the London Stock Exchange, the SEC and the New York Stock Exchange), whether or not the requirement has the force of law,

in which case the party concerned shall take all such steps as may be reasonable and practicable in the circumstances to agree the contents of such announcement with the Seller and the Purchaser before making such announcement and PROVIDED THAT any such announcement shall be made only after notice to the Seller and the Purchaser.

41.3 The restrictions contained in this Clause shall continue to apply after the termination of this Agreement without limit in time.

#### **42. Confidentiality**

42.1 Subject to the provisions of Clause 42.2 and Clause 41:

- (A) each party shall treat as confidential all information received or obtained as a result of entering into or performing this Agreement which relates to:
  - (i) the provisions of this Agreement or any document referred to herein;
  - (ii) the negotiations relating to this Agreement or any document referred to herein; or
  - (iii) the subject matter of this Agreement;
- (B) the Purchaser shall treat, and shall procure that each other member of the Purchaser's Group treats, as confidential all information received or obtained concerning any member of the GSK Group and any GSK Business, as a result of the negotiation and entering into of this Agreement; and

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(C) the Seller shall treat, and shall procure that each other member of the GSK Group treats, as confidential all information (i) retained concerning the Business Completion and (ii) received or obtained concerning any member of the Purchaser's Group as a result of the negotiation and entering into of this Agreement.

42.2 Notwithstanding the other provisions of this Clause 42, a party may disclose confidential information if and to the extent:

- (A) required by the applicable law or regulation of any relevant jurisdiction or for the purpose of any judicial proceedings;
- (B) required by any securities exchange or regulatory or Governmental Entity or any Tax Authority to which any party is subject or submits, wherever situated (including, without limitation, the UK Listing Authority, the London Stock Exchange, the SEC and the New York Stock Exchange), whether or not the requirement for information has the force of law;
- (C) that the information is disclosed on a confidential basis to the professional advisers, auditors and/or banking institutions or financial advisers of such party PROVIDED THAT such party shall be liable for any failure by its professional advisers, auditors or bankers to keep such information confidential;
- (D) that the information has come into the public domain through no fault of, or otherwise than as a result of breach or default of, that party;
- (E) the other parties have given prior written consent to the disclosure, such consent not to be unreasonably withheld or delayed;
- (F) it does so to a member of the GSK Group (in the case of the Seller) or to a member of the Purchaser's Group (in the case of the Purchaser) which accepts restrictions in the terms of this Clause 42; or
- (G) required to enable that party to enforce its rights under this Agreement,

PROVIDED THAT any such information disclosed pursuant to sub-Clauses 42.2(A) or 42.2(B) shall be disclosed (where reasonably practicable) only after notice has been given to the other parties of such requirement with a view to agreeing the content and timing of such disclosure.

42.3 The restrictions contained in this Clause 42 shall continue to apply after the termination of this Agreement without limit in time.

42.4 With effect from the date of this Agreement, the confidentiality agreement dated 7 July 2011 between the Seller and the Purchaser is, in respect of Confidential Information (as defined in such confidentiality agreement), terminated (notwithstanding anything to the contrary in clause 7 thereof) without prejudice to the rights and liabilities of the parties which have accrued thereunder prior to the date hereof. Pending Completion, in the event of any conflict between the terms of such confidentiality agreement and the terms of this Clause 42, the provisions of this Clause 42 shall prevail.

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#### **43. Costs and expenses**

- 43.1 Except as otherwise stated in this Agreement, each party shall pay its own costs and expenses in relation to the negotiations leading up to the sale of the Business Assets and to the preparation, execution and carrying into effect of this Agreement and all other documents entered into pursuant to, or in connection with, it.
- 43.2 Without prejudice to Clause 43.1:
- (A) the Purchaser shall pay to the Seller and each Business Seller on demand an amount equal to 50 per cent. of any Transfer Tax for which the Seller or that Business Seller (as the case may be) is liable to account to any Tax Authority in connection with or as a result of this Agreement or any transfer, sale, supply, use or transaction made pursuant to or envisaged or contemplated by this Agreement; and
  - (B) the Seller shall pay to the Purchaser on demand an amount equal to 50 per cent. of any Transfer Tax for which the Purchaser is liable to account to any Tax Authority in connection with or as a result of this Agreement or any transfer, sale, supply, use or transaction made pursuant to or envisaged or contemplated by this Agreement.
- 43.3 The Purchaser, the Seller and each Business Seller shall cooperate to take all reasonable steps, claims or elections to minimise any Transfer Tax payable under or in connection with this Agreement.
- 43.4 The Seller and each Business Seller shall provide the Purchaser and the Purchaser shall provide the Seller and each Business Seller with any valid documentation that may be required to enable the Purchaser or the Seller or relevant Business Seller (as the case may be) to receive a credit or deduction for any Transfer Tax arising in connection with or as a result of this Agreement or any transfer, sale, supply, use or transaction made pursuant to or envisaged or contemplated by this Agreement, where applicable under local law.

#### **44. Counterparts**

- 44.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.
- 44.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

#### **45. Invalidity**

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:

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- (A) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (B) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

**46. Contracts (Rights of Third Parties) Act 1999**

- 46.1 Save as contemplated by Clause 46.2, the parties to this Agreement do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.
- 46.2 The provisions of Clause 29.2 confer a benefit on certain persons referred to therein and, subject to the remaining provisions of this Clause 46 and Clause 29.2 are each intended to be enforceable by such persons by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 46.3 The provisions of Clause 12.4, 12.6, Clause 47.2 and Clause 48.4 confer a benefit on the Purchaser's Financing Banks and, subject to the remaining provisions of this Clause 46, Clause 12.4, Clause 47.2 and Clause 48.4 are each intended to be enforceable by any of the Purchaser's Financing Banks by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 46.4 This Agreement may be amended or varied in any way and at any time, in accordance with the terms of this Agreement, by the parties to it without the consent of any person referred to in Clause 29.2 or (without prejudice to any provision of the Debt Commitment Letter or any other Financing Agreement) any of the Purchaser's Financing Banks.

**47. Choice of governing law**

- 47.1 This Agreement shall be governed by and construed in accordance with English law. Any matter, claim or dispute arising out of or in connection with this Agreement, whether contractual or non-contractual, is to be governed by and determined in accordance with English law.
- 47.2 Clause 47.1 shall be without prejudice to the interpretation of any provision under the Debt Commitment Letter or any other Financing Agreement (including for the avoidance of doubt any provision thereof pursuant to which New York law is expressed to apply to the interpretation of any provision of this Agreement incorporated by reference into the Debt Commitment Letter or such other Financing Agreement).

**48. Jurisdiction**

- 48.1 The courts of England are to have jurisdiction to settle any dispute, whether contractual or non-contractual, arising out of or in connection with this Agreement. Any Proceedings shall be brought only in the courts of England.
- 48.2 Each party waives (and agrees not to raise) any objection, on the ground of *forum non conveniens* or on any other ground, to the taking of Proceedings in the courts of England. Each party also agrees that a judgment against it in Proceedings brought in

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England shall be conclusive and binding upon it and may be enforced in any other jurisdiction.

48.3 Each party irrevocably submits and agrees to submit to the jurisdiction of the English courts.

48.4 No party hereto, nor any of its affiliates, will bring, or support the bringing of, any claim, whether at law or in equity, whether in contract or in tort or otherwise, against any of the Purchaser's Financing Banks in any way relating to this Agreement or any of the transactions contemplated by this Agreement, including any dispute arising out of or relating in any way to the Debt Commitment Letter or any other Financing Agreement or the performance thereof, anywhere other than in the Supreme Court of the State of New York, County of New York, or, if under applicable law exclusive jurisdiction is vested in the federal courts, the United States District Court for the Southern District of New York (and appellate courts thereof) and each of the parties hereto and their respective affiliates agree to waive irrevocably all right to a trial by jury in any such claim or dispute.

**49. Agent for service**

49.1 The Purchaser irrevocably appoints the Purchaser's Solicitors to be its agent for the receipt of Service Documents. It agrees that any Service Document may be effectively served on it in connection with Proceedings in England and Wales by service on its agent effected in any manner permitted by the Civil Procedure Rules, provided that the Service Document is marked for the urgent attention of Jane Hobson, Partner.

49.2 If the agent at any time ceases for any reason to act as such, the Purchaser shall appoint a replacement agent having an address for service in England or Wales and shall notify the Seller of the name and address of the replacement agent. Failing such appointment and notification, the Seller shall be entitled by notice to the Purchaser to appoint a replacement agent to act on behalf of the Purchaser. The provisions of this Clause 49 applying to service on an agent apply equally to service on a replacement agent.

49.3 A copy of any Service Document served on an agent shall be sent by post to the Purchaser. Failure or delay in so doing shall not prejudice the effectiveness of service of the Service Document.

49.4 "**Service Document**" means a claim form, application notice, order, judgment or other document relating to any Proceedings.

IN WITNESS of which the parties have entered into this Agreement on the day and year first before written.

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**Schedule 1  
(The Business Sellers)**

<b>Name</b>	<b>Status/Address</b>
Glaxo Group Limited	A company registered in England by Companies House under number 00305979 and whose registered office is at Glaxo Wellcome House, Berkeley Avenue, GSKford, Middlesex, UB6 0NN, United Kingdom
GlaxoSmithKline LLC	A company registered in the United States by the Delaware Secretary of State under number 4746253 and whose registered office is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808, United States of America
GlaxoSmithKline Consumer Healthcare Inc.	A company registered in Canada by Corporations Canada, Industry Canada under number 391577-8 and whose registered office is at 7333 Mississauga Road, 4 <sup>th</sup> Floor, Mississauga, Ontario, L5N 6L4, Canada
Prism CH Holdings, Inc.	A corporation incorporated under the laws of Delaware, one of the United States, whose registered office is c/o Corporation Service Company, 2711 Centerville Road, Suite 400 Wilmington, Delaware, 19808 United States of America
SmithKline Beecham Pharmaceuticals Company	A company registered in the United States by the Delaware Secretary of State under number 3050 and whose registered office is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808, United States of America

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**Schedule 2  
(Conditions)**

1. Competition Condition

The receipt of evidence that all filings have been made and all the waiting periods having expired or been terminated in relation to the transactions provided for by this Agreement pursuant to the Hart-Scott-Rodino Anti Trust Improvements Act of 1976 (as amended) of the United States of America.

2. Financing Condition

Definitive documentation in respect of the Debt Financing having been executed by the Purchaser and the other parties thereto at or prior to the Completion Date, all Permitted Financing Conditions having been satisfied at or prior to the Completion Date and each of the Purchaser's Financing Banks advancing funds under the Debt Financing at Completion in accordance with their contractual commitments to do so under the Financing Agreements.

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**Schedule 3  
(Conduct of Business before Completion)**

The acts and matters referred to in Clause 6.3 are as follows:

1. any disposal (not being a disposal in the ordinary course of trading on normal arm's length terms) of any interest in any part of the Business Assets where in any such case such disposal is of an asset of an individual value in excess of US\$ [\*\*\*] or of assets of an aggregate value in excess of US\$ [\*\*\*];
2. any creation or grant of any Encumbrance (other than a Permitted Encumbrance or a non-exclusive licence of Intellectual Property or know-how in the ordinary course of business) on, over or affecting any of the Business Assets;
3. subject to paragraph 4 below, the discontinuance or cessation of operation of any part of the Business;
4. the discontinuation of any Product SKU unless:
  - (a) gross revenues for the relevant Product SKU in the twelve months prior to discontinuation were less than US\$ [\*\*\*]; or
  - (b) discontinuation is required for any *bona fide* regulatory or safety reason;
5. the acquisition, whether by merger, consolidation, formation or otherwise, of any body corporate or business or the entering into of any partnership or joint venture arrangement which involves investment by the Business;
6. the grant of a licence in respect of, or the sale, transfer, disposal or assignment of, any Transferring Business IPR (other than the grant of a non-exclusive licence of Intellectual Property in the ordinary course of business);
7. the initiation, settlement or abandonment of any claim, litigation, arbitration or other proceedings with a value above US\$ [\*\*\*] and relating to the Business or the Business Assets, other than:
  - (a) debt collection in the ordinary course of business; and
  - (b) any claim, litigation, arbitration or other proceeding in respect of which the Purchaser would be entitled to claim for indemnification pursuant to the terms of this Agreement;
8. any material amendment to any Business Contract, Regulatory Permit or Third Party Regulatory Permit, except to the extent required by (i) applicable law or regulation, (ii) any Governmental Entity, or (iii) the standards, policies and procedures of GSK as then in force;
9. the termination, or taking of any steps to terminate, any Material Contract;

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10. any material acceleration or increase in the quantity of Products Manufactured (to the extent within the power or control of the GSK Group to control the Manufacture of Products) which is not in accordance with the past practice of the Business during the six (6) months preceding the date of this Agreement, except where such acceleration or increase results from an actual increase in the orders of the relevant Products by any distributor or customer without any unusual inducement by the Seller or any employee or representative of the Business intended to result in the Manufacture of seasonally adjusted inventory levels of Products in excess of normal levels;
11. save as disclosed to the Purchaser in writing on or before the date of this Agreement, any outsourcing to one or more third parties of any marketing functions in respect of any or all of the Products Commercialised under the Cornerstone Brands; and
12. the entry into of any agreement to do any of the acts and matters specified in this Schedule 3.

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**Schedule 4**  
**(Completion arrangements)**

**1. General**

**1.1 Matters to be dealt with by the Seller**

At Completion, the Seller shall:

*Transfer of Business Assets capable of delivery*

Subject to the provisions of this Agreement, procure that each relevant member of the GSK Group with legal and beneficial title to any Business Asset delivers to, or holds to the order of, the Purchaser (or the relevant Designated Purchaser) all the Business Assets to which such member of the GSK Group has legal and beneficial title and which are capable of transfer by delivery (other than any Business Records which shall be delivered to the Purchaser in accordance with Clause 25) with the intent that legal and beneficial title to these Business Assets shall pass at the Completion Time.

*Other matters*

Deliver to the Purchaser:

- (A) a certified copy of the minutes of a duly held meeting of the directors of the Seller (or a duly constituted committee thereof) authorising the execution by the Seller of this Agreement and those Seller's Transaction Documents to be entered into at Completion and, in the case where such execution is authorised by a committee of the board of directors of the Seller, a certified copy of the minutes of a duly held meeting of the directors constituting such committee or the relevant extract thereof;
- (B) an original counterpart of the Transitional Manufacturing and Supply Agreement, duly executed on behalf of the Seller and/or the relevant member(s) of the GSK Group;
- (C) an original counterpart of the Bill of Sale and Assignment and Assumption of Obligations and Liabilities Agreement duly executed on behalf of the Seller and/or the relevant members of the GSK Group;
- (D) an original counterpart of each of the Business Intellectual Property Assignments and each of the Business Domain Name Assignments duly executed on behalf of the Seller and/or the relevant member(s) of the GSK Group;
- (E) a completed Internal Revenue Service Form W-9 in respect of the Seller;
- (F) a completed Internal Revenue Service Form W8-BEN in respect of GCHI; and
- (G) a completed Internal Revenue Service Form W8-BEN in respect of GSK PLC.

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**Matters to be dealt with by the Purchaser**

At Completion, the Purchaser shall:

- (A) deliver to the Seller:
- (i) a certified copy of the minutes of a duly held meeting of the directors of the Purchaser (or a duly constituted committee thereof) authorising the execution by the Purchaser of this Agreement and those of the Purchaser's Transaction Documents to be entered into at Completion to which it is a party and, in the case where such execution is authorised by a committee of the board of directors of the Purchaser, a certified copy of the minutes of a duly held meeting of the directors constituting such committee or the relevant extract thereof;
  - (ii) an original receipt acknowledging delivery of all documents required to be delivered by the Seller pursuant to this Schedule;
  - (iii) an original counterpart of the Transitional Manufacturing and Supply Agreement, duly executed on behalf of the Purchaser and/or the relevant member(s) of the Purchaser's Group;
  - (iv) an original counterpart of the Bill of Sale and Assignment and Assumption of Obligations and Liabilities Agreement duly executed on behalf of the Purchaser and/or the relevant member(s) of the Purchaser's Group; and
  - (v) an original counterpart of each of the Business Intellectual Property Assignments and each of the Business Domain Name Assignments duly executed on behalf of the Purchaser and/or the relevant member(s) of the Purchaser's Group; and
- (B) pay, or procure the payment of:
- (i) the amount of the Initial Cash Consideration to the Seller's Bank Account; or
  - (ii) if so directed by the Seller, pay, or procure the payment of, such part of the amount of the Initial Cash Consideration to such bank account(s) of the Business Sellers as the Seller may notify to the Purchaser not less than three (3) Business Days before Completion,

in any such case by CHAPS transfer for same day value.

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**Schedule 5  
(The Warranties)**

**1. Capacity of the Seller and the Business Sellers**

- 1.1 The Seller and the Business Sellers are each duly incorporated and validly existing under the laws of their respective jurisdiction of incorporation.
- 1.2 The Seller and the Business Sellers and GSK PLC each have the requisite capacity, power and authority to enter into and perform this Agreement, as does each member of the GSK Group in respect of any other documents which are to be entered into by any such party pursuant to this Agreement (the “**Seller’s Transaction Documents**”).
- 1.3 This Agreement constitutes valid and binding obligations of the Seller and each Business Seller and GSK PLC in accordance with its terms. The Seller’s Transaction Documents will, when executed by the relevant member of the GSK Group, constitute valid and binding obligations of that member of the GSK Group, in accordance with their respective terms.
- 1.4 The execution and delivery of this Agreement and the performance by the Seller, each of the Business Sellers and GSK PLC of their respective obligations under it and, in the case of any other member of the GSK Group, the execution and delivery of any Seller’s Transaction Documents to which it is a party and the performance by that party of its obligations under them, will not:
- (A) result in a breach of any provision of the memorandum or articles of association or by laws or equivalent constitutional document of the relevant member of the GSK Group;
  - (B) result in a breach of, or constitute a default under, any instrument to which the relevant member of the GSK Group is party or by which the relevant member of the GSK Group is bound where such breach is material to their ability to perform their obligations under this Agreement or under any of the Seller’s Transaction Documents;
  - (C) so far as the Seller is aware, result in a breach of any existing order, judgment or decree of any court or Governmental Entity by which the relevant member of the GSK Group is bound where such breach is material to their ability to perform their obligations under this Agreement or under any of the Seller’s Transaction Documents; or
  - (D) save as contemplated by this Agreement, require the relevant member of the GSK Group to obtain any consent or approval of, or give any notice to or make any registration with, any Governmental Entity which has not been obtained or made at the date hereof both on an unconditional basis and on a basis which cannot be revoked.
- 1.5 No person is entitled to receive from the Business any fee, brokerage or commission in connection with the Seller’s Transaction Documents or anything contained in them.

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## **2. Solvency**

- 2.1 No order has been made and no resolution has been passed for the winding up of the Seller or any Business Seller, or for the appointment of any administrator, receiver (including administrative receiver) or liquidator (provisional or otherwise) over the whole or any part of the property, assets and/or undertaking of the Seller or any Business Seller, in each case which would be reasonably likely to restrict or otherwise affect the transactions contemplated by this Agreement, or the whole or any part of the Business or the Business Assets.
- 2.2 No petition has been presented or meeting convened for the purpose of considering a resolution or resolution circulated for the winding up of the Seller or any Business Seller, or for the appointment of any administrator, receiver (including administrative receiver) or liquidator (provisional or otherwise) over the whole or any part of the property, assets and/or undertaking of the Seller or any Business Seller, in each case which would be reasonably likely to restrict or otherwise affect the transactions contemplated by this Agreement, or the whole or any part of the Business or the Business Assets.
- 2.3 Neither the Seller nor any Business Seller has stopped payment or suspended payment of its debts generally, is insolvent or deemed unable to pay its debts as they fall due.

## **3. Ownership and sufficiency of Assets**

- 3.1 Each of the Business Assets (other than any Business Inventory acquired in the ordinary course of business on terms that the property does not pass until payment is made) is owned both legally and beneficially by a Business Seller or another member of the GSK Group and each of those assets capable of possession is, save where in the possession of third parties in the ordinary course of business, in the possession of a Business Seller or another member of the GSK Group.
- 3.2 Save for Permitted Encumbrances, no Encumbrance on, over or affecting the whole or any part of the Business Assets is outstanding and, save in relation to Permitted Encumbrances, there is no agreement or commitment entered into by any Business Seller to give or create any Encumbrance and no claim has been made against any Business Seller by any person to be entitled to any Encumbrance.
- 3.3 The Business Assets, together with such other facilities and services which are to be provided to the Purchaser's Group pursuant to this Agreement, the Transitional Services Agreement, the Transitional Manufacturing and Supply Agreement, the licences granted to the Purchaser under each of Clause 26.2 and Clause 26.14, any other Seller's Transaction Document and any other Purchaser's Transaction Document, comprise all of the material assets and services required to carry on the Business in substantially the same manner as it has been during the six (6) months preceding the date of this Agreement (save that nothing in this paragraph shall be deemed to be or construed as a warranty that the activities of the Business do not infringe the Intellectual Property of any third party).

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#### **4. Business Inventory**

- 4.1 To the extent in existence at the date of this Agreement, the Business Inventory complies in all material respects with all applicable product specifications and with applicable requirements of GMP.
- 4.2 To the extent in existence at the date of this Agreement, all items of Business Inventory are beneficially owned by a member of the GSK Group.

#### **5. Audited Carve-Out Accounts**

5.1 The Audited Carve-Out Accounts will be prepared:

- (A) in conformity with International Accounting Standards, International Financial Reporting Standards and related interpretations, as issued by the International Accounting Standards Board as applicable to the items included in the Audited Carve-Out Accounts; and
- (B) to present:
- (i) the net assets sold; and
  - (ii) the revenue and direct operating expenses,

in each case, of the business described therein pursuant to the basis of preparation described in note 2 (basis of preparation and accounting policies) of the notes accompanying the audited financial statements set out therein.

5.2 On the basis of the foregoing paragraph 5.1 (and having regard to the fact that (i) the net assets to be sold of the business described in the Audited Carve-Out Accounts are not each contained within separate legal entities, (ii) historically the GSK Group has not maintained separate records for the business described therein, and (iii) the Audited Carve-Out Accounts are not intended to be a complete presentation of the financial position, operating results or cash flows of the business described therein), the financial statements contained within the Audited Carve-Out Accounts will present fairly, in all material respects, the net assets sold of the business described therein as at 31 December 2010, 31 December 2009 and 31 December 2008 and the revenue and direct operating expenses of the business described therein for the years ended 31 December 2010, 31 December 2009 and 31 December 2008 in conformity with the basis of preparation described in note 2 (basis of preparation and accounting policies) of the notes accompanying such financial statements.

#### **6. Interim Review Carve-Out Accounts**

6.1 The Interim Review Carve-Out Accounts will be prepared:

- (A) in conformity with International Accounting Standards, International Financial Reporting Standards and related interpretations, as issued by the International Accounting Standards Board as applicable to the items included in the Audited Carve-Out Accounts; and

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(B) to present:

- (i) the net assets sold; and
- (ii) the revenue and direct operating expenses,

in each case, of the business described therein pursuant to the basis of preparation described in note 2 (basis of preparation and accounting policies) of the notes accompanying the financial statements set out therein.

6.2 On the basis of the foregoing paragraph 6.1 (and having regard to the fact that (i) the net assets to be sold of the business described in the Interim Review Carve-Out Accounts are not each contained within separate legal entities, (ii) historically the GSK Group has not maintained separate records for the business described therein, and (iii) the Interim Review Carve-Out Accounts are not intended to be a complete presentation of the financial position, operating results or cash flows of the business described therein), the financial statements contained within the Interim Review Carve-Out Accounts will not require that any material modifications be made to them for them to be in conformity with the basis of preparation described in note 2 of the financial statements set out therein.

## 7. Events since the Business Financial Information Date

Since the Business Financial Information Date:

- (A) there has been no change which has had a Material Adverse Effect; and
- (B) save in respect of actions undertaken in connection with the GSK Group Reorganisation Plans, the Business has in all material respects been carried on in the ordinary course and no Business Contract which would constitute a Material Contract has been entered into by any member of the GSK Group (in relation to the Business).

## 8. Contracts and commitments

8.1 The Data Room contains a copy (or a summary of all material terms of) of each Business Contract and Shared Business Contract in existence as at the date of this Agreement.

8.2 No Business Seller (in relation to the Business) is currently in breach of any Material Contract and, so far as the Seller is aware, no other party to any Material Contract is in breach of any such Material Contract where, in either case, such breach would entitle the non-defaulting party to terminate such Material Contract.

8.3 No member of the GSK Group has received any notice indicating that any third party which is required to provide consent to the transfer of any Material Contract under this Agreement will withhold or delay the grant of such consent, or make the grant of such consent subject to conditions.

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8.4 The Brand Activations Grids specifically disclosed in the Disclosure Letter do not materially misstate the planned advertising and promotional activity in respect of the Business during the calendar year 2012.

## **9. Consents and licences**

9.1 All governmental and quasi-governmental licences, consents, permissions, waivers, exceptions and approvals required for carrying on the Business, the absence of which, individually or in the aggregate, would have a Material Adverse Effect, are in force and has been complied with in all material respects and, so far as the Seller is aware, no written notice has been received by the Seller or any other member of the GSK Group which indicates that any such licence, consent, permission, waiver, exception or approval has not been complied with in all material respects and is likely to be revoked or which may confer a right of revocation.

9.2 So far as the Seller is aware, there are no circumstances which make it reasonably likely that any of the licences, consents, permissions, waivers, exceptions and approvals referred to in paragraph 9.1 will or are likely to be suspended, cancelled or revoked or not renewed, in whole or in part, in the ordinary course of events (whether in connection with the Proposed Transaction or otherwise)

9.3 During the Relevant Period, the Business has been conducted in all material respects in compliance with the applicable requirements of GMP, except where the failure so to comply, individually or in the aggregate, would not have a Material Adverse Effect.

## **10. Litigation**

10.1 No Business Seller (in relation to the Business) is currently party to any Third Party Proceedings, whether as claimant, defendant or otherwise (other than as claimant in proceedings for the collection of debts arising in the ordinary course of business) where the amount claimed in any individual claim exceeds US\$ [\*\*\*].

10.2 So far as the Seller is aware, no Third Party Proceedings are pending or threatened by or against any Business Seller in respect of a Product which would be reasonably likely to result in any individual claim in excess of US\$ [\*\*\*].

10.3 No member of the GSK Group has received any formal written notice in the Relevant Period indicating that any litigation or arbitration, administrative or criminal proceedings in relation to the Business are currently pending where the amount claimed in any individual claim exceeds US\$ [\*\*\*].

## **11. Delinquent and wrongful acts**

11.1 So far as the Seller is aware, no member of the GSK Group (in relation to the Business), has during the Relevant Period committed any criminal or illegal act which is material to the Business.

11.2 No member of the GSK Group (in relation to the Business) has during the Relevant Period received notification that any investigation or inquiry is being or has been

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conducted by any supranational, national or local authority or governmental agency in respect of its respective part of the Business.

**12. Intellectual Property and Information Technology**

- 12.1 Details of all Business Intellectual Property which is registered or which is an application for registration are set out in Part A of Schedule 11. No such Intellectual Property is the subject of any Encumbrance.
- 12.2 Copies of all material licences of:
- (A) Business Intellectual Property granted to a third party; and
  - (B) Intellectual Property and know how, in each case granted to a Business Seller exclusively in relation to the Business,
- are set out in the Data Room.
- 12.3 So far as the Seller is aware, no party to any of the licences referred to in paragraph 12.2 is in breach of any such licence where such breach would entitle the non-defaulting party to terminate such licence.
- 12.4 Neither the validity or subsistence of the Business Intellectual Property nor the right, title and interest of the Seller or any Business Seller in such Intellectual Property, is the subject of any current, pending or threatened written challenge, claim or proceedings (including for opposition, cancellation, revocation or rectification) nor has it been in the [\*\*\*] months prior to the date of this Agreement.
- 12.5 No claim in writing has been made by a third party in the [\*\*\*] months prior to the date of this Agreement, which alleges that the operations of the Business infringe or misuse the Intellectual Property of a third party or which otherwise disputes the right of the Seller or any Business Seller to use the Business Intellectual Property in the Business. So far as the Seller is aware, the activities of the Business do not infringe the Intellectual Property or know-how rights of any third party where such infringement would have more than an immaterial effect on the Business.
- 12.6 No claim in writing has been made by the Seller in the [\*\*\*] months prior to the date of this Agreement, which alleges that a third party is infringing or misusing or is likely to infringe or misuse the Business Intellectual Property. So far as the Seller is aware, no third party is infringing any Business Intellectual Property where such infringement would have more than an immaterial effect on the Business.
- 12.7 There has been no material disruption to the commercial activities of the Business in the [\*\*\*] months prior to the date of this Agreement which has been caused by any failure or breakdown of the Information Technology used in the Business.
- 12.8 So far as the Seller is aware, no Business Seller has disclosed to any person any of its Confidential Information relating to the Business except where such disclosure was made in the normal course of the Business and was made subject to an agreement

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under which the recipient is obliged to maintain its confidentiality or restricted from using it other than for the purposes for which it was disclosed by the Business.

**13. Insurances**

- 13.1 Details of the GSK Group Insurance Policies are set out in the Data Room and, so far as the Seller is aware, no individual or related claim in respect of the Business for amounts in excess of US\$ [\*\*\*] are outstanding thereunder.
- 13.2 So far as the Seller is aware, all premiums and any related insurance premium taxes have been duly paid or are due to be paid in respect of all such GSK Group Insurance Policies.
- 13.3 Details of all outstanding claims made in respect of the GSK Group Insurance Policies in the past [\*\*\*] years are contained in the Data Room.

**14. Product Liability**

- 14.1 The Products sold by the Business during the Relevant Period have complied in all material respects with all applicable product specifications and have been Manufactured in all material respects in accordance with applicable requirements of then-current GMP, except for any such non-compliance that has not had, and would not reasonably be expected to have, a material impact on the relevant brand.
- 14.2 During the Relevant Period, none of the Products has been the subject of any product recall after being sold. So far as the Seller is aware, no circumstances exist which are reasonably likely to give rise to the occurrence of such an event.
- 14.3 No Business Seller (in relation to the Business) has received in the Relevant Period any written notification or written claim (in each case, which remains outstanding) that it has Manufactured or Commercialised any Product in the course of carrying on the Business or its respective part thereof which does not in any material respect comply with all applicable laws, regulations or standards or which in any material respect is defective or dangerous, where the pursuit of any such notification or claim has had, or would reasonably be expected to have, a material impact on the relevant brand.

**15. Warranted Regulatory Permits and Warranted Third Party Regulatory Permits**

- 15.1 Save (i) in circumstances where a Certificate of Pharmaceutical Product is required and (ii) in respect of Products Commercialised in Canada, the Commercialisation of which requires a Druvg Establishment Licence and/or a Natural Health Product Site Licence, the Warranted Regulatory Permits and the Warranted Third Party Regulatory Permits are the only Regulatory Permits that are required to carry on the Business as carried on prior to the date hereof.
- 15.2 Each Warranted Regulatory Permit is validly held by the relevant Regulatory Permit Holder and is in full force and effect and the relevant Regulatory Permit Holder has complied with all terms and conditions thereof, except for any such invalidity or non-compliance that has not had, and would not reasonably be expected to have, a material impact on the relevant Product(s).

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15.3 No proceeding relating to the Warranted Regulatory Permits has been notified during the Relevant Period to the Seller or any Regulatory Permit Holder by any Governmental Entity, where the commencement or instigation of such proceeding has had, or would reasonably be expected to have, a material impact on the relevant Product(s). So far as the Seller is aware, neither the Seller nor any Regulatory Permit Holder has received any written notice during the Relevant Period from any Governmental Entity indicating that any Warranted Regulatory Permit is likely to be suspended, revoked, not renewed or modified, where such suspension, revocation, non-renewal or modification has had, or would reasonably be expected to have, a material impact on the relevant Product(s).

15.4 In relation to any Product for which a Regulatory Permit is not required, the Seller, relevant Business Seller or member of the GSK Group has, so far as the Seller is aware, complied with its obligations relating to the formulation and labelling of such Product under any relevant OTC Monograph, save for such non-compliance as has not had, and would not reasonably be expected to have, a material impact on the relevant Product(s).

## 16. Taxation

16.1 Each Seller and Business Seller has in respect of the Business timely filed, or caused to be timely filed, all Tax returns that were required to be filed by or with respect to it (other than Tax returns which, if properly prepared and filed, would involve an immaterial amount of Tax).

16.2 Each Seller and Business Seller has in respect of the Business timely paid or caused to be timely paid all material Taxes required to be paid by or with respect to it.

16.3 There are no liens for Taxes on any of the Business Assets other than Permitted Encumbrances.

16.4 None of the Business Assets is:

- (A) property required to be treated as owned by another person pursuant to section 168(f)(8) of the Internal Revenue Code of 1954, as amended and in effect immediately prior to the enactment of the Tax Reform Act of 1986;
- (B) "tax-exempt use property" within the meaning of section 168(h)(1) of the IRC;
- (C) "tax-exempt bond financed property" within the meaning of section 168(g)(5) of the IRC;
- (D) "limited use property" within the meaning of Revenue Procedure 2001-28, 2001-1 C.B. 1156; or
- (E) subject to a "section 467 rental agreement" within the meaning of section 467 of the IRC.

16.5 GCHI is:

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- (A) a Registrant within the meaning of Part IX of the ETA and its registration number is 87462 8415 RT001;
- (B) not a non-resident of Canada for the purposes of the Income Tax Act (Canada); and
- (C) registered for Quebec Sales Tax with registration number 1088494748 TQ0001 for the purpose of An Act respecting Quebec Sales Tax.

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**Schedule 6**  
**(Seller's limitations on liability)**

**1. Limitations on quantum and general**

1.1 Neither the Purchaser nor any other member of the Purchaser's Group shall be entitled in any event to damages or other payment in respect of any claim or claims under any of the Warranties in respect of any individual claim (or series of related claims with respect to related facts or circumstances):

- (A) for less than US\$ 200,000; or
- (B) unless and until the aggregate amount of all claims made in respect of the Warranties (taking no account of those referred to in (A) above) exceeds US\$ 6,011,560 but, once the aggregate amount of all such claims has exceeded such sum, the Seller shall be liable for the full amount of all such claims and not merely in respect of the excess over such sum.

1.2 The total aggregate liability of the Seller and all members of the GSK Group under this Agreement shall not in any event exceed an amount equal to:

- (A) for all claims under the Warranties, US\$ 90,173,400; and
- (B) for all claims under this Agreement (including the claims referred to in the preceding sub-paragraph 1.2(A)) save for any claims in relation to any Excluded Liabilities, US\$ 601,156,000.

1.3 Neither the Purchaser nor any other member of the Purchaser's Group shall be entitled to claim for any indirect or consequential loss (including loss of profit) or punitive damages.

1.4 The Seller shall only be liable in respect of any claim under this Agreement if and to the extent that such claim is admitted by the Seller or proven by a judgment in a court of competent jurisdiction.

1.5 Each provision of this Schedule shall be read and construed without prejudice to each of the other provisions of this Schedule.

1.6 The Purchaser shall give, and shall procure that there is given, to the Seller access to all such information and documentation within the possession or control of any member of the Purchaser's Group as the Seller may reasonably require to enable it to satisfy itself as to whether any breach of the Warranties notified pursuant to paragraph 2 below shall have occurred.

**2. Time limits for bringing claims**

No claim shall be brought against the Seller in respect of any of the Warranties unless the Purchaser shall have given to the Seller written notice of such claim specifying (in reasonable detail) the matter which gives rise to the claim, the nature of the claim and

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the amount claimed in respect thereof (detailing the Purchaser's good faith calculation of the loss thereby alleged to have been suffered by it or the relevant member of the Purchaser's Group):

- (A) subject to sub-paragraph 2(B), on or before the date falling 18 months after the Completion Date; or
- (B) in respect of any claim under the Tax Warranties, the later of six (6) months after the expiry of the period specified by statute during which an assessment of that liability to Tax may be issued by a relevant Tax Authority and the seventh anniversary of the Completion Date,

PROVIDED THAT the liability of the Seller in respect of any claim referred to in paragraph (A) above shall absolutely determine (if such claim has not been previously satisfied, settled or withdrawn) if legal proceedings in respect of such claim shall not have been commenced within six (6) months of the service of such notice and for this purpose proceedings shall not be deemed to have been commenced unless they shall have been properly issued and validly served upon the Seller except:

- (aa) in the case of a claim based upon a liability which is contingent or otherwise not capable of being quantified, in which case the six (6) month period shall commence on the date that the contingent liability becomes an actual liability or the liability is capable of being quantified; or
- (bb) in the case of a claim where a member of the Purchaser's Group has a corresponding claim against an insurer or a corresponding entitlement to recovery from some other person in which case the six (6) month period shall commence on the date that the corresponding claim or entitlement is finally settled or finally determined.

### **3. Conduct of litigation**

3.1 Upon the Purchaser or any other member of the Purchaser's Group becoming aware of any claim, action or demand against it or any other matter likely to give rise to any claim in respect of any of the Warranties, the Purchaser shall:

- (A) as soon as practicable notify the Seller thereof in writing in accordance with paragraph 2;
- (B) subject to the Seller's agreement to indemnify the Purchaser or the relevant member of the Purchaser's Group in a form reasonably satisfactory to the Purchaser against any liability, cost, damage or expense which may be properly incurred thereby (but without thereby implying any admission of liability on the part of the Seller), take such action and give such information and access to personnel, premises, chattels, documents and records (which the Purchaser shall procure are preserved) to the Seller and its professional advisers as the Seller may reasonably request and the Seller shall be entitled to require any relevant member of the Purchaser's Group to take such reasonable action and give such reasonable information and assistance (at the Seller's cost) in order

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to avoid, dispute, resist, mitigate, settle, compromise, defend or appeal any claim in respect thereof or adjudication with respect thereto;

- (C) at the request of the Seller, allow the Seller to take the sole conduct of such claims, actions and/or demands (as applicable) as the Seller may deem appropriate in connection with any such claim, action or demand in the name of the Purchaser or any relevant member of the Purchaser's Group and in that connection the Purchaser shall give or cause to be given (and shall procure that the relevant member of the Purchaser's Group shall give or cause to be given) to the Seller all such assistance (at the Seller's cost) as it may reasonably require in avoiding, disputing, resisting, settling, compromising, defending or appealing any such claim, action or demand and shall instruct such solicitors or other professional advisers as the Seller may nominate to act on behalf of the Purchaser or any relevant member of the Purchaser's Group, as appropriate, but to act solely in accordance with the Seller's instructions provided that neither the Purchaser nor the relevant member of the Purchaser's Group shall be required to commence any legal proceedings where either:
- (i) the Purchaser or the relevant member of the Purchaser's Group has validly assigned all of its rights in relation to the relevant claim, action or demand (as applicable) to the Seller in a manner which entitles the Seller to the same benefits in respect of such rights as the Purchaser or the relevant member of the Purchaser's Group had; or
  - (ii) where sub-paragraph 3.1(C)(i) does not apply or where the Seller otherwise requests in writing, the Seller has not notified the relevant party against whom such proceedings are brought that such proceedings are being brought at the instruction of the Seller;

AND PROVIDED ALSO THAT, the Seller shall not be entitled to assume the defence of any such claim, action and/or demand if the claim, action and/or demand seeks any relief other than damages (including any orders, injunctions or other equitable relief) against any member of the Purchaser's Group which the relevant member of the Purchaser's Group reasonably determined cannot be separated from any related claim for damages. If such claim for other relief can be separated from the claim for damages, the Seller shall be entitled to assume the defence of the claim for damages. The Seller shall further be entitled to settle any claim, action and/or demand where relief other than damages is sought if the claimant agrees to settle such claim for damages and not to pursue other relief;

AND PROVIDED ALSO THAT the Seller shall not be entitled (on written notice from the Purchaser) to assume or continue the defence of any such claim, action and/or demand in the event that such claim, action and/or demand, or the Seller's conduct of the defence thereof, has caused or could cause (in the opinion of the Purchaser, acting reasonably and in good faith) material damage to the reputation or goodwill of any member of the Purchaser's Group;

PROVIDED THAT in circumstances where the Seller is not entitled to assume or continue the defence of any claim, action or demand pursuant to this paragraph

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3.1(C), the Purchaser shall keep the Seller informed and consult with the Seller in relation thereto, and take into account the Seller's reasonable views thereon.

- (D) be entitled to participate in the defence of the relevant claim, action or demand (as applicable) and to employ separate counsel to represent it as its own expense PROVIDED THAT the Seller shall control the defence of the relevant claim, action or demand (as applicable);
- (E) make no admission of liability, agreement, settlement or compromise with any person in relation to any such claim, action or demand without the prior written consent of the Seller; and
- (F) take, or procure that there is taken, all reasonable action to mitigate any loss suffered by it or by any member of the Purchaser's Group in respect of which a claim could be made under the Warranties.

3.2 The Seller shall be entitled at any stage and at its sole discretion to settle any such claim, action or demand (but without any admission of wrongdoing, and, without prejudice to the limitations on liability set out in this Agreement, subject to the Seller compensating the Purchaser for the full amount of any Losses suffered, sustained and/or incurred by any member of the Purchaser's Group in this respect).

#### **4. No liability if loss is otherwise compensated for**

4.1 No liability shall attach to the Seller or to any member of the GSK Group by reason of any breach of any of the Warranties to the extent that the same loss has been recovered by the Purchaser or any other member of the Purchaser's Group under any other Warranty or terms of this Agreement or any other document entered into pursuant hereto and accordingly the Purchaser and each other member of the Purchaser's Group may only recover once in respect of the same loss.

4.2 The Seller shall not be liable for breach of any of the Warranties to the extent that the subject of the claim has been or is made good or is otherwise compensated for (including, without limitation, pursuant to Clause 22) without cost to the Purchaser or any other member of the Purchaser's Group.

4.3 In calculating the liability of the Seller for any breach of the Warranties there shall be taken into account the amount by which any Taxation for which the Purchaser, any Designated Purchaser or any other member of the Purchaser's Group is now or in the future accountable or liable to be assessed is reduced or extinguished as a result of the matter giving rise to such liability.

#### **5. Recovery from Insurers and other Third Parties**

5.1 If, in respect of any matter which would give rise to a claim under the Warranties, any member of the Purchaser's Group is entitled to claim under any policy of insurance, then no such matter shall be the subject of a claim under any such Warranties unless and until the appropriate member of the Purchaser's Group shall have made a claim against its insurers and used all reasonable endeavours to pursue such claim and any

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such insurance claim shall then reduce by the amount recovered or extinguish any such claims under any such Warranties.

5.2 Where the Purchaser or any member of the Purchaser's Group is at any time entitled to recover from some other person any sum in respect of any matter giving rise to a claim under the Warranties, the Purchaser shall, and shall procure that the member of the Purchaser's Group concerned shall, take all reasonable steps to enforce such recovery prior to taking action against the Seller (other than to notify the Seller of such claim) and, in the event that the Purchaser or any member of the Purchaser's Group shall recover any amount from such other person, the amount of the claim against the Seller shall be reduced by the amount so recovered.

5.3 If the Seller or any other member of the GSK Group pays at any time to the Purchaser or any member of the Purchaser's Group an amount pursuant to a claim in respect of the Warranties or under any provision of this Agreement and the Purchaser or member of the Purchaser's Group subsequently recovers from some other person any sum in respect of any matter giving rise to such claim, the Purchaser shall, and shall procure that the relevant member of the Purchaser's Group shall, repay to the Seller the lesser of (i) the amount paid by the Seller (or other member of the GSK Group) to the Purchaser or relevant member of the Purchaser's Group and (ii) the sum (including interest (if any)) recovered from such other person, less any Tax thereon.

## **6. Acts of Purchaser**

6.1 No claim shall lie against the Seller under or in relation to the Warranties to the extent that such claim is attributable to:

- (A) any voluntary act, omission, transaction, or arrangement carried out at the written request of or with the written consent of the Purchaser or of a member of the Purchaser's Group before, at or after Completion or under the terms of this Agreement or any other agreement contemplated by it;
- (B) any voluntary act, omission, transaction, or arrangement carried out by the Purchaser or by a member of the Purchaser's Group on or after Completion which is outside the ordinary course of business of the relevant member of the Purchaser's Group and/or which the relevant member of the Purchaser's Group knew, or ought reasonably to have known (after reasonable enquiry), would, or was reasonably likely to, result in a claim; or
- (C) any admission of liability made in breach of the provisions of this Schedule after the date hereof by the Purchaser or on its behalf or by persons deriving title from the Purchaser or by a member of the Purchaser's Group on or after Completion.

6.2 The Seller shall not be liable for any breach of any Warranty which would not have arisen but for any reorganisation (including a cessation of the whole or part of any trade) or change in ownership of any member of the Purchaser's Group or of any assets of any such member after Completion or change in any accounting basis on which any member of the Purchaser's Group values its assets or any accounting basis, method,

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policy or practice of any member of the Purchaser's Group which is different from that adopted or used in the preparation of the Completion Current Asset Statement.

**7. The Completion Current Asset Statement**

No matter shall be the subject of a claim, and no liability shall exist, under the Warranties to the extent that allowance, provision or reserve in respect of such matter shall have been made in the Completion Current Asset Statement.

**8. Retrospective legislation**

No liability shall arise in respect of any breach of any of the Warranties to the extent that liability for such breach or such claim occurs or is increased directly or indirectly as a result of:

- (A) any legislation not in force on or prior to the date of this Agreement; or
- (B) the withdrawal of any extra-statutory concession or other agreement or arrangement currently granted by or made with any Governmental Entity (whether or not having the force of law); or
- (C) any change after the date of this Agreement of any generally accepted interpretation or application of any legislation or in the enforcement policy or practice of the relevant authorities.

**9. Purchaser's knowledge**

Without prejudice to paragraph 10, the Seller shall not be liable under the Warranties in relation to any matter forming the basis of a claim of which the Purchaser was actually aware on or before the date of this Agreement including any such matter referred to in the Information Memorandum, the VDD Report, the Management Presentation or in any other due diligence report prepared for the Purchaser or any other member of the Purchaser's Group. For these purposes, the Purchaser's awareness shall mean the actual knowledge of Matthew Mannelly (President and Chief Executive Officer), Ron Lombardi (Chief Financial Officer), Timothy Connors (Executive VP, Sales and Marketing), Eric Klee (Secretary and General Counsel), Jean Boyko (Senior Vice President, Science and Technology) and Paul Hennessey (Vice President, Operations). The Purchaser confirms that, as at the date of this Agreement, it is not aware of any matter forming the basis of a claim, or a potential claim, for any breach of Warranty.

**10. Disclosure**

Neither the Purchaser nor any member of the Purchaser's Group shall be entitled to claim that any fact, matter or circumstance causes any of the Warranties to be breached if fairly disclosed in the Disclosure Letter or in any document delivered or deemed to be delivered with it (including, for the avoidance of doubt, the Data Room and the VDD Report).

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**11. Claim to be reduction of Final Cash Consideration**

Any payment made by the Seller or any other person in respect of any claim under the Warranties shall be deemed to be a reduction of the Final Cash Consideration.

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**Schedule 7  
(Initial Cash Consideration)**

<b>Asset</b>	<b>Amount</b>
<b>Canadian Business Inventory</b>	<b>US\$[●]</b>
<b>Canadian Business Intellectual Property</b>	<b>US\$[●]</b>
<b>Other Canadian Business Assets</b>	<b>US\$[●]</b>
<b>UK Business Assets</b>	<b>US\$[●]</b>
<b>US Business Inventory</b>	<b>US\$[●]</b>
<b>US Business Intellectual Property</b>	<b>US\$[●]</b>
<b>Other US Assets</b>	<b>US\$[●]</b>

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**Schedule 8**  
**(Completion Current Asset Statement)**

**1. General**

1.1 The Completion Current Asset Statement shall:

- (A) be prepared and agreed or determined in accordance with the provisions of this Schedule;
- (B) be in the format set out in paragraph 5 of this Schedule; and
- (C) comprise a statement of:
  - (i) the Completion Current Asset Amount;
  - (ii) the Provisional Current Asset Amount; and
  - (iii) the Business Current Asset Adjustment Amount.

**2. Completion Current Asset Statement – Accounting policies, principles, practices, bases and methodologies**

*Part A – General*

2.1 The Completion Current Asset Statement shall:

- (A) be prepared strictly in accordance with the applicable specific accounting principles, practices and policies set out in Part B of this paragraph 2.1 of this Schedule; and
- (B) subject to paragraph 2.1(A) above, be prepared under International Financial Reporting Standards as adopted by the European Union, in force and applicable at the Completion Date.

*Part B – Specific accounting principles, practices and policies*

2.2 The Completion Current Asset Statement shall be derived from the books and records of the relevant Business Sellers.

2.3 The Completion Current Asset Statement shall be prepared:

- (A) on a going concern basis;
- (B) as if the date to which the Completion Current Asset Statement is made up was the last day of a financial year;
- (C) on the basis of the same judgements, estimates, forecasts and opinions that were used for the purposes of and reflected in the Group financial statements of

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GlaxoSmithKline plc for the year ended 31 December 2010 as set out in the GSK Annual Report 2010;

- (D) so as to include no charge, provision, reserve or write-off in respect of any costs, liabilities or charges to be incurred after the date to which the Completion Current Asset Statement is made up as a consequence of the change of ownership of the Business, or any change in management strategy, direction or priority;
- (E) so as to take no account of events occurring or information becoming available following the Completion Date;
- (F) so as to take no account of the costs of the Seller or the Purchaser (or any member of their respective Groups) in relation to this Agreement (including, without limitation, the costs of the preparation, delivery, review and resolution of either Completion Current Asset Statement); and
- (G) such that any monetary sum expressed in a currency other than Dollars shall be translated into Dollars at the relevant Exchange Rate set out in Clause 1.2.

### **3. Business Inventory count at Completion**

- 3.1 For the purposes of the Completion Current Asset Statement, the Seller shall procure that there is carried out as at the Completion Time a stock count in relation to the Business Inventory at each of the four (4) distributions centres located in the United States and the one (1) distribution centre located in Canada at which Business Inventory is held as at the Completion Time (the “**Business Inventory Count**”).
- 3.2 The Business Inventory Count shall be carried out in a manner consistent with that adopted for the purposes of verifying the relevant stock position of the GSK Group during the last complete financial year of the GSK Group prior to the date hereof and shall consist of a reconciliation of the inventory figure shown in the computerised warehousing inventory at the relevant distribution centres as at the Completion Time (updated in accordance with the customary rolling stock-check process), such figure to be verified by means of physical sample stock-checks of selected items of Business Inventory at the relevant locations referred to in paragraph 3.1 above in the same manner and to the same material extent as was undertaken to verify the relevant inventory position of the GSK Group (the “**Verification Sample Inventory Checks**”) during the last complete financial year of the GSK Group prior to the date hereof. Both the Purchaser and the Seller and their respective representatives shall be entitled to be present at the Verification Sample Inventory Checks and shall be entitled to make such enquiries, tests and inspections, and to have copies of such supporting documentation, in each case as either of them may reasonably deem necessary.

### **4. Completion Current Asset Statement - Preparation**

- 4.1 The Seller shall procure the preparation of a draft of the Completion Current Asset Statement, which shall be delivered to the Purchaser within forty-five (45) Business Days following the Completion Date (the “**Draft Completion Current Asset Statement**”).

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- 4.2 After Completion, the Purchaser shall (and shall procure that each member of the Purchaser's Group shall) give to the Seller and to the Seller's advisers, without charge, such reasonable access to the personnel of any member of the Purchaser's Group (who shall be instructed to give prompt information and explanations) and to all books and records of the Purchaser's Group relating to the Business on or prior to the Completion Date as the Seller or the Seller's advisers may reasonably request in connection with the preparation of the Draft Completion Current Asset Statement.
- 4.3 The Purchaser may dispute the Draft Completion Current Asset Statement by delivering to the Seller notice in writing (the "**Dispute Notice**") within twenty-one (21) days of receiving the Draft Completion Current Asset Statement (the "**Review Period**"). The Dispute Notice shall specify:
- (A) exactly which items of the Draft Completion Current Asset Statement are disputed;
  - (B) the reasons therefor, making specific reference to the parts of this Schedule which the Purchaser claims have not been followed in preparing the Draft Completion Current Asset Statement; and
  - (C) to the extent practicable, the effect that the Purchaser believes that the items in dispute have on each of the following:
    - (i) the Completion Current Asset Amount;
    - (ii) the Provisional Current Asset Amount; and
    - (iii) the Business Current Asset Adjustment Amount.
- 4.4 Only those items or amounts specified in the Dispute Notice shall be treated as being in dispute (the "**Disputed Items**") and no amendment may be made by either the Seller or the Purchaser, or any Expert appointed pursuant to paragraph 4.7 below, to any items or amounts which are not Disputed Items, save in the case of manifest error. To the extent practicable, the Dispute Notice shall be accompanied by all relevant supporting documentation and working papers on which the Purchaser wishes to rely, it being acknowledged by the Purchaser that it shall (to the extent practicable) provide further documentation to support its claims promptly on reasonable request by the Seller.
- 4.5 For the purposes of enabling the Purchaser to present the Dispute Notice, the Seller shall, following the Completion Date, give the Purchaser and its advisers, without charge, such reasonable access to the personnel of any member of the GSK Group (who shall be instructed to give prompt information and explanations) and to all books and records of the GSK Group (to the extent in the possession or control of the relevant member of the GSK Group) relating to the Business on or prior to the Completion Date as the Purchaser or the Purchaser's advisers may reasonably request in connection with their review of the Draft Completion Current Asset Statement. It is acknowledged and agreed by the Purchaser that neither it nor its advisers shall be entitled to any such access, information or assistance which goes beyond that reasonably necessary to determine whether the Draft Completion Current Asset Statement has been prepared in accordance with the provisions of this Schedule.

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- 4.6 If the Purchaser does not serve the Dispute Notice on the Seller by the end of the Review Period then the Draft Completion Current Asset Statement shall, as between the Seller and the Purchaser, in the absence of manifest error, be deemed to have been accepted, approved and agreed by the Seller and the Purchaser and shall be final and binding on the Seller and the Purchaser and shall constitute the “**Completion Current Asset Statement**” for all purposes of this Agreement.
- 4.7 If the Dispute Notice is served on the Seller by the Purchaser by the end of the Review Period then the Seller and the Purchaser shall attempt to resolve the Disputed Items between them in good faith negotiations. If there are any Disputed Items which have not been resolved in good faith negotiations within a period of fourteen (14) days after the end of the Review Period, then the Disputed Items shall be referred for determination to a partner of at least ten (10) years qualified experience at PricewaterhouseCoopers LLP or, if no such partner is able to act, on the application of either the Purchaser or the Seller by the President for the time being of the Institute of Chartered Accountants in England and Wales (the “**Expert**”), who shall be instructed to notify the Purchaser and the Seller of his determination within thirty (30) days of such referral.
- 4.8 The Seller and the Purchaser shall, and shall procure that each member of their respective Groups shall, give the Expert reasonable access at reasonable times to all books and records in their possession or control relating to the period prior to the Completion Date and generally shall provide the Expert with such other information and assistance as the Expert may reasonably require. In making his determination, the Expert shall act as expert and not as arbitrator and the Draft Completion Current Asset Statement, as amended by the Expert, shall, as between the Seller and the Purchaser and in the absence of manifest error, be deemed to have been accepted and approved by the Seller and the Purchaser, shall be final and binding on the Seller and the Purchaser and shall constitute the “**Completion Current Asset Statement**” for all purposes of this Agreement. The fees and costs of the Expert shall be paid as the Expert shall determine.
- 4.9 Following agreement or determination of the Completion Current Asset Statement, the amount of:
- (A) the Completion Current Asset Amount;
  - (B) the Provisional Current Asset Amount; and
  - (C) the Business Current Asset Adjustment Amount,
- shall be determined by reference to the Completion Current Asset Statement.

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5. **Completion Current Asset Statement**

	US\$	US\$
Completion Current Asset Amount	•	
Provisional Current Asset Amount	(•)	
Business Current Asset Adjustment Amount		•

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**Schedule 9  
(The Products)**

**Part A - Cornerstone Brands**

**PRODUCT SCHEDULE FORMAT FOR NYTOL**

[\*\*\*]

**PRODUCT SCHEDULE FORMAT FOR BEANO**

[\*\*\*]

**[\*\*\*] Confidential Treatment Requested**

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**PRODUCT SCHEDULE FORMAT FOR ECOTRIN**

[\*\*\*]

[\*\*\*] Confidential Treatment Requested

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**PRODUCT SCHEDULE FORMAT FOR TAGAMET**

[\*\*\*]

**PRODUCT SCHEDULE FORMAT FOR PHAZYME**

[\*\*\*]

**PRODUCT SCHEDULE FORMAT FOR FIBERCHOICE**

[\*\*\*]

**[\*\*\*] Confidential Treatment Requested**

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[\*\*] Confidential Treatment Requested

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**PRODUCT SCHEDULE FORMAT FOR BC**

[\*\*\*]

**[\*\*\*] Confidential Treatment Requested**

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[\*\*\*]

**[\*\*\*] Confidential Treatment Requested**

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**PRODUCT SCHEDULE FORMAT FOR GOODY'S**

[\*\*\*]

**[\*\*\*] Confidential Treatment Requested**

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[\*\*\*]

**[\*\*\*] Confidential Treatment Requested**

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**PRODUCT SCHEDULE FORMAT FOR GAVISCON**

[\*\*\*]

**[\*\*\*] Confidential Treatment Requested**

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[\*\*\*]

**[\*\*\*] Confidential Treatment Requested**

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**II. Portfolio Brands**

**PRODUCT SCHEDULE FORMAT FOR STANBACK**

[\*\*\*]

**PRODUCT SCHEDULE FORMAT FOR SOMINEX**

[\*\*\*]

**PRODUCT SCHEDULE FORMAT FOR R&C SHAMPOO**

[\*\*\*]

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**PRODUCT SCHEDULE FORMAT FOR PHAZYME**

[\*\*\*]

**PRODUCT SCHEDULE FORMAT FOR MASSENGILL**

[\*\*\*]

**[\*\*\*] Confidential Treatment Requested**

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**PRODUCT SCHEDULE FORMAT FOR KWELLADA-P**

[\*\*\*]

**PRODUCT SCHEDULE FORMAT FOR CHAP-ET**

[\*\*\*]

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**Schedule 16**  
**(Permitted Financing Conditions)**

The following conditions to the commitments of the Purchaser's Funding Banks to advance, remit or make available any funds, monies or amounts under any Financing Agreements shall constitute "**Permitted Financing Conditions**":

1. subject to the Certain Funds Provisions (as defined in the Debt Commitment Letter), the execution and delivery by the Purchaser of all documents and instruments required to create and perfect the security specified as being required for closing under the Debt Commitment Letter;
2. no Material Adverse Change having occurred;
3. the delivery to the Purchaser's Funding Banks (or an agent or arranger on their behalf) of all documentation and other information about the borrower and guarantors in respect of the Debt Funding as has been reasonably requested in writing at least 15 days prior to Completion Date that they reasonably determine is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the PATRIOT Act;
4. the delivery to the Purchaser's Funding Banks of a customary preliminary offering memorandum in connection with the private placement of the Unsecured Notes (as defined in the Debt Commitment Letter) (for the avoidance of doubt such offering memorandum shall not for the purposes of the Permitted Financing Conditions be required to contain all information (including financial information) necessary for the back-end registration referred to in the Debt Commitment Letter) and drafts of customary comfort letters by independent auditors of the Seller and the Purchaser which such auditors are prepared to issue upon completion of customary procedures;
5. the accuracy when made of the Specified Representations (as defined in the Debt Commitment Letter), provided that (for the avoidance of doubt) no Specified Representation shall be made in relation to the Business or any Business Assets;
6. payment on the Completion Date of all accrued and unpaid fees and expenses of the Purchaser's Funding Banks required to be paid under the terms of the Debt Commitment Letter, to the extent invoiced at least three days prior to the Completion Date; and
7. the completion of the Marketing Period.

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Signed by J Lecouilliard  
for and on behalf of  
**GLAXOSMITHKLINE LLC**

)  
) /s/ J Lecouilliard.....  
) ATTORNEY IN FACT

Signed by J Lecouilliard  
for and on behalf of  
**GLAXOSMITHKLINE PLC**

)  
) /s/ J Lecouilliard.....  
) ATTORNEY IN FACT

Signed by J Lecouilliard  
for and on behalf of  
**GLAXO GROUP LIMITED**

)  
) /s/ J Lecouilliard.....  
) ATTORNEY IN FACT

Signed by J Lecouilliard  
for and on behalf of  
**GLAXOSMITHKLINE CONSUMER HEALTHCARE INC.**

)  
) /s/ J Lecouilliard.....  
) ATTORNEY IN FACT

Signed by J Lecouilliard  
for and on behalf of  
**PRISM CH HOLDINGS INC.**

)  
) /s/ J Lecouilliard.....  
) ATTORNEY IN FACT

Signed by J Lecouilliard  
for and on behalf of  
**SMITHKLINE BEECHAM PHARMACEUTICALS COMPANY**

)  
) /s/ J Lecouilliard.....  
) ATTORNEY IN FACT

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---

Signed by Matthew M. Mannelly  
for and on behalf of  
**PRESTIGE BRANDS HOLDINGS, INC.**

)  
) /s/ Matthew M. Mannelly.....  
)

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CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO CERTAIN PORTIONS OF THIS AGREEMENT. CONFIDENTIAL PORTIONS HAVE BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

DATED 20 December 2011

**GLAXOSMITHKLINE LLC**

and

**GLAXOSMITHKLINE L.P.**

and

**GLAXOSMITHKLINE PLC**

and

**PRESTIGE BRANDS HOLDINGS, INC.**

---

**BUSINESS SALE AND PURCHASE AGREEMENT**  
in relation to certain over-the-counter consumer healthcare brands  
and supporting business

---

Slaughter and May  
One Bunhill Row  
London EC1Y 8YY  
(RJZS/GEZF)

510630299

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## CONTENTS

	<b>Page</b>
1. Interpretation	1
2. Sale and purchase of the Business and Business Assets	23
3. Anti-Trust	26
4. Purchaser's Right to Terminate	28
5. [***]	28
6. Pre-Completion undertakings	30
7. Consideration	32
8. Completion Current Asset Statement and adjustments	35
9. Intra-Group Guarantees	36
10. Sales Tax	36
11. Completion	37
12. [***]	38
13. Action after Completion	39
14. Wrong Pockets	40
15. Third party consents for the transfer of Business Assets	41
16. Business Inventory	43
17. Assumed and Excluded Liabilities	43
18. Apportionment	47
19. Transfer of Regulatory Permits	49
20. Receivables	51
21. Insurance	51
22. Seller's Warranties and Purchaser's remedies	52
23. Purchaser's warranties	54

**[\*\*\*] Confidential Treatment Requested**

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24.	Business Records and Business Information	55
25.	Intellectual Property	56
26.	Seller's undertakings	60
27.	Business Seller's undertaking	63
28.	Purchaser's undertakings	63
29.	Payments	66
30.	No set-off	67
31.	Effect of Completion	67
32.	Assignment	67
33.	Further assurance	68
34.	Entire agreement	69
35.	Capacity of Seller and Purchaser	70
36.	Remedies and waivers	70
37.	Indemnification and conduct of claims	70
38.	Notices	73
39.	Announcements	75
40.	Confidentiality	75
41.	Costs and expenses	77
42.	Counterparts	77
43.	Invalidity	78
44.	Contracts (Rights of Third Parties) Act 1999	78
45.	Choice of governing law	78
46.	Jurisdiction	78
47.	Agent for service	79

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## SCHEDULES AND ATTACHMENTS

Schedule 1 (Conduct of Business before Completion)	80
Schedule 2 (Completion arrangements)	82
Schedule 3 (The Warranties)	85
Schedule 4 (Seller's limitations on liability)	94
Schedule 5 (Initial Cash Consideration)	101
Schedule 6 (Completion Current Asset Statement)	102
Schedule 7 (The Products)	107
Schedule 8 (Relevant Marks)	108
Schedule 9 (The Business Domain Names)	109
Schedule 10 (The Regulatory Permits)	110
Schedule 11 (Seller's Bank Account)	111
Schedule 12 (Purchaser's Bank Account)	112
Attachment 1 (GSK Marks)	114
Attachment 2 (Management Presentation)	115
Attachment 3 (The GSK Group Reorganisation Plans)	116
Attachment 4 (Bill of Sale and Assignment and Assumption of Obligations and Liabilities Agreement)	117
Attachment 5 (Business Domain Name Assignments)	118

### AGREED FORM DOCUMENTS

Bill of Sale and Assignment and Assumption of Obligations and Liabilities Agreement	-	see Attachment 4
Business Domain Name Assignments	-	see Attachment 5
Management Presentation	-	see Attachment 2

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THIS AGREEMENT is made the ..... day of December, 2011

**BETWEEN:**

1. **GLAXOSMITHKLINE LLC**, a company incorporated under the laws of the state of Delaware, United States of America, (under number 4746253) whose registered office is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808, United States of America (the "**Seller**");

**AND**

2. **GLAXOSMITHKLINE CONSUMER HEALTHCARE L.P.**, limited partnership, number 2308674, formed by the Delaware Secretary of State in accordance with the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. § 17-101, et seq, and whose registered office is at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808, United States of America (the "**Business Seller**");

**AND**

3. **GLAXOSMITHKLINE PLC**, a company incorporated in England and Wales (registered number 03888792) whose registered office is at 980 Great West Road, Brentford, Middlesex TW8 9GS, United Kingdom ("**GSK PLC**").

**AND**

4. **PRESTIGE BRANDS HOLDINGS, INC.**, a company incorporated in Delaware, US, whose principal place of business is at 90 North Broadway, Irvington, NY 10533, US (the "**Purchaser**").

**WHEREAS:**

- (A) The Business Seller carries on the Business (as defined in this Agreement).
- (B) The Business Seller has agreed to sell, and the Seller has agreed to procure the sale of, and the Purchaser has agreed to purchase, or procure the purchase of, and pay, or procure payment, for the Business and the Business Assets (as defined in this Agreement) as a going concern for the consideration and on the terms set out in this Agreement.

**NOW IT IS AGREED** as follows:

**1. Interpretation**

1.1 In this Agreement and the Schedules and Attachments to it:

"**1998 Licence**" means the Amended and Restated Licence Agreement dated 10 September 1998 intialled by or on behalf of the parties on the date of this Agreement;

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<b>“Adverse Event”</b>	means any untoward medical occurrence in a patient or clinical investigation subject or consumer, temporally associated with the use of a Product, whether or not considered related to such Product;
<b>“Affiliate”</b>	in relation to any person, means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned person;
<b>“Agreed Form”</b>	in relation to any document means the document in a form agreed by the parties to this Agreement and initialled for the purposes of identification by or on behalf of the Purchaser and the Seller;
<b>“Agreed Rate”</b>	means a rate of 2 per cent. per annum above the base rate from time to time of Barclays Bank PLC;
<b>“Antitrust Laws”</b>	means the Sherman Antitrust Act of 1890, as amended, the Clayton Antitrust Act of 1914, as amended, and the HSR Act;
<b>“Antitrust Proceeding”</b>	has the meaning given in Clause 3.3;
<b>“Associated Undertaking”</b>	<p>in relation to any person, means any Undertaking in which (a) that person, (b) any subsidiary or subsidiary undertaking of that person, (c) any holding company of that person or (d) any subsidiary or subsidiary undertaking of any such holding company (“<b>Party A</b>”) has an interest from time-to-time of twenty (20) per cent. or more, the question of whether such an interest exists to be determined by whether Party A:</p> <ul style="list-style-type: none"><li>(i) has an interest in twenty (20) per cent. or more of the shares of such Undertaking; or</li><li>(ii) is entitled, through shareholding or otherwise, to receive twenty (20) per cent. or more of the income of such Undertaking on any distribution by it of all of its income or is entitled to receive twenty (20) per cent. or more of the assets of such Undertaking on a winding up; or</li><li>(iii) holds, through shareholding or otherwise, twenty (20) per cent. or more of the voting rights in such Undertaking;</li></ul>

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<b>“Assumed Liabilities”</b>	has the meaning given in Clause 17.2;
<b>“Assurance”</b>	means any warranty, representation, statement, assurance, covenant, agreement, undertaking, indemnity, guarantee or commitment of any nature whatsoever;
<b>“Audited Carve-out Accounts”</b>	means audited statements of net assets to be sold and related statements of revenue and direct operating expenses for the fiscal years ended 31 December 2008, 31 December 2009 and 31 December 2010 in relation to the business described in, and in substantially the form of, the Draft Carve-Out Accounts (prepared on the basis of note 2 (basis of preparation and accounting policies) accompanying such audited statements, which shall be in substantially the form of the corresponding note in the Draft Carve-Out Accounts);
<b>“Bill of Sale and Assignment and Assumption of Obligations and Liabilities Agreement”</b>	means the bill of sale and assignment and assumption of obligations and liabilities agreement, in the Agreed Form of Attachment 4, pursuant to which the transfer of the Business Assets and the Assumed Liabilities will be effected at Completion;
<b>“Brand Activation Grids”</b>	means the brand activation grids in respect of the Products, appended to the Disclosure Letter and <b>“Brand Activation Grid”</b> shall be construed accordingly;
<b>“Brands”</b>	means the brands listed in Schedule 7;
<b>“Business”</b>	means the business carried on in respect of the Commercialising of the Products under the Brands as carried on by the Business Seller, in each case as at Completion, including the Business Assets <u>but</u> excluding the Excluded Assets;
<b>“Business Assets”</b>	has the meaning given in Clause 2.2;
<b>“Business Current Asset Adjustment Amount”</b>	means the amount, expressed in Dollars, calculated by deducting the Provisional Current Asset Amount from the Completion Current Asset Amount, and such amount may be a positive or negative amount;
<b>“Business Day”</b>	means a day (other than a Saturday or Sunday) on which banks are open for business (other than solely for trading and settlement in Euro) in London and New York City, <u>but</u> excluding each day in the period between 24 December and 1 January (inclusive) in any year;

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<b>“Business Domain Name Assignments”</b>	means the assignments in the Agreed Form of Attachment 5 in respect of the Business Domain Names;
<b>“Business Domain Names”</b>	means the internet domain names listed in Schedule 9;
<b>“Business Financial Information Date”</b>	means 30 September 2011;
<b>“Business Goodwill”</b>	means all the goodwill in relation to the Business;
<b>“Business Information”</b>	means all Information owned by the Business Seller or any member of the GSK Group at Completion which is used exclusively in, or arises exclusively out of, the Business, <u>but</u> only to the extent the same is in the possession or control of a member of the GSK Group immediately prior to the Completion Time and is readily discoverable (after reasonable enquiry and investigation) by the relevant member of the GSK Group;
<b>“Business Intellectual Property”</b>	means all Intellectual Property owned by the Business Seller or any member of the GSK Group which is used exclusively in the Business as at Completion <u>but</u> excluding any Excluded IPR;
<b>“Business Inventory”</b>	means all released and packed inventory of Products in finished form beneficially owned by any member of the GSK Group in any location at the Completion Time;
<b>“Business Records”</b>	means: <ul style="list-style-type: none"><li>(i) all books and records containing Business Information or on which Business Information is recorded (including, without limitation, all documents and other material, whether human or computer or machine readable);</li><li>(ii) those documents comprising the Data Room;</li><li>(iii) all clinical studies and regulatory files (in either case, in any form or medium) which are proprietary to the Business Seller and which are used exclusively in, or arise exclusively out of, the Business; and</li><li>(iv) the deeds, documents of title, certificates and records, in each case to the extent relating to the Business Intellectual Property; and</li></ul>

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(v) artwork proprietary to the Business Seller which is used exclusively in the Business immediately prior to the Completion Time,

in each case (other than in respect of the items specified in paragraph (ii) of this definition) to the extent in the possession or control of, and readily discoverable (following reasonable enquiry and investigation) by, a member of the GSK Group immediately prior to the Completion Time, but excluding any Excluded Business Records;

**“Certificate of Pharmaceutical Product”**

means a certificate of pharmaceutical product substantially in the form published by the World Health Organisation in connection with the “WHO Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce”;

**“Commercialise”**

means to advertise, promote, market, distribute and/or sell a product and **“Commercialising”** and **“Commercialisation”** (and other derivatives of such words) shall be construed accordingly;

**“Completion”**

means completion of the sale and purchase of the Business Assets under this Agreement;

**“Completion Current Asset Amount”**

means the aggregate amount, expressed in Dollars, of the Business Inventory as at immediately prior to the Completion Time, to be shown in the Completion Current Asset Statement prepared in accordance with Schedule 6, which amount may not be negative;

**“Completion Current Asset Statement”**

means the completion current asset statement relating to the Business prepared in accordance with Clause 8 and Schedule 6, in the format set out in paragraph 5 of Schedule 6;

**“Completion Date”**

has the meaning given in Clause 11.1;

**“Completion Time”**

means 9.00 a.m. (in each location where the Business Seller, relevant member(s) of the GSK Group, or relevant member(s) of the Purchaser’s Group (as applicable) is or are located) on the Completion Date;

**“Confidential Information”**

means all information held in any form or media whatsoever which is of a confidential nature and not in the public domain, including know-how which is confidential

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in nature and trade secrets;

**“Consideration Allocation Statement”**

means the statement allocating the Initial Cash Consideration (or, if amended in accordance with Clause 7.9, the Final Cash consideration) among:

- (i) the Business Inventory;
- (ii) the Intellectual Property; and
- (ii) the Other Assets,

prepared in accordance with Clause 7 and in the format set out in Schedule 5;

**“Contract Long Stop Date”**

means the Business Day immediately following the date which falls [\*\*\*] months after the Completion Date, or such other date as the parties may agree;

**“CTA 2010”**

means the Corporation Tax Act 2010;

**“Data Room”**

means those documents, information and materials listed on the index attached to the Disclosure Letter, as such documents were contained on the Project Prism Intralinks datasite as at 17 December 2011;

**“Debrox”**

means the products sold under the Debrox ® brand in the United States;

**“Designated Purchaser”**

means a company in the Purchaser’s Group designated by the Purchaser as the purchaser of some or all of the Business Assets;

**“Disclosure Letter”**

means the letter of the same date as this Agreement written by the Seller to the Purchaser for the purposes of paragraph 10 of Schedule 4;

**“Draft Carve-Out Accounts”**

means the draft statements of net assets to be sold and related statements of revenue and direct operating expenses for the fiscal years ended 31 December 2008, 31 December 2009 and 31 December 2010 provided by the Seller to the Purchaser on the date of this Agreement;

**“Draft Carve-Out Interim Accounts”**

means the draft statements of net assets to be sold and related statements of revenue and direct operating expenses for the fiscal periods 1 January 2010 to 30 September 2010 and 1 January 2011 to 30 September 2011 provided by the Seller to the Purchaser on the date

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of this Agreement;

**“Draft Completion Current Asset Statement”**

has the meaning given in paragraph 4.1 of Schedule 6;

**“Draft Consideration Allocation Statement”**

has the meaning given in Clause 7.5;

**“Encumbrance”**

means any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention or any other agreement or arrangement the effect of which is the creation of security, or any other right to acquire or option, any right of first refusal or any right of pre-emption, or any agreement or arrangement to create any of the same, and **“Unencumbered”** shall be construed accordingly;

**“Exchange Rate”**

means, in relation to any currency to be converted into or from Dollars for the purposes of this Agreement, the spot rate of exchange (closing mid-point) for that currency into or, as the case may be, from Dollars in respect of the relevant date, as published in the London edition of *The Financial Times* first published after the relevant date or, where no such rate of exchange is published in respect of the relevant date, at the rate quoted by Barclays Bank PLC as at the close of business in London on the relevant date;

**“Excluded Assets”**

has the meaning given in Clause 2.2;

**“Excluded Business Contracts”**

means:

- (a) all the contracts, arrangements, agreements, engagements, guarantees, licences, purchase orders, customer orders, packaging contracts and other commitments which in each case relate both:
  - (i) to the Business, or any part of the Business to be transferred to the Purchaser (or any Designated Purchaser) on Completion; and
  - (ii) to any other business of the GSK Group, any part of the Business which is not transferred to the Purchaser (or any Designated Purchaser) on Completion, any product other than the Products, or any Excluded Asset,

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and to which a member of the GSK Group is (itself or through an agent) a party or the benefit of which is held in trust for, or has been assigned to, any member of the GSK Group; and

- (b) any contracts, agreements and other arrangements with any agent, sales intermediary, distributor, customer, end user, pharmacy or retail asset;

**“Excluded Business Records”**

means:

- (i) any and all books and records and Information (including any books and records and Information which would otherwise fall within paragraph (ii) of the definition of **“Business Records”**) which are not used exclusively in, or do not arise exclusively out of, the Business (including any Information relating to, or comprising, any Shared Formulations);
- (ii) any and all books and records and Information relating to any Excluded Asset (other than Excluded Business Records) or Excluded Liability;
- (iii) any and all books and records and Information (including any books and records and Information which would otherwise fall within paragraphs (ii) and (iii) of the definition of **“Business Records”**) which relate to, or are required by any member of the GSK Group in order to carry out their respective obligations in connection with, the Separation Plan, PROVIDED THAT all such material and information shall, to the extent that it is not otherwise an Excluded Business Record, cease to be an Excluded Business Record upon the expiry of such obligations;
- (iv) any and all books and records and Information (including any books and records and Information which would otherwise fall within paragraphs (i) (ii) or (iii) of the definition of **“Business Records”**) which any member of the GSK Group is required by law to retain PROVIDED THAT the Purchaser shall be entitled to receive a copy of such information or material to the extent that such material or information relates exclusively to

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the Business; and

- (v) any and all books and records and Information (including any books and records and Information which would otherwise fall within paragraphs (i), (ii) or (iii) of the definition of “**Business Records**”) which contain information in which any member of the GSK Group has legal privilege;

**“Excluded IPR”**

means:

- (i) any Intellectual Property which is owned by the Business Seller or any member of the GSK Group and used (other than exclusively) in the Business at Completion (including any Shared Marks and any Intellectual Property in any Shared Formulations); and
- (ii) the GSK Marks;

**“Excluded Liabilities”**

has the meaning given in Clause 17.4;

**“FDA”**

means the United States Food and Drug Administration;

**“Final Cash Consideration”**

has the meaning given in Clause 7.2;

**“Good Manufacturing Practice” or “GMP”**

means current practices for the Manufacture of the relevant Product as required at the time of Manufacture by applicable law and regulation of any Governmental Entity in any country in which the relevant Product is Manufactured or is to be Commercialised, including without limitation, where such Product is a Medicinal Product to be Commercialised in the United States, the principles detailed in the U.S. Current Good Manufacturing Practices, 21 C.F.R. Parts 210 and 211, as such practices are interpreted by the applicable provisions of the Quality Management System;

**“Governmental Entity”**

means any court, administrative body, local authority or other governmental or quasi-governmental entity with competent jurisdiction, any supra-national, national, federal, state, municipal, provincial or local governmental, regulatory or administrative authority, agency, commission, court, tribunal, arbitral body, self-regulated entity, private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority or other governmental entity;

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<b>“Group”</b>	means the Purchaser’s Group and/or the GSK Group (as the context requires);
<b>“Gross Price”</b>	means US\$44,844,000, which amount includes the Non-Compete Consideration;
<b>“GSK Business”</b>	means the business of any member of the GSK Group ( <u>but</u> excluding the Business) as at or following Completion;
<b>“GSK Group”</b>	means the Seller, the Seller’s Affiliates and the Seller’s Associated Undertakings from time-to-time (including, for the avoidance of doubt, the Business Seller);
<b>“GSK Group Confidential Information”</b>	means all information (other than to the extent that it relates exclusively to the Business) which is not in the public domain in whatever form held: <ul style="list-style-type: none"> <li>(i) relating to any member of the GSK Group or the business of any such member;</li> <li>(ii) supplied by or on behalf of any member of the GSK Group to the Purchaser or any other member of the Purchaser’s Group; or</li> <li>(iii) supplied in confidence to any member of the GSK Group by any third party;</li> </ul>
<b>“GSK Group Insurance Policies”</b>	means insurance policies taken out and maintained by or on behalf of members of the GSK Group and <b>“GSK Group Insurance Policy”</b> shall be construed accordingly;
<b>“GSK Group Reorganisation Plans”</b>	means the plans relating to a proposed reorganisation of the GSK Group, as summarised in the document forming Attachment 3;
<b>“GSK Marks”</b>	means: <ul style="list-style-type: none"> <li>(i) any of the words, letter combinations, marks, logos, devices or symbols set out in Attachment 1;</li> <li>(ii) any words, letter combinations, marks, logos, devices or symbols confusingly similar to those set out in Attachment 1;</li> <li>(iii) any name, mark, logo, device or symbol which includes or consists of the words, letter</li> </ul>

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combinations, marks, logos, devices or symbols described in (i) or (ii) of this definition; and

(iv) the corporate name of any member of the GSK Group,

in each case whether registered or unregistered and “**GSK Mark**” shall be construed accordingly;

**“GSK Product”**

means any product Commercialised by or on behalf of any member of the GSK Group at any time on or after Completion;

**“HSR Act”**

means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended;

**“Information”**

means the following information (in whatever form held):

- (i) formulae, designs, specifications, drawings, know-how, manuals and instructions;
- (ii) customer lists, sales, marketing and promotional information;
- (iii) correspondence, orders and enquiries;
- (iv) business plans and forecasts; and
- (v) technical or other expertise;

**“Information Memorandum”**

means the information memorandum dated July 2011 relating to the Business prepared by the GSK Group and Goldman Sachs International and provided to the Purchaser;

**“Information Technology”**

means computer hardware, software and networks;

**“Initial Cash Consideration”**

has the meaning given in Clause 7.1;

**“Intellectual Property”**

means patents, Trade Marks, rights in designs, copyrights (including rights in computer software), database rights, topography rights and plant variety rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;

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<b>“Interim Review Carve-out Accounts”</b>	means the unaudited statements of net assets to be sold and related statements of revenue and direct operating expenses for the fiscal periods 1 January 2010 to 30 September 2010 and 1 January 2011 to 30 September 2011 in relation to the business described in, and in substantially the form of, the Draft Interim Carve-Out Accounts (prepared on the basis of note 2 (basis of preparation and accounting policies) accompanying such unaudited statements, which shall be in substantially the form of the corresponding note in the Draft Carve-out Interim Accounts);
<b>“International Financial Reporting Standards”</b>	means the body of pronouncements issued by the International Accounting Standards Board (IASB), including International Financial Reporting Standards and interpretations approved by the IASB, International Accounting Standards and Standing Interpretations Committee interpretations approved by the predecessor International Accounting Standards Committee;
<b>“IP Completion Deliverable”</b>	means the obligation of the Seller described as such in Schedule 2;
<b>“IRC”</b>	means the United States Internal Revenue Code of 1986;
<b>“Licensed Goods”</b>	means the items of Business Inventory that are the subject of the licence set out in Clause 25.2(B);
<b>“Losses”</b>	includes, in respect of any matter, event or circumstance, all demands, claims, actions, proceedings, damages, payments, fines, penalties, losses, costs (including reasonable legal costs), expenses (including recoverable Tax), disbursements or other liabilities, in any case of any nature whatsoever;
<b>“Management Plan”</b>	has the meaning given in the Information Memorandum and includes the contents of Paragraph D “FY2011E and the Management Plan (FY2012-16E)” of Part VI “Financial Overview” of the Information Memorandum;
<b>“Management Presentation”</b>	means the management presentation briefing document in the Agreed Form of Attachment 2;
<b>“Manufacture” or “Manufacturing” or “Manufactured”</b>	means, as applicable, all the production, packaging, labelling, warehousing, quality control testing, waste disposal and quality release of products;

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**“Material Adverse Change”**

means any matter, change, event or circumstance arising or occurring after [\*\*\*] that, individually or in the aggregate, is materially adverse or is reasonably likely to be materially adverse to the business, assets, financial condition, future prospects or results of operations of the Business taken as a whole, but shall exclude any matter, change, event or circumstance to the extent resulting or arising from:

- (i) any change that is generally applicable to, or generally affects, the industries or markets or geographic areas in which the Business operates or arises from or relates to changes in Law or accounting rules or changes in any authoritative interpretation of any Law by any Governmental Entity;
- (ii) any change in the United States’ or world’s financial, securities or currency markets or general economic or political conditions or changes in prevailing interest rates or exchange rates;
- (iii) any terrorist activity, attack, war, riot, insurrection, other armed conflict or civil disorder or effects of weather or natural disasters or acts of God or other calamity, crisis or geopolitical event;
- (iv) the execution of this Agreement, the public announcement thereof or the pendency or consummation of the transactions contemplated hereby (including any cancellations of or delays in customer orders or other decreases in customer demand, any reduction in revenues, and any disruption in supplier, distributor, customer or similar relationships);
- (v) the bankruptcy, insolvency or other financial distress of any customers, distributors or suppliers or the Business;
- (vi) the taking of any action expressly required by this Agreement or otherwise taken with the written consent of the Purchaser hereunder; and
- (vii) any failure of the Business or the GSK Group to meet any projections or forecasts for any period (it being understood that the facts underlying

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such failure may be taken into consideration in determining whether a Material Adverse Change has occurred to the extent such underlying facts are not excluded from consideration by reason of the foregoing paragraphs (i) to (vi) (inclusive)),

provided that the exceptions in (i), (ii) and (iii) shall only be taken into account if the Business is not adversely affected in a disproportionate manner relative to other comparable businesses operating in the same industry and geography as the Business;

<b>“Material Adverse Effect”</b>	means a material adverse effect on the financial condition or future prospects of the Business taken as a whole;
<b>“Medicinal Product”</b>	means, in the case of a Product to be Commercialised in the United States, a “Drug product” as defined in U.S. Current Good Manufacturing Practices, 21 C.F.R. Parts 210 section 210.3 or, in the case of a Product to be Commercialised in the European Union or elsewhere, a Medicinal Product as defined in Article 1(2) of Directive 2001/83/EC;
<b>“Murine”</b>	means the ear care products sold under the Murine ® brand in the United States;
<b>“Murine Line”</b>	means the ear care and all other products sold under the Murine ® brand in the United States;
<b>“NDA”</b>	means a “new drug application”, as such term is used in the Federal Food, Drug and Cosmetic Act (as amended), and the rules and regulations thereunder and “ <b>NDAs</b> ” shall be construed accordingly;
<b>“Non-Compete Consideration”</b>	means an amount equal to US\$[***];
<b>“Occurrence Policies”</b>	means the insurance policies taken out and maintained by or on behalf of members of the GSK Group under which claims may be made after Completion in respect of events arising or occurring prior to Completion and “ <b>Occurrence Policy</b> ” shall be construed accordingly;
<b>“OTC Monograph”</b>	means an over-the-counter drug monograph, as more fully described in 21 C.F.R. sections 330 et seq.;
<b>“OTC Product”</b>	a product approved by a relevant Governmental Entity as a medicine available for purchase by customers ‘over-the counter’ (i.e. without the need for a

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prescription from a physician or other health care professional);

<b>“Permitted Encumbrances”</b>	means security interests arising in the ordinary course of business or by operation of law, security interests arising under sales contracts with title retention provisions, equipment leases with third parties entered into in the ordinary course of business, security interests for Taxes and other governmental charges which are not due and payable or which may thereafter be paid without penalty, which do not individually or in aggregate materially impair the continued use and operation of the assets to which they relate in the context of the Business;
<b>“Post-Completion Date”</b>	means the date falling sixty (60) days after the Completion Date;
<b>“Pre-Completion Period”</b>	has the meaning given in Clause 6.2;
<b>“Proceedings”</b>	means any proceeding, suit or action arising out of or in connection with this Agreement, whether contractual or non-contractual, or the negotiation, existence, validity or enforceability of this Agreement;
<b>“Products”</b>	means the products listed in Schedule 7 in the SKU forms and in the territories set out for each such product in such Schedule, and <b>“Product”</b> shall be construed accordingly;
<b>“Property”</b>	means freehold, fee simple, leasehold, or other immovable property or real property;
<b>“Provisional Current Asset Amount”</b>	means US\$156,000;
<b>“Purchaser Material Adverse Effect”</b>	means a material adverse effect on the financial condition or future prospects of the Purchaser’s existing operations taken as a whole;
<b>“Purchaser’s Bank Account”</b>	means the bank account of the Purchaser, details of which are set out in Schedule 12;
<b>“Purchaser’s Group”</b>	means the Purchaser, the Purchaser’s Affiliates and the Purchaser’s Associated Undertakings from time-to-time;
<b>“Purchaser’s Solicitors”</b>	means Baker & McKenzie LLP, of 100 New Bridge Street, London EC4V 6JA;
<b>“Purchaser Transaction”</b>	has the meaning given in Clause 23.1(A);

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**Documents”****“Quality Management System”**

means the GSK Group’s system of quality management controls designed to ensure regulatory compliance and to assure product safety, quality and efficacy in the GSK Group’s operations with regard to the manufacture and supply of investigational materials or products for sale or distribution and implemented pursuant to the GSK Group’s Corporate Policy entitled Quality Management System (POL-GSKF-514);

**“Receivables”**

means all outstanding payments due to the Seller or to any other member of the GSK Group in respect of the period up to the Completion Time for goods or services supplied or rights licensed by it or on its behalf in the ordinary and usual course of carrying on the Business (and in each case including such part of such amounts as relate to Sales Tax);

**“Regulatory Permit Holder”**

means any member of the GSK Group holding one or more of the Regulatory Permits at Completion and **“Regulatory Permit Holders”** shall be construed accordingly

**“Regulatory Permits”**

means each of NDAs, approvals, licences, permits, certificates, registrations, formulary listings, exemptions and authorisations relating exclusively to the Business issued by Governmental Entities and which are listed in Part A of Schedule 10 and **“Regulatory Permit”** shall be construed accordingly;

**“Relevant Agency”**

has the meaning given to it in Clause 3.3;

**“Relevant GSK Group Employee”**

means any employee of any member of the GSK Group who is entitled to a gross fixed annual salary in excess of US\$[\*\*\*] per annum (or its equivalent in local currency at exchange rates prevailing at the date of this Agreement) who:

- (i) is, or has been, directly or indirectly involved in the Business or its sale; or
- (ii) is, has been, or will be, directly or indirectly involved in the preparation and/or implementation of the Separation Plan;

**“Relevant Marks”**

means the Trademarks in Schedule 9 to this Agreement

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<b>“Relevant Period”</b>	means the period of three (3) calendar years ended on the date of this Agreement;
<b>“Relevant Rights”</b>	means the Relevant Marks and all rights and information (including, without limitation, Intellectual Property and Information) licensed to the Business Seller which relate to the Business;
<b>“Remedy”</b>	means undertakings, commitments, hold-separate arrangements, divestments, conditions, obligations, measures, undertakings, and/or modifications, consents decrees, settlements or analogous procedures (each a <b>“Remedy”</b> );
<b>“Restricted Product Market”</b>	means the OTC Product market for [***] products;
<b>“Restricted Territory”</b>	means the United States;
<b>“Sales Tax”</b>	means any sales, goods, services, turnover, value-added, or similar Tax, including (for the avoidance of doubt and without limitation): <ul style="list-style-type: none"> <li>(i) any sales Tax imposed under the law of the United States of America; and</li> <li>(ii) any Tax imposed by any Member State of the European Union in conformity with the Directive of the Council of the European Union on the common system of value added tax (2006/112/EC);</li> </ul>
<b>“SEC”</b>	means the US Securities and Exchange Commission;
<b>“Seller’s Bank Account”</b>	means the bank account of the Seller, details of which are set out in Schedule 11;
<b>“Seller’s Solicitors”</b>	means Slaughter and May of One Bunhill Row, London EC1Y 8YY and, for the purposes of Clause 3, Sidley Austin LLP of One South Dearborn, Chicago, Illinois 60603;
<b>“Seller Transaction Documents”</b>	has the meaning given in paragraph 1.2 of Schedule 3;
<b>“Senior Employee”</b>	means any employee of any member of the Purchaser’s Group who is entitled to a gross fixed annual salary in excess of US\$[***] per annum (or its equivalent in local currency at exchange rates prevailing at the date of

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this Agreement) who:

- (i) is, or has been, directly or indirectly involved in the acquisition of the Business; or
- (ii) is, or will be, directly or indirectly involved in the preparation and/or implementation of the Separation Plan;

**“Separation Plan”**

means a written plan for the separation of the Business from the GSK Business;

**“Service Document”**

has the meaning given in Clause 47.4;

**“Shared Formulation Know-How”**

means know-how owned by the Seller (or a member of the GSK Group) in respect of the Shared Formulations;

**“Shared Formulations”**

means any formulations owned by the Seller or a member of the GSK Group which, at the Completion Date are used (i) by the Seller or a member of the GSK Group in relation to the manufacture of products other than Products and (ii) in the Business in respect of the Products, and **“Shared Formulation”** shall be construed accordingly;

**“Shared Marks”**

means the Trade Mark registrations and applications for Trade Mark registrations for any of the Brands which have been applied to products Commercialised by a member of the GSK Group other than in respect of a Product and **“Shared Mark”** shall be construed accordingly;

**“SKU”**

means a stock keeping unit and **“SKUs”** shall be construed accordingly;

**“Tax” or “Taxation”**

means all taxes, levies, duties, imposts and any charges, deductions or withholdings in the nature of tax including (without limitation) taxes on gross or net income, profits or gains, social security contributions and taxes on receipts, sales, use, occupation, development, franchise, employment, value added and personal property, together with all penalties, charges and interest relating to any of them, regardless of whether any such taxes, levies, duties, imposts, charges, deductions, withholdings, penalties and interest are chargeable directly or primarily;

**“Tax Authority”**

means any taxing, revenue or other authority competent to impose or collect any liability to Tax;

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<b>“Tax Warranties”</b>	means the Warranties in paragraph 16 of Schedule 4;
<b>“Termination Date”</b>	means 30 June 2012;
<b>“Third Party Proceedings”</b>	means litigation or arbitration, administrative or criminal proceedings which have been properly issued in the relevant court or tribunal of competent jurisdiction or under the relevant rules applicable to such arbitration (as the case may be) and validly served on the relevant member of the GSK Group;
<b>“Trade Marks”</b>	means trade marks, service marks, logos, devices, symbols, get up and/or trade dress (or any combination thereof) and <b>“Trade Mark”</b> shall be construed accordingly;
<b>“Transfer Taxes”</b>	means all stamp, transfer, registration, and other similar Taxes, duties and charges (including, for the avoidance of doubt and without limitation, any real estate transfer Tax or other Tax relating to the sale, transfer or registration of real estate) and all notarial fees payable or assessed in connection with, or directly or indirectly as a result of, this Agreement or the sale or purchase of the Business Assets under this Agreement;
<b>“United States” or “US”</b>	means the United States of America, its territories, possessions, any state of the United States of America and the District of Columbia;
<b>“VDD Report”</b>	means the financial vendor due diligence report relating to the Business prepared by KPMG LLP and dated 26 August 2011 (including volume 4 of such report dated 9 September 2011);
<b>“Warranties”</b>	means the warranties set out in Schedule 3; and
<b>“Working Hours”</b>	means 9.00 a.m. to 5.00 p.m. on a Business Day.

1.2 In this Agreement and the Schedules and Attachments to it, unless otherwise specified:

- (A) references to Clauses, sub-Clauses, paragraphs, sub-paragraphs, Schedules and Attachments are to clauses, sub-clauses, paragraphs and sub-paragraphs of, and schedules or attachments to, this Agreement;
- (B) headings to Clauses, Schedules and Attachments are for convenience only and do not affect the interpretation of this Agreement;
- (C) the Schedules and Attachments form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and

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any reference to this Agreement shall include the Schedules and the Attachments;

- (D) a reference to any statute, regulation or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, consolidated, amended, modified, extended or re-enacted except to the extent that any such consolidation, amendment, modification, extension or re-enactment after the date of this Agreement would increase or extend the liability of any person under or pursuant to this Agreement;
- (E) references to a “**company**” shall be construed so as to include any corporation or other body corporate, wherever and however incorporated or established;
- (F) references to a “**person**” shall be construed so as to include any individual, firm, company, corporation, body corporate, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (G) use of any gender includes the other genders;
- (H) references to the singular shall include the plural and vice-versa;
- (I) a “**holding company**” and a “**subsidiary**” mean a holding company and subsidiary as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Companies Act 2006, as a member of another company even if its shares in that other company are registered in the name of (i) another person (or its nominee), whether by way of security or in connection with the taking of security, or (ii) its nominee;
- (J) a “**subsidiary undertaking**” means a subsidiary undertaking as defined in section 1162 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1162(2)(b) and (d) of the Companies Act 2006, as a member of another company even if its shares in that other company are registered in the name of (i) another person (or its nominee), whether by way of security or in connection with the taking of security, or (ii) its nominee;
- (K) the expressions “**allotment**”, “**debentures**” and “**Undertaking**” shall have the meaning given in the Companies Act 2006;
- (L) a person shall be treated as being connected with another if that person is connected with another within the meaning of sections 1122 and 1123 CTA 2010;
- (M) any question as to whether a person “**controls**” another (including for the purposes of the definition of “**Affiliate**”) shall be determined in accordance with

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the provisions of section 1124 CTA 2010 (and “**controlled**” shall be construed accordingly);

- (N) references to writing shall include any modes of reproducing words in a legible and non-transitory form, and accordingly shall exclude e-mail and other transitory modes;
- (O) references to times of day are to New York time;
- (P) any reference to a “**day**” (including within the phrase “**Business Day**”) shall mean a period of 24 hours running from midnight to midnight;
- (Q) references to the knowledge, information, belief or awareness of the Seller or any similar expression shall be construed as a reference to the actual knowledge, awareness, information or belief of:
  - (i) David Redfern (Chief Strategy Officer, Corporate Strategy and Development), Jo LeCouilliard (Vice President, Head of Corporate Development), Alan Burns (Director, Corporate Development), Hope D’Oyley Gay (Vice President and Associate General Counsel, Legal Operations, Business Development Transactions) and Susan Trent (Consumer Healthcare, North American Strategy) (in each case, in respect of all matters);
  - (ii) Terry Dixon (Assistant General Counsel, Legal Operations, Global Trade Marks) and Theodore Furman (Vice President, Global Consumer Healthcare and Ophthalmology, Global Patents) (in each case, only in respect of matters relating to Intellectual Property, know-how and, in each case, contracts, arrangements and engagements relating thereto);
  - (iii) Paul Hunter (Project Director, Global Marketing Systems) (only in respect of matters relating to Information Technology and contracts, arrangements and engagements relating thereto);
  - (iv) Dora Monserrate (Director, US Regulatory Affairs) (only in respect of matters relating to Regulatory Permits issued in the United States); and
  - (v) Deborah Winter (Director, Tax Planning, Global Tax) (only in respect of Tax matters),

each such person having made reasonable enquiry;

- (R) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be treated as including what most nearly approximates in that jurisdiction to the English legal term;

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- (S) references in any Warranty, in this Clause 1 or in Schedule 1 to any monetary sum expressed in Dollars shall, where such sum is referable in whole or in part to a particular jurisdiction, be deemed to be a reference to an equivalent amount in the local currency of that jurisdiction translated at the Exchange Rate on the date of this Agreement or, if such day is not a Business Day, on the Business Day immediately preceding such day;
- (T) where any amount in any local currency is required to be converted into Dollars for the purposes of calculating the “**Provisional Current Asset Amount**”, expressed in Dollars, such amount shall be translated into Dollars at the Exchange Rate for that local currency on the date which is five (5) Business Days prior to the Completion Date or, if such day is not a Business Day, on the Business Day immediately preceding such day;
- (U) where any amount in any local currency is required to be converted into Dollars for the purposes of calculating the “**Completion Current Asset Amount**”, expressed in Dollars, such amount shall be translated into Dollars at the Exchange Rate for that local currency on the Completion Date;
- (V) where it is necessary to determine whether a monetary limit or threshold set out in paragraph 1 of Schedule 4 has been reached or exceeded (as the case may be) and the value of the relevant claim or any of the relevant claims or any part of the relevant threshold is expressed in a currency other than Dollars (as the case may be), the value of each such claim or the relevant threshold, as the case may be, shall be translated into Dollars at the Exchange Rate on the date of notification of the relevant claim;
- (W) (i) the rule known as the *ejusdem generis* rule shall not apply and accordingly general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
- (ii) the use of the words “**includes**” or “**including**” shall be deemed to say also “**without limitation**”; and
- (iii) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (X) any indemnity or covenant to pay (the “**Payment Obligation**”) being given on an “**after-Tax basis**” or expressed to be “**calculated on an after-Tax basis**” means that the amount payable pursuant to such Payment Obligation (the “**Payment**”) shall be calculated in such a manner as will ensure that, after taking into account:
- (i) any Tax required to be deducted or withheld from the Payment;

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- (ii) the amount and timing of any additional Tax which becomes payable by the recipient of the Payment (or a member of the GSK Group or the Purchaser's Group, as the case may be) as a result of the Payments being subject to Tax in the hands of that person; and
- (iii) the amount and timing of any Tax benefit which is obtained by the recipient of the Payment (or a member of the GSK Group or the Purchaser's Group, as the case may be) to the extent that such Tax benefit is attributable to the matter giving rise to the Payment Obligation or to the receipt of the Payment,

which amount and timing is to be determined by the auditors of the recipient at the shared expense of both relevant parties and is to be certified as such to the party making the Payment, the recipient of the Payment is in the same position as that in which it would have been if the matter giving rise to the Payment Obligation had not occurred;

- (Y) unless specified to the contrary, references to "**indemnify**" and "**indemnifying**" any person against any circumstance include indemnifying and holding that person harmless on an after-Tax basis and:
  - (i) the provisions of Clause 37 shall apply to such indemnification;
  - (ii) references to the Purchaser indemnifying each member of the GSK Group shall constitute undertakings by the Purchaser to the Seller for itself and on behalf of each other member of the GSK Group; and
  - (iii) references to the Seller indemnifying each member of the Purchaser's Group shall constitute undertakings by the Seller to the Purchaser for itself and on behalf of each other member of the Purchaser's Group;
- (Z) references to "**Dollars**" or "**US\$**" are to the lawful currency of the United States, and references to "**Euro**" are to the lawful currency of the member states of the European Union that have adopted the single currency in accordance with the Treaty Establishing the European Community, as amended by the Treaty of the European Union; and
- (AA) other than in Clause 41 of this Agreement, references to "costs" and/or "expenses" incurred by a person shall not include any amount in respect of such costs or expenses for which either that person or any member of its Group for the purposes of any Sales Tax is entitled to credit.

## 2. Sale and purchase of the Business and Business Assets

2.1 On the terms and subject to the conditions set out in this Agreement:

- (A) the Seller agrees to procure the sale of the entire legal and beneficial ownership in Business free from all Encumbrances as a going concern and of the entire

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legal and beneficial ownership in the Business Assets listed in Clause 2.2 free from all Encumbrances;

- (B) the Business Seller agrees to sell the entire legal and beneficial ownership in the Business Assets listed in Clause 2.2 of which it is the legal and beneficial owner free from all Encumbrances; and
- (C) the Purchaser agrees to purchase, or procure the purchase by the relevant Designated Purchaser(s) of, the entire legal and beneficial ownership in the Business free from all Encumbrances as a going concern and the entire legal and beneficial ownership in the Business Assets listed in Clause 2.2 free from all Encumbrances,

in each case as at and with effect from Completion (or as otherwise provided in this Agreement).

2.2 For the purposes of Clause 2.1 and this Agreement,

- (A) the Business Goodwill;
- (B) the Business Inventory (which shall be transferred subject to and in accordance with the terms of Clause 16);
- (C) the Regulatory Permits (which shall be transferred subject to and in accordance with the terms of Clause 19);
- (D) the Business Intellectual Property (which shall be transferred subject to and in accordance with the terms of Clauses 2.5 and 25);
- (E) the Business Domain Names;
- (F) all Business Records and Business Information (which shall be transferred subject to and in accordance with the terms of Clause 24);
- (G) the benefit of any confidentiality or non-disclosure agreement entered into by the Seller or any member of the Seller's Group with any third party in relation to or in connection with the sale and purchase of the Business; and
- (H) all other rights and assets used exclusively in the Business as at Completion other than the Relevant Rights,

together constitute the “**Business Assets**”, PROVIDED THAT there shall be excluded therefrom those property rights and assets expressly excluded by the definition of any category of Business Assets listed above and the following assets (the “**Excluded Assets**”):

- (I) the Excluded Business Contracts;

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- (J) the Excluded IPR;
- (K) the Excluded Business Records;
- (L) the Receivables;
- (M) all plant and machinery in which the Seller or any other member of the GSK Group has any right, title or interest;
- (N) cash in hand or at bank and any current investments used in or held on account of that part of the Business carried on by the Business Seller;
- (O) subject to Clause 21, the benefit of any rights in respect of any insurance policy (whether issued by any third party or any other person) of the Business Seller or any other member of the GSK Group relating to the Business or any of the Business Assets;
- (P) all current and former employees, consultants, individual independent contractors, temporary workers or similar individuals of the Seller or any other member of the GSK Group, and all such individuals who have or are currently performing services for the Seller or any other member of the GSK Group;
- (Q) any and all causes of action and claims of any member of the GSK Group arising out of or relating to any Excluded Liability or any of the Excluded Assets listed in sub-Clauses 2.2(I) to 2.2(P) (inclusive) and sub-Clauses 2.2(R) to 2.2(V);
- (R) any books and records or other information which relates to the sale or proposed sale of the whole or part of the Business including such information which relates to the negotiation of the transactions contemplated by this Agreement;
- (S) any asset the benefit of which is to be used by any member of the GSK Group to provide any services in accordance with the Separation Plan, PROVIDED THAT all such assets which are used exclusively in the Business as at the date on which the actions under the Separation Plan are concluded shall be transferred to the Purchaser as soon as reasonably practicable (and in any event within twenty (20) Business Days following such conclusion);
- (T) any Property in which the Seller or any other member of the GSK Group has any right, title or interest;
- (U) any deduction, relief, allowance or credit in respect of, and any repayment or right to a repayment of, any Tax that constitutes an Excluded Liability or otherwise relates to income, profit or gains arising, the value of any asset or assets, or an Event occurring, during the period ending on Completion; and

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(V) any obsolete or unusable Business Inventory, and any Business Inventory with an expiry date of less than fifteen months following the Completion Date.

2.3 Notwithstanding any other provision of this Agreement, each member of the GSK Group shall retain its respective rights, title and interest in and to, and no member of the Purchaser's Group shall obtain any rights, title or interest in or to (pursuant to this Agreement), the Excluded Assets and the Seller shall indemnify the Purchaser (and each member of the Purchaser's Group) against any and all Losses which it may suffer, sustain and/or incur in relation to or in connection with any of the Excluded Assets.

2.4 Part 1 Law of Property (Miscellaneous Provisions) Act 1994 shall not apply for the purposes of Clause 2.

2.5 Clause 2.1 shall operate as an assignment of the Business Intellectual Property with effect from Completion.

### 3. Anti-Trust

3.1 The obligations of each party under this Agreement (other than those contained in this Clause 3, Clause 4, Clause 28.2, Clause 28.3, Clause 32, Clauses 34 to 36 (inclusive) and Clauses 38 to 46 (inclusive) are conditional in all respects upon there not being in effect any order of a Governmental Entity under an Antitrust Law that prohibits or enjoins Completion.

3.2 Within 10 Business Days of execution of this Agreement the parties shall contact the United States Federal Trade Commission or the Antitrust Division of the United States Department of Justice as appropriate ("the **Relevant Agency**") and schedule a meeting at the Relevant Agency's earliest opportunity that will allow both parties to participate. At that meeting the parties shall inform the Relevant Agency of the terms and conditions of this Agreement and of the commercial circumstances that necessitate the transaction contemplated by this Agreement being a standalone transaction. Each party warrants that all information provided to the Relevant Agency related to this Agreement will be, as of the date provided, true and accurate.

3.3 The Purchaser shall prior to 30 April 2012 take all commercially reasonable steps necessary to ensure that the Relevant Agency does not threaten to bring, or in fact bring, suit before any Governmental Entity under an Antitrust Law to prohibit or enjoin Completion temporarily or permanently, or otherwise challenge before any Governmental Entity the transaction contemplated by this Agreement (an "Antitrust **Proceeding**"). The Purchaser's obligation under this Clause 3.3 shall include:

- (A) informing the Relevant Agency within three (3) Business Days of the meeting referred to in Clause 3.2 that it is willing to divest Debrox, Murine or the Murine Line and promptly thereafter;
- (B) taking all steps necessary to effect divestment at no minimum price of whichever of Debrox, Murine or the Murine Line is necessary to avoid an Antitrust Proceeding; and if appropriate

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- (C) agreeing to, and taking all steps necessary to implement, any other Remedy necessary to avoid an Antitrust Proceeding provided that such Remedy does not have a Purchaser Material Adverse Effect.
- 3.4 If, notwithstanding the Purchaser's obligation in Clause 3.3, an Antitrust Proceeding is commenced with respect to the transaction contemplated by this Agreement, the parties agree to work together in good faith to agree upon a course of action they agree will provide the highest likelihood that Completion can take place as soon as possible.
- 3.5 The parties shall keep each other informed as to its discussions with the Relevant Agency in relation to the transaction contemplated by this Agreement and steps taken or to be taken to ensure that the Relevant Agency does not commence an Antitrust Proceeding. In particular, each party shall:
- (A) notify the other party and provide copies to the other party, of any communications (whether written or oral) from the Relevant Agency in relation to its review of the transaction contemplated by this Agreement;
- (B) provide the other party with draft copies of all submissions and substantive communications intended to be sent to the Relevant Authority at such time as will allow the other party a reasonable opportunity to provide comments on such submissions and communications before they are submitted or sent, (acting reasonably) agree such submissions and communications with the other party before they are submitted or sent, and provide the other party with copies of all such submissions and communications in the form submitted or sent; and
- (C) to the extent reasonably practicable, give the other party reasonable notice of, and reasonable opportunity to participate in, all meetings and telephone calls with the Relevant Agency.
- 3.6 The Seller shall, and shall procure that the Business Sellers shall, co-operate with and provide reasonable assistance to the Purchaser to enable it to satisfy the obligations set out in Clause 3.3.
- 3.7 The Seller may immediately terminate this Agreement in its entirety at any time after the execution of this Agreement in the event that it becomes reasonably apparent to the Seller that the Purchaser will not be able to ensure prior to 30 April 2012 that a Governmental Entity has not issued or will not issue an order under an Antitrust Law that prohibits or enjoins the transaction contemplated by this Agreement, as provided in Clause 4.5. If the Seller exercises its right to terminate in this Clause 3.7 it will pay to the Purchaser the sum of \$[\*\*\*] as soon as practicable (and in any event within 5 Business Days of 30 April 2012).
- 3.8 In the event that there is an order in effect by a Governmental Entity under an Antitrust Law that prohibits or enjoins Completion at the Termination Date, this Agreement shall automatically terminate as provided in Clause 4.5 below.

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**4. Purchaser's Right to Terminate**

- 4.1 If a Material Adverse Change has arisen or occurred and is subsisting at Completion, or at any time prior to Completion a Material Adverse Change has arisen or occurred which is not capable of remedy prior to Completion, the Purchaser may terminate this Agreement with immediate effect by notice in writing to the Seller.
- 4.2 During the Pre-Completion Period, the Seller shall notify the Purchaser immediately upon becoming aware of any Material Adverse Change.
- 4.3 If the Purchaser becomes entitled to terminate this Agreement under Clause 4.1 and the Purchaser fails to serve written notice on the Seller in accordance with Clause 4.1, the Purchaser shall:
- (A) be deemed to have waived its right to terminate this Agreement pursuant to such Clause; and
  - (B) not be entitled to make any claim for damages or exercise any other right, power or remedy under this Agreement or otherwise provided by law in respect of the Material Adverse Change giving rise to such right to give notice to terminate.
- 4.4 This Agreement may not be rescinded, repudiated or terminated by any party (whether before or after Completion) otherwise than in accordance with (and to the extent permitted by) Clauses 3.7, 3.8 or 4.1 or by an agreement in writing signed by all the parties hereto.
- 4.5 In the event that this Agreement is terminated or terminates in accordance with Clause 3.7, 3.8 or 4.1 the obligations of each party under this Agreement (except for those contained in Clauses 23, Clauses 28.2 and 28.3, Clause 32, Clauses 34 and 36 and Clauses 38 to 47 (inclusive)) shall immediately terminate PROVIDED THAT the rights and liabilities of the parties which have accrued prior to termination shall subsist.
5. [\*\*\*]

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**6. Pre-Completion undertakings**

- 6.1 Subject to the terms and conditions of this Agreement, the Seller and the Purchaser shall use all reasonable endeavours to procure that Completion occurs and, without prejudice to the generality of the foregoing, shall use all reasonable endeavours to cooperate with each other on and after the date of this Agreement to consummate the transactions contemplated by this Agreement.
- 6.2 Subject to Clause 6.4, between the date of this Agreement and Completion (the “**Pre-Completion Period**”), the Seller shall exercise all rights available to it:
- (A) to procure that the Business will be carried on in the ordinary course in the same manner as it was operated during the six (6) months preceding the date of this Agreement and shall use all reasonable endeavours to maintain its trade and trade connections; and
- (B) in particular to procure that each applicable member of the GSK Group:
- (i) uses all commercially reasonable endeavours:
- (a) to maintain and keep any Regulatory Permits and ensure that all filings and notifications required to be made in respect of the same are made in accordance with past practice during the six (6) months preceding the date of this Agreement; and
- (b) to progress, in accordance with past practice during the six (6) months preceding the date of this Agreement, any applications, submissions, filings or other correspondence initiated by such member of the GSK Group prior to the date of this Agreement relating to the grant of new NDAs, approvals, licences, permits, certificates, registrations, exemptions and/or authorisations in respect of the Business,
- unless (in either case) requested by the Purchaser or required by any applicable Governmental Entity to amend, cancel or surrender any such Regulatory Permits, applications, submissions or filings;
- (ii) continues to Commercialise the Products in accordance with past practice during the six (6) months preceding the date of this Agreement and, in particular, shall not materially accelerate or increase the quantity of Products distributed to the relevant distributors, except where such acceleration or increase results from an actual increase in the orders of the relevant Products by the relevant distributor without an unusual or increased level of solicitation by a member of the Seller's Group intended to result in seasonably adjusted inventory levels of Products materially in excess of normal levels;

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- (iii) maintains the level of Business Inventory held for use in the Business in accordance with past practice during the six (6) months preceding the date of this Agreement;
- (iv) complies with the Quality Management System to ensure that the Products sold by the Business comply with the applicable requirements of GMP;
- (v) notifies the Purchaser in writing of any actual safety issue in respect of any Product (as soon as reasonably practicable after becoming aware of the same) which issue the relevant member of the GSK Group, acting reasonably and in good faith, considers material in the context of the Manufacture or Commercialisation of such Product;
- (vi) continues to support trade marketing, advertising and promotion in relation to the Business in accordance with the relevant Brand Activation Grid;
- (vii) notifies the Purchaser in writing as soon as reasonably practicable after becoming aware of any third party infringement of its Business Intellectual Property which has a material impact on the relevant Brand; and
- (viii) (a) materially complies with the terms of the 1998 Licence, solely to the extent such terms relate to the Business and (b) if the licensor does not materially comply with the terms of the 1998 Licence (to the extent such terms relate to the Business), uses all commercially reasonable efforts to enforce the terms of the 1998 Licence in respect of such non-compliance.

6.3 Subject to Clauses 6.2 and 6.4, during the Pre-Completion Period, the Seller shall exercise all rights available to it to procure that no member of the GSK Group will undertake any of the acts or matters listed in Schedule 1 in relation to the Business without the prior written consent of the Purchaser (such consent not to be unreasonably withheld or delayed).

6.4 Neither Clause 6.2 nor Clause 6.3 shall operate so as to restrict or prevent:

- (A) any matter reasonably undertaken in response to events beyond the control of any member of the GSK Group with the intention of minimising any adverse effect of such events where it is not reasonably practicable in the circumstances for the Seller to have obtained the consent of the Purchaser before such matter is undertaken PROVIDED THAT the Seller shall inform the Purchaser of the relevant matter and circumstances as soon as reasonably practicable after doing so;

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- (B) the completion or performance of any obligations undertaken pursuant to any contract or arrangement entered into prior to the date of this Agreement to the extent that such completion or performance is due prior to Completion;
- (C) any matter undertaken at the written request of the Purchaser;
- (D) any matter contemplated by any Seller Transaction Document or any action taken by any member of the GSK Group pursuant to any Seller Transaction Document;
- (E) any action or omission which any member of the GSK Group is required to take or omit to take by any applicable law or regulation, any Tax Authority or Governmental Entity;
- (F) any matter or action undertaken in connection with the GSK Group Reorganisation Plans;
- (G) any disposal of Business Inventory, obsolete assets or redundant assets, or any payment of cash, in each case in the ordinary course of trading or in a manner which is not inconsistent with the operational, investment and/or financial plans of the GSK Group for the Pre-Completion Period as described in the Information Memorandum (including, without limitation, in the Management Plan, as set out therein) and/or the Management Presentation;
- (H) any matter necessary for the purposes of separating the assets or business which relate to both the Business and the GSK Business in accordance with this Agreement or the Separation Plan;
- (I) any matter or action undertaken in response to (i) any notice, request, order, demand or correspondence received from any Governmental Entity in connection with any Product, or (ii) incidents concerning Products, in any such case in accordance with the GSK Groups's policies and procedures from time to time in force (including the Quality Management System), which matter or action may include, without limitation to the generality of the foregoing, instigating recalls of Products or issuing safety notifications in respect of relevant Products, PROVIDED HOWEVER THAT the Seller shall inform the Purchaser of the relevant matter or action as soon as reasonably practicable after undertaking the same; or
- (J) any repackaging of any Product PROVIDED THAT such repackaging is in compliance with applicable law and regulation.

## 7. Consideration

7.1 The initial aggregate consideration payable at Completion for the sale of the Business and the Business Assets shall be:

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- (A) the payment by the Purchaser to the Seller (on behalf of the Business Seller) of an amount equal to the aggregate of:
- (i) the Gross Price; and
  - (ii) the Provisional Current Asset Amount,
- (such aggregate amount being the “**Initial Cash Consideration**”, payable in accordance with Clause 11.4); and
- (B) the assumption by the Purchaser of the Assumed Liabilities.

- 7.2 Following agreement or determination of the Business Current Asset Adjustment Amount, the Initial Cash Consideration shall be adjusted in accordance with Clause 8 in order to determine the final aggregate cash consideration for the sale of the Business Assets (the “**Final Cash Consideration**”). The Final Cash Consideration may only be further adjusted as specifically provided elsewhere in this Agreement.
- 7.3 The Initial Cash Consideration, as adjusted to become the Final Cash Consideration, the assumption of the Assumed Liabilities and any other payment made under this Agreement to the Seller shall, in each case, be exclusive of any amounts in respect of Sales Tax.
- 7.4 The Initial Cash Consideration shall be payable in accordance with Clause 11.4 and may be adjusted only under Clause 8 and the other terms of this Agreement, provided however that the Purchaser shall be permitted to withhold from the payment of the Initial Cash Consideration and the Business Current Asset Adjustment Amount any Tax required by law to be withheld or deducted from the Initial Cash Consideration, or as the case may be, the Business Current Asset Adjustment Amount.
- 7.5 The Purchaser shall prepare, or procure the preparation of, a draft of the Consideration Allocation Statement, which shall be delivered to the Seller within twenty-one (21) days of the date of this Agreement (the “**Draft Consideration Allocation Statement**”).
- 7.6 The Seller shall have a period of fifteen (15) days (the “**Consideration Allocation Statement Review Period**”) after the delivery to it of the Draft Consideration Allocation Statement to review the Draft Consideration Allocation Statement, and within such Consideration Allocation Statement Review Period may request (in writing) an adjustment to be made to any allocation set out therein. If no such written request is presented to the Purchaser within the Consideration Allocation Statement Review Period, then the Draft Consideration Allocation Statement shall be deemed to have been agreed and approved by the Seller and the Purchaser, shall be final and binding upon them and shall constitute the “Consideration Allocation Statement” for all purposes of this Agreement.
- 7.7 If any such written request as is referred to in Clause 7.5 is presented to the Purchaser within the Consideration Allocation Statement Review Period, then the Purchaser and the Seller shall attempt to resolve the matter in dispute between them in good faith

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negotiations. In the event that the Purchaser and the Seller fail to agree the matter in dispute between them within fifteen (15) days following delivery to the Purchaser of such a written request, and unless the Seller and the Purchaser agree in writing to extend the period in which they may agree such allocation, the Seller and the Purchaser agree that each shall adopt its own allocation of the Initial Cash Consideration for all purposes (including Tax) and, for the avoidance of doubt, neither party shall have any liability to the other for any actions, claims, demands, proceedings, judgments, liabilities, loss, damages, payments, costs and expenses arising out of their failure to agree the Consideration Allocation Statement.

- 7.8 Following agreement or determination of the Consideration Allocation Statement, the agreed or determined allocation of the Initial Cash Consideration shall be adopted by the Seller and the Purchaser for all purposes (including Tax).
- 7.9 Following agreement or determination of the Completion Current Asset Statement in accordance with Schedule 6, the Purchaser and the Seller shall discuss in good faith to what extent (if any) the Consideration Allocation Statement should be amended to represent an agreed or determined allocation of the Final Cash Consideration.
- 7.10 Should the Purchaser and the Seller agree to amend the Consideration Allocation Statement in accordance with Clause 7.9, the allocation of the Final Cash Consideration thus agreed or determined shall be adopted by the Seller and the Purchaser for all purposes (including Tax).
- 7.11 For the avoidance of doubt, it is understood and agreed by the parties that any valuation of assets and liabilities used in order to determine the allocation pursuant to this Clause 7 is not intended to be, and shall not be interpreted as, any assurance by any party as to the value of the assets and liabilities being transferred.
- 7.12 Within ninety (90) days of the determination of the Final Cash Consideration the Purchaser shall provide to the Seller a draft United States Internal Revenue Service Form 8594 (the "**Form 8594**") setting forth:
- (A) the allocation amongst the Business Inventory of the amount allocated to the Business Inventory in the Consideration Allocation Statement;
  - (B) the allocation amongst the Business Intellectual Property the amount allocated to the Business Intellectual Property in the Consideration Allocation Statement; and
  - (C) the allocation amongst the Other Business Assets the amount allocated to the Other Business Assets in the Consideration Allocation Statement
- 7.13 The Seller shall have thirty (30) days from the date it receives the draft Form 8594 to provide any comments thereon to the Purchaser. If the Seller does not provide any comments within that thirty (30) day period, the Form 8594 shall be considered final (the "**Final Allocation**"). If the Seller responds with comments within the thirty (30) day period, the Purchaser and the Seller shall seek to resolve any conflicts within the ten

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(10) day period following the Purchaser's receipt of the Seller's comments. Upon the expiry of the ten (10) day period, if the Purchaser and the Seller cannot agree to a Final Allocation, the matter will be referred to an accounting firm nationally recognised in the United States and which shall be:

- (A) chosen by agreement between the Purchaser and the Seller; and
- (B) instructed jointly by the Purchaser and the Seller to determine the Final Allocation.

7.14 Following agreement or determination of the Final Allocation, the agreed or determined allocation shall be binding on the parties to this Agreement and the Purchaser and the Seller, or as the case may be, the Business Seller and the Purchaser shall not in any tax filing or in any tax proceeding take a position in relation to the amount allocated to any Business Asset which is inconsistent with the Final Allocation.

## **8. Completion Current Asset Statement and adjustments**

- 8.1 The Seller and the Purchaser shall comply with their respective obligations in Schedule 6 in relation to the Completion Current Asset Statement.
- 8.2 If the Business Current Asset Adjustment Amount is a positive amount, the Purchaser shall (not later than seven (7) days after the date on which the Business Current Asset Adjustment Amount is agreed or determined in accordance with Schedule 6) pay to the Seller an amount equal to such Business Current Asset Adjustment Amount, together with an amount equivalent to interest thereon at the Agreed Rate (accrued daily and assuming a 365 day year) for the period from, and including, the Completion Date to, but excluding, the date of payment (and for such purposes, the Agreed Rate on the date on which the Business Current Asset Adjustment Amount is agreed or determined shall be deemed to be the Agreed Rate prevailing for the period from, and including, the date on which the Business Current Asset Adjustment Amount is agreed or determined to, but excluding, the date of payment).
- 8.3 If the Business Current Asset Adjustment Amount is a negative amount, the Seller shall (not later than seven (7) days after the date on which the Business Current Asset Adjustment Amount is agreed or determined in accordance with Schedule 6) pay to the Purchaser an amount equal to the Business Current Asset Adjustment Amount (expressed as a positive amount), together with an amount equivalent to interest thereon at the Agreed Rate (accrued daily and assuming a 365 day year) for the period from, and including, the Completion Date to, but excluding, the date of payment (and for such purposes, the Agreed Rate on the date on which the Business Current Asset Adjustment Amount is agreed or determined shall be deemed to be the Agreed Rate prevailing for the period from, and including, the date on which the Business Current Asset Adjustment Amount is agreed or determined to, but excluding, the date of payment).
- 8.4 The payment referred to in this Clause 8 shall constitute an adjustment to the Initial Cash Consideration and shall be made in immediately available funds in Dollars without

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any set off, restriction or condition by telegraphic transfer to the Purchaser's Bank Account (in the case of a payment by the Seller) or to the Seller's Bank Account (in the case of a payment by the Purchaser). For the avoidance of doubt, the provisions of Clause 29 shall apply to any such payment.

## **9. Intra-Group Guarantees**

9.1 The Purchaser, for itself and its successors and assigns, covenants that, at any time and from time to time on or after Completion, it will execute and deliver, or procure the execution and delivery of, all such instruments of assumption and acknowledgements or take such other action as the Seller may reasonably request in order to effect the release and discharge in full of any Assurance given by any member of the GSK Group to any person (including to another member of the GSK Group) in respect of any Assumed Liability, and the Purchaser's assumption of, and the substitution of an appropriate member of the Purchaser's Group as the primary obligor in respect of, each such Assurance shall be, in each case, on a non-recourse basis to the GSK Group. Pending such release and discharge, the Purchaser hereby agrees with the Seller (on behalf of itself and each member of the GSK Group) that it will assume and pay and discharge when due, and indemnify each member of the GSK Group against any and all Losses arising out of, all such Assurances.

## **10. Sales Tax**

10.1 The Purchaser, the Seller and the Business Seller shall cooperate to take all reasonable steps, claims or elections to minimise any Sales Tax payable under or in connection with this Agreement.

10.2 Notwithstanding Clause 10.1, the Purchaser shall pay to the Seller and the Business Seller on demand an amount equal to 50% of any Sales Tax:

- (i) for which the Seller or the Business Seller (as the case may be) is liable to account to any Tax Authority in connection with or as a result of this Agreement or any transfer, sale, supply, use or transaction made pursuant to or envisaged or contemplated by this Agreement; and
- (ii) which the Purchaser is unable to recover from that Tax Authority by way of credit or repayment.

10.3 The Seller and the Business Seller shall provide the Purchaser with any valid documentation that may be required to enable the Purchaser to receive a credit or deduction for any Sales Tax arising in connection with or as a result of this Agreement or any transfer, sale, supply, use or transaction made pursuant to or envisaged or contemplated by this Agreement, where applicable under local law.

10.4 The Seller and the Business Seller agree to comply with all applicable bulk sale notice requirements and obtain all tax clearance certificates necessary to extinguish the Purchaser's liability for any pre-closing Taxes due and owing by any member of the GSK Group.

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10.5 The amount of the Non-Compete Consideration shall be inclusive of any applicable amounts in respect of Sales Tax.

## 11. Completion

11.1 Unless this Agreement is terminated earlier in accordance with its terms, Completion shall take place on the latest of:

- (A) [\*\*\*];
- (B) the date which is three (3) Business Days after the date on which the Seller notifies the Purchaser that it is ready to proceed to Completion;  
and
- (C) where an order referred to in Clause 3.1 is in effect, the date which is three (3) Business Days after the date on which the transactions contemplated by this Agreement cease to be prohibited or enjoined by such order;

(the “**Completion Date**”), PROVIDED THAT if the date on which Completion would otherwise occur pursuant to either paragraph (B) or (C) is after the Termination Date, the parties shall use all reasonable endeavours to proceed to Completion on such date as the parties may agree, being a date which would fall on or prior to the Termination Date.

11.2 Completion of the sale and purchase of the Business Assets shall take place at 3.00 p.m. (London time) on the Completion Date at the offices of the Seller’s Solicitors at One Bunhill Row, London EC1Y 8YY.

11.3 At Completion, the Seller and the Purchaser shall do, or procure the carrying out of, those things listed in respect of each of them in Schedule 2 (and for the purposes of this Clause 11.3, the Business Assets referred to in Clause 15.1 shall be deemed to have been acquired by the Purchaser (on behalf of the relevant Designated Purchaser) for the purposes of determining whether the Seller has complied with its obligations pursuant to Schedule 2).

11.4 The Initial Cash Consideration shall be payable by or on behalf of the Purchaser in immediately available funds in Dollars at Completion as referred to in paragraph 1.2(B) of Schedule 2.

11.5 Receipt of funds in accordance with Clause 11.4 shall constitute a good discharge of the Purchaser in respect of the payment of the Initial Cash Consideration but not, for the avoidance of doubt, in respect of the Purchaser’s other obligations under Clause 8 or this Clause 11.

11.6 The Purchaser shall not be obliged to complete the purchase of the Business Assets unless the Seller complies with all of its obligations under Clause 11.3.

11.7 The Seller shall not be obliged to complete the sale of the Business Assets unless the Purchaser complies with all of its obligations under Clause 11.3

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- 11.8 If the respective obligations of the Seller and/or the Purchaser under Clause 11.3 are not complied with on the Completion Date, the party which has complied with its obligations under Clause 11.3 may:
- (A) defer Completion by a period of not more than twenty-eight (28) days (so that the provisions of this Clause 11 shall apply to Completion as so deferred);
  - (B) waive all or any of the requirements contained or referred to in Clause 11.3 at its discretion and proceed to Completion so far as practicable (without limiting its rights under this Agreement and/or applicable Laws); or
  - (C) terminate this Agreement, without liability on its part.
- 11.9 Notwithstanding anything to the contrary contained in this Agreement, each of the parties hereto expressly acknowledges that, with respect to any termination of this Agreement arising as a consequence of any material non-compliance or breach by the Purchaser of its obligations under this Agreement (including, for the avoidance of doubt and notwithstanding Clause 11.6, any failure of the Purchaser to comply with its obligations on the Completion Date in accordance with this Clause 11 in circumstances in which the Seller is ready and able to comply with its obligations on the Completion Date in accordance with this Clause 11) the total aggregate liability of the Purchaser and all members of the Purchaser's Group under this Agreement in respect of such termination, non-compliance or breach shall not in any event exceed an amount equal to US\$25,000,000.
- 11.10 If, by close of business on 30 April 2012, the Purchaser has not (otherwise than due to a breach of any obligation owed by the Purchaser to any member of the Green Group) drawn down funding under the definitive agreements to be entered into in respect of the debt financing facilities which the Purchaser's Financing Banks have committed to make available to the Purchaser pursuant to the Debt Commitment Letter for the purposes of the transaction contemplated by this Agreement, the Purchaser shall have the right to terminate this Agreement immediately by notice in writing to the other parties, and without liability on its part.

For the purposes of this Clause 11.10, the following defined terms shall have the meanings ascribed to them:

**"Debt Commitment Letter"**

means the commitment letter pursuant to which the Purchaser's Financing Banks have committed, subject to the terms and conditions set forth therein, to provide (i) a seven-year senior secured term loan facility in an aggregate principal amount of US\$ 620,000,000, (ii) a five-year senior secured revolving credit facility in an aggregate principal amount of US\$ 50,000,000, and (iii) a one-year senior unsecured bridge facility in an aggregate principal amount of US\$ 290,000,000 to the Purchaser, and the fee letter relating thereto (together with any replacement or amendments thereof and all exhibits, schedule and

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annexes to such letters); and

**“Purchaser’s Financing Banks”** means (i) Citigroup Global Markets Inc. of 390 Greenwich Street, New York, New York 10013, United States, (ii) Morgan Stanley Senior Funding, Inc. of 1585 Broadway, New York, New York 10036, United States; and (iii) Royal Bank of Canada of One Liberty Plaza, New York, New York 10006, United States.

12. [\*\*\*]
- 12.1 If Completion does not occur as a consequence of the Seller not having given notice under Clause 11.1(B) or otherwise [\*\*\*] on the Completion Date, [\*\*\*].
- 12.2 [\*\*\*]
- 12.3 Notwithstanding any other provision in this Agreement, [\*\*\*] pursuant to this Clause 12 then, in the absence of fraud and save in the circumstances set out in Clause 12.6, the rights, obligations and liabilities (if any) of each party under this Agreement and each other Purchaser Transaction Document or Seller Transaction Document (whether arising in equity or law) shall automatically end (except for the provisions of Clauses 23, 28.2, 28.3, 32, 34, 36 and Clauses 38 to 47 (inclusive) of this Agreement which shall survive any termination) regardless of whether such rights, obligations and/or liabilities have arisen or accrued before termination.
- 12.4 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 12.6, each of the parties hereto expressly acknowledges and agrees that, with respect to any [\*\*\*] pursuant to this Clause 12, [\*\*\*] shall constitute liquidated damages with respect to any claim for damages or any other claim which the Purchaser would otherwise be entitled to assert against GSK PLC, any member of the GSK Group, or any of its or their respective assets [\*\*\*] and shall constitute the sole and exclusive remedy with respect to any such termination of this Agreement of the Purchaser and each member of the Purchaser’s Group or other person against GSK PLC or any member of the GSK Group for any loss suffered as a result of the failure of the transactions contemplated thereby to be consummated and, upon payment of such amount, none of GSK PLC, nor any member of the GSK Group

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shall have any further liability or obligation relating to or arising out of this Agreement or this letter.

- 12.5 The parties expressly acknowledge and agree that, in light of the difficulty of accurately determining actual damages with respect to the foregoing [\*\*\*] pursuant to this Clause 12, the right to such payment:
- (A) constitutes a reasonable estimate of the damages that will be suffered by reason of [\*\*\*]; and
  - (B) shall be in full and complete satisfaction of any and all damages arising as a result of [\*\*\*].
- 12.6 Notwithstanding anything to the contrary contained in this Agreement, nothing in this Clause 12 shall relieve GSK PLC, the Seller or any other member of the GSK Group from liability for any wilful breach of their respective representations, warranties, covenants or agreements set forth in this Agreement.
- 13. Action after Completion**
- 13.1 To the extent that the provisions of Clause 16 do not apply, during the period from and including the Completion Date until and including the date falling three (3) months after the Completion Date, the Seller shall be entitled to send (or to procure that there is sent) to any third party supplier, customer and other business contact in respect of the Business one or more notices in such format as the Seller may reasonably determine informing them of the transfer of the Business PROVIDED THAT the contents of any such notice does not disclose information that is any more extensive than that contained in any Agreed Form announcement.
- 13.2 The Seller shall procure that originals of all notices, correspondence, information, orders or enquiries relating solely to the Business and copies of the relevant parts of all notices, correspondence, information, orders or enquiries relating partly to the Business and partly to one or more of the remaining businesses or assets of the GSK Group which are received by any member of the GSK Group on or after Completion shall be passed as soon as practicable to the Purchaser.
- 13.3 The Purchaser shall procure that originals of all notices, correspondence, information, orders or enquiries relating solely to one or more of the remaining businesses or assets of the GSK Group and copies of the relevant parts of all notices, correspondence, information, orders or enquiries relating partly to the Business and partly to one or more of the remaining businesses or assets of the GSK Group which are received by any member of the Purchaser's Group on or after Completion shall be passed as soon as practicable to the relevant member of the GSK Group.
- 13.4 If, after Completion, it is determined by the United States Internal Revenue Service or by either the Purchaser or the Seller that any change is required to be made to the materials delivered pursuant to Clause 13.2, the Seller and the Purchaser shall discuss

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in good faith the changes required to be made and shall arrange for revised documents to be delivered within the time limits prescribed by applicable law.

#### **14. Wrong Pockets**

- 14.1 All payments from third parties which are received by the Seller or any other member of the GSK Group on or after Completion, to the extent to which they relate to the Business sold, or any of the Business Assets transferred, pursuant to this Agreement and which do not constitute Excluded Assets shall be promptly paid over (and in any event within ten (10) Business Days of such receipt) to the Purchaser (or to such other member of the Purchaser's Group as the Purchaser may nominate) and, pending such payment, shall be held in trust (or procured to be held in trust) by the Seller or the applicable member of the GSK Group for the Purchaser (or such other member of the Purchaser's Group as the Purchaser may nominate).
- 14.2 All payments from third parties which are received by the Purchaser or by any other member of the Purchaser's Group on or after Completion, to the extent to which they relate to (i) one or more of the remaining businesses or assets of the GSK Group or (ii) any assets or liabilities of the GSK Group which did not form part of the Business Assets or the Assumed Liabilities (including, notwithstanding the provisions of Clauses 20.1 and 20.2, any money or items received by any member of the Purchaser's Group in respect of the Receivables or which constitute Excluded Assets) shall be promptly paid over (and in any event within 10 Business Days of such receipt) to the Seller (or to such other member of the GSK Group as the Seller may nominate) and, pending such payment, shall be held in trust (or procured to be held in trust) by the Purchaser or the applicable member of the Purchaser's Group for the Seller (or such other member of the GSK Group as the Seller may nominate).
- 14.3 Without prejudice to any other provision of this Agreement, the parties agree that they do not intend for members of the Purchaser's Group after Completion to be vested with, or otherwise to have under their possession or control, any property or asset (tangible or intangible and including any rights pursuant to any contracts, arrangements and undertakings including, without limitation, any licences of Intellectual Property or know-how, but otherwise excluding Intellectual Property and know-how) which was, in the twenty-four (24) months prior to the Completion Date, used by a member of the GSK Group other than exclusively in relation to the Business ("**Non-Business Assets**").
- 14.4 Without prejudice to any restriction or limitation on the extent of any party's obligations under this Agreement or to the provisions of Clause 25, if, after Completion, any party to this Agreement shall become aware that any Non-Business Asset is vested in, or otherwise under the possession or control of any member of the Purchaser's Group, then the transfer of that Non-Business Asset shall be regarded as void *ab initio* and the Purchaser shall, or shall procure that any other relevant member of the Purchaser's Group will, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form reasonably satisfactory to the Seller to vest such property or asset in, and transfer the possession and control of the same to, the Seller or a company nominated by the Seller as soon as reasonably practicable after so becoming aware.

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14.5 Any property or asset transferred to the Seller or to any other member of the GSK Group pursuant to Clause 14.4 shall be transferred for an amount equal to the market value of such property or asset, which amount shall be paid by the Seller (on behalf of the relevant member of the GSK Group, as the case may be) to the Purchaser on the date of transfer of the property or asset and, at the same time, an equal and upwards adjustment shall be made by the Purchaser to the Seller as an adjustment to the consideration payable by the Purchaser under this Agreement and the amounts so payable shall be set off such that no funds shall flow in relation to that payment PROVIDED THAT the Seller shall indemnify the Purchaser (or the relevant member of the Purchaser's Group, as the case may be) in full in respect of any Tax which the Purchaser (or the relevant member of the Purchaser's Group, as the case may be) is liable to pay as a result of the transfer and/or the upward adjustment of the consideration and which the Purchaser (or the relevant member of the Purchaser's Group, as the case may be) would not otherwise been liable to pay but for such transfer and/or the upward adjustment of the consideration.

15. **Third party consents for the transfer of Business Assets**

15.1 Where any consent, approval or agreement of any third party (other than of a relevant anti-trust authority required pursuant to Clause 3 (a "**Third Party Consent**")) is required for the transfer of any of the Business Assets (excluding any consent, approval or agreement required for the transfer of any Regulatory Permit) and such Third Party Consent has not been obtained at or before Completion:

- (A) the failure to obtain such Third Party Consent shall not delay Completion and the parties shall, subject to the terms and conditions of this Agreement, proceed to Completion; but
- (B) (subject to any transfer by operation of law) the sale of the relevant Business Asset shall not take effect, notwithstanding Completion, until that Third Party Consent has been obtained.

15.2 Following Completion and until the earliest of:

- (A) such date as the relevant Third Party Consent is obtained (the "**Third Party Consent Date**");
- (B) such date as any member of the GSK Group or any member of the Purchaser's Group receives a notice or other communication from the relevant third party whose Third Party Consent is required to the transfer of the relevant Business Asset positively refusing such Third Party Consent (the "**Third Party Refusal Date**"); and
- (C) the Contract Long Stop Date,

the Seller and the Purchaser shall procure that (in the case of the Seller) the Business Seller and (in the case of the Purchaser) the relevant Designated Purchaser(s) shall each use their respective reasonable endeavours to obtain the relevant Third Party

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Consent as soon as possible after Completion and the Seller or the Business Seller shall be responsible for any costs and expenses paid or payable to any third party.

15.3 Following Completion and until the earliest of:

- (A) the relevant Third Party Consent Date;
- (B) the relevant Third Party Refusal Date; and
- (C) the Contract Long Stop Date,

the Business Seller shall be deemed to hold the benefit of the relevant Business Asset referred to in Clause 15.1 on trust for the relevant Designated Purchaser.

15.4 If any Third Party Consent:

- (A) has not been obtained by the Contract Long Stop Date; or
- (B) has been positively refused by the relevant third party whose Third Party Consent is required to the relevant Business Asset transfer (such refusal to be notified by the relevant member of the Purchaser's Group or GSK Group receiving such refusal to the Seller or the Purchaser (as applicable) as soon as reasonably possible following receipt),

the relevant Business Asset shall be deemed to have been excluded from the sale under this Agreement and the Purchaser acknowledges and agrees that the Purchaser, the relevant Designated Purchaser(s) or another member of the Purchaser's Group shall be solely responsible for procuring its own replacement or equivalent asset (if required) and that no member of the GSK Group shall have any responsibility for procuring any such replacement or equivalent asset.

15.5 If, pursuant to Clause 15.4, any Business Asset referred to in Clause 15.1 is excluded from the sale under this Agreement then, notwithstanding that (i) a value may have been attributed to the Business Asset so excluded in the calculation of the Initial Cash Consideration or the Final Cash Consideration, and/or (ii) the Purchaser, the relevant Designated Purchaser(s) or another member of the Purchaser's Group may incur costs, expenses or liabilities in procuring a replacement or equivalent asset, neither the Seller nor any other member of the GSK Group shall be liable to make any payment to the Purchaser, the relevant Designated Purchaser(s) or any other member of the Purchaser's Group, whether in respect of the amount, if any, of consideration apportioned to that Business Asset for the purposes of Clause 7, or any such costs, expenses or liabilities or otherwise, and neither the Purchaser, the relevant Designated Purchaser(s) nor any other member of the Purchaser's Group shall have any right to call for any adjustment to the Initial Cash Consideration or the Final Cash Consideration or for any equalisation, compensatory or other payment from the Seller (or any other member of the GSK Group) in respect of the Business Asset so excluded.

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15.6 For the avoidance of doubt, the provisions of this Clause 15 shall not apply to the Regulatory Permits, the transfer of which is governed by Clause 19.

## 16. Business Inventory

16.1 The Seller shall procure that, at Completion, each relevant member of the GSK Group transfers to the Purchaser (or relevant Designated Purchaser, as the case may be) such Business Inventory as is beneficially owned by, or on behalf of, that member of the GSK Group at Completion (each such member of the GSK Group being a “**Business Inventory Transferor**”) with the intent that legal and beneficial title to, and risk in, the Business Inventory shall pass to the Purchaser (or relevant Designated Purchaser, as the case may be) at Completion.

16.2 Each Business Inventory Transferor shall be entitled to issue to the Purchaser (or relevant Designated Purchaser, as the case may be) appropriate invoices and other sales documentation in connection with the transfer at Completion of any Business Inventory by such Business Inventory Transferor (including, without limitation to the generality of the foregoing and for the avoidance of doubt, any Tax-related invoices in respect of the transfer of Business Inventory by the relevant Business Inventory Transferor), provided that, for the avoidance of doubt, no such invoice or documentation shall in any way cause or constitute an increase in the consideration otherwise payable under this Agreement for such Business Inventory.

## 17. Assumed and Excluded Liabilities

17.1 Except as otherwise provided in this Agreement, the Purchaser (on behalf of the relevant Designated Purchasers) hereby undertakes to the Seller (for itself and as trustee for each other member of the GSK Group) that with effect from Completion, the Purchaser will (or will procure that the relevant Designated Purchaser or another member of the Purchaser’s Group will) duly and properly perform, assume and pay and discharge when due, and indemnify the Seller and each member of the GSK Group against, any and all Losses arising in connection with the Assumed Liabilities.

17.2 Subject always to Clause 17.3, in this Agreement “**Assumed Liabilities**” means the following:

- (A) all obligations and liabilities arising in connection with any coupons, rebates, override arrangements or chargebacks relating to any Product sold at or after the Completion Time;
- (B) all liabilities arising in connection with the condition after the Completion Time of, or any defect arising after the Completion Time in, any Business Inventory;
- (C) all Losses in respect of any claim, action, demand, proceeding or investigation arising out of or relating to the Products (including, for the avoidance of doubt and without limitation, the Manufacture and Commercialisation of the Products), or the sale, use or lease of any of the Business Assets, but only to the extent

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that the circumstances giving rise to such Losses are referable to a period following Completion;

- (D) all other liabilities and obligations which are incurred or fall due to be performed, or arise in respect of the period, from and after the Completion Time in respect of the Business and the Business Assets,

but excluding the Excluded Liabilities.

17.3 Notwithstanding Clauses 17.1 and 17.2, the Seller (on behalf of each member of the GSK Group) hereby undertakes to the Purchaser (for itself and as trustee for each other member of the Purchaser's Group) that with effect from Completion, the Seller will (or will procure that another member of the GSK Group will), duly and properly perform, assume and pay and discharge when due, and indemnify the Purchaser and each member of the Purchaser's Group against, and all Losses arising in connection with the Excluded Liabilities.

17.4 In this Agreement, "**Excluded Liabilities**" means the following:

- (A) any Tax Liability of any member of the GSK Group relating to any period ending on or before Completion;
- (B) all obligations and liabilities arising in connection with any coupons, rebates, override arrangements or chargebacks relating to any Product sold before the Completion Time;
- (C) all liabilities arising in connection with the condition before the Completion Time of, or any defect arising before the Completion Time in, any Business Inventory;
- (D) all Losses in respect of any claim, action, demand, proceeding or investigation arising out of or relating to the Products (including, for the avoidance of doubt and without limitation, the Manufacture and Commercialisation of the Products) or the sale, use or lease of any of the Business Assets, to the extent that the circumstances giving rise to such Losses are referable to a period before Completion;
- (E) any obligations or liabilities whatsoever (including in relation to or in connection with any salaries, wages, pensions, benefits, termination or severance payments, or any other obligation or liability) in respect of any current and former employees, consultants, individual independent contractors, temporary workers or similar individuals of the Seller or any other member of the GSK Group, and all such individuals who have or are currently performing services for the Seller or any other member of the GSK Group employees (or previous employees) or alike of the GSK Group, all in relation to the Business;
- (F) any obligations or liabilities whatsoever in respect of any GSK Group-owned Property or environmental claims, actions, demands, proceedings or

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investigations affecting any member of the Purchaser's Group as a result of the transactions contemplated by this Agreement;

- (G) all termination payments and other forms of compensation to be paid on the termination of any agent, sales intermediary or distributor arrangement of the Business which are referable to a period before Completion;
- (H) any liabilities or obligations in respect of the Excluded Assets; and
- (I) all other liabilities and obligations which are incurred or fall due to be performed or arise in the period before the Completion Time in respect of the Business and the Business Assets.

17.5 Where, for the purposes of determining the extent to which (i) the Purchaser is responsible for Assumed Liabilities pursuant to the provisions of sub-Clause 17.2(A), and/or (ii) the Seller is responsible for Excluded Liabilities pursuant to the provisions of sub-Clause 17.4(B), it is necessary to allocate any liability or obligation between the period before, and the period from or after, the Completion Time, then such obligations and liabilities shall be allocated or apportioned by the Seller, acting reasonably, in accordance with the following:

- (A) in respect of turnover-related coupons, rebates, override arrangements or chargebacks, by calculating the amount of turnover generated:
  - (i) for the purposes of calculating the relevant Assumed Liabilities, after the Completion Time; and
  - (ii) for the purposes of calculating the relevant Excluded Liabilities, before the Completion Time,
 

during the period to which the relevant coupon, rebate, override arrangement or chargeback relates and then multiplying the total amount due under such coupon, rebate, override arrangement or chargeback by the percentage which the amount of turnover generated:

    - (a) for the purposes of calculating the Assumed Liabilities, at or after the Completion Time; and
    - (b) for the purposes of calculating the Excluded Liabilities, before the Completion Time,

represents of the total amount of turnover generated in the relevant period;
- (B) in respect of non turnover-related coupons, rebates, override arrangements or chargebacks, on a time basis by calculating the number of days:
  - (i) for the purposes of calculating the relevant Assumed Liabilities, from and including the Completion Date; and

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(ii) for the purposes of calculating the relevant Excluded Liabilities, before the Completion Date,

in the period to which the relevant coupon, rebate, override arrangement or chargeback relates and then multiplying the total amount due under such coupon, rebate, override arrangement or chargeback by the percentage which the number of days in the period:

(a) for the purposes of calculating the Assumed Liabilities, from and including the Completion Date; and

(b) for the purposes of calculating the Excluded Liabilities, before the Completion Date,

represents of the total number of days in the relevant period; and

(C) in respect of any other liability or obligation to the extent not addressed above in this Clause 17.5, on a fair and equitable basis.

17.6 The Purchaser, for itself and its successors and assigns, covenants that, at any time and from time to time on or after Completion, it will execute and deliver, or procure the execution and delivery of, all such further instruments of assumption and acknowledgements or take such other action as the Seller may reasonably request in order to effect:

(A) the release and discharge in full of the relevant member of the GSK Group in respect of any Assumed Liability;

(B) the assumption by a member of the Purchaser's Group of the Assumed Liabilities; and

(C) the substitution of a member of the Purchaser's Group as the primary obligor in respect of the Assumed Liabilities,

in each case on a non-recourse basis to the GSK Group.

17.7 Notwithstanding Clause 17.1, the assumption by the Purchaser of the Assumed Liabilities shall be without prejudice to any rights which the Purchaser may have against any member of the GSK Group under this Agreement or under any Seller Transaction Document to which a member of the GSK Group is a party.

17.8 Notwithstanding any provision to the contrary in this Agreement, the parties agree that their respective liability in relation to or in connection with any claim under this Clause 17 shall be without financial limitation.

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**18. Apportionment**

- 18.1 The Seller and the Purchaser acknowledge that certain costs or charges will have been incurred, which relate to the Business and/or the Business Assets, for a period after Completion (including, without limitation to the generality of the foregoing, the provision of goods and services and/or the licensing of rights to the Business) and for which payment may have been made (whether by deposit, prepayment or otherwise), or invoices received, by members of the GSK Group in the ordinary course of business (“**Prepayments**”) prior to Completion. To the extent that any Prepayment has been recorded (or, notwithstanding any failure to record, has fallen to be recorded) in the books and records of the relevant members of the GSK Group, as at Completion, the amount of such Prepayment shall be apportioned to the Purchaser and in any such case, the provisions of Clauses 18.4 to 18.10 (inclusive) shall apply.
- 18.2 The Seller and the Purchaser acknowledge that certain costs or charges will have been incurred, which relate to the Business and/or the Business Assets, for a period prior to Completion (including, without limitation to the generality of the foregoing, goods and services and/or the licensing of rights to the Business) and for which the relevant members of the GSK Group will not have been invoiced, nor will the relevant members of the GSK Group have paid any such amounts, on or prior to Completion (the amounts not so invoiced or paid being “**Accruals**”). To the extent that any Accrual has been recorded (or, notwithstanding any failure to record, has fallen to be recorded) in the books and records of the relevant members of the GSK Group, as at Completion, the amount of such Accrual shall be apportioned to the GSK Group to the extent that such amounts are paid by the Purchaser after Completion and in any such case, the provisions of Clauses 18.4 to 18.10 (inclusive) shall apply.
- 18.3 The Seller and Purchaser acknowledge that certain costs or charges will be incurred, which relate to the Business and/or the Business Assets, for the period after Completion (including, without limitation to the generality of the foregoing, goods and services and/or the licensing of rights to the Business) and for which the relevant members of the GSK Group are invoiced and are liable to pay such invoiced amounts (“**Post-Completion Costs**”). To the extent that any members of the GSK Group pays, or is liable to pay, such Post-Completion Costs, the amount of such Post-Completion Costs shall be apportioned to the Purchaser and in any such case, the provisions of Clauses 18.4 to 18.10 (inclusive) shall apply.
- 18.4 On the date on which the Seller delivers the Draft Completion Current Asset Statement to the Purchaser in accordance with paragraph 4.1 of Schedule 6, the Seller shall also deliver to the Purchaser a statement of all the Prepayments and Accruals as at the Completion Time, and all Post-Completion Costs incurred (the “**Initial Apportionment Statement**”), PROVIDED THAT, to the extent that any such Accruals are not capable of being quantified as at the time that the Initial Apportionment Statement is delivered (such Accruals being “**Outstanding Accruals**”), they shall not be included in such Initial Apportionment Statement and the provisions of Clause 18.8 shall instead apply. The Initial Apportionment Statement shall set out:

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- (A) the amount of the Prepayments which is to be borne by the Purchaser in accordance with Clause 18.1;
- (B) the amount of the Accruals which is to be borne by the Seller in accordance with Clause 18.2;
- (C) the amount of the Post-Completion Costs which is to be borne by the Purchaser in accordance with Clause 18.3; and
- (D) the amount to be paid by the Purchaser to the Seller, or by the Seller to the Purchaser (as the case may be), calculated on the basis set out in Clause 18.6,

and shall be accompanied by evidence from the Seller of the items set out in such Apportionment Statement.

18.5 The Purchaser shall have a period of twenty-one (21) days (the “**Initial Apportionment Statement Review Period**”) after the delivery to it of the Initial Apportionment Statement to review the Initial Apportionment Statement, and within such Initial Apportionment Statement Review Period may request (in writing) an adjustment to be made to any item set out therein and shall provide the Seller with such evidence as the Seller may reasonably require to support such request. If no such written request is presented to the Purchaser within the Initial Apportionment Statement Review Period, then the Initial Apportionment Statement shall be deemed to have been agreed and approved by the Seller and the Purchaser and shall be final and binding upon them.

18.6 If any such written request as is referred to in Clause 18.5 is presented to the Seller within the Initial Apportionment Statement Review Period, then the Purchaser and the Seller shall attempt to resolve the matter in dispute between them in good faith negotiations and the provisions of paragraphs 4.7 and 4.8 of Schedule 6 shall apply *mutatis mutandis*.

18.7 Within seven (7) days of agreement or determination of the Initial Apportionment Statement there shall be netted off:

- (A) an amount equal to any Accruals to be borne by the Seller (“**Amount A**”); against
- (B) an amount equal to any Prepayments and Post-Completion Costs to be borne by the Purchaser (“**Amount B**”),

and the resulting net amount shall:

- (a) if Amount A is greater than Amount B, be paid by the Seller to the Purchaser together with an amount equivalent to interest thereon at the Agreed Rate (accrued daily) for the period from the Completion Date to the date of payment; and

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- (b) if Amount B is greater than Amount A, be paid (as a positive number) by the Purchaser to the Seller together with an amount equivalent to interest thereon at the Agreed Rate (accrued daily) for the period from the Completion Date to the date of payment.
- 18.8 Subject to Clause 18.9, the Seller shall, on the date falling one hundred and twenty (120) days following the Completion Date, deliver to the Purchaser a further statement in respect of all the Outstanding Accruals as at the Completion Time and any additional Post-Completion Costs arising after the date of delivery of the Initial Apportionment Statement (the “**Final Apportionment Statement**”) and the provisions of Clauses 18.4 to 18.7 (inclusive) shall apply *mutatis mutandis* to the preparation, review, adjustments to and payments in respect of such Final Apportionment Statement as if references to the Initial Apportionment Statement were to the Final Apportionment Statement and references to Accruals were to Outstanding Accruals.
- 18.9 To the extent that any Outstanding Accruals are not capable of being quantified as at the time that the Final Apportionment Statement is delivered, the Seller and the Purchaser hereby agree that no further amount shall be considered as due, owing or payable between any member of the GSK Group and any member of the Purchaser’s Group (or vice versa) in respect of the Prepayments, Outstanding Prepayments, Accruals, Outstanding Accruals, or any Post-Completion Costs.
- 18.10 All payments referred to in this Clause 18 shall constitute an adjustment to the Initial Cash Consideration and shall be made in immediately available funds in Dollars without any set off, restriction or condition by telegraphic transfer to the bank account or accounts of the Purchaser or (as the case may be) the Seller. For the avoidance of doubt, the provisions of Clause 29 shall apply to any such payment.
- 19. Transfer of Regulatory Permits**
- 19.1 As soon as reasonably practicable following Completion, the Seller and the Purchaser shall file, or procure that there is filed, with the FDA and any and all other relevant Governmental Entities all information required in order to transfer any Regulatory Permits from the Seller (or the relevant Regulatory Permit Holder(s)) to the Purchaser (or the relevant Designated Purchaser), including any authorisation letters or notices and letters of acceptance. Without limiting the generality of the foregoing, promptly following Completion, the Purchaser and the Seller shall submit, or procure that there is submitted, to the FDA for each transferred Regulatory Permit constituting a NDA and each transferred Regulatory Permit constituting an abbreviated new drug application (an “**ANDA**”) the information required by 21 C.F.R. § 314.72. The Seller and the Purchaser shall each provide written confirmation to the other promptly following satisfaction of their respective obligations pursuant to the preceding sentences of this Clause 19.1.
- 19.2 For each transferred NDA, ANDA and each Product subject to an OTC Monograph, the Seller shall, as soon as reasonably practicable following Completion, update (or procure that there is updated) its drug product listing information with the FDA in order to delist the transferred Product and the Purchaser shall update (or procure that there is

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updated) its drug product listing information with the FDA to list the transferred Product, as specified in 21 C.F.R. § 207.30.

- 19.3 The Seller and the Purchaser shall use all reasonable endeavours to take any actions required by the relevant Governmental Entities to effect the transfer of any required Regulatory Permits from the Seller to the Purchaser (it being acknowledged that this obligation shall not require either party to take any actions which are properly attributable to the other party), and shall cooperate with each other in order to effectuate the foregoing transfer of Regulatory Permits in as efficient and timely a manner following Completion as is reasonably practicable.
- 19.4 Subject to Clause 19.5, the Seller and the Purchaser shall each be liable for their own respective costs and expenses in procuring the transfer of the Regulatory Permits in accordance with this Clause 19.
- 19.5 Notwithstanding Clause 19.4, the Purchaser agrees and acknowledges that it shall be responsible, at its own expense, from Completion for obtaining any other NDAs, consents, approvals, registrations, formulary listings, Drug Establishment Licenses, Natural Product Site Licenses, certificates, permits, licences, or other approvals, in each case, of applicable Governmental Entities, required for the continuation of the Business.
- 19.6 From and after Completion and until such time as the transfer of the relevant Regulatory Permit has been completed, to the extent the Seller or any other member of the GSK Group would be deemed to be responsible for any incident (including any safety issue) concerning any Product in respect of which it previously held the corresponding Regulatory Permit immediately prior to Completion, the Purchaser undertakes to take such actions and steps as the Seller may reasonably request and deem necessary in accordance with the practices, policies and procedures of the GSK Group during the six (6) month period preceding the date of this Agreement (or to procure the same of the relevant member of the Purchaser's Group), or to permit the Seller (or other relevant member of the GSK Group) to take such actions and steps as the Seller may reasonably request and deem necessary (as the case may be), in each case with a view to minimising the liability (if any) of the Seller (or relevant member of the GSK Group), in response to incidents (including safety issues) concerning such Products and, upon request, the parties shall provide, and shall procure the provision of, such help and assistance as may be necessary for the purposes of such actions or steps.
- 19.7 Nothing in this Clause 19 shall oblige any party to do or to procure any act or thing which violates any applicable law or regulation and the term "all reasonable endeavours" shall be construed accordingly.

## **20. Receivables**

- 20.1 The Purchaser shall not acquire, or procure the acquisition of the Receivables, and accordingly the Seller or, as the case may be, the other relevant members of the GSK Group (as applicable) shall remain entitled to the Receivables in accordance with the terms of this Clause 20.1.

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20.2 The Purchaser agrees that the Seller (or such other member(s) of the GSK Group as the Seller may nominate) (each, a “Collecting Seller”) shall be responsible for the collection of any of the Receivables and that:

- (A) each Collecting Seller shall be entitled to take such steps as it may think fit, acting reasonably and in good faith but not in a manner which is materially prejudicial to any member of the Purchaser's Group, to recover any Receivables;
- (B) notwithstanding the foregoing sub-Clause 20.2(A), if any Collecting Seller commences any action or proceeding for debt collection in respect of any such Receivables, it shall give reasonable advance written notice thereof to the Purchaser,

PROVIDED THAT, for the avoidance of doubt, the giving of any such notice (or failure to give such notice) shall not prejudice the right of the relevant Collecting Seller to commence any such action or proceeding;

- (C) the Purchaser shall not take, and shall procure that no other member of the Purchaser's Group takes, any step to collect any of the Receivables (unless agreed in writing with the Seller or relevant Collecting Seller), and shall not do anything to hinder their collection by any Collecting Seller; and
- (D) if the Purchaser or any other member of the Purchaser's Group should receive any communication or payment in respect of any Receivable, the Purchaser shall give, or shall procure that there are given, written details of any such communication or payment to the Seller as soon as reasonably practicable following receipt thereof.

20.3 In the event that, notwithstanding Clauses 20.1 and 20.2 above, on or after Completion the Purchaser or any other member of the Purchaser's Group receives any moneys or other items in respect of the Receivables, the provisions of Clause 14.2 shall apply.

## 21. Insurance

21.1 Subject to the provisions of Clauses 21.2 to 21.4 (inclusive), the Purchaser acknowledges and agrees that:

- (A) upon Completion, all insurance cover provided in relation to the Business pursuant to the GSK Group Insurance Policies shall cease to cover the Business in respect of the period following Completion; and
- (B) responsibility for procuring any insurance in relation to the Business which it acquires is, in respect of the period following Completion, the Purchaser's alone and is not the responsibility of any member of the GSK Group.

21.2 The provisions of Clause 21.1 shall be without prejudice to any accrued claims subsisting at Completion and arising in respect of the period to the Completion Date

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under any GSK Group Insurance Policy in respect of any Assumed Liability and for which neither the Purchaser nor any other member of the Purchaser's Group is insured under its policies. Subject to receiving such assistance from the Purchaser's Group as the Seller may reasonably request and to the Seller and each other relevant member of the GSK Group being indemnified by the Purchaser for any reasonable costs, losses and deductibles suffered or incurred by them in relation to any such accrued claims on terms satisfactory to the Seller (acting reasonably), the Seller shall take all reasonable steps (at the Purchaser's cost) to confer the benefit of any such claim on the relevant member of the Purchaser's Group. The provisions of this Clause 21.2 shall be subject to the provisions of Clause 21.3.

21.3 If either the Seller or any other member of the GSK Group receives any proceeds in from an insurer as a result of its actions pursuant to Clause 21.2 above, the Seller shall (or the Seller shall procure that the relevant member of the GSK Group shall) pay such proceeds or shall procure that such proceeds are paid, subject to the deduction of any Tax suffered on such proceeds and subject to the deduction of any other reasonable costs and expenses, losses or deductibles for which an indemnity was given pursuant to Clause 21.2 (to the extent not already reimbursed pursuant to such indemnity), to the Purchaser (if possible, by way of an adjustment to the Final Cash Consideration), PROVIDED THAT no payment shall be made to the extent that the Seller or any other member of the GSK Group has:

- (A) previously made a payment to any member of the Purchaser's Group pursuant to this Agreement in respect of such matter or any costs arising therefrom; or
- (B) itself any liability in respect of such matter.

21.4 Reasonable endeavours for the purposes of this Clause 21 shall not include undertaking or threatening litigation or other legal action or incurring any expenditure or liability without having been put in funds by or on behalf of the Purchaser prior to incurring such expenditure or liability.

## 22. Seller's Warranties and Purchaser's remedies

22.1 Subject as provided in this Agreement, the Seller warrants to the Purchaser as at the date of this Agreement in the terms set out in Schedule 3.

22.2 The only Warranties given:

- (A) in respect of trade regulation are those contained in paragraph 9 of Schedule 3 and each of the other Warranties shall be deemed not to be given in relation to trade regulation;
- (B) in respect of Intellectual Property, Information Technology, know-how and, in each case, contracts, arrangements and engagements relating thereto are those contained in paragraph 12 of Schedule 3 and each of the other Warranties shall be deemed not to be given in relation to Intellectual Property or

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Information Technology or know-how and contracts, arrangements and engagements relating thereto; and

- (C) in respect of the Regulatory Permits are those contained in paragraph 15 of Schedule 4 and each of the other Warranties shall be deemed not to be given in relation to either the Regulatory Permits,

PROVIDED THAT, notwithstanding the foregoing, the Warranties given in paragraphs 3.2 and 3.3 of Schedule 3 shall be deemed to be given in relation to each of the Business Assets.

- 22.3 In the absence of fraud, the liability of the Seller under or in relation to the Warranties shall be limited as set out in Schedule 4.
- 22.4 Any payment made by the Seller in respect of any claim under the Warranties shall be treated as a repayment of, and adjustment to, the Final Cash Consideration.
- 22.5 Save in accordance with Clauses 3.7, 3.8 or Clause 4.1, notwithstanding that the Purchaser becomes aware at any time (whether it does so by reason of any disclosure made in the Disclosure Letter or otherwise) that there has been any breach of the Warranties or any other term of this Agreement or that there may be a claim under any Assurance given by the Seller or the Business Seller under this Agreement, the Purchaser shall not be entitled to rescind or terminate this Agreement or treat it as rescinded or terminated but, shall be entitled to claim damages or exercise any other right, power or remedy under this Agreement or as otherwise provided by law. The Purchaser waives all and any rights of rescission in respect of this Agreement it may have (howsoever arising or deemed to arise) other than any such rights in respect of fraud.
- 22.6 Each of the Warranties shall be construed as a separate and independent warranty and, except where expressly provided to the contrary, shall not be limited or restricted, or widened or extended, by reference to or inference from the terms of any other Warranty.
- 22.7 The Purchaser acknowledges and agrees that the Seller makes no warranty (and, for the avoidance of doubt, gives no representation) as to the accuracy of the forecasts, estimates, projections, statements of intent or statements of opinion provided to the Purchaser (howsoever and whensoever provided), including without limitation, in the Information Memorandum, the VDD Report, the Data Room, the Management Presentation, the Disclosure Letter, any document appended, attached or provided pursuant to any Purchaser Transaction Document or any Seller Transaction Document (including, without limitation to the foregoing, in any SKU-level forecasts, statistical modelling, demand forecasts or any Product launch forecasts provided pursuant to the Separation Plan) or in any documents provided to the Purchaser or its advisers in the course of the Purchaser's due diligence exercise, and the Seller shall incur no liability for any loss incurred by any member of the Purchaser's Group with respect to such matters.

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**23. Purchaser's warranties**

23.1 The Purchaser warrants to the Seller (for itself and on trust for the Business Seller) that:

- (A) it has the requisite capacity, power and authority to enter into and perform this Agreement and any other documents which are to be entered into pursuant to this Agreement to which it is a party (the "**Purchaser Transaction Documents**");
- (B) this Agreement constitutes and the Purchaser Transaction Documents will, when executed by the Purchaser and/or any other member of the Purchaser's Group, as the case may be, constitute valid and binding obligations of the Purchaser and/or such other member of the Purchaser's Group, as the case may be, in accordance with the respective terms of each such document;
- (C) the execution and delivery of, and the performance by the Purchaser or any other member of the Purchaser's Group of their respective obligations under this Agreement and the Purchaser Transaction Documents to which each is respectively a party will not:
  - (i) result in a breach of any provision of the memorandum or articles of association or by-laws or equivalent constitutional documents of the Purchaser or the relevant member of the Purchaser's Group;
  - (ii) result in a breach of, or constitute a default under, any instrument to which the Purchaser and/or the relevant member of the Purchaser's Group is a party or by which the Purchaser or the relevant member of the Purchaser's Group is bound where such breach or default is material to their ability to perform their obligations under this Agreement or under any of the Purchaser Transaction Documents;
  - (iii) so far as the Purchaser is aware, result in a breach of any existing order, judgment or decree of any court or Governmental Entity by which the Purchaser or the relevant member of the Purchaser's Group is bound where such breach is material to their ability to perform their obligations under this Agreement or under any of the Purchaser Transaction Documents; or
  - (iv) save as contemplated by this Agreement, require the Purchaser or the relevant member of the Purchaser's Group to obtain any consent or approval of, or give any notice to or make any registration with, any Governmental Entity or other authority which has not been obtained or made at the date hereof both on an unconditional basis and on a basis which cannot be revoked;
- (D) each Designated Purchaser is, and will at and immediately after Completion be, a member of the Purchaser's Group; and

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- (E) the Purchaser will have, at Completion and on the date on which any consideration adjustment amount becomes due under Clause 7, sufficient cash resources available to it on an unconditional basis to satisfy its obligations under this Agreement and the Purchaser Transaction Documents (including, without prejudice to the generality of the foregoing, its obligation to pay any consideration due under this Agreement and any consideration adjustment amount under Clause 8).

#### **24. Business Records and Business Information**

- 24.1 On Completion (or as soon as reasonably practicable thereafter (and in any event within twenty (20) Business Days thereof)), the Seller shall deliver to the Purchaser, or procure the delivery to the Purchaser of:
- (A) all the Business Records, but excluding (subject to the following sub-Clause 24.1(B)) the Excluded Business Records. Where a record ceases to be an Excluded Business Record pursuant to paragraph (iii) of the definition of Excluded Business Record, the Seller shall deliver such record to the Purchaser as soon as reasonably practicable following such cessation (and in any event within twenty (20) Business Days thereof); and
- (B) copies of those parts of any Excluded Business Records falling within paragraph (i) of the definition thereof which relate to the Business.
- 24.2 The Purchaser acknowledges that the Seller and the Business Seller may wish to inspect and/or copy the Business Records delivered to the Purchaser under this Agreement for the purpose of dealing with any report, return, statement, audit, filing or other requirement under any applicable law or regulation, its Tax affairs or any third party claim or otherwise reasonably required in respect of the GSK Business and, accordingly, the Purchaser shall, upon being given reasonable notice by the Seller and subject to the Seller and/or the Business Seller (as applicable) giving such undertaking(s) as to confidentiality as the Purchaser may reasonably require, make such Business Records available (or procure that the same are made available) to the Seller, the Business Seller and/or their respective representatives and professional advisers for inspection (during Working Hours at the place where such Business Records are to be inspected) and copying (at the Seller's expense) in each case for and only to the extent necessary for such purpose and for a period of seven (7) years from Completion.
- 24.3 In respect of any Excluded Business Records or any accounting or Tax records which contain information which relates in part (but not exclusively) to the Business, the Seller shall, upon being given reasonable notice by the Purchaser and for a period of seven (7) years from Completion, make available (or procure that there is made available) to the Purchaser and/or its representatives and professional advisers for inspection (during Working Hours at the place where the relevant part of such Excluded Business Records is to be inspected) and copying (at the Purchaser's expense) that part of such Excluded Business Records (including accounting or Tax records) relating to the Business to the extent necessary to enable the Purchaser (or any other member of the Purchaser's

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Group) to carry on the Business (including for the purpose of dealing with any report, return, statement, audit, filing or other requirement under any applicable law or regulation, its Tax affairs or any third party claim or otherwise reasonably required in respect of the Business), PROVIDED THAT the Seller shall not be obliged to make available (or to procure that there are made available) any such Excluded Business Records to the extent that such Excluded Business Records contain legally privileged information which is confidential to any member of the GSK Group.

## 25. Intellectual Property

25.1 Save as expressly set out in this Clause 25 the Purchaser acknowledges and agrees on behalf of itself and each member of the Purchaser's Group that nothing in this Agreement shall operate as an agreement to transfer (nor shall transfer) any right, title or interest in or to, nor constitute any licence of, any of the GSK Marks, the Shared Marks or the Shared Formulations (or, in each case, any know-how relating thereto).

### GSK Marks

25.2 The Seller shall, with effect from Completion, procure the grant to the Purchaser of a non-exclusive, royalty-free, non-assignable licence (without the right to sub-license) to use the GSK Marks, universal product codes, national drug codes, drug identification numbers and/or natural product numbers, in each case owned by the Seller (or a member of the GSK Group) on:

- (A) (in the case of the GSK Marks only) any sales literature and stationery of the Business, in each case solely to the extent such materials bear any GSK Marks as at the Completion Time, such licence to commence on the Completion Date and terminate on the date falling ninety (90) days after the Completion Date; and
- (B) any Business Inventory, solely to the extent that such Business Inventory bears any GSK Marks, universal product codes, national drug codes, drug identification numbers and/or natural product codes (as applicable) as at the Completion Time, such licence to commence on the Completion Date and terminate on the date that is the earlier of (i) the date on which the last of the Business Inventory has been sold and (ii) the date falling one (1) year after the Completion Date.

25.3 The Purchaser shall have no right to use any of the GSK Marks as part of a corporate or trading name and undertakes not to hold itself out or otherwise represent itself to be a member of, or to be associated or connected with any member or business venture of GSK Group.

25.4 The Purchaser shall (i) as soon as reasonably practicable (and in any event within ninety (90) days after Completion) prepare and use new sales literature and stationery which does not bear any of the GSK Marks and (ii) as soon as reasonably practicable (and in any event within the period specified in Clause 25.2(B)) arrange for its own artwork and packaging materials (including its own universal product codes, national

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drug codes, drug identification numbers and/or natural product numbers) to be applied in respect of the Products.

- 25.5 The Purchaser undertakes to comply with all applicable laws, regulations and decisions of any relevant court, tribunal, ombudsman or regulatory body (including, without limitation, any relevant Governmental Entity) from time to time relevant to the Licensed Goods.
- 25.6 If it is found that any goods supplied or intended to be supplied under any of the GSK Marks are not in conformity with any of the Purchaser's obligations under this Agreement in respect of such goods or supply, the Seller shall give Notice to the Purchaser to that effect and the Purchaser undertakes that, from the date ten (10) Business Days after such Notice is given, it shall not supply any of such non-conforming goods under any of the GSK Marks without first either conforming them to such obligations or obtaining the written consent of the Seller.
- 25.7 The Purchaser shall Notify the Seller in writing of all complaints made by any consumer association or pressure group and all other material complaints made by its customers or potential customers (including, without limitation, complaints referred to any court, tribunal, ombudsman or regulatory body (including any relevant Governmental Entity)) in relation to the goods provided by, or on behalf of, it under any of the GSK Marks.
- 25.8 The Purchaser acknowledges that all goodwill associated with the use of the GSK Marks by the Purchaser vests and shall vest in the Seller and that the Purchaser has no, and shall not by virtue of this Agreement obtain any, rights in any of the GSK Marks other than those expressly set out in this Clause 25. The Purchaser undertakes that it shall make no claim to such goodwill or, save as set out in this Agreement, to any rights in the GSK Marks.
- 25.9 Without prejudice to Clause 25.8, if any goodwill or proprietary right in relation to the GSK Marks vest in the Purchaser, the Purchaser shall, immediately upon becoming aware of the vesting of such goodwill or right, assign, or procure the assignment of, such goodwill or right to the Seller.
- 25.10 Without prejudice to the Purchaser's right to challenge the validity of any registrations of the GSK Marks, while any licence granted pursuant to Clause 25.2 remains in force, the Purchaser undertakes not to intentionally commit or omit any act or pursue any course of conduct, or assist any third party to pursue any course of conduct, which would be likely to:
- (A) bring any of the GSK Marks into disrepute;
  - (B) damage the goodwill or reputation attaching to any of the GSK Marks;
  - (C) prejudice the validity or enforceability of any of the GSK Marks (in respect of any goods or services); or

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(D) dilute or reduce the value or strength of any of the GSK Marks or any registrations thereof.

25.11 The Purchaser shall indemnify, and keep indemnified, the Seller and each member of the GSK Group from and against all Losses incurred by the Seller and/or member of the GSK Group as a result of, or in connection with the grant of any licence pursuant to Clause 25.2 or the Purchaser using any of the Licensed Goods otherwise than in accordance with the provisions of Clauses 25.2 to 25.10 (inclusive).

25.12 The Purchaser acknowledges and agrees that the Seller may incur Losses constituted by:

- (A) damage to the goodwill or reputation attaching to;
- (B) damage to the validity or enforceability of;
- (C) damage to or distortion of the image associated with; and/or
- (D) dilution of the value or strength of,

any of the GSK Marks (including registrations and applications for registration thereof) and that such Losses are reasonably foreseeable and shall be recoverable (both under the indemnity given in Clause 25.11 and otherwise under, and pursuant to, this Agreement), without limitation to what other Losses may be recoverable under or pursuant to this Agreement.

25.13 Subject to Clause 25.2 and without prejudice to the trade mark rights of the GSK Group, the Purchaser shall procure that for:

- (A) a minimum period of five (5) years following Completion; and
- (B) thereafter for so long as any member of the GSK Group continues to retain an interest in the GSK Marks,

no member of the Purchaser's Group shall use any GSK Mark in any business which competes with any of the GSK Group's business, any extensions thereof or developments thereto, or any other business of the Seller or any member of the GSK Group in which any GSK Mark is used.

#### Licensed Rights

25.14 The Seller shall, with effect from Completion, grant to the Purchaser (or procure the grant to the Purchaser of) a non-exclusive, perpetual, assignable, irrevocable, royalty-free licence (with the right to sub-license) to use any:

- (A) Intellectual Property (excluding any Trade Marks, patents and rights in software); and

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(B) Shared Formulation (and any Shared Formulation Know-How),

in each case owned by the Seller (or a member of the GSK Group) at the Completion Time and used (but not exclusively) in the Business at the Completion Time (the “**Licensed Rights**”) subject to, and in accordance with, Clauses 25.15 to 25.18 (inclusive) (the “**Licence**”)

- 25.15 The Purchaser shall only use the Licensed Rights pursuant to the Licence in substantially the same manner as such Licensed Rights were used by the Seller (or a member of the GSK Group) in respect of a Product in the Business (including solely in relation to the territory and SKU form in which such Product is used) immediately prior to the Completion Time, save that the Purchaser shall be entitled to use the Licensed Rights outside of the Restricted Territory, solely for the purposes of having the relevant Product manufactured outside of the Restricted Territory and then exported back into the Restricted Territory, and not for the Commercialisation of the relevant Product in that manufacturing territory or elsewhere other than the Restricted Territory (subject always to the terms of any manufacture and/or supply arrangements entered into from time to time between a member of the GSK Group and a member of the Purchaser's Group in respect of the manufacture and/or supply of a Product to which the Licensed Rights relate).
- 25.16 The Purchaser shall not use the Licensed Rights except as expressly authorised under Clauses 25.14 to 25.18 (inclusive). Without prejudice to the generality of the foregoing, and for the avoidance of doubt, the Purchaser shall not be entitled to use the Licensed Rights in respect of any product other than the Product in which such rights were used by the Seller (or a member of the GSK Group) in the Business immediately prior to the Completion Time.
- 25.17 The Purchaser shall indemnify, and keep indemnified, the Seller and each member of the GSK Group from and against all Losses incurred by the Seller and/or member of the GSK Group as a result of, or in connection with, the Purchaser using the Licensed Rights otherwise than in accordance with the provisions of Clauses 25.14 to 25.16 (inclusive).
- 25.18 For the avoidance of doubt, the provisions of Clause 40 shall apply in respect of the Licence.

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- 25.19 If, after Completion, a member of the Purchaser's Group owns any Intellectual Property or rights in Information which was used, in the [\*\*\*] months prior to the Completion Date by a member of the GSK Group (or in any business operated by the GSK Group in the [\*\*\*] months prior to the Completion Date) other than exclusively in relation to the Business (including, for the avoidance of doubt, any GSK Marks, any Shared Marks, any Intellectual Property in any Shared Formulations or any rights in Information in any Shared Formulations), the Purchaser shall, or shall procure that the relevant member of the Purchaser's Group shall, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form

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reasonably satisfactory to the Seller to vest such Intellectual Property and/or rights in Information in, and transfer the possession and control of the same to, the Seller or a company nominated by the Seller, for nil consideration, as soon as reasonably practicable after becoming aware of the ownership of such rights.

**26. Seller's undertakings**

- 26.1 The Seller undertakes to the Purchaser that, immediately following the execution of this Agreement, it will deliver to the Purchaser the Disclosure Letter, duly executed on behalf of the Seller and/or the relevant member(s) of the GSK Group.
- 26.2 The Seller undertakes to the Purchaser that it shall not, and shall procure that each member of the GSK Group shall not (for as long as the relevant entity remains a member of the GSK Group), for a period of [\*\*\*] months from the Completion Date, solicit or entice away from the employment of any member of the Purchaser's Group any Senior Employee without the prior written consent of the Purchaser, other than:
- (A) any Senior Employee whose employment with the relevant member of the Purchaser's Group has then ceased or who has received notice terminating such employment; or
  - (B) where such solicitation or enticement is as a result of an advertisement or advertisements not specifically targeted at such Senior Employees or as a result of an unsolicited approach to the Seller or any other member of the GSK Group from any such Senior Employee.
- 26.3 GSK PLC undertakes to the Purchaser and to any member of the Purchaser's Group that, with the intention of transferring to the Purchaser and the relevant Designated Purchaser(s) the full benefit and value of the goodwill of, and the connections related to, the Business (and as a constituent part of this Agreement), to the extent legally permissible, it shall in consideration of the payment to it by the Purchaser of the Non-Compete Consideration (which it shall receive for its own account and not as agent for or on behalf of any other person), use all reasonable endeavours to procure that, for a period of three (3) years from the Completion Date, no GSK Product shall be Commercialised, directly or indirectly, or in conjunction with or on behalf of any other person, (any Commercialisation through means of the internet being ignored for these purposes) by any member of the GSK Group (i) in both a Restricted Product Market and the Restricted Territory and (ii) in such a manner as to compete with any Product being Commercialised, as at the date of this Agreement, in the relevant Restricted Product Market and the relevant Restricted Territory, PROVIDED THAT the foregoing undertaking in this Clause 26.3 (as applicable) shall not be breached:
- (i) to the extent that any product Commercialised by or on behalf of any member of the GSK Group is, as at the date of this Agreement, Commercialised in both the Restricted Product Market and the Restricted Territory;

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- (ii) to the extent that the relevant member of the GSK Group is carrying out its obligations pursuant to any Seller Transaction Document;
- (iii) where, before the expiry of the relevant period specified in sub-Clause 26.3 above, a Product which is Commercialised, as at the date of this Agreement, in both a Restricted Product Market and in the Restricted Territory is discontinued in such Restricted Product Market and/or in such Restricted Territory and, following such discontinuation, one or more GSK Products is/are Commercialised in both the same relevant Restricted Product Market and the relevant Restricted Territory as that in which such discontinued Product was Commercialised;
- (iv) where any member of the GSK Group holds or acquires shares (whether directly or indirectly but not carrying a voting interest of more than 20 per cent.) in a company which Commercialises any product in such a manner as to compete with any Product being Commercialised, as at the date of this Agreement, in both a Restricted Product Market and the Restricted Territory PROVIDED THAT the relevant member of the GSK Group does not directly control the Commercialisation of any such product;
- (v) in the case of any acquisition as an incidental part of a larger transaction by any member of the GSK Group directly or indirectly, or in conjunction with or on behalf of another person of any business (whether by acquisition of shares, the whole or any part of the undertaking or assets of any third party or by other means) which involves the Commercialisation of any product which competes with any Product being Commercialised, as at the date of this Agreement, in both a Restricted Product Market and the Restricted Territory PROVIDED THAT the relevant member of the GSK Group does not directly or indirectly, or in conjunction with or on behalf of another person control the Commercialisation of any such product or, in the event that it does, the relevant member of the GSK Group assigns, sells, transfers or otherwise disposes of the relevant competing product(s) within one (1) year from completion of the relevant acquisition and, during such one (1) year period, the Seller shall not be in breach of its obligations pursuant to this Clause 26.3;
- (vi) in the case of any merger, joint venture or partnership arrangement between any member of the GSK Group and any third party where the resulting entity (the “**JV Entity**”) Commercialises any product in such a manner as to compete with any Product being Commercialised, as at the date of this Agreement, in both a Restricted Product Market and the Restricted Territory, PROVIDED THAT the relevant member of the GSK Group does not:
  - (a) directly or indirectly, or in conjunction with or on behalf of another person, control the Commercialisation of any such product;  
or
  - (b) hold an interest (whether direct or indirect and whether by way of holding of shares, voting rights or otherwise) of more than 20 per cent. in such JV Entity in circumstances where the Commercialisation

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of the relevant product contributes more than 20 per cent. of the gross annual revenues of such JV Entity; or

- (vii) where any third party acquires Control (as defined in the City Code on Takeovers and Mergers) of the Seller, by virtue of that third party's then existing activities in Commercialising any product in such a manner as to compete with any Product being Commercialised, as at the date of this Agreement, in both a Restricted Product Market and the Restricted Territory, PROVIDED THAT the undertaking set out in sub-Clause 26.3(B) above shall continue to apply (following the acquisition of such Control) to the Seller and those Affiliates and Associated Undertakings of the Seller which are members of the GSK Group as at the date of this Agreement.

26.4 The Seller undertakes to the Purchaser that, with effect from the Completion Date but without limit in time thereafter, the Seller shall, or shall procure that the relevant member(s) of the GSK Group shall, use all reasonable endeavours to obtain any Certificate of Pharmaceutical Product requested in writing by the Purchaser in order to enable the Purchaser (or another member of the Purchaser's Group), subject always to the Intellectual Property rights of any member of the GSK Group, to Commercialise a Product in a country. The Purchaser hereby agrees that it shall use all reasonable endeavours to provide (or procure that there is provided) to the Seller such cooperation as the Seller (or any other relevant member of the GSK Group) reasonably requests in connection with obtaining any such Certificate of Pharmaceutical Product. The Purchaser further agrees that:

- (A) it shall indemnify the Seller and each member of the GSK Group for all reasonable costs and expenses and all liabilities suffered by the relevant member in carrying out its obligations under this Clause 26.4; and
- (B) it shall indemnify the Seller and each member of the GSK Group in respect of such reasonable costs and expenses and such liabilities within thirty (30) Business Days of the delivery to the Purchaser of written notice requesting indemnification of the same and setting out, in reasonable detail, details of the costs, expenses and/or liabilities incurred or suffered for which indemnification is sought.

26.5 The Seller shall procure that, for a period of twelve (12) months after the Completion Date:

- (A) the Seller or a member of the GSK Group shall prepare, where reasonably requested to do so by the Purchaser and subject to reimbursement by the Purchaser of all reasonable costs and expenses of the GSK Group incurred in connection with the preparation of the same, financial data in relation to all periods beginning prior to Completion and ending prior to, on or after Completion required for financial accounts, management accounts or statutory accounts of the Purchaser or any other member of the Purchaser's Group and any data to the extent reasonably required for compliance by the Purchaser or any other member of the Purchaser's Group with any reporting requirements of

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any stock exchange or securities or other regulatory authority or under any applicable law, rule or regulation which shall each be delivered to the Purchaser as soon as reasonably practicable following the relevant request; and

- (B) the Purchaser and its accountants and agents shall upon reasonable notice, as soon as reasonably practicable, be given reasonable access during Working Hours at the relevant location to any employees, officers, advisers or premises of the Seller or the Business Seller and any of its books and records (or extracts thereof) which may reasonably be required by the Purchaser or any other member of the Purchaser's Group in connection with any report, return, statement, audit, filing or other requirement under any applicable law or regulation or otherwise reasonably required in respect of the Business.

26.6 The Purchaser shall not, and shall procure that no member of the Purchaser's Group will, take any action to obtain or benefit from any repayment, credit or relief of or in respect of any Sales Tax or amount in respect of any Sales Tax chargeable in respect of any supply for which the Non-Compete Consideration is deemed to be the consideration.

26.7 Each undertaking contained in this Clause 26 shall be construed as a separate undertaking and if one or more of the undertakings is held by a court of competent jurisdiction to be against the public interest or unlawful or in any way an unreasonable restraint of trade, the remaining undertakings shall continue to bind the Seller.

**27. Business Seller's undertaking**

The Business Seller hereby undertakes to the Purchaser that, where pursuant to the provisions of this Agreement the Seller agrees or undertakes to procure that the Business Seller undertakes or does a particular action, matter or thing or omits to take or do a particular action, matter or thing, the Business Seller will undertake, do, or omit to take or do that action, matter or thing (in each case, as applicable) in accordance with the relevant provision(s) of this Agreement.

**28. Purchaser's undertakings**

28.1 The Purchaser undertakes to the Seller that, immediately following the execution of this Agreement, it will deliver to the Seller an acknowledgement of the Disclosure Letter, duly executed on behalf of the Purchaser and/or the relevant member(s) of the Purchaser's Group.

28.2 The Purchaser agrees and undertakes on behalf of itself and each other member of the Purchaser's Group that (in the absence of fraud, fraudulent misrepresentation or wilful concealment) it has no rights against and shall not make any claim against any employee, director, agent, officer or adviser of any member of the GSK Group on whom it may have relied before agreeing to any term of or entering into this Agreement or any other agreement or document entered into pursuant hereto (including, without prejudice to the generality of the foregoing, any such persons as are named in sub-Clause 1.2(Q)).

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- 28.3 The Purchaser undertakes on behalf of itself and each member of the Purchaser's Group (and without prejudice to the confidentiality agreement referred to in Clause 40.4) that, subject to Clause 40.2, each member of the Purchaser's Group will treat as strictly confidential and not disclose to any person (other than (i) any employee, director, officer, agent, consultant or adviser of the Purchaser, (ii) other members of the Purchaser's Group, (iii) any employee, director, officer, agent, consultant or adviser of any member of the Purchaser's Group, (iv) any Purchaser's Financing Bank or its employees, directors, officers, agents or advisers, in any such case on a confidential basis) any GSK Group Confidential Information. The Purchaser acknowledges that any future use of GSK Group Confidential Information is at the risk of the Purchaser and other members of the Purchaser's Group and is without representation, warranty or liability of the part of any member of the GSK Group.
- 28.4 The Purchaser undertakes to the Seller that it shall not, and shall procure that each member of the Purchaser's Group shall not (for as long as the relevant entity remains a member of the Purchaser's Group), for a period of [\*\*\*] months from the Completion Date, solicit or entice away from the employment of any member of the GSK Group any Relevant GSK Group Employee without the prior written consent of the Seller, other than:
- (A) any Relevant GSK Group Employee whose employment with the relevant member of the GSK Group has then ceased or who has received notice terminating such employment; or
  - (B) where such solicitation or enticement is as a result of an advertisement or advertisements not specifically targeted at such Relevant GSK Group Employee or as a result of an unsolicited approach to the Purchaser or any other member of the Purchaser's Group from any such Relevant GSK Group Employee.
- 28.5 The Purchaser undertakes to the Seller that, with effect from the Completion Date but without limit in time thereafter, the Purchaser shall, or shall procure that the relevant member(s) of the Purchaser's Group shall, use all reasonable endeavours to obtain any Certificate of Pharmaceutical Product requested in writing by the Seller in order to enable:
- (A) the Seller (or another member of the GSK Group) to Commercialise any GSK Product in a country; or
  - (B) any other Person who may, subsequent to the date hereof, acquire rights in respect of products Commercialised under the Brands in territories other than the United States, to Commercialise such products (a "**CPP Third Party**"),

(and for the avoidance of doubt, the Seller and the Purchaser hereby agree that the obligations imposed on the Purchaser pursuant to this Clause 28.5 shall not apply to the extent the Seller's request relates to the Commercialisation of any GSK Product or the Commercialisation of any product by a CPP Third Party (as applicable) in breach of the Intellectual Property rights of any member of the Purchaser's Group). The Seller hereby agrees that it shall use all reasonable endeavours to provide (or procure that there is

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provided, including, where relevant, by any relevant CPP Third Party) to the Purchaser such cooperation as the Purchaser (or any other relevant member of the Purchaser's Group) reasonably requests in connection with obtaining any such Certificate of Pharmaceutical Product. The Seller further agrees that:

- (aa) it shall indemnify each member of the Purchaser's Group (or shall procure that each member of the Purchaser's Group is indemnified, including, where relevant, by any CPP Third Party) for all costs, expenses and liabilities suffered or reasonably incurred by the relevant member in carrying out its obligations under this Clause 28.5; and
- (bb) it shall indemnify each member of the Purchaser's Group (or shall procure that each member of the Purchaser's Group is indemnified, including, where relevant, by any CPP Third Party) in respect of such costs, expenses and liabilities within thirty (30) Business Days of the delivery to the Seller of written notice requesting indemnification of the same and setting out, in reasonable detail, details of the costs, expenses and/or liabilities incurred or suffered for which indemnification is sought.

In circumstances where the Seller requests a Certificate of Pharmaceutical Product in order to enable a CPP Third Party to Commercialise products in accordance with this Clause 28.5, subject to the Seller providing to the Purchaser such contact details of the relevant CPP Third Party as the Purchaser may reasonably request (and without prejudice to the foregoing provisions of this Clause 28.5), the Purchaser agrees that it shall use reasonable endeavours to conduct such communications and exchanges as are required in order to obtain the relevant Certificate of Pharmaceutical Product directly with such CPP Third Party and shall not involve the Seller (or any other member of the GSK Group) for the purposes thereof.

28.6 The Purchaser shall procure that, for a period of twelve (12) months after the Completion Date:

- (A) the Business shall prepare, where reasonably requested to do so by the Seller and subject to reimbursement by the Seller of all reasonable costs and expenses of the Business incurred in connection with the preparation of the same, financial data in relation to all periods beginning prior to Completion and ending prior to, on or after Completion required for financial accounts, management accounts or statutory accounts of the Seller or any other member of the GSK Group and any data to the extent reasonably required for compliance by the Seller or any other member of the GSK Group with any reporting requirements of any stock exchange or securities or other regulatory authority or under any applicable law, rule or regulation which shall each be delivered to the Seller as soon as reasonably practicable following the relevant request; and
- (B) the Seller and its accountants and agents shall on reasonable notice, as soon as reasonably practicable, be given reasonable access during Working Hours at the relevant location to any employees, officers, advisers or premises of the

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Business and any of its books and records which may reasonably be required by the Seller or any other member of the GSK Group in connection with any report, return, statement, audit, filing or other requirement under any applicable law or regulation or otherwise required in respect of the GSK Business.

- 28.7 The Purchaser shall not, and shall procure that no member of the Purchaser's Group will, take any action to obtain or benefit from any repayment, credit or relief of or in respect of any Sales Tax or amount in respect of any Sales Tax chargeable in respect of any supply for which the Non-Compete Consideration is deemed to be the consideration.
- 28.8 Each undertaking contained in this Clause 28 shall be construed as a separate undertaking and if one or more of the undertakings is held by a court of competent jurisdiction to be against the public interest or unlawful or in any way an unreasonable restraint of trade, the remaining undertakings shall continue to bind the Purchaser.
- 29. Payments**
- 29.1 The parties shall use all reasonable endeavours to cooperate to ensure that any amount payable by any party under this Agreement is, to the extent reasonable having regard to the Tax affairs of both parties, made in such a way as to ensure that the amount is not required by law to be paid subject to any deduction or withholding on account of Tax.
- 29.2 If, notwithstanding the parties' compliance with Clause 29.1, any amount payable by any party (whether paid on its own behalf or on behalf of the Business Seller or, as the case may be, a Designated Purchaser) under this Agreement (except for the Non-Compete Consideration or the Initial Consideration or any interest) is required by law to be paid subject to any deduction or withholding on account of Tax, the party which is obliged to make the payment (the "**Paying Party**") shall be required to increase its payments to such amount as will ensure that, after the withholding or deduction on the increased amount is taken into account, the party to which the payment is to be made (whether to be received on its own behalf or on behalf of the Business Seller or, as the case may be, a Designated Purchaser) (the "**Receiving Party**") receives and retains a set amount which is equal to that which the Receiving Party would have received and retained had no such withholding or deduction been required.
- 29.3 To the extent the Receiving Party subsequently receives and is entitled to retain and utilise a credit against, relief or remission for, or repayment of any Tax (any of the foregoing being referred to as a "saving") in respect of such additional amount or the payment to which such additional amount relates, the Purchaser or, as the case may be, the Seller shall procure that the Receiving Party shall pay an amount to the Paying Party which the Receiving Party reasonably determines will leave it (after that payment) in the same after-Tax position as it would have been in but for its utilisation of the saving.

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**30. No set-off**

Except as expressly provided under this Agreement, any payment to be made by any party under this Agreement shall be made in full without any set off, restriction, condition or deduction for or on account of any counterclaim.

**31. Effect of Completion**

Save as otherwise provided herein, any provision of this Agreement or of any other document referred to herein which is capable of being performed after but which has not been performed at or before Completion and all Warranties and other Assurances contained in, or entered into pursuant to, this Agreement shall (subject to Schedule 3) remain in full force and effect notwithstanding Completion.

**32. Assignment**

32.1 Obligations under this Agreement shall not be assignable.

32.2 Subject to the provisions of Clause 32.3 below, the benefits of this Agreement shall not be assignable except that any party may, upon giving written notice to the others, assign the benefit of this Agreement to a member of the GSK Group (in the case of the Seller or the Business Seller) or to a member of the Purchaser's Group (in the case of the Purchaser or any Designated Purchaser) (a "**Permitted Assignee**") PROVIDED THAT such assignment shall be without cost to, and shall not result in any increased liability, or any reduction in the rights, of, any of the other parties AND FURTHER PROVIDED THAT if such Permitted Assignee shall subsequently cease to be a member of the Purchaser's Group or the GSK Group, as the case may be, the original assigning party shall procure that prior to the Permitted Assignee ceasing to be a member of the Purchaser's Group or the GSK Group, as the case may be, it shall assign the benefit of this Agreement assigned to it to the party by whom such rights were originally assigned or (upon giving further written notice to the other parties) to another member of the Purchaser's Group or the GSK Group, as the case may be. Any purported assignment in contravention of this Clause shall be void.

32.3 Notwithstanding the provisions of Clause 32.2 or any other provisions of this Agreement, the Purchaser shall be entitled to grant security over its rights, or assign its rights by way of security, under this Agreement or any other Purchaser Transaction Document (in each case, whether in whole or in part) for the purposes of any debt financing to be provided to the Purchaser in connection with its entry into this Agreement PROVIDED THAT any assignee of any such rights shall not be entitled to further assign them (in whole or in part) other than by way of enforcement of such security.

32.4 Without prejudice to the provisions of Clause 32.2 above, the parties hereby agree that where the Purchaser assigns the benefit of this Agreement to any other person, the rights of all members of the GSK Group under this Agreement against the Purchaser's Group shall be no less than such rights would have been had the assignment not occurred and the liabilities of all members of the GSK Group under this Agreement to

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the Purchaser's Group shall be no greater than such liabilities would have been had the assignment not occurred.

- 32.5 Without prejudice to the provisions of Clause 32.2 above, the parties hereby agree that where the Seller or the Business Seller assigns the benefit of this Agreement to any other person, the rights of all members of the Purchaser's Group under this Agreement against the GSK Group shall be no less than such rights would have been had the assignment not occurred and the liabilities of all members of the Purchaser's Group under this Agreement to the GSK Group shall be no greater than such liabilities would have been had the assignment not occurred.
- 32.6 Notwithstanding the provisions of Clause 32.2 and 32.3, no such assignment is permitted if such assignment shall result in the Purchaser or the Seller having to amend its respective notification and report form (if any) filed with any Governmental Entity pursuant to Clause 3 of this Agreement.
- 32.7 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and Permitted Assignees.

**33. Further assurance**

- 33.1 Without prejudice to any restriction or limitation on the extent of any party's obligations under this Agreement and except in relation to the Business Intellectual Property, each of the parties shall from time to time, so far as each is reasonably able, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form reasonably satisfactory to the party concerned as they may reasonably consider necessary to transfer the Business Assets to the Purchaser (or any other member of the Purchaser's Group) or otherwise to give the other party the full benefit of this Agreement.
- 33.2 Without prejudice to Clause 25, the Seller undertakes after Completion, and at the request of the Purchaser, to execute or procure the execution of all such documents as may reasonably be necessary to secure the vesting in the Purchaser (or a member of the Purchaser's Group) of the Business Intellectual Property, provided that the Purchaser undertakes to the Seller that it will be responsible for:
- (A) handling and managing all aspects of the process of recording (or applying to record) at the appropriate intellectual property registries or offices the change in ownership of the Business Intellectual Property (including (but not limited to) the preparation of all documents required for this purpose);
  - (B) all costs reasonably and properly incurred by the Seller in complying with its obligations in this Clause 33.2; and
  - (C) all other costs and expenses in respect of such vesting.

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**34. Entire agreement**

- 34.1 This Agreement, the Disclosure Letter and the Business Domain Name Assignments and any other documents entered into pursuant to this Agreement (the “**Transaction Documents**”) constitute the whole and only agreement between the parties relating to the sale and purchase of the Business Assets and, save if and only to the extent expressly repeated in any of the Transaction Documents, supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating thereto.
- 34.2 The Purchaser acknowledges and agrees (for itself and on behalf of each other member of the Purchaser’s Group) with the Seller (on behalf of itself and each other member of the GSK Group) that:
- (A) it does not rely on and has not been induced to enter into any of the Transaction Documents on the basis of any Assurance (express or implied) made or given by or on behalf of any member of the GSK Group or any of their respective directors, officers, employees or advisers other than those expressly set out in the Transaction Documents or, to the extent that it has been, it has (in the absence of fraud) no rights or remedies in relation thereto and shall make no claim in relation thereto or against such parties;
  - (B) no member of the GSK Group, or any of their respective directors, officers, employees or advisers, has given or made any Assurance other than those expressly set out in the Transaction Documents or, to the extent that they have, the Purchaser hereby (for itself and on behalf of each other member of the Purchaser’s Group) unconditionally and irrevocably waives (in the absence of fraud) any claim which it might otherwise have had in relation thereto; and
  - (C) any warranty or other rights which may be implied by law in any jurisdiction in relation to the sale of the Business Assets in such jurisdiction shall be excluded or, if incapable of exclusion, irrevocably waived and the Purchaser agrees to indemnify the Seller and each member of the GSK Group against any and all Losses arising or incurred as a result of claims under any such implied warranty or other rights by the Purchaser or any other member of the Purchaser’s Group or their respective successors in title (including, without limitation, any provider of finance to the Purchaser).
- 34.3 This Agreement may only be varied by a document in writing and signed by each of the parties and expressed to be a variation to this Agreement. For this purpose, a variation to this Agreement shall include any addition, deletion, supplement or replacement, howsoever effected.
- 34.4 To the extent that any provision of any agreement entered into for the purposes of transferring Business Assets located in a particular jurisdiction or country is inconsistent with any provision of this Agreement, the provision of this Agreement shall prevail.

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**35. Capacity of Seller and Purchaser**

- 35.1 The undertakings given by the Purchaser to, and agreements made by the Purchaser with, the Seller in this Agreement are given and made to and with the Seller for itself and as trustee for the Business Seller (as applicable).
- 35.2 The undertakings given by the Seller to, and agreements made by the Seller with, the Purchaser in this Agreement are given and made to and with the Purchaser for itself and as trustee for the relevant Designated Purchaser.

**36. Remedies and waivers**

- 36.1 No delay or omission by any party to this Agreement in exercising any right, power or remedy provided by law or under this Agreement or any document referred to in it shall:
- (A) impair or affect such right, power or remedy; or
  - (B) operate as a waiver of it.
- 36.2 The single or partial exercise of any right, power or remedy provided by law or under this Agreement or under any document referred to in it shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 36.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law unless otherwise stated herein (including, without limitation, in Clause 22.5 and Clause 34.2).

**37. Indemnification and conduct of claims**

- 37.1 Subject to Clauses 37.4 and 37.3, if any assessment, action, claim, demand, proceeding or investigation is filed, brought, alleged or instituted by a third party (a "**Third Party Claim**") against any member of the GSK Group or, as the case may be, any member of the Purchaser's Group, (the "**Relevant Indemnified Party**") in respect of which an indemnity is to be sought from the Purchaser or, as the case may be, the Seller (the "**Relevant Indemnifying Party**") pursuant to this Agreement, the Purchaser or, as the case may be, the Seller shall procure that the Relevant Indemnified Party shall:
- (A) as soon as practicable notify the Relevant Indemnifying Party thereof by written notice as soon as it appears to the Relevant Indemnified Party that any Third Party Claim received by or coming to the notice of the Relevant Indemnified Party may result in a claim for indemnification;
  - (B) subject to the Relevant Indemnifying Party indemnifying the Relevant Indemnified Party against any Losses which may be incurred thereby, take such action and give such information and access to personnel, premises, chattels, documents and records to the Relevant Indemnifying Party and their professional advisers as the Relevant Indemnifying Party may reasonably

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request in order to investigate such Third Party Claim, and the Relevant Indemnifying Party shall be entitled to require any relevant company (being a member of the Purchaser's Group (where the Relevant Indemnified Party is a member of the Purchasers' Group) or a member of the GSK Group (where the Relevant Indemnified Party is a member of the GSK Group)) to take such action and give such reasonable information and assistance in order to avoid, dispute, resist, mitigate, settle, compromise, defend or appeal any claim in respect thereof or adjudication with respect thereto;

- (C) allow the Relevant Indemnifying Party to take the sole conduct of such actions, claims, proceedings, investigations and/or negotiations as the Relevant Indemnifying Party may reasonably deem appropriate in connection with any such assessment, claim or investigation in the name of the Relevant Indemnified Party or any such relevant company referred to above, and in that connection the Relevant Indemnified Party shall give or cause to be given to the Relevant Indemnifying Party all such assistance as it may reasonably require (at the cost of the Relevant Indemnifying Party, provided that such costs shall be reasonable) in avoiding, disputing, resisting, settling, compromising, defending or appealing any such claim, proceeding or investigation and shall instruct such legal or other professional advisers as the Relevant Indemnifying Party may nominate to act on behalf of the Relevant Indemnified Party or any relevant company, as appropriate, but to act in accordance with the Relevant Indemnifying Party's instructions;
  - (D) be entitled to participate in the defence of any Third Party Claim and to employ separate counsel to represent it at its own expense PROVIDED THAT the Relevant Indemnifying Party shall control the defence of the Third Party Claim;
  - (E) make no admission of liability, agreement, settlement or compromise with any third party in relation to any such claim, investigation or adjudication without the prior written consent of the Relevant Indemnifying Party (such consent not to be unreasonably withheld or delayed); and
  - (F) take all reasonable action to mitigate any loss suffered by it in respect of which a claim could be made for indemnification.
- 37.2 The Relevant Indemnifying Party shall be entitled at any stage and in its absolute discretion to settle any such Third Party Claim (but without any admission of wrongdoing) after giving reasonable advance written notice to the Relevant Indemnified Party and provided that the Relevant Indemnified Party is discharged in full of its liabilities under such Third Party Claim.
- 37.3 Notwithstanding the provisions of Clauses 37.1 and 37.2, the Relevant Indemnifying Party shall not be entitled to assume the defence of any Third Party Claim (and shall be liable for the reasonable costs and expenses (including legal expenses) incurred by the Relevant Indemnified Party in defending such Third Party Claim) if the Third Party Claim seeks any relief other than damages (including any orders, injunctions or other equitable relief) against the Relevant Indemnified Party which the Relevant Indemnified

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Party reasonably determines cannot be separated from any related claim for damages. If such claim for other relief can be separated from the claim for damages, the Relevant Indemnifying Party shall be entitled to assume the defence of the claim for damages. Further, the Relevant Indemnifying Party shall not be entitled (on written notice from the Relevant Indemnified Party) to assume or continue the defence of any such claim, action and/or demand in the event that such claim, action and/or demand, or the Relevant Indemnifying Party's conduct of the defence thereof, has caused or could cause (in the opinion of the Relevant Indemnified Party, acting reasonably and in good faith) material damage to the reputation or goodwill of any member of the Purchaser's Group.

37.4 Notwithstanding the provisions of Clauses 37.1 and 37.2, in respect of any Third Party Claim for which an indemnity is to be sought by the Seller (or any other member of the GSK Group) from the Purchaser pursuant to Clause 17.1, the Purchaser shall, at the request of the Seller, have the option (at its sole discretion) to allow the Seller or such member of the GSK Group as the Seller may nominate) to take the sole conduct of such actions, claims, proceedings, investigations and/or negotiations as the Seller may deem appropriate in connection with any such Third Party Claim in the name of the Seller (or the name of the relevant member of the GSK Group) and in that connection the Purchaser shall give, or cause to be given, to the Seller all such assistance as it may reasonably require in avoiding, disputing, resisting, settling, compromising, defending or appealing any such claim, proceeding or investigation, PROVIDED THAT all Losses arising in connection with the Assumed Liability forming the subject of such Third Party Claim shall be for the account of the Seller (or relevant member of the GSK Group) and neither the Purchaser nor any other member of the Purchaser's Group shall have any liability to assume, pay, discharge when due, or indemnify any member of the GSK Group against, the Assumed Liability forming the subject of such Third Party Claim. The provisions of the foregoing sentence shall not affect, and shall be without prejudice to, any other obligation, liability, loss, damage, commitment, cost, expense or payment constituting an Assumed Liability pursuant to the provisions of Clause 17.2.

37.5 Notwithstanding the provisions of Clauses 37.1 and 37.2, in respect of any Third Party Claim for which an indemnity is to be sought by the Purchaser (or any other member of the Purchaser's Group) from the Seller pursuant to Clause 17.3, if the Purchaser reasonably determines that the conduct or outcome of such Third Party Claim could have a material adverse effect on its business (taken as a whole), then the Purchaser shall have the option (at its sole discretion) to take the sole conduct of such actions, claims, proceedings, investigations and/or negotiations as the Purchaser may deem appropriate in connection with any such Third Party Claim in the name of the Purchaser (or the name of the relevant member of the Purchaser's Group), PROVIDED THAT:

- (A) all Losses arising in connection with the Excluded Liability forming the subject of such Third Party Claim; and
- (B) all Losses arising in connection with any other Third Party Claim or series of related Third Party Claims with respect to related facts or circumstances,

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shall be for the account of the Purchaser (or the relevant member of the Purchaser's Group) and neither the Seller nor any other member of the GSK Group shall have any liability to assume, pay, discharge when due, or indemnify any member of the Purchaser's Group against, any Excluded Liabilities forming the subject of such Third Party Claim or such related Third Party Claims. The provisions of the foregoing sentence shall not affect, and shall be without prejudice to, any other obligation, liability, loss, damage, commitment, cost, expense or payment constituting an Excluded Liability pursuant to the provisions of Clause 17.4.

**38. Notices**

38.1 Any notice or other communication given or made under, or in connection with the matters contemplated by, this Agreement shall only be effective if it is in writing. Faxes and e-mail are not permitted.

38.2 Any such notice or communication shall be sent to a party at its address and for the attention of the individual set out below:

<b>Name of party</b>	<b>Address</b>
GlaxoSmithKline PLC	980 Great West Road Brentford Middlesex TW8 9GS United Kingdom
For the attention of:	Company Secretary
With a copy to:	Hope D'Oyley-Gay Vice President and Associate General Counsel GlaxoSmithKline 2301 Renaissance Boulevard King of Prussia, PA 19406 United States of America
The Business Seller	c/o 980 Great West Road Brentford Middlesex TW8 9GS United Kingdom
For the attention of:	Company Secretary

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<b>Name of party</b>	<b>Address</b>
With a copy to:	Hope D'Oyley-Gay Vice President and Associate General Counsel GlaxoSmithKline 2301 Renaissance Boulevard King of Prussia, PA 19406 United States of America
Prestige Brands Holdings, Inc.	90 North Broadway Irvington NY 10533 United States of America
For the attention of:	Ron Lombardi Chief Financial Officer
With a copy to:	Eric Klee Secretary and General Counsel Prestige Brands Holdings, Inc. 90 North Broadway Irvington NY 10533 United States of America

PROVIDED THAT a party may change its notice details on giving notice to the other party of the change in accordance with this Clause 38. That notice shall only be effective on the date falling five (5) clear Business Days after the notification has been received or such later date as may be specified in the notice.

- 38.3 Any notice or communication given or made under, or in connection with the matters contemplated by, this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:
- (A) if delivered personally (for the avoidance of doubt, including by courier or registered post), on delivery;
  - (B) if sent by first class inland (domestic) post, two (2) clear Business Days after the date of posting; and
  - (C) if sent by airmail, six (6) clear Business Days after the date of posting.
- 38.4 Any notice or communication given or made under, or in connection with the matters contemplated by, this Agreement outside Working Hours in the place to which it is addressed shall be deemed not to have been given until the start of the next period of Working Hours in such place.

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**39. Announcements**

39.1 Subject to Clause 39.2, no announcement (other than any press announcements agreed between the parties) concerning the sale or purchase of the Business and/or the Business Assets or any ancillary matter shall be made by any party without the prior written approval of the Seller and the Purchaser, such approval not to be unreasonably withheld or delayed.

39.2 Any member of the Purchaser's Group and any member of the GSK Group may make an announcement concerning the sale or purchase of the Business and/or the Business Assets or any ancillary matter if required by:

- (A) the applicable law of any relevant jurisdiction; or
- (B) any securities exchange or regulatory or governmental body or any Tax Authority to which any party is subject or submits, wherever situated (including, without limitation, the UK Listing Authority, the London Stock Exchange, the SEC and the New York Stock Exchange), whether or not the requirement has the force of law,

in which case the party concerned shall take all such steps as may be reasonable and practicable in the circumstances to agree the contents of such announcement with the Seller and the Purchaser before making such announcement and PROVIDED THAT any such announcement shall be made only after notice to the Seller and the Purchaser.

39.3 The restrictions contained in this Clause 39 shall continue to apply after the termination of this Agreement without limit in time.

**40. Confidentiality**

40.1 Subject to the provisions of Clause 40.2 and Clause 39:

- (A) each party shall treat as confidential all information received or obtained as a result of entering into or performing this Agreement which relates to:
  - (i) the provisions of this Agreement or any document referred to herein;
  - (ii) the negotiations relating to this Agreement or any document referred to herein; or
  - (iii) the subject matter of this Agreement;
- (B) the Purchaser shall treat, and shall procure that each other member of the Purchaser's Group treats, as confidential all information received or obtained concerning any member of the GSK Group and any GSK Business, as a result of the negotiation and entering into of this Agreement; and

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- (C) the Seller shall treat, and shall procure that each other member of the GSK Group treats, as confidential all information (i) retained concerning the Business Completion and (ii) received or obtained concerning any member of the Purchaser's Group as a result of the negotiation and entering into of this Agreement.

40.2 Notwithstanding the other provisions of this Clause 40, a party may disclose confidential information if and to the extent:

- (A) required by the applicable law or regulation of any relevant jurisdiction or for the purpose of any judicial proceedings;
- (B) required by any securities exchange or regulatory or Governmental Entity or any Tax Authority to which any party is subject or submits, wherever situated (including, without limitation, the UK Listing Authority, the London Stock Exchange, the SEC and the New York Stock Exchange), whether or not the requirement for information has the force of law;
- (C) that the information is disclosed on a confidential basis to the professional advisers, auditors and/or banking institutions or financial advisors of such party PROVIDED THAT such party shall be liable for any failure by its professional advisers, auditors or bankers to keep such information confidential;
- (D) that the information has come into the public domain through no fault of, or otherwise than as a result of breach or default of, that party;
- (E) the other parties have given prior written consent to the disclosure, such consent not to be unreasonably withheld or delayed;
- (F) it does so to a member of the GSK Group (in the case of the Seller) or to a member of the Purchaser's Group (in the case of the Purchaser) which accepts restrictions in the terms of this Clause 40; or
- (G) required to enable that party to enforce its rights under this Agreement,

PROVIDED THAT any such information disclosed pursuant to sub-Clauses 40.2(A) or 40.2(B) shall be disclosed (where reasonably practicable) only after notice has been given to the other parties of such requirement with a view to agreeing the content and timing of such disclosure.

40.3 The restrictions contained in this Clause 40 shall continue to apply after the termination of this Agreement without limit in time.

40.4 With effect from the date of this Agreement, the confidentiality agreement dated 7 July 2011 between the Seller and the Purchaser is, in respect of Confidential Information (as defined in such confidentiality agreement), terminated (notwithstanding anything to the contrary in clause 7 thereof) without prejudice to the rights and liabilities of the parties which have accrued thereunder prior to the date hereof. Pending Completion, in the

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event of any conflict between the terms of such confidentiality agreement and the terms of this Clause 40, the provisions of this Clause 40 shall prevail.

#### **41. Costs and expenses**

- 41.1 Except as otherwise stated in this Agreement, each party shall pay its own costs and expenses in relation to the negotiations leading up to the sale of the Business Assets and to the preparation, execution and carrying into effect of this Agreement and all other documents entered into pursuant to, or in connection with, it.
- 41.2 Without prejudice to Clause 41.1:
- (A) the Purchaser shall pay to the Seller and the Business Seller on demand an amount equal to 50 per cent. of any Transfer Tax for which the Seller or the Business Seller (as the case may be) is liable to account to any Tax Authority in connection with or as a result of this Agreement or any transfer, sale, supply, use or transaction made pursuant to or envisaged or contemplated by this Agreement; and
  - (B) the Seller shall pay to the Purchaser on demand an amount equal to 50 per cent. of any Transfer Tax for which the Purchaser is liable to account to any Tax Authority in connection with or as a result of this Agreement or any transfer, sale, supply, use or transaction made pursuant to or envisaged or contemplated by this Agreement.
- 41.3 The Purchaser, the Seller and the Business Seller shall cooperate to take all reasonable steps, claims or elections to minimise any Transfer Tax payable under or in connection with this Agreement.
- 41.4 The Seller and the Business Seller shall provide the Purchaser and the Purchaser shall provide the Seller and the Business Seller with any valid documentation that may be required to enable the Purchaser or the Seller or the Business Seller (as the case may be) to receive a credit or deduction for any Transfer Tax arising in connection with or as a result of this Agreement or any transfer, sale, supply, use or transaction made pursuant to or envisaged or contemplated by this Agreement, where applicable under local law.

#### **42. Counterparts**

- 42.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.
- 42.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

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**43. Invalidity**

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:

- (A) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (B) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

**44. Contracts (Rights of Third Parties) Act 1999**

44.1 Save as contemplated by Clause 44.2, the parties to this Agreement do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.

44.2 The provisions of Clause 28.2 confer a benefit on certain persons referred to therein and, subject to the remaining provisions of this Clause 44 and Clause 28.2 are each intended to be enforceable by such persons by virtue of the Contracts (Rights of Third Parties) Act 1999.

44.3 This Agreement may be amended or varied in any way and at any time, in accordance with the terms of this Agreement, by the parties to it without the consent of any person referred to in Clause 28.2.

**45. Choice of governing law**

45.1 This Agreement shall be governed by and construed in accordance with English law. Any matter, claim or dispute arising out of or in connection with this Agreement, whether contractual or non-contractual, is to be governed by and determined in accordance with English law.

**46. Jurisdiction**

46.1 The courts of England are to have jurisdiction to settle any dispute, whether contractual or non-contractual, arising out of or in connection with this Agreement. Any Proceedings shall be brought only in the courts of England.

46.2 Each party waives (and agrees not to raise) any objection, on the ground of *forum non conveniens* or on any other ground, to the taking of Proceedings in the courts of England. Each party also agrees that a judgment against it in Proceedings brought in England shall be conclusive and binding upon it and may be enforced in any other jurisdiction.

46.3 Each party irrevocably submits and agrees to submit to the jurisdiction of the English courts.

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**47. Agent for service**

- 47.1 The Purchaser irrevocably appoints the Purchaser's Solicitors to be its agent for the receipt of Service Documents. It agrees that any Service Document may be effectively served on it in connection with Proceedings in England and Wales by service on its agent effected in any manner permitted by the Civil Procedure Rules, provided that the Service Document is marked for the urgent attention of Jane Hobson, Partner.
- 47.2 If the agent at any time ceases for any reason to act as such, the Purchaser shall appoint a replacement agent having an address for service in England or Wales and shall notify the Seller of the name and address of the replacement agent. Failing such appointment and notification, the Seller shall be entitled by notice to the Purchaser to appoint a replacement agent to act on behalf of the Purchaser. The provisions of this Clause 47 applying to service on an agent apply equally to service on a replacement agent.
- 47.3 A copy of any Service Document served on an agent shall be sent by post to the Purchaser. Failure or delay in so doing shall not prejudice the effectiveness of service of the Service Document.
- 47.4 "**Service Document**" means a claim form, application notice, order, judgment or other document relating to any Proceedings.

IN WITNESS of which the parties have entered into this Agreement on the day and year first before written.

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**Schedule 1**  
**(Conduct of Business before Completion)**

The acts and matters referred to in Clause 6.3 are as follows:

1. any disposal (not being a disposal in the ordinary course of trading on normal arm's length terms) of any interest in any part of the Business Assets where in any such case such disposal is of an asset of an individual value in excess of US\$[\*\*\*] or of assets of an aggregate value in excess of US\$[\*\*\*];
2. any creation or grant of any Encumbrance (other than a Permitted Encumbrance or a non-exclusive licence of Intellectual Property or know-how in the ordinary course of business) on, over or affecting any of the Business Assets;
3. subject to paragraph 4 below, the discontinuance or cessation of operation of any part of the Business;
4. the discontinuation of any Product SKU unless:
  - (a) gross revenues for the relevant Product SKU in the twelve months prior to discontinuation were less than US\$[\*\*\*]; or
  - (b) discontinuation is required for any *bona fide* regulatory or safety reason;
5. the acquisition, whether by merger, consolidation, formation or otherwise, of any body corporate or business or the entering into of any partnership or joint venture arrangement which involves investment by the Business;
6. the grant of a licence in respect of, or the sale, transfer, disposal or assignment of, any Business Intellectual Property (other than the grant of a non-exclusive licence of Intellectual Property in the ordinary course of business);
7. the initiation, settlement or abandonment of any claim, litigation, arbitration or other proceedings with a value above US\$[\*\*\*] and relating to the Business or the Business Assets, other than:
  - (a) debt collection in the ordinary course of business; and
  - (b) any claim, litigation, arbitration or other proceeding in respect of which the Purchaser would be entitled to claim for indemnification pursuant to the terms of this Agreement;
8. any material amendment to any Regulatory Permit or Third Party Regulatory Permit, except to the extent required by (i) applicable law or regulation, (ii) any Governmental Entity, or (iii) the standards, policies and procedures of the GSK Group as then in force;
9. the entry into any contract which is for the Commercialisation and/or Manufacture of any Product calls for payments by any party thereto in excess of US\$[\*\*\*] (excluding Sales Tax) in any twelve month period;

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10. any material acceleration or increase in the quantity of Products Manufactured (to the extent within the power or control of the GSK Group to control the Manufacture of Products) which is not in accordance with the past practice of the Business during the six (6) months preceding the date of this Agreement, except where such acceleration or increase results from an actual increase in the orders of the relevant Products by any distributor or customer without any unusual inducement by the Seller or any employee or representative of the Business intended to result in the Manufacture of seasonally adjusted inventory levels of Products in excess of normal levels;
11. save as disclosed to the Purchaser in writing on or before the date of this Agreement, any outsourcing to one or more third parties of any marketing functions in respect of any or all of the Products; and
12. the entry into of any agreement to do any of the acts and matters specified in this Schedule 1.

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**Schedule 2**  
**(Completion arrangements)**

**1. General**

**1.1 Matters to be dealt with by the Seller**

At Completion, the Seller shall:

*Transfer of Business Assets capable of delivery*

Subject to the provisions of this Agreement, procure that each relevant member of the GSK Group with legal and beneficial title to any Business Asset delivers to, or holds to the order of, the Purchaser (or the relevant Designated Purchaser) all the Business Assets to which such member of the GSK Group has legal and beneficial title and which are capable of transfer by delivery (other than any Business Records which shall be delivered to the Purchaser in accordance with Clause 24) with the intent that legal and beneficial title to these Business Assets shall pass at the Completion Time.

*IP Completion Deliverable*

procure that:

- (A) the owner of the Relevant Marks assigns, for no consideration other than the payment to the Seller of the Consideration in accordance with this Agreement, to the Purchaser (i) all of the Relevant Marks and (ii) all other Relevant Rights which exclusively relate to the Business; and
- (B) the owner of the Relevant Rights licenses (on a non-exclusive, perpetual, irrevocable, royalty-free basis, with the right to sub-license) for no consideration other than the payment to the Seller of the Consideration in accordance with this Agreement, to the Purchaser all Relevant Rights which non-exclusively relate to the Business (the “**Licensed Relevant Rights**”) provided that the Purchaser shall:
  - (i) only use the Licensed Relevant Rights pursuant to this licence in substantially the same manner as such Licensed Relevant Rights were used by the Business Seller (or a member of the GSK Group) in respect of a Product in the Business (including solely in relation to the territory and SKU form in which such Product is used) immediately prior to the Completion Time, save that the Purchaser shall be entitled to use the Licensed Relevant Rights outside of the Restricted Territory, solely for the purposes of having the relevant Product manufactured outside of the Restricted Territory and then exported back into the Restricted Territory, and not for the Commercialisation of the relevant Product in that manufacturing territory or elsewhere other than the Restricted Territory (subject always to the terms of any manufacture and/or supply arrangements entered into from time to time between a member of the GSK Group

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and a member of the Purchaser's Group in respect of the manufacture and/or supply of a Product to which the Licensed Relevant Rights relate);

- (ii) not be entitled to use the Licensed Relevant Rights in respect of any product other than the Product in which such rights were used by the Business Seller (or a member of the GSK Group) in the Business immediately prior to the Completion Time; and
- (ii) indemnify, and keep indemnified, the owner of the Relevant Rights and each member of the GSK Group from and against all Losses incurred by the owner of the Relevant Rights and/or any member of the GSK Group as a result of, or in connection with, the Purchaser using the Licensed Relevant Rights otherwise than in accordance with the provisions of this licence.

*Other matters*

Deliver to the Purchaser:

- (A) a certified copy of the minutes of a duly held meeting of the directors of the Seller (or a duly constituted committee thereof) authorising the execution by the Seller of this Agreement and those Seller Transaction Documents to be entered into at Completion and, in the case where such execution is authorised by a committee of the board of directors of the Seller, a certified copy of the minutes of a duly held meeting of the directors constituting such committee or the relevant extract thereof;
- (B) an original counterpart of the Bill of Sale and Assignment and Assumption of Obligations and Liabilities Agreement duly executed on behalf of the Seller and/or the relevant members of the GSK Group;
- (C) an original counterpart of each of the Business Domain Name Assignments duly executed on behalf of the Seller and/or the relevant member(s) of the GSK Group;
- (D) a completed Internal Revenue Service Form W-9 in respect of the Seller; and
- (E) a completed Internal Revenue Service Form W8-BEN in respect of GSK PLC.

1.2 **Matters to be dealt with by the Purchaser**

At Completion, the Purchaser shall:

- (A) deliver to the Seller:
  - (i) a certified copy of the minutes of a duly held meeting of the directors of the Purchaser (or a duly constituted committee thereof) authorising the execution by the Purchaser of this Agreement and those of the

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Purchaser Transaction Documents to be entered into at Completion to which it is a party and, in the case where such execution is authorised by a committee of the board of directors of the Purchaser, a certified copy of the minutes of a duly held meeting of the directors constituting such committee or the relevant extract thereof;

- (ii) an original receipt acknowledging delivery of all documents required to be delivered by the Seller pursuant to this Schedule;
  - (iii) an original counterpart of the Bill of Sale and Assignment and Assumption of Obligations and Liabilities Agreement duly executed on behalf of the Purchaser and/or the relevant member(s) of the Purchaser's Group; and
  - (iv) an original counterpart of each of the Business Domain Name Assignments duly executed on behalf of the Purchaser and/or the relevant member(s) of the Purchaser's Group;
- (B) pay, or procure the payment of:
- (i) the amount of the Initial Cash Consideration to the Seller's Bank Account; or
  - (ii) if so directed by the Seller, pay, or procure the payment of, such part of the amount of the Initial Cash Consideration to such bank account(s) of the Business Seller as the Seller may notify to the Purchaser not less than three (3) Business Days before Completion,

in any such case by CHAPS transfer for same day value.

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**Schedule 3  
(The Warranties)**

**1. Capacity of the Seller and the Business Seller**

- 1.1 The Seller, the Business Seller and GSK PLC are each duly incorporated and validly existing under the laws of their respective jurisdiction of incorporation.
- 1.2 The Seller, the Business Seller and GSK PLC each have the requisite capacity, power and authority to enter into and perform this Agreement, as does each member of the GSK Group in respect of any other documents which are to be entered into by any such party pursuant to this Agreement (the “**Seller Transaction Documents**”).
- 1.3 This Agreement constitutes valid and binding obligations of the Seller, the Business Seller and GSK PLC in accordance with its terms. The Seller Transaction Documents will, when executed by the relevant member of the GSK Group, constitute valid and binding obligations of that member of the GSK Group, in accordance with their respective terms.
- 1.4 The execution and delivery of this Agreement and the performance by the Seller, the Business Seller and GSK PLC of their respective obligations under it and, in the case of any other member of the GSK Group, the execution and delivery of any Seller Transaction Documents to which it is a party and the performance by that party of its obligations under them, will not:
- (A) result in a breach of any provision of the memorandum or articles of association or by laws or equivalent constitutional document of the relevant member of the GSK Group;
  - (B) result in a breach of, or constitute a default under, any instrument to which the relevant member of the GSK Group is party or by which the relevant member of the GSK Group is bound where such breach is material to their ability to perform their obligations under this Agreement or under any of the Seller Transaction Documents;
  - (C) so far as the Seller is aware, result in a breach of any existing order, judgment or decree of any court, Governmental Entity by which the relevant member of the GSK Group is bound and where such breach is material to their ability to perform their obligations under this Agreement or under any of the Seller Transaction Documents; or
  - (D) save as contemplated by this Agreement, require the relevant member of the GSK Group to obtain any consent or approval of, or give any notice to or make any registration with, any Governmental Entity which has not been obtained or made at the date hereof both on an unconditional basis and on a basis which cannot be revoked.

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1.5 No person is entitled to receive from the Business any fee, brokerage or commission in connection with the Seller Transaction Documents or anything contained in them.

## **2. Solvency**

2.1 No order has been made and no resolution has been passed for the winding up of the Seller or the Business Seller, or for the appointment of any administrator, receiver (including administrative receiver) or liquidator (provisional or otherwise) over the whole or any part of the property, assets and/or undertaking of the Seller or the Business Seller, in each case which would be reasonably likely to restrict or otherwise affect the transactions contemplated by this Agreement, or the whole or any part of the Business or the Business Assets.

2.2 No petition has been presented or meeting convened for the purpose of considering a resolution or resolution circulated for the winding up of the Seller or the Business Seller, or for the appointment of any administrator, receiver (including administrative receiver) or liquidator (provisional or otherwise) over the whole or any part of the property, assets and/or undertaking of the Seller or the Business Seller, in each case which would be reasonably likely to restrict or otherwise affect the transactions contemplated by this Agreement, or the whole or any part of the Business or the Business Assets.

2.3 Neither the Seller nor the Business Seller has stopped payment or suspended payment of its debts generally, is insolvent or deemed unable to pay its debts as they fall due.

## **3. Ownership and sufficiency of Assets**

3.1 Each of the Business Assets (other than any Business Inventory acquired in the ordinary course of business on terms that the property does not pass until payment is made) is owned both legally and beneficially by the Business Seller or another member of the GSK Group and each of those assets capable of possession is, save where in the possession of third parties in the ordinary course of business, in the possession of the Business Seller or another member of the GSK Group.

3.2 Save for Permitted Encumbrances, no Encumbrance on, over or affecting the whole or any part of the Business Assets is outstanding and, save in relation to Permitted Encumbrances, there is no agreement or commitment entered into by the Business Seller to give or create any Encumbrance and no claim has been made against the Business Seller by any person to be entitled to any Encumbrance.

3.3 The Business Assets, together with such other rights which are to be provided to the Purchaser's Group pursuant to this Agreement, the IP Completion Deliverable, the licences granted to the Purchaser under each of Clause 25.2 and Clause 25.14, any other Seller's Transaction Document and any other Purchaser's Transaction Document, comprise all of the material assets required to carry on the Business in substantially the same manner as it has been during the six (6) months preceding the date of this Agreement (save that nothing in this paragraph shall be deemed to be or construed as a warranty that the activities of the Business do not infringe the Intellectual Property of any third party).

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**4. Business Inventory**

- 4.1 To the extent in existence at the date of this Agreement, the Business Inventory complies in all material respects with all applicable product specifications and with applicable requirements of GMP.
- 4.2 To the extent in existence at the date of this Agreement, all items of Business Inventory are beneficially owned by a member of the GSK Group.

**5. Audited Carve-Out Accounts**

The Audited Carve-Out Accounts will be prepared:

- (A) in conformity with International Accounting Standards, International Financial Reporting Standards and related interpretations, as issued by the International Accounting Standards Board as applicable to the items included in the Audited Carve-out Accounts; and
- (B) to present:
- (i) the net assets sold; and
  - (ii) the revenue and direct operating expenses,

in each case, of the business described therein) pursuant to the basis of preparation described in note 2 (basis of preparation and accounting policies) of the notes accompanying the audited financial statements set out therein.

- 5.2 On the basis of the foregoing paragraph 5.1 (and having regard to the fact that (i) the net assets to be sold of the business described in the Audited Carve-Out Accounts are not each contained within separate legal entities, (ii) historically the GSK Group has not maintained separate records for the business described therein, and (iii) the Audited Carve-Out Accounts are not intended to be a complete presentation of the financial position, operating results or cash flows of the business described therein), the financial statements contained within the Audited Carve-Out Accounts will present fairly, in all material respects, the net assets sold of the business described therein as at 31 December 2010, 31 December 2009 and 31 December 2008 and the revenue and direct operating expenses of the business described therein for the years ended 31 December 2010, 31 December 2009 and 31 December 2008 in conformity with the basis of preparation described in note 2 (basis of preparation and accounting policies) of the notes accompanying such financial statements.

**6. Interim Review Carve-Out Accounts**

The Interim Review Carve-Out Accounts will be prepared:

- (A) in conformity with International Accounting Standards, International Financial Reporting Standards and related interpretations, as issued by the International

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Accounting Standards Board as applicable to the items included in the Audited Carve-Out Accounts; and

(B) to present:

- (i) the net assets sold; and
- (ii) the revenue and direct operating expenses,

in each case, of the business described therein) pursuant to the basis of preparation described in note 2 (basis of preparation and accounting policies) of the notes accompanying the financial statements set out therein.

6.2 On the basis of the foregoing paragraph 6.1 (and having regard to the fact that (i) the net assets to be sold of the business described in the Interim Review Carve-Out Accounts are not each contained within separate legal entities, (ii) historically the GSK Group has not maintained separate records for the business described therein, and (iii) the Interim Review Carve-Out Accounts are not intended to be a complete presentation of the financial position, operating results or cash flows of the business described therein), the financial statements contained within the Interim Review Carve-Out Accounts will not require that any material modifications be made to them for them to be in conformity with the basis of preparation described in note 2 of the financial statements set out therein.

## 7. Events since the Business Financial Information Date

Since the Business Financial Information Date:

- (A) there has been no change which has had a Material Adverse Effect; and
- (B) save in respect of actions undertaken in connection with the GSK Group Reorganisation Plans, the Business has in all material respects been carried on in the ordinary course and no contract which relates exclusively to the Business has been entered into or terminated by any member of the GSK Group (in relation to the Business).

## 8. Discount arrangements

8.1 The Brand Activation Grids specifically disclosed in the Disclosure Letter do not materially misstate the planned advertising and promotional activity in respect of the Business during the calendar year 2012.

## 9. Consents and licences

9.1 All governmental and quasi-governmental licences, consents, permissions, waivers, exceptions and approvals required for carrying on the Business, the absence of which, individually or in the aggregate, would have a Material Adverse Effect, are in force and have been complied with in all material respects and, so far as the Seller is aware, no

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written notice has been received by the Seller or any other member of the GSK Group which indicates that any such licence, consent, permission, waiver, exception or approval has not been complied with in all material respects and is likely to be revoked or which may confer a right of revocation.

9.2 So far as the Seller is aware, there are no circumstances which make it reasonably likely that any of the licences, consents, permissions, waivers, exceptions and approvals referred to in paragraph 9.1 will or are likely to be suspended, cancelled or revoked or not renewed, in whole or in part, in the ordinary course of events (whether in connection with the Transactions contemplated by this Agreement or otherwise)

9.3 During the Relevant Period, the Business has been conducted in all material respects in compliance with the applicable requirements of GMP, except where the failure so to comply, individually or in the aggregate, would not have a Material Adverse Effect.

## **10. Litigation**

10.1 The Business Seller (in relation to the Business) is not currently party to any Third Party Proceedings, whether as claimant, defendant or otherwise (other than as claimant in proceedings for the collection of debts arising in the ordinary course of business) where the amount claimed in any individual claim exceeds US\$[\*\*\*].

10.2 So far as the Seller is aware, no Third Party Proceedings are pending or threatened by or against the Business Seller in respect of a Product which would be reasonably likely to result in any individual claim in excess of US\$[\*\*\*].

10.3 No member of the GSK Group has received any formal written notice in the Relevant Period indicating that any litigation or arbitration, administrative or criminal proceedings in relation to the Business are currently pending where the amount claimed in any individual claim exceeds US\$[\*\*\*].

## **11. Delinquent and wrongful acts**

11.1 So far as the Seller is aware, no member of the GSK Group (in relation to the Business), has during the Relevant Period committed any criminal or illegal act which is material to the Business.

11.2 No member of the GSK Group (in relation to the Business) has during the Relevant Period received notification that any investigation or inquiry is being or has been conducted by any supranational, national or local authority or governmental agency in respect of its respective part of the Business.

## **12. Intellectual Property and Information Technology**

12.1 None of the Business Intellectual Property is registered or is an application for registration.

12.2 Copies of all material licences of:

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- (A) Business Intellectual Property granted to a third party; and
- (B) Intellectual Property and know how, in each case granted to a Business Seller exclusively in relation to the Business,
- are set out in the Data Room.

- 12.3 So far as the Seller is aware no party to any of the licences referred to in paragraph 12.2 is in breach of any such licence where such breach would entitle the non-defaulting party to terminate such licence.
- 12.4 Neither the validity or subsistence of the Business Intellectual Property nor the right, title and interest of the Seller or any Business Seller in such Intellectual Property, is the subject of any current, pending or threatened written challenge, claim or proceedings (including for opposition, cancellation, revocation or rectification) nor has it been in the [\*\*\*] months prior to the date of this Agreement. So far as the Seller is aware, neither the validity or subsistence of the Intellectual Property comprised in the Relevant Rights nor the right, title and interest of the owner of the Relevant Rights in such Intellectual Property is the subject of any current, pending or threatened written challenge, claim or proceedings (including for opposition, cancellation, revocation or rectification) nor has it been in the [\*\*\*] months prior to the date of this Agreement.
- 12.5 No claim in writing has been made by a third party to (i) the Seller or any Business Seller or (ii) so far as the Seller is aware, the owner of the Relevant Rights, in each case in the [\*\*\*] months prior to the date of this Agreement, which alleges that the operations of the Business infringe or misuse the Intellectual Property of a third party or which otherwise disputes the right of the Seller or any Business Seller to use the Business Intellectual Property in the Business, or, so far as the Seller is aware, disputes the right of the owner of the Relevant Rights to use the Intellectual Property comprised in the Relevant Rights in the Business. So far as the Seller is aware, the activities of the Business do not infringe the Intellectual Property or know-how rights of any third party where such infringement would have more than an immaterial effect on the Business.
- 12.6 No claim in writing has been made by (i) the Seller or (ii) so far as the Seller is aware, the owner of the Relevant Rights, in each case in the [\*\*\*] months prior to the date of this Agreement, which alleges that a third party is infringing or misusing or is likely to infringe or misuse the Business Intellectual Property or the Intellectual Property comprised in the Relevant Rights. So far as the Seller is aware, no third party is infringing any Business Intellectual Property or any Intellectual Property comprised in the Relevant Rights, in each case where such infringement would have more than an immaterial effect on the Business.
- 12.7 There has been no material disruption to the commercial activities of the Business in the [\*\*\*] months prior to the date of this Agreement which has been caused by any failure or breakdown of the Information Technology used in the Business.

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12.8 So far as the Seller is aware, the Seller has not disclosed to any person any of its Confidential Information relating to the Business except where such disclosure was made in the normal course of the Business and was made subject to an agreement under which the recipient is obliged to maintain its confidentiality or restricted from using it other than for the purposes for which it was disclosed by the Business.

### **13. Insurances**

13.1 Details of the GSK Group Insurance Policies are set out in the Data Room and, so far as the Seller is aware, no individual or related claim in respect of the Business for amounts in excess of US\$[\*\*\*] is outstanding thereunder.

13.2 So far as the Seller is aware, all premiums and any related insurance premium taxes have been duly paid or are due to be paid in respect of all such GSK Group Insurance Policies.

13.3 Details of all outstanding claims made in respect of the GSK Group Insurance Policies in the past [\*\*\*] years are contained in the Data Room.

### **14. Product Liability**

14.1 The Products sold by the Business during the Relevant Period have complied in all material respects with all applicable product specifications and have been Manufactured in all material respects in accordance with applicable requirements of then-current GMP, except for any such non-compliance that has not had, and would not reasonably be expected to have, a material impact on the relevant brand.

14.2 During the Relevant Period, none of the Products has been the subject of any product recall after being sold. So far as the Seller is aware, no circumstances exist which are reasonably likely to give rise to the occurrence of such an event.

14.3 The Business Seller (in relation to the Business) has not received in the Relevant Period any written notification or written claim (in each case, which remains outstanding) that it has Manufactured or Commercialised any Product in the course of carrying on the Business or its respective part thereof which does not in any material respect comply with all applicable laws, regulations or standards or which in any material respect is defective or dangerous, where the pursuit of any such notification or claim has had, or would reasonably be expected to have, a material impact on the relevant brand.

### **15. Regulatory Permits**

15.1 Save in circumstances where a Certificate of Pharmaceutical Product is required, the Regulatory Permits are the only Regulatory Permits that are required to carry on the Business as carried on prior to the date hereof.

15.2 Each Regulatory Permit is validly held by the relevant Regulatory Permit Holder and is in full force and effect and the relevant Regulatory Permit Holder has complied with all

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terms and conditions thereof, except for any such invalidity or non-compliance that has not had, and would not reasonably be expected to have, a material impact on the relevant Product(s).

- 15.3 No proceeding relating to the Regulatory Permits has been notified during the Relevant Period to the Seller or any Regulatory Permit Holder by any Governmental Entity, where the commencement or instigation of such proceeding has had, or would reasonably be expected to have, a material impact on the relevant Product(s). So far as the Seller is aware, neither the Seller nor any Regulatory Permit Holder has received any written notice during the Relevant Period from any Governmental Entity indicating that any Regulatory Permit is likely to be suspended, revoked, not renewed or modified, where such suspension, revocation, non-renewal or modification has had, or would reasonably be expected to have, a material impact on the relevant Product(s).
- 15.4 In relation to any Product for which a Regulatory Permit is not required, the Seller and Business Seller or member of the GSK Group has, so far as the Seller is aware, complied with its obligations relating to the formulation and labelling of such Product under any relevant OTC Monograph, save for such non-compliance as has not had, and would not reasonably be expected to have, a material impact on the relevant Product(s).

## **16. Taxation**

- 16.1 The Seller and Business Seller have in respect of the Business timely filed, or caused to be timely filed, all Tax returns that were required to be filed by or with respect to it (other than Tax returns which, if properly prepared and filed, would involve an immaterial amount of Tax).
- 16.2 The Seller and Business Seller have in respect of the Business timely paid or caused to be timely paid all material Taxes required to be paid by or with respect to it.
- 16.3 There are no liens for Taxes on any of the Business Assets other than Permitted Encumbrances.
- 16.4 None of the Business Assets is:
- (A) property required to be treated as owned by another person pursuant to section 168(f)(8) of the Internal Revenue Code of 1954, as amended and in effect immediately prior to the enactment of the Tax Reform Act of 1986;
  - (B) "tax-exempt use property" within the meaning of section 168(h)(1) of the IRC;
  - (C) "tax-exempt bond financed property" within the meaning of section 168(g)(5) of the IRC;
  - (D) "limited use property" within the meaning of Revenue Procedure 2001-28, 2001-1 C.B. 1156; or

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(E) subject to a "section 467 rental agreement" within the meaning of section 467 of the IRC.

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**Schedule 4**  
**(Seller's limitations on liability)**

**1. Limitations on quantum and general**

1.1 Neither the Purchaser nor any other member of the Purchaser's Group shall be entitled in any event to damages or other payment in respect of any claim or claims under any of the Warranties in respect of any individual claim (or series of related claims with respect to related facts or circumstances):

- (A) for less than US\$75,000; or
- (B) unless and until the aggregate amount of all claims made in respect of the Warranties (taking no account of those referred to in (A) above) exceeds US\$500,000 but, once the aggregate amount of all such claims has exceeded such sum, the Seller shall be liable for the full amount of all such claims and not merely in respect of the excess over such sum.

1.2 The total aggregate liability of the Seller and all members of the GSK Group under this Agreement shall not in any event exceed an amount equal to:

- (A) for all claims under the Warranties, US\$6,726,600; and
- (B) for all claims under this Agreement (including the claims referred to in the preceding sub-paragraph 1.2(A)) save for any claims in relation to any Excluded Liabilities, US\$44,844,000.

1.3 Neither the Purchaser nor any other member of the Purchaser's Group shall be entitled to claim for any indirect or consequential loss (including loss of profit) or punitive damages.

1.4 The Seller shall only be liable in respect of any claim under this Agreement if and to the extent that such claim is admitted by the Seller or proven by a judgment in a court of competent jurisdiction.

1.5 Each provision of this Schedule shall be read and construed without prejudice to each of the other provisions of this Schedule.

1.6 The Purchaser shall give, and shall procure that there is given, to the Seller access to all such information and documentation within the possession or control of any member of the Purchaser's Group as the Seller may reasonably require to enable it to satisfy itself as to whether any breach of the Warranties notified pursuant to paragraph 2 below shall have occurred.

**2. Time limits for bringing claims**

No claim shall be brought against the Seller in respect of any of the Warranties unless the Purchaser shall have given to the Seller written notice of such claim specifying (in reasonable detail) the matter which gives rise to the claim, the nature of the claim

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and the amount claimed in respect thereof (detailing the Purchaser's good faith calculation of the loss thereby alleged to have been suffered by it or the relevant member of the Purchaser's Group):

- (A) subject to sub-paragraph 2(B), on or before the date falling 18 months after the Completion Date; or
- (B) in respect of any claim under the Tax Warranties, the later of six (6) months after the expiry of the period specified by statute during which an assessment of that liability to Tax may be issued by a relevant Tax Authority and the seventh anniversary of the Completion Date,

PROVIDED THAT the liability of the Seller in respect of any claim referred to in paragraph (A) above shall absolutely determine (if such claim has not been previously satisfied, settled or withdrawn) if legal proceedings in respect of such claim shall not have been commenced within six (6) months of the service of such notice and for this purpose proceedings shall not be deemed to have been commenced unless they shall have been properly issued and validly served upon the Seller except:

- (aa) in the case of a claim based upon a liability which is contingent or otherwise not capable of being quantified, in which case the six (6) month period shall commence on the date that the contingent liability becomes an actual liability or the liability is capable of being quantified; or
- (bb) in the case of a claim where a member of the Purchaser's Group has a corresponding claim against an insurer or a corresponding entitlement to recovery from some other person in which case the six (6) month period shall commence on the date that the corresponding claim or entitlement is finally settled or finally determined.

### 3. Conduct of litigation

3.1 Upon the Purchaser or any other member of the Purchaser's Group becoming aware of any claim, action or demand against it or any other matter likely to give rise to any claim in respect of any of the Warranties, the Purchaser shall:

- (A) as soon as practicable notify the Seller thereof in writing in accordance with paragraph 2;
- (B) subject to the Seller's agreement to indemnify the Purchaser or the relevant member of the Purchaser's Group in a form reasonably satisfactory to the Purchaser against any liability, cost, damage or expense which may be properly incurred thereby (but without thereby implying any admission of liability on the part of the Seller), take such action and give such information and access to personnel, premises, chattels, documents and records (which the Purchaser shall procure are preserved) to the Seller and its professional advisers as the Seller may reasonably request and the Seller shall be entitled to require any relevant member of the Purchaser's Group to take such reasonable action and

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give such reasonable information and assistance (at the Seller's cost) in order to avoid, dispute, resist, mitigate, settle, compromise, defend or appeal any claim in respect thereof or adjudication with respect thereto;

- (C) at the request of the Seller, allow the Seller to take the sole conduct of such claims, actions and/or demands (as applicable) as the Seller may deem appropriate in connection with any such claim, action or demand in the name of the Purchaser or any relevant member of the Purchaser's Group and in that connection the Purchaser shall give or cause to be given (and shall procure that the relevant member of the Purchaser's Group shall give or cause to be given) to the Seller all such assistance (at the Seller's cost) as it may reasonably require in avoiding, disputing, resisting, settling, compromising, defending or appealing any such claim, action or demand and shall instruct such solicitors or other professional advisers as the Seller may nominate to act on behalf of the Purchaser or any relevant member of the Purchaser's Group, as appropriate, but to act solely in accordance with the Seller's instructions provided that neither the Purchaser nor the relevant member of the Purchaser's Group shall be required to commence any legal proceedings where either:
- (i) the Purchaser or the relevant member of the Purchaser's Group has validly assigned all of its rights in relation to the relevant claim, action or demand (as applicable) to the Seller in a manner which entitles the Seller to the same benefits in respect of such rights as the Purchaser or the relevant member of the Purchaser's Group had; or
  - (ii) where sub-paragraph 3.1(C)(i) does not apply or where the Seller otherwise requests in writing, the Seller has not notified the relevant party against whom such proceedings are brought that such proceedings are being brought at the instruction of the Seller;

AND PROVIDED ALSO THAT, the Seller shall not be entitled to assume the defence of any such claim, action and/or demand if the claim, action and/or demand seeks any relief other than damages (including any orders, injunctions or other equitable relief) against any member of the Purchaser's Group which the relevant member of the Purchaser's Group reasonably determined cannot be separated from any related claim for damages. If such claim for other relief can be separated from the claim for damages, the Seller shall be entitled to assume the defence of the claim for damages. The Seller shall further be entitled to settle any claim, action and/or demand where relief other than damages is sought if the claimant agrees to settle such claim for damages and not to pursue other relief;

AND PROVIDED ALSO THAT the Seller shall not be entitled (on written notice from the Purchaser) to assume or continue the defence of any such claim, action and/or demand in the event that such claim, action and/or demand, or the Seller's conduct of the defence thereof, has caused or could cause (in the opinion of the Purchaser, acting reasonably and in good faith) material damage to the reputation or goodwill of any member of the Purchaser's Group;

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PROVIDED THAT in circumstances where the Seller is not entitled to assume or continue the defence of any claim, action or demand pursuant to this paragraph 3.1(C), the Purchaser shall keep the Seller informed and consult with the Seller in relation thereto, and take into account the Seller's reasonable views thereon;

- (D) be entitled to participate in the defence of the relevant claim, action or demand (as applicable) and to employ separate counsel to represent it as its own expense PROVIDED THAT the Seller shall control the defence of the relevant claim, action or demand (as applicable);
  - (E) make no admission of liability, agreement, settlement or compromise with any person in relation to any such claim, action or demand without the prior written consent of the Seller; and
  - (F) take, or procure that there is taken, all reasonable action to mitigate any loss suffered by it or by any member of the Purchaser's Group in respect of which a claim could be made under the Warranties.
- 3.2 The Seller shall be entitled at any stage and at its sole discretion to settle any such claim, action or demand (but without any admission of wrongdoing, and, without prejudice to the limitations on liability set out in this Agreement, subject to the Seller compensating the Purchaser for the full amount of any Losses suffered, sustained and/or incurred by any member of the Purchaser's Group in this respect).

#### **4. No liability if loss is otherwise compensated for**

- 4.1 No liability shall attach to the Seller or to any member of the GSK Group by reason of any breach of any of the Warranties to the extent that the same loss has been recovered by the Purchaser or any other member of the Purchaser's Group under any other Warranty or terms of this Agreement or any other document entered into pursuant hereto and accordingly the Purchaser and each other member of the Purchaser's Group may only recover once in respect of the same loss.
- 4.2 The Seller shall not be liable for breach of any of the Warranties to the extent that the subject of the claim has been or is made good or is otherwise compensated for (including, without limitation, pursuant to Clause 21) without cost to the Purchaser or any other member of the Purchaser's Group.
- 4.3 In calculating the liability of the Seller for any breach of the Warranties there shall be taken into account the amount by which any Taxation for which the Purchaser, any Designated Purchaser or any other member of the Purchaser's Group is now or in the future accountable or liable to be assessed is reduced or extinguished as a result of the matter giving rise to such liability.

#### **5. Recovery from Insurers and other Third Parties**

- 5.1 If, in respect of any matter which would give rise to a claim under the Warranties, any member of the Purchaser's Group is entitled to claim under any policy of insurance,

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then no such matter shall be the subject of a claim under any such Warranties unless and until the appropriate member of the Purchaser's Group shall have made a claim against its insurers and used all reasonable endeavours to pursue such claim and any such insurance claim shall then reduce by the amount recovered or extinguish any such claims under any such Warranties.

- 5.2 Where the Purchaser or any member of the Purchaser's Group is at any time entitled to recover from some other person any sum in respect of any matter giving rise to a claim under the Warranties, the Purchaser shall, and shall procure that the member of the Purchaser's Group concerned shall, take all reasonable steps to enforce such recovery prior to taking action against the Seller (other than to notify the Seller of such claim) and, in the event that the Purchaser or any member of the Purchaser's Group shall recover any amount from such other person, the amount of the claim against the Seller shall be reduced by the amount so recovered.
- 5.3 If the Seller or any other member of the GSK Group pays at any time to the Purchaser or any member of the Purchaser's Group an amount pursuant to a claim in respect of the Warranties or under any provision of this Agreement and the Purchaser or member of the Purchaser's Group subsequently recovers from some other person any sum in respect of any matter giving rise to such claim, the Purchaser shall, and shall procure that the relevant member of the Purchaser's Group shall, repay to the Seller the lesser of (i) the amount paid by the Seller (or other member of the GSK Group) to the Purchaser or relevant member of the Purchaser's Group and (ii) the sum (including interest (if any)) recovered from such other person, less any Tax thereon.

## 6. Acts of Purchaser

- 6.1 No claim shall lie against the Seller under or in relation to the Warranties to the extent that such claim is attributable to:
- (A) any voluntary act, omission, transaction, or arrangement carried out at the written request of or with the written consent of the Purchaser or of a member of the Purchaser's Group before, at or after Completion or under the terms of this Agreement or any other agreement contemplated by it;
  - (B) any voluntary act, omission, transaction, or arrangement carried out by the Purchaser or by a member of the Purchaser's Group on or after Completion which is outside the ordinary course of business of the relevant member of the Purchaser's Group and/or which the relevant member of the Purchaser's Group knew, or ought reasonably to have known (after reasonable enquiry), would, or was reasonably likely to, result in a claim; or
  - (C) any admission of liability made in breach of the provisions of this Schedule after the date hereof by the Purchaser or on its behalf or by persons deriving title from the Purchaser or by a member of the Purchaser's Group on or after Completion.

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6.2 The Seller shall not be liable for any breach of any Warranty which would not have arisen but for any reorganisation (including a cessation of the whole or part of any trade) or change in ownership of any member of the Purchaser's Group or of any assets of any such member after Completion or change in any accounting basis on which any member of the Purchaser's Group values its assets or any accounting basis, method, policy or practice of any member of the Purchaser's Group which is different from that adopted or used in the preparation of the Completion Current Asset Statement.

#### **7. The Completion Current Asset Statement**

No matter shall be the subject of a claim, and no liability shall exist, under the Warranties to the extent that allowance, provision or reserve in respect of such matter shall have been made in the Completion Current Asset Statement.

#### **8. Retrospective legislation**

No liability shall arise in respect of any breach of any of the Warranties to the extent that liability for such breach or such claim occurs or is increased directly or indirectly as a result of:

- (A) any legislation not in force on or prior to the date of this Agreement; or
- (B) the withdrawal of any extra-statutory concession or other agreement or arrangement currently granted by or made with any Governmental Entity (whether or not having the force of law); or
- (C) any change after the date of this Agreement of any generally accepted interpretation or application of any legislation or in the enforcement policy or practice of the relevant authorities.

#### **9. Purchaser's knowledge**

Without prejudice to paragraph 10, the Seller shall not be liable under the Warranties in relation to any matter forming the basis of a claim of which the Purchaser was actually aware on or before the date of this Agreement including any such matter referred to in the Information Memorandum, the VDD Report, the Management Presentation or in any other due diligence report prepared for the Purchaser or any other member of the Purchaser's Group. For these purposes, the Purchaser's awareness shall mean the actual knowledge of Matthew Mannelly (President and Chief Executive Officer), Ron Lombardi (Chief Financial Officer), Timothy Connors (Executive VP, Sales and Marketing), Eric Klee (Secretary and General Counsel), Jean Boyko (Senior Vice President, Science and Technology) and Paul Hennessey (Vice President, Operations). The Purchaser confirms that, as at the date of this Agreement, it is not aware of any matter forming the basis of a claim, or a potential claim, for any breach of Warranty.

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**10. Disclosure**

Neither the Purchaser nor any member of the Purchaser's Group shall be entitled to claim that any fact, matter or circumstance causes any of the Warranties to be breached if fairly disclosed in the Disclosure Letter or in any document delivered or deemed to be delivered with it (including, for the avoidance of doubt, the Data Room and the VDD Report).

**11. Claim to be reduction of Final Cash Consideration**

Any payment made by the Seller or any other person in respect of any claim under the Warranties shall be deemed to be a reduction of the Final Cash Consideration.

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**Schedule 5**  
**(Initial Cash Consideration)**

<u>Asset</u>	<u>Amount</u>
<b>(A) Business Inventory</b>	
Business Inventory	US\$[.]
<b>(B) Business Intellectual Property</b>	
Business Intellectual Property	US\$[.]
<b>(C) Other Business Assets</b>	
Brands	US\$[.]

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**Schedule 6**  
**(Completion Current Asset Statement)**

**1. General**

1.1 The Completion Current Asset Statement shall:

- (A) be prepared and agreed or determined in accordance with the provisions of this Schedule;
- (B) be in the format set out in paragraph 5 of this Schedule; and
- (C) comprise a statement of:
  - (i) the Completion Current Asset Amount;
  - (ii) the Provisional Current Asset Amount; and
  - (iii) the Business Current Asset Adjustment Amount.

**2. Completion Current Asset Statement – Accounting policies, principles, practices, bases and methodologies**

*Part A – General*

2.1 The Completion Current Asset Statement shall:

- (A) be prepared strictly in accordance with the applicable specific accounting principles, practices and policies set out in Part B of this paragraph 2.1 of this Schedule; and
- (B) subject to paragraph 2.1(A) above, be prepared under International Financial Reporting Standards as adopted by the European Union, in force and applicable at the Completion Date.

*Part B – Specific accounting principles, practices and policies*

2.2 The Completion Current Asset Statement shall be derived from the books and records of the Business Seller.

2.3 The Completion Current Asset Statement shall be prepared:

- (A) on a going concern basis;
- (B) as if the date to which the Completion Current Asset Statement is made up was the last day of a financial year;
- (C) on the basis of the same judgements, estimates, forecasts and opinions that were used for the purposes of and reflected in the Group financial statements of

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GSK PLC for the year ended 31 December 2010 as set out in the GSK Annual Report 2010;

- (D) so as to include no charge, provision, reserve or write-off in respect of any costs, liabilities or charges to be incurred after the date to which the Completion Current Asset Statement is made up as a consequence of the change of ownership of the Business, or any change in management strategy, direction or priority;
- (E) so as to take no account of events occurring or information becoming available following the Completion Date;
- (F) so as to take no account of the costs of the Seller or the Purchaser (or any member of their respective Groups) in relation to this Agreement (including, without limitation, the costs of the preparation, delivery, review and resolution of either Completion Current Asset Statement); and
- (G) such that any monetary sum expressed in a currency other than Dollars shall be translated into Dollars at the relevant Exchange Rate set out in Clause 1.2.

### **3. Business Inventory count at Completion**

3.1 For the purposes of the Completion Current Asset Statement, the Seller shall procure that there is carried out as at the Completion Time a stock count in relation to the Business Inventory at each of the four (4) distribution centres located in the United States at which Business Inventory is held as at the Completion Time (the “**Business Inventory Count**”).

3.2 The Business Inventory Count shall be carried out in a manner consistent with that adopted for the purposes of verifying the relevant stock position of the GSK Group during the last complete financial year of the GSK Group prior to the date hereof and shall consist of a reconciliation of the inventory figure shown in the computerised warehousing inventory at the relevant distribution centres as at the Completion Time (updated in accordance with the customary rolling stock-check process), such figure to be verified by means of physical sample stock-checks of selected items of Business Inventory at the relevant locations referred to in paragraph 3.1 above in the same manner and to the same material extent as was undertaken to verify the relevant inventory position of the GSK Group (the “**Verification Sample Inventory Checks**”) during the last complete financial year of the GSK Group prior to the date hereof. Both the Purchaser and the Seller and their respective representatives shall be entitled to be present at the Verification Sample Inventory Checks and shall be entitled to make such enquiries, tests and inspections, and to have copies of such supporting documentation, in each case as either of them may reasonably deem necessary.

### **4. Completion Current Asset Statement - Preparation**

4.1 The Seller shall procure the preparation of a draft of the Completion Current Asset Statement, which shall be delivered to the Purchaser within forty-five (45) Business

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Days following the Completion Date (the “**Draft Completion Current Asset Statement**”).

- 4.2 After Completion, the Purchaser shall (and shall procure that each member of the Purchaser’s Group shall) give to the Seller and to the Seller’s advisers, without charge, such reasonable access to the personnel of any member of the Purchaser’s Group (who shall be instructed to give prompt information and explanations) and to all books and records of the Purchaser’s Group relating to the Business on or prior to the Completion Date as the Seller or the Seller’s advisers may reasonably request in connection with the preparation of the Draft Completion Current Asset Statement.
- 4.3 The Purchaser may dispute the Draft Completion Current Asset Statement by delivering to the Seller notice in writing (the “**Dispute Notice**”) within twenty-one (21) days of receiving the Draft Completion Current Asset Statement (the “**Review Period**”). The Dispute Notice shall specify:
- (A) exactly which items of the Draft Completion Current Asset Statement are disputed;
  - (B) the reasons therefor, making specific reference to the parts of this Schedule which the Purchaser claims have not been followed in preparing the Draft Completion Current Asset Statement; and
  - (C) to the extent practicable, the effect that the Purchaser believes that the items in dispute have on each of the following:
    - (i) the Completion Current Asset Amount;
    - (ii) the Provisional Current Asset Amount; and
    - (iii) the Business Current Asset Adjustment Amount.
- 4.4 Only those items or amounts specified in the Dispute Notice shall be treated as being in dispute (the “**Disputed Items**”) and no amendment may be made by either the Seller or the Purchaser, or any Expert appointed pursuant to paragraph 4.7 below, to any items or amounts which are not Disputed Items, save in the case of manifest error. To the extent practicable, the Dispute Notice shall be accompanied by all relevant supporting documentation and working papers on which the Purchaser wishes to rely, it being acknowledged by the Purchaser that it shall (to the extent practicable) provide further documentation to support its claims promptly on reasonable request by the Seller.
- 4.5 For the purposes of enabling the Purchaser to present the Dispute Notice, the Seller shall, following the Completion Date, give the Purchaser and its advisers, without charge, such reasonable access to the personnel of any member of the GSK Group (who shall be instructed to give prompt information and explanations) and to all books and records of the GSK Group (to the extent in the possession or control of the relevant member of the GSK Group) relating to the Business on or prior to the Completion Date as the Purchaser or the Purchaser’s advisers may reasonably request in connection

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with their review of the Draft Completion Current Asset Statement. It is acknowledged and agreed by the Purchaser that neither it nor its advisers shall be entitled to any such access, information or assistance which goes beyond that reasonably necessary to determine whether the Draft Completion Current Asset Statement has been prepared in accordance with the provisions of this Schedule.

- 4.6 If the Purchaser does not serve the Dispute Notice on the Seller by the end of the Review Period then the Draft Completion Current Asset Statement shall, as between the Seller and the Purchaser, in the absence of manifest error, be deemed to have been accepted, approved and agreed by the Seller and the Purchaser and shall be final and binding on the Seller and the Purchaser and shall constitute the “**Completion Current Asset Statement**” for all purposes of this Agreement.
- 4.7 If the Dispute Notice is served on the Seller by the Purchaser by the end of the Review Period then the Seller and the Purchaser shall attempt to resolve the Disputed Items between them in good faith negotiations. If there are any Disputed Items which have not been resolved in good faith negotiations within a period of fourteen (14) days after the end of the Review Period, then the Disputed Items shall be referred for determination to a partner of at least ten (10) years qualified experience at PricewaterhouseCoopers LLP or, if no such partner is able to act, on the application of either the Purchaser or the Seller by the President for the time being of the Institute of Chartered Accountants in England and Wales (the “**Expert**”), who shall be instructed to notify the Purchaser and the Seller of his determination within thirty (30) days of such referral.
- 4.8 The Seller and the Purchaser shall, and shall procure that each member of their respective Groups shall, give the Expert reasonable access at reasonable times to all books and records in their possession or control relating to the period prior to the Completion Date and generally shall provide the Expert with such other information and assistance as the Expert may reasonably require. In making his determination, the Expert shall act as expert and not as arbitrator and the Draft Completion Current Asset Statement, as amended by the Expert, shall, as between the Seller and the Purchaser and in the absence of manifest error, be deemed to have been accepted and approved by the Seller and the Purchaser, shall be final and binding on the Seller and the Purchaser and shall constitute the “**Completion Current Asset Statement**” for all purposes of this Agreement. The fees and costs of the Expert shall be paid as the Expert shall determine.
- 4.9 Following agreement or determination of the Completion Current Asset Statement, the amount of:
- (A) the Completion Current Asset Amount;
  - (B) the Provisional Current Asset Amount; and
  - (C) the Business Current Asset Adjustment Amount,

shall be determined by reference to the Completion Current Asset Statement.

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**5. Completion Current Asset Statement**

	US\$	US\$
Completion Current Asset Amount	.	
Provisional Current Asset Amount	<u>(.)</u>	
Business Current Asset Adjustment Amount		.

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**Schedule 7  
(The Products)**

**PRODUCT SCHEDULE FORMAT FOR DEBROX**

[\*\*\*]

**PRODUCT SCHEDULE FORMAT FOR GLYOXIDE**

[\*\*\*]

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Signed by J Lecouilliard )  
for and on behalf of ) /s/ J Lecouilliard.....  
**GLAXOSMITHKLINE LLC** ) ATTORNEY IN FACT

Signed by J Lecouilliard )  
for and on behalf of ) /s/ J Lecouilliard.....  
**GLAXOSMITHKLINE PLC** ) ATTORNEY IN FACT

Signed by J Lecouilliard )  
for and on behalf of ) /s/ J Lecouilliard.....  
**GLAXOSMITHKLINE CONSUMER HEALTHCARE, L.P.** ) ATTORNEY IN FACT

Signed by Matthew M. Mannelly )  
for and on behalf of ) /s/ Matthew M. Mannelly.....  
**PRESTIGE BRANDS HOLDINGS, INC.** )

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EXECUTION VERSION

CITIGROUP GLOBAL MARKETS INC.  
390 Greenwich Street  
New York, New York 10013

MORGAN STANLEY SENIOR FUNDING, INC.  
1585 Broadway  
New York, New York 10036

ROYAL BANK OF CANADA  
One Liberty Plaza  
New York, New York 10006

CONFIDENTIAL

December 20, 2011

Prestige Brands Holdings, Inc.  
90 North Broadway  
Irvington, New York 10533  
Attention: Ron Lombardi

Project Prism  
Commitment Letter

Ladies and Gentlemen:

You have advised Citi (as defined below), Morgan Stanley Senior Funding, Inc. (“*MSSF*”), Royal Bank of Canada (“*Royal Bank*”) and RBC Capital Markets<sup>1</sup> (“*RBCCM*”) and, together with Citi and MSSF, “*we*” and “*us*” or the “*Commitment Parties*”) that Prestige Brands Holdings, Inc. (“*Holdings*” or “*you*”), Prestige Brands, Inc. (the “*Borrower*”) and/or one or more of its subsidiaries intends to acquire (the “*Acquisition*”), directly or indirectly, a business previously identified to us by you as “*Prism*” (“*Prism*”). You have further advised us that, in connection with the foregoing, you intend to consummate the other Transactions described in the Transaction Description attached hereto as Exhibit A (the “*Transaction Description*”). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Transaction Description, the Summary of Principal Terms and Conditions attached hereto as Exhibit B (the “*Senior Term Sheet*”), the Summary of Principal Terms and Conditions attached hereto as Exhibit C (the “*Unsecured Bridge Term Sheet*”), and collectively with the Senior Term Sheet, the “*Term Sheets*”; this commitment letter, the Transaction Description, the Term Sheets and the Summary of Additional Conditions attached hereto as Exhibit D, collectively, the “*Commitment Letter*”).

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<sup>1</sup> RBC Capital Markets is a marketing name for the investment banking activities of Royal Bank of Canada.

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For purposes of this Commitment Letter, “*Citi*” shall mean Citigroup Global Markets Inc., Citibank, N.A., Citigroup USA, Inc., Citicorp North America, Inc. and/or any of their affiliates as Citi shall determine to be appropriate to provide the services contemplated herein.

1. Commitments.

In connection with the Transactions, each of Citi, MSSF and Royal Bank (together with any other initial lender that becomes a party hereto, each an “*Initial Lender*” and, collectively, the “*Initial Lenders*”) is pleased to advise you of its commitment to, severally and not jointly, provide 45%, 45% and 10%, respectively, of the entire aggregate principal amount of each of the Credit Facilities, subject only to the satisfaction of the conditions set forth herein, in the sections entitled “Conditions to All Borrowings” in Exhibit B and Exhibit C hereto (limited on the Closing Date (as defined below) as indicated therein) and in Exhibit D hereto.

2. Titles and Roles.

It is agreed that (i) Citi, MSSF and RBCCM will act as joint lead arrangers and joint bookrunners for each of the Credit Facilities (collectively, the “*Lead Arranger*” or the “*Lead Arrangers*”), (ii) Citi will act as administrative agent and collateral agent (in such capacity, the “*Senior Administrative Agent*”) for the Senior Secured Credit Facilities, (iii) MSSF will act as administrative agent (in such capacity, the “*Unsecured Bridge Administrative Agent*”) and, collectively with the Senior Administrative Agent, the “*Administrative Agent*”) for the Unsecured Bridge Facility and (iv) RBCCM will act as documentation agent for each of the Credit Facilities. It is further agreed that (i) in any Information Materials (as defined below) and all other offering or marketing materials in respect of the Senior Secured Credit Facilities, (x) Citi shall have “left side” designation and shall appear on the top left and shall hold the leading role and responsibility customarily associated with such “top left” placement and (y) MSSF will be placed immediately to the right of Citi and (ii) in any Information Materials (as defined below) and all other offering or marketing materials in respect of the Unsecured Bridge Facility, (x) MSSF shall have “left side” designation and shall appear on the top left and shall hold the leading role and responsibility customarily associated with such “top left” placement and (y) Citi will be placed immediately to the right of MSSF. You agree that no other agents, co-agents, arrangers or bookrunners will be appointed, no other titles will be awarded and no compensation (other than compensation expressly contemplated by this Commitment Letter and the Fee Letter referred to below) will be paid to any Lender (as defined below) in order to obtain its commitment to participate in the Credit Facilities unless you and we shall so agree.

3. Syndication.

The Lead Arranger reserves the right, prior to or after the Closing Date (as defined below), to syndicate all or a portion of the Initial Lenders' respective commitments hereunder to a group of banks, financial institutions and other institutional lenders and investors (together with the Initial Lenders, the "**Lenders**") identified by the Lead Arranger in consultation with you and, with respect to the Revolving Facility only, reasonably acceptable to the Lead Arranger and you (your consent not to be unreasonably withheld or delayed), and you agree to use commercially reasonable efforts to provide the Initial Lenders with a period of 15 consecutive business days commencing on or after January 3, 2012 following the receipt of the Information Memorandum (as defined below) in a form customarily delivered in connection with senior secured bank financings and senior unsecured bridge financings and prior to the Closing Date to syndicate the Credit Facilities; *provided* that (a) we agree not to syndicate our commitments to (i) certain banks, financial institutions and other institutional lenders ("**Disqualified Institutions**") that have been specified to us by you or the Borrower in writing prior to the date hereof and (ii) competitors of you, Prism and your and its respective subsidiaries that have been specified to us by you or the Borrower in writing prior to the date hereof ("**Disqualified Competitors**" and, together, with Disqualified Institutions, "**Disqualified Lenders**") and (b) notwithstanding the Lead Arranger's right to syndicate the Credit Facilities and receive commitments with respect thereto, (i) no Initial Lender shall be relieved, released or novated from its obligations hereunder (including its obligation to fund the Credit Facilities on the date of the consummation of the Acquisition with the proceeds of the initial funding under the Credit Facilities (the date of such funding, the "**Closing Date**")) in connection with any syndication, assignment or participation of the Credit Facilities, including its commitments in respect thereof, until after the Closing Date has occurred, (ii) no assignment or novation by any Initial Lender shall become effective as between you and the Initial Lenders with respect to all or any portion of any Initial Lender's commitments in respect of the Credit Facilities until the initial funding of the Credit Facilities and (iii) unless you otherwise agree in writing, each Initial Lender shall retain exclusive control over all rights and obligations with respect to its commitments in respect of the Credit Facilities, including all rights with respect to consents, modifications, supplements, waivers and amendments, until the Closing Date has occurred.

Without limiting your obligations to assist with syndication efforts as set forth herein, it is understood that the Initial Lenders' commitments hereunder are not conditioned upon the syndication of, or receipt of commitments in respect of, the Credit Facilities and in no event shall the commencement or successful completion of syndication of the Credit Facilities constitute a condition to the availability of the Credit Facilities on the Closing Date. The Lead Arranger may commence syndication efforts promptly upon the execution of this Commitment Letter and as part of their syndication efforts, it is their intent to have Lenders commit to the Credit Facilities prior to the Closing Date (subject to the limitations set forth in the preceding paragraph). Until the earlier of Successful Syndication (as defined in the Fee Letter) and the day that is 90 days following the Closing Date, you agree actively to assist (and use commercially reasonable efforts to cause Prism to assist) the Lead Arranger in completing a timely syndication that is reasonably satisfactory to us and you. Such assistance shall include, without limitation, (a) your using commercially reasonable efforts to ensure that any syndication efforts benefit materially from your existing lending and investment banking relationships and, to the extent practical and appropriate, Prism's existing lending and investment banking relationships, (b) direct contact between senior management, certain representatives and certain advisors of you, on the one hand, and the proposed Lenders, on the other hand, (and your using commercially reasonable efforts to ensure such contact between senior management of Prism, on the one hand, and the proposed Lenders, on the other hand), in all such cases at times mutually agreed upon, (c) your assistance (including the use of commercially reasonable efforts to cause Prism to assist) in the preparation and delivery, prior to the date that is 15 consecutive business days prior to the Closing Date ending on the third business day prior to the Closing Date of the Information Materials (as defined below) and other customary offering and marketing materials to be used in connection with the syndication, (d) using your commercially reasonable efforts to procure, at your expense, prior to the date that is 15 consecutive business days prior to the Closing Date ending on the third business day prior to the Closing Date, ratings for the Credit Facilities and the Unsecured Notes from each of Standard & Poor's Ratings Services ("**S&P**") and Moody's Investors Service, Inc. ("**Moody's**"), and a public corporate credit rating and a public corporate family rating in respect of the Borrower after giving effect to the Transactions from each of S&P and Moody's, respectively, (e) the hosting, with the Lead Arranger, of a reasonable number of meetings to be mutually agreed upon of prospective Lenders at times and locations to be mutually agreed upon (and your using commercially reasonable efforts to cause the officers of Prism to be available for such meetings), (f) your using commercially reasonable efforts to provide prior to the date that is (i) 15 consecutive business days prior to the Closing Date ending on the third business day prior to the Closing Date, customary pro forma financial statements of the Borrower after giving effect to the Transactions (but excluding the impacts of any purchase accounting adjustments) and (ii) 15 consecutive business days prior to the Closing Date ending on the third business day prior to the Closing Date, customary forecasts of financial statements of the Borrower for each quarter for the first twenty four months following the Closing Date and for each year commencing with the first fiscal year following the Closing Date for the term of the Credit Facilities and (g) at any time prior to the earlier of Successful Syndication (as defined in the Fee Letter) or 90 days following the Closing Date, ensuring (or, in the case of Prism, your using commercially reasonable efforts to ensure) that there are no competing issues, offerings, placements or arrangements of debt securities or commercial bank or other credit facilities by or on behalf of you, Prism or any of your or its respective subsidiaries being offered, placed or arranged (other than the Unsecured Notes or debt securities issued in lieu of the Unsecured Notes) without the consent of the Lead Arranger, if such issuance, offering, placement or arrangement would materially impair the primary syndication of the Credit Facilities. Notwithstanding anything to the contrary contained in this Commitment Letter or the Fee Letter or any other letter agreement or undertaking concerning the financing of the Transactions to the contrary, your obligations to assist in syndication efforts as provided herein (including the obtaining of the ratings referenced above) shall not constitute a condition to the commitments hereunder or the funding of the Credit Facilities on the Closing Date.

The Lead Arranger, in its capacities as such, will manage, in consultation with you, all aspects of any syndication of the Credit Facilities, including decisions as to the selection of institutions (which, in the case of the Revolving Facility, shall be reasonably acceptable to you (your consent not to be unreasonably withheld or delayed)) to be approached and when they will be approached, when their commitments will be accepted, which institutions will participate (subject to your consent rights set forth in the second preceding paragraph and excluding Disqualified Lenders), the allocation of the commitments among the Lenders and the amount and distribution of fees among the Lenders. To assist the Lead Arranger in its syndication efforts, you agree to promptly prepare and provide (and to use commercially reasonable efforts to cause Prism to provide) to us all customary information with respect to you, Prism and each of your and its respective subsidiaries and the Transactions, including all financial information and projections prepared by you (including financial estimates, financial models, forecasts and other forward-looking information, the "**Projections**"), as the Lead Arranger may reasonably request in connection with the structuring, arrangement and syndication of the Credit Facilities. For the avoidance of doubt, you will not be required to provide any information to the extent that the provision thereof would violate any law, rule or regulation, or any obligation of confidentiality binding on you, Prism or your or its respective affiliates; *provided* that you shall use commercially reasonable efforts to obtain the relevant consents under such obligations of confidentiality to allow for the provision of such information.

You hereby acknowledge that (a) the Lead Arranger will make available Information (as defined below), Projections and other offering and marketing material and presentations, including confidential information memoranda to be used in connection with the syndication of the Credit Facilities (collectively, the “**Information Memorandum**”) (such Information, Projections, other offering and marketing material and the Information Memorandum, collectively, with the Term Sheets, the “**Information Materials**”) on a confidential basis to the proposed syndicate of Lenders by posting the Information Materials on Intralinks, Debt X, SyndTrak Online or by similar electronic means and (b) certain of the Lenders may be “public side” Lenders (i.e. Lenders that do not wish to receive material non-public information (“**MNPI**”) with respect to you, your affiliates, Prism or your or its respective securities and who may be engaged in investment and other market related activities with respect to you, Prism or your or its respective securities) (each, a “**Public Sider**” and each Lender that is not a Public Sider, a “**Private Sider**”). You will be solely responsible for the contents of the Information Materials and each of the Commitment Parties shall be entitled to use and rely upon the information contained therein without responsibility for independent verification thereof.

At the request of the Lead Arranger, you agree to assist (and to use commercially reasonable efforts to cause Prism to assist) us in preparing an additional version of the Information Materials to be used in connection with the syndication of the Credit Facilities that consists exclusively of information that is publicly available and/or does not include MNPI with respect to you, Prism or any of your or its respective subsidiaries for the purpose of United States federal and state securities laws to be used by Public Siders. It is understood that in connection with your assistance described above, customary authorization letters will be included in any Information Materials that authorize the distribution thereof to prospective Lenders, represent that the additional version of the Information Materials does not include any MNPI and exculpate you, Prism and us with respect to any liability related to the use of the contents of such Information Materials or related offering and marketing materials by the recipients thereof. Before distribution of any Information Materials, you agree to use commercially reasonable efforts to identify that portion of the Information Materials that may be distributed to the Public Siders as “Public Information”, which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof. By marking Information Materials as “PUBLIC”, you shall be deemed to have authorized the Commitment Parties and the proposed Lenders to treat such Information Materials as not containing any MNPI (it being understood that you shall not be under any obligation to mark the Information Materials “PUBLIC”).

You acknowledge and agree that the following documents, without limitation, may be distributed to both Private Siders and Public Siders, unless you advise the Lead Arranger in writing (including by email) within a reasonable time prior to their intended distribution that such materials should only be distributed to Private Siders: (a) administrative materials prepared by the Lead Arranger for prospective Lenders (such as a lender meeting invitation, bank allocation, if any, and funding and closing memoranda), (b) term sheets and notification of changes in the Credit Facilities’ terms and conditions, (c) drafts and final versions of the Facilities Documentation and (d) publicly filed financial statements of you and your subsidiaries and financial statements of Prism and its subsidiaries of a type that would be publicly filed if Prism was a public reporting company. If you advise us in writing (including by email), within a reasonable period of time prior to dissemination, that any of the foregoing should be distributed only to Private Siders, then Public Siders will not receive such materials without your consent.

4. Information.

You hereby represent and warrant that (with respect to Information and Projections relating to Prism and its subsidiaries, to your knowledge) (a) all material written information and written data, other than the Projections and other than information of a general economic or industry specific nature (the "**Information**"), that has been or will be made available to any Commitment Party, directly or indirectly, by you or by any of your representatives on your behalf in connection with the transactions contemplated hereby, when taken as a whole, is or will be, when furnished, correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (giving effect to all supplements and updates thereto) and (b) the Projections contained in the Information Memorandum will be prepared in good faith based upon assumptions that are believed by you to be reasonable at the time such Projections are so furnished; it being understood that the Projections are as to future events and are not to be viewed as facts, the Projections are subject to significant uncertainties and contingencies, many of which are beyond your control, that no assurance can be given that any particular Projections will be realized and that actual results during the period or periods covered by any such Projections may differ significantly from the projected results and such differences may be material. You agree that, if at any time prior to the earlier of Successful Syndication (as defined in the Fee Letter) or 90 days following the Closing Date, you become aware that any of the representations and warranties in the preceding sentence would be incorrect in any material respect if the Information and the Projections contained in the Information Memorandum were being furnished, and such representations were being made, at such time, then you will (or, prior to the Closing Date, with respect to the Information and such Projections relating to Prism, will use commercially reasonable efforts to) promptly supplement the Information and such Projections such that (with respect to Information and Projections relating to Prism and its subsidiaries, to your knowledge) such representations and warranties are correct in all material respects under those circumstances. In arranging and syndicating the Credit Facilities, each of the Commitment Parties will be entitled to use and rely primarily on the Information and the Projections contained in the Information Memorandum without responsibility for independent verification thereof or for the accuracy or completeness of the Information or the Projections.

5. Fees.

As consideration for the commitments of the Initial Lenders hereunder and for the agreement of the Lead Arranger to perform the services described herein, you agree to pay (or cause to be paid) the fees set forth in the Term Sheets and in the Fee Letter dated the date hereof and delivered herewith with respect to the Credit Facilities (the "**Fee Letter**"). Once paid, such fees shall not be refundable except as otherwise agreed in writing.

6. Conditions.

The commitments of the Initial Lenders hereunder to fund the Credit Facilities on the Closing Date and the agreements of the Lead Arranger to perform the services described herein are subject solely to (a) the conditions set forth in the sections entitled “Conditions to All Borrowings” in Exhibit B hereto and Exhibit C hereto and (b) the conditions set forth in Exhibit D hereto, upon satisfaction (or waiver by all Commitment Parties) of such conditions, the initial funding of the Credit Facilities shall occur.

Notwithstanding anything in this Commitment Letter (including each of the exhibits attached hereto), the Fee Letter, the Facilities Documentation or any other letter agreement or other undertaking concerning the financing of the Transactions to the contrary, (i) the only representations relating to you, the Borrower, the Guarantors, Prism, your and their respective subsidiaries and your and their respective businesses the accuracy of which shall be a condition to the availability and funding of the Credit Facilities on the Closing Date shall be (A) such of the representations made by Prism with respect to Prism in the Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that you or the Borrower have the right to terminate your or its obligations under the Acquisition Agreement as a result of a breach of such representations in the Acquisition Agreement (to such extent, the “**Specified Acquisition Agreement Representations**”) and (B) the Specified Representations (as defined below) made by you and the Borrower in the Facilities Documentation and (ii) the terms of the Facilities Documentation shall be in a form such that they do not impair the availability or funding of the Credit Facilities on the Closing Date if the conditions set forth in the sections entitled “Conditions to All Borrowings” in Exhibit B and Exhibit C hereto and the conditions set forth in Exhibit D hereto are satisfied (it being understood that, to the extent any security interest in any Collateral (as defined in the Senior Term Sheet) is not or cannot be provided and/or perfected on the Closing Date (other than the pledge and perfection of the security interest in the equity interests of the Borrower and each of its material direct wholly-owned domestic restricted subsidiaries and other assets pursuant to which a lien may be perfected by the filing of a financing statement under the Uniform Commercial Code) after your use of commercially reasonable efforts to do so or without undue burden or expense, then the provision and/or perfection of a security interest in such Collateral shall not constitute a condition precedent to the availability of the Credit Facilities on the Closing Date, but instead shall be required to be delivered after the Closing Date pursuant to arrangements and timing to be mutually agreed by the Senior Administrative Agent and the Borrower acting reasonably. For purposes hereof, “**Specified Representations**” means the representations and warranties of the Borrower and the Guarantors (after giving effect to the Acquisition) set forth in the Facilities Documentation relating to organizational status, power and authority, due authorization, execution and delivery, enforceability and no conflicts with or consent under material law or charter documents, in each case, related to, the incurrence of the Loans, the provision of the Guarantees and the granting of security interests in the Collateral to secure the Credit Facilities; solvency as of the Closing Date (after giving effect to the Transactions) of the Borrower and its subsidiaries on a consolidated basis; Federal Reserve margin regulations; the Investment Company Act; anti-terrorism laws and PATRIOT Act; subject to the parenthetical in the immediately preceding sentence, creation, validity and perfection of security interests in the Collateral; and the status of the Senior Secured Credit Facilities and the guaranties thereof as senior debt. This paragraph, and the provisions herein, shall be referred to as the “**Certain Funds Provisions**”.

7. Indemnity.

To induce the Commitment Parties to enter into this Commitment Letter and the Fee Letter and to proceed with the documentation of the Credit Facilities, you agree (a) to indemnify and hold harmless each Commitment Party, their respective affiliates and the respective officers, directors, employees, agents, advisors and other representatives of each of the foregoing (each, an “**Indemnified Person**”), from and against any and all losses, claims, damages and liabilities of any kind or nature and reasonable and documented or invoiced out-of-pocket fees and expenses, joint or several, to which any such Indemnified Person may become subject to the extent arising out of, resulting from or in connection with, this Commitment Letter (including the Term Sheets), the Fee Letter, the Transactions or any related transaction contemplated hereby, the Credit Facilities or any use of the proceeds thereof or any claim, litigation, investigation or proceeding (including any inquiry or investigation) relating to any of the foregoing (any of the foregoing, a “**Proceeding**”), regardless of whether any such Indemnified Person is a party thereto, whether or not such Proceedings are brought by you, Prism, your or Prism’s equity holders, affiliates, creditors or any other third person, and to reimburse each such Indemnified Person upon demand for any reasonable and documented or invoiced out-of-pocket legal expenses of one firm of counsel for all such Indemnified Persons, taken as a whole and, if necessary, of a single local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all such Indemnified Persons, taken as a whole, and, solely in the case of a conflict of interest, one additional counsel in each applicable material jurisdiction to the affected Indemnified Persons) or other reasonable and documented or invoiced out-of-pocket fees and expenses incurred in connection with investigating or defending any of the foregoing; *provided* that the foregoing indemnity will not, as to any Indemnified Person, apply to losses, claims, damages, liabilities or related expenses to the extent that they have resulted from (i) the willful misconduct, bad faith or gross negligence of such Indemnified Person or any of such Indemnified Person’s controlled affiliates or any of its or their respective officers, directors, employees, agents, advisors or other representatives, in each case who are involved in or aware of the Transactions (as determined by a court of competent jurisdiction in a final and non-appealable decision), (ii) a material breach of the obligations of such Indemnified Person or any of such Indemnified Person’s affiliates under this Commitment Letter, the Term Sheets, the Fee Letter or the Facilities Documentation or (iii) disputes between and among Indemnified Persons to the extent such disputes do not arise from any act or omission of you, Prism or any of your or Prism’s affiliates (other than claims against an Indemnified Person acting in its capacity as an agent or arranger or similar role hereunder or under the Credit Facilities unless such claims arise from the gross negligence, bad faith or willful misconduct of such Indemnified Person) and (b) to the extent that the Closing Date occurs, to reimburse each Commitment Party from time to time, upon presentation of a summary statement, for all reasonable and documented or invoiced out-of-pocket expenses (including but not limited to expenses of each Commitment Party’s consultants’ fees (to the extent any such consultant has been retained with your prior written consent (such consent not to be unreasonably withheld or delayed)), syndication expenses, travel expenses and reasonable fees, disbursements and other charges of a single counsel to the Commitment Parties identified in the Term Sheets and of a single local counsel to the Commitment Parties in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and of such other counsel retained with your prior written consent (such consent not to be unreasonably withheld or delayed)), in each case incurred in connection with the Credit Facilities and the preparation, negotiation and enforcement of this Commitment Letter, the Fee Letter, the Facilities Documentation and any security arrangements in connection therewith (collectively, the “**Expenses**”). You acknowledge that we may receive a benefit, including without limitation, a discount, credit or other accommodation, from any of such counsel based on the fees such counsel may receive on account of their relationship with us including, without limitation, fees paid pursuant hereto. The foregoing provisions in this paragraph shall be superseded in each case, to the extent covered thereby, by the applicable provisions contained in the Facilities Documentation upon execution thereof and thereafter shall have no further force and effect.

Notwithstanding any other provision of this Commitment Letter, (i) no Indemnified Person shall be liable for any damages arising from the use by others of information or other materials obtained through internet, electronic, telecommunications or other information transmission systems, except to the extent that such damages have resulted from the willful misconduct or gross negligence of such Indemnified Person or any of such Indemnified Person's controlled affiliates or any of its or their respective officers, directors, employees, agents, advisors or other representatives, in each case who are involved in or aware of the Transactions as determined by a final, non-appealable judgment of a court of competent jurisdiction and (ii) without in any way limiting the indemnification obligations set forth above, none of us, you, Prism or any Indemnified Person shall be liable for any indirect, special, punitive or consequential damages (including, without limitation, any loss of profits, business or anticipated savings) in connection with this Commitment Letter, the Fee Letter, the Transactions (including the Credit Facilities and the use of proceeds thereunder), or with respect to any activities related to the Credit Facilities, including the preparation of this Commitment Letter, the Fee Letter and the Facilities Documentation.

You shall not be liable for any settlement of any Proceeding effected without your written consent (which consent shall not be unreasonably withheld, conditioned or delayed), but if settled with your written consent or if there is a final and non-appealable judgment by a court of competent jurisdiction for the plaintiff in any such Proceeding, in each case, you agree to indemnify and hold harmless each Indemnified Person from and against any and all losses, claims, damages, liabilities and expenses by reason of such settlement or judgment in accordance with and to the extent provided in the other provisions of this Section 7.

You shall not, without the prior written consent of any Indemnified Person (which consent shall not be unreasonably withheld or delayed), effect any settlement of any pending or threatened proceedings in respect of which indemnity could have been sought hereunder by such Indemnified Person unless such settlement (i) includes an unconditional release of such Indemnified Person in form and substance reasonably satisfactory to such Indemnified Person from all liability or claims that are the subject matter of such proceedings and (ii) does not include any statement as to or any admission of fault, culpability, wrong doing or a failure to act by or on behalf of any Indemnified Person.

8. Sharing of Information, Absence of Fiduciary Relationships, Affiliate Activities.

You acknowledge that the Commitment Parties and their affiliates may be providing debt financing, equity capital or other services (including, without limitation, financial advisory services) to other persons in respect of which you, Prism and your and its respective affiliates may have conflicting interests regarding the transactions described herein and otherwise. None of the Commitment Parties or their affiliates will use confidential information obtained from you by virtue of the transactions contemplated by this Commitment Letter or their other relationships with you in connection with the performance by them or their affiliates of services for other persons, and none of the Commitment Parties or their affiliates will furnish any such information to other persons, except to the extent permitted below. You also acknowledge that none of the Commitment Parties or their affiliates has any obligation to use in connection with the transactions contemplated by this Commitment Letter, or to furnish to you, confidential information obtained by them from other persons.



As you know, certain of the Commitment Parties may be full service securities firms engaged, either directly or through their affiliates, in various activities, including securities trading, commodities trading, investment management, financing and brokerage activities and financial planning and benefits counseling for both companies and individuals. In the ordinary course of these activities, certain of the Commitment Parties and their respective affiliates may actively engage in commodities trading or trade the debt and equity securities (or related derivative securities) and financial instruments (including bank loans and other obligations) of you, Prism and other companies which may be the subject of the arrangements contemplated by this letter for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities. Certain of the Commitment Parties or their affiliates may also co-invest with, make direct investments in, and invest or co-invest client monies in or with funds or other investment vehicles managed by other parties, and such funds or other investment vehicles may trade or make investments in securities of you, Prism or other companies which may be the subject of the arrangements contemplated by this Commitment Letter or engage in commodities trading with any thereof.

The Commitment Parties and their respective affiliates may have economic interests that conflict with those of you or Prism. You agree that the Commitment Parties will act under this letter as independent contractors and that nothing in this Commitment Letter or the Fee Letter will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between the Commitment Parties and you, Prism, your and its respective equity holders or your and their respective affiliates. You acknowledge and agree that (i) the transactions contemplated by this Commitment Letter and the Fee Letter are arm's-length commercial transactions between the Commitment Parties and, if applicable, their affiliates, on the one hand, and you, on the other, (ii) in connection therewith and with the process leading to such transaction each Commitment Party and its applicable affiliates (as the case may be) is acting solely as a principal and not as agents or fiduciaries of you, Prism, your and its management, equity holders, creditors, affiliates or any other person, (iii) the Commitment Parties and their applicable affiliates (as the case may be) have not assumed an advisory or fiduciary responsibility or any other obligation in favor of you or your affiliates with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether the Commitment Parties or any of their respective affiliates have advised or are currently advising you or Prism on other matters) except the obligations expressly set forth in this Commitment Letter and the Fee Letter and (iv) you have consulted your own legal and financial advisors to the extent you deemed appropriate. You further acknowledge and agree that you are responsible for making your own independent judgment with respect to such transactions and the process leading thereto. You agree that you will not claim that the Commitment Parties or their applicable affiliates, as the case may be, have rendered advisory services of any nature or respect, or owe a fiduciary or similar duty to you or your affiliates, in connection with such transaction or the process leading thereto.

9. Confidentiality.

You agree that you will not disclose, directly or indirectly, the Fee Letter and the contents thereof or, prior to your acceptance hereof, this Commitment Letter, the Term Sheets, the other exhibits and attachments hereto and the contents of each thereof, or the activities of any Commitment Party pursuant hereto or thereto, to any person or entity without prior written approval of the Lead Arranger (such approval not to be unreasonably withheld or delayed), except (a) to your officers, directors, agents, employees, attorneys, accountants, advisors, controlling persons or equity holders on a confidential and need-to-know basis, (b) if the Commitment Parties consent in writing to such proposed disclosure or (c) pursuant to the order of any court or administrative agency in any pending legal, judicial or administrative proceeding, or otherwise as required by applicable law or compulsory legal process or to the extent requested or required by governmental and/or regulatory authorities, in each case based on the reasonable advice of your legal counsel (in which case you agree, to the extent practicable and not prohibited by applicable law, to inform us promptly thereof prior to disclosure); *provided* that (i) you may disclose this Commitment Letter (but not the Fee Letter) and the contents hereof to the holders of Prism's capital stock, Prism, its subsidiaries and their respective officers, directors, agents, employees, attorneys, accountants or advisors, on a confidential and need-to-know basis, (ii) you may disclose the Commitment Letter and its contents (but not the Fee Letter) in any syndication or other marketing materials in connection with the Credit Facilities or in connection with any public filing relating to the Transactions, (iii) you may disclose the Term Sheets and the contents thereof, to potential Lenders and to rating agencies in connection with obtaining ratings for the Borrower and the Credit Facilities, (iv) you may disclose the aggregate fee amount contained in the Fee Letter as part of Projections, pro forma information or a generic disclosure of aggregate sources and uses related to fee amounts related to the Transactions to the extent customary or required in offering and marketing materials for the Credit Facilities or in any public filing relating to the Transactions and (v) to the extent portions thereof have been redacted in a manner to be reasonably agreed by us (including the portions thereof addressing fees payable to the Commitments Parties and/or the Lenders, marketing flex, caps and the securities demands), you may disclose the Fee Letter and the contents thereof to the holders of Prism's capital stock, Prism, its subsidiaries and their respective officers, directors, agents, employees, attorneys, accountants or advisors on a confidential and need-to-know basis.

The Commitment Parties and their affiliates will use all confidential information provided to them or such affiliates by or on behalf of you hereunder or in connection with the Acquisition and the related Transactions solely for the purpose of providing the services which are the subject of this Commitment Letter and shall treat confidentially all such information and shall not publish, disclose or otherwise divulge, such information; *provided* that nothing herein shall prevent the Commitment Parties and their affiliates from disclosing any such information (a) pursuant to the order of any court or administrative agency or in any pending legal, judicial or administrative proceeding, or otherwise as required by applicable law or compulsory legal process or to the extent required by governmental and/or regulatory authorities, in each case, based on the advice of counsel (in which case the Commitment Parties agree (except with respect to any audit or examination conducted by bank accountants or regulatory authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure), (b) upon the request or demand of any regulatory authority having jurisdiction over the Commitment Parties or any of their respective affiliates (in which case the Commitment Parties agree (except with respect to any audit or examination conducted by bank accountants or any regulatory authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable law, to inform you promptly thereof prior to disclosure), (c) to the extent that such information becomes publicly available other than by reason of improper disclosure by the Commitment Parties or any of their affiliates or any related parties thereto in violation of any confidentiality obligations owing to you, Prism or any of your or its respective affiliates (including those set forth in this paragraph), (d) to the extent that such information is or was received by the Commitment Parties from a third party that is not, to the Commitment Parties' knowledge, subject to contractual or fiduciary confidentiality obligations owing to you, Prism or any of your or its respective affiliates or related parties, (e) to the extent that such information is independently developed by the Commitment Parties, (f) to the Commitment Parties' affiliates and to its and their respective directors, officers, employees, legal counsel, independent auditors, professionals and other experts or agents who need to know such information in connection with the Transactions and who are informed of the confidential nature of such information and are or have been advised of their obligation to keep information of this type confidential, (g) to potential or prospective Lenders, participants or assignees and to any direct or indirect contractual counterparty to any swap or derivative transaction relating to you or any of your subsidiaries, in each case who agree to be bound by the terms of this paragraph (or language substantially similar to this paragraph), (h) for purposes of establishing a "due diligence" defense, (i) to ratings agencies, in connection with obtaining the ratings described above in this letter, in consultation and coordination with you or (j) to the extent you shall have consented to such disclosure in writing; *provided* that the disclosure of any such information to any Lenders or prospective Lenders or participants or prospective participants referred to above shall be made subject to the acknowledgment and acceptance by such Lender or prospective Lender or participant or prospective participant that such information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to you and each Commitment Party, including, without limitation, as agreed in any Information Materials or other marketing materials) in accordance with the standard syndication processes of such Commitment Party or customary market standards for dissemination of such type of information. The Commitment Parties' and their affiliates', if any, obligations under this paragraph shall terminate automatically and be superseded by the confidentiality provisions in the definitive documentation relating to the Credit Facilities upon the initial funding thereunder. The provisions of this paragraph shall terminate on the second anniversary of the date hereof.

10. Miscellaneous.

This Commitment Letter and the commitments hereunder shall not be assignable by any party hereto (other than by (i) subject to the limitations set forth in paragraph 3 above, an Initial Lender to any Lender or (ii) you, on or after the Closing Date, to the Borrower) without the prior written consent of each other party hereto (such consent not to be unreasonably withheld or delayed) (and any attempted assignment without such consent shall be null and void). This Commitment Letter and the commitments hereunder are intended to be solely for the benefit of the parties hereto (and Indemnified Persons) and are not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto (and Indemnified Persons to the extent expressly set forth herein). Subject to the limitations set forth in Section 3 above, the Commitment Parties reserve the right to employ the services of their affiliates or branches in providing services contemplated hereby and to allocate, in whole or in part, to their affiliates or branches certain fees payable to the Commitment Parties in such manner as the Commitment Parties and their affiliates or branches may agree in their sole discretion and, to the extent so employed, such affiliates and branches shall be entitled to the benefits and protections afforded to, and subject to the provisions governing the conduct of, the Commitment Parties hereunder. This Commitment Letter may not be amended or any provision hereof waived or modified except by an instrument in writing signed by each of the Commitment Parties and you. This Commitment Letter may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one agreement. Delivery of an executed counterpart of a signature page of this Commitment Letter by facsimile transmission or other electronic transmission (i.e., a “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart hereof. This Commitment Letter (including the exhibits hereto), together with the Fee Letter dated the date hereof, (i) are the only agreements that have been entered into among the parties hereto with respect to the Credit Facilities and (ii) supersede all prior understandings, whether written or oral, among us with respect to the Credit Facilities and sets forth the entire understanding of the parties hereto with respect thereto. THIS COMMITMENT LETTER AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS COMMITMENT LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; *provided, however*, that the interpretation of any provision of any Specified Acquisition Agreement referred to in this Commitment Letter including the determination of the accuracy of any Specified Acquisition Agreement Representation shall be governed by, and construed in accordance with, English law, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

Each of the parties hereto agrees that (i) this Commitment Letter is a binding and enforceable agreement with respect to the subject matter contained herein, notwithstanding that the availability and funding of the Credit Facilities is subject to conditions precedent, including the good faith negotiation of the Facilities Documentation by the parties hereto in a manner consistent with this Commitment Letter and (ii) the Fee Letter is a legally valid and binding agreement of the parties thereto with respect to the subject matter set forth therein.

EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY OR ON BEHALF OF ANY PARTY RELATED TO OR ARISING OUT OF THIS COMMITMENT LETTER OR THE FEE LETTER OR THE PERFORMANCE OF SERVICES HEREUNDER OR THEREUNDER.

Each of the parties hereto hereby irrevocably and unconditionally (a) submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York County, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Commitment Letter, the Fee Letter or the transactions contemplated hereby or thereby, or for recognition or enforcement of any judgment, and agrees that all claims in respect of any such action or proceeding shall only be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court, and further agrees to not commence any such suit, action or proceeding other than in such New York State court or, to the extent permitted by law, in such Federal court, (b) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Commitment Letter, the Fee Letter or the transactions contemplated hereby in any New York State or in any such Federal court, (c) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court and (d) agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties hereto agrees that service of process, summons, notice or document by registered mail addressed to you or us at the addresses set forth above shall be effective service of process for any suit, action or proceeding brought in any such court.

We hereby notify you that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "**PATRIOT Act**"), each of us and each of the Lenders may be required to obtain, verify and record information that identifies the Borrower and the Guarantors, which information may include their names, addresses, tax identification numbers and other information that will allow each of us and the Lenders to identify the Borrower and the Guarantors in accordance with the PATRIOT Act. This notice is given in accordance with the requirements of the PATRIOT Act and is effective for each of us and the Lenders.

The indemnification, compensation (if applicable), reimbursement (if applicable), jurisdiction, governing law, venue, waiver of jury trial, syndication and confidentiality provisions contained herein and in the Fee Letter shall remain in full force and effect regardless of whether Facilities Documentation shall be executed and delivered and notwithstanding the termination or expiration of this Commitment Letter or the Initial Lenders' commitments hereunder; *provided* that your obligations under this Commitment Letter (other than your obligations with respect to (a) assistance to be provided in connection with the syndication thereof (including supplementing and/or correcting Information and Projections) prior to the Closing Date and (b) confidentiality of the Fee Letter and the contents thereof) shall automatically terminate and be superseded by the provisions of the Facilities Documentation to the extent covered thereby upon the initial funding thereunder, and you shall automatically be released from all liability in connection therewith at such time. You may terminate this Commitment Letter and/or the Initial Lenders' commitments with respect to the Credit Facilities (or portion thereof) hereunder at any time subject to the provisions of the preceding sentence.

Section headings used herein are for convenience of reference only and are not to affect the construction of, or to be taken into consideration in interpreting, this Commitment Letter.

If the foregoing correctly sets forth our agreement, please indicate your acceptance of the terms of this Commitment Letter and of the Fee Letter by returning to the Commitment Parties, executed counterparts hereof and of the Fee Letter not later than 5:00 p.m., New York City time, on December 20, 2011 (together with an executed copy of the Acquisition Agreement). The Initial Lenders' respective commitments and the obligations of the Lead Arranger hereunder will expire at such time in the event that the Commitment Parties have not received such executed counterparts in accordance with the immediately preceding sentence. If you do so execute and deliver to us this Commitment Letter and the Fee Letter, we agree to hold our commitment available for you until the earliest of (i) after execution of the Acquisition Agreement and prior to the consummation of the Transactions, the termination of the Acquisition Agreement in accordance with its terms, (ii) the consummation of the Acquisition with or without the funding of the Credit Facilities and (iii) 5:00 p.m., New York City time, on April 30, 2012 (such earliest time, the "**Expiration Date**"). Upon the occurrence of any of the events referred to in the preceding sentence, this Commitment Letter and the commitments of each of the Commitment Parties hereunder and the agreement of the Lead Arranger to provide the services described herein shall automatically terminate unless the Commitment Parties shall, in their discretion, agree to an extension in writing.

[Remainder of this page intentionally left blank]

We are pleased to have been given the opportunity to assist you in connection with the financing for the Transactions.

Very truly yours,

CITIGROUP GLOBAL MARKETS INC.

By: /s/ Caesar Wyszomirski  
Name: Caesar Wyszomirski  
Title: Director

[Signature Page to Commitment Letter]

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MORGAN STANLEY SENIOR FUNDING, INC.

By: /s/ Paul Fossati

Name: Paul Fossati

Title: Vice President

[Signature Page to Commitment Letter]

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ROYAL BANK OF CANADA

By: /s/ James S. Wolfe

Name: James S. Wolfe

Title: Managing Director  
Head of US Leveraged Finance

[Signature Page to Commitment Letter]

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Accepted and agreed to as of  
the date first above written:

PRESTIGE BRANDS HOLDINGS, INC.

By: /s/ Ron Lombardi

Name: Ron Lombardi

Title: CFO

[Signature Page to Commitment Letter]

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Project Prism  
Transaction Description

Capitalized terms used but not defined in this Exhibit A shall have the meanings set forth in the other Exhibits to the Commitment Letter to which this Exhibit A is attached (the “**Commitment Letter**”) or in the Commitment Letter. In the case of any such capitalized term that is subject to multiple and differing definitions, the appropriate meaning thereof in this Exhibit A shall be determined by reference to the context in which it is used.

Prestige Brands Holdings, Inc. (“**Holdings**”), a company organized under the laws of the State of Delaware, Prestige Brands, Inc. (the “**Borrower**”), a company organized under the laws of the State of Delaware, and/or one or more of its subsidiaries intend to acquire (the “**Acquisition**”), directly or indirectly, a business previously identified to the Commitment Parties by you as “Prism” (“**Prism**”). In connection with the foregoing, it is intended that the following transactions shall be consummated substantially contemporaneously:

- a) Pursuant to a business sale and purchase agreement, dated as of the date hereof, in relation to certain over-the-counter consumer healthcare brands and supporting business (together with all exhibits, schedules, and disclosure letters thereto, collectively, the “**Acquisition Agreement**”) entered into with Prism’s owners, Holdings (provided that on or prior to the Closing Date, Holdings will either (i) assign its rights and obligations under the Acquisition Agreement to the Borrower or a subsidiary Guarantor or (ii) contribute Prism to the Borrower or a subsidiary Guarantor) will acquire Prism (the “**Acquisition**”) through a sale and purchase transaction in accordance with the terms of the Acquisition Agreement.
- b) The Borrower will (i) obtain the senior secured credit facilities described in Exhibit B to the Commitment Letter (the “**Senior Secured Credit Facilities**”) and (ii) issue up to \$290 million in senior unsecured notes (the “**Unsecured Notes**”) in a Rule 144A offering (with back-end registration), or in the event the Unsecured Notes cannot be issued on the Closing Date or less than \$290 million of Unsecured Notes are issued on the Closing Date, obtain the senior unsecured bridge facility described in Exhibit C to the Commitment Letter (the “**Unsecured Bridge Facility**”) and, together with the Senior Secured Credit Facilities, the “**Credit Facilities**”).
- c) The proceeds of the Credit Facilities (and/or the Unsecured Notes) on the Closing Date will be applied (i) to pay the consideration in connection with the Acquisition, (ii) to pay the fees and expenses incurred in connection with the Transactions (such fees and expenses, the “**Transaction Costs**”) and (iii) to refinance all of the existing indebtedness for borrowed money of the Borrower and its subsidiaries under that certain Credit Agreement (as amended, restated, supplemented or otherwise modified, the “**Existing Credit Agreement**”), dated as March 24, 2010, Prestige Brands, Inc., Prestige Brands Holdings, Inc. the Lenders and Issuers party thereto, Bank of America, N.A., as Administrative Agent, and the other agents party thereto (such refinancing of the Existing Credit Agreement, the “**Refinancing**”) (the amounts set forth in clauses (i) through (iii) above, collectively, the “**Acquisition Costs**”).

The transactions described above (including the payment of Transaction Costs) are collectively referred to herein as the “**Transactions**”.

Project Prism  
Senior Secured Credit Facilities  
Summary of Principal Terms and Conditions<sup>2</sup>

<u>Borrower:</u>	Prestige Brands, Inc. (the “ <b>Borrower</b> ”).
<u>Transactions:</u>	As set forth in Exhibit A to the Commitment Letter.
<u>Administrative Agent and Collateral Agent:</u>	Citi will act as sole administrative agent and sole collateral agent (in such capacities, the “ <b>Administrative Agent</b> ”) for a syndicate of banks, financial institutions and other entities arranged by the Lead Arranger (as defined below) in consultation with the Borrower, and, in the case of the Revolving Facility, reasonably acceptable to the Borrower (excluding any Disqualified Lender) with respect to each of the Senior Secured Credit Facilities (together with the Initial Lenders, the “ <b>Lenders</b> ”), and will perform the duties customarily associated with such roles.
<u>Lead Arranger and Bookrunner:</u>	Citi, MSSF and RBCCM will act as joint lead arrangers and joint bookrunners for the Senior Secured Credit Facilities (collectively, the “ <b>Lead Arranger</b> ”), and will perform the duties customarily associated with such role.
<u>Syndication Agent:</u>	MSSF will act as syndication agent for the Senior Secured Credit Facilities.
<u>Documentation Agent:</u>	RBCCM will act as documentation agent for the Senior Secured Credit Facilities.
<u>Senior Secured Credit Facilities:</u>	(A) A senior secured term loan facility (the “ <b>Term Facility</b> ”) in an aggregate principal amount of \$620 million <i>plus</i> , at the Borrower’s election, an amount sufficient to fund any original issue discount (“ <b>OID</b> ”) or upfront fees required to be funded in connection with (x) the “flex” provisions in the Fee Letter or (y) the issuance of the Unsecured Notes or any other debt securities pursuant to any offering by Holdings or any of its direct or indirect subsidiaries undertaken to finance the Acquisition (the “ <b>Securities</b> ”) (the loans thereunder, the “ <b>Term Loans</b> ”). The Term Loans will be offered with 200 basis points OID or upfront fees on the amount thereof.

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<sup>2</sup> All capitalized terms used but not defined herein shall have the meaning given them in the Commitment Letter to which this Term Sheet is attached, including Exhibit A thereto.

(B) A senior secured revolving credit facility (the “**Revolving Facility**” and, together with the Term Facility, the “**Senior Secured Credit Facilities**”) in an aggregate principal amount equal to \$50 million. Lenders with commitments under the Revolving Facility are collectively referred to as “**Revolving Lenders**” and the loans thereunder, together with (unless the context otherwise requires) the swingline borrowings referred to below, are collectively referred to as “**Revolving Loans**”; and together with the Term Loans, the “**Senior Secured Loans**”. The Revolving Facility will be offered with 100 basis points of upfront fees on the commitments on the Closing Date.

Swingline Loans:

In connection with the Revolving Facility, the Administrative Agent (in such capacity, the “**Swingline Lender**”) will make available to the Borrower a swingline facility under which the Borrower may make short-term borrowings in dollars upon same-day notice (in minimum amounts to be mutually agreed upon and integral multiples to be agreed upon) of up to an amount to be agreed. Except for purposes of calculating the commitment fee described below, any such swingline borrowings will reduce availability under the Revolving Facility on a dollar-for-dollar basis.

Upon notice from the Swingline Lender, the Revolving Lenders will be unconditionally obligated to purchase participations in any swingline loan pro rata based upon their commitments under the Revolving Facility.

If any Revolving Lender becomes a “defaulting Lender”, then the swingline exposure of such defaulting Lender will automatically be reallocated among the non-defaulting Lenders pro rata in accordance with their commitments under the Revolving Facility up to an amount such that the revolving credit exposure of such non-defaulting Lender does not exceed its commitments. In the event such reallocation does not fully cover the exposure of such defaulting Lender, the Swingline Lender may require the Borrower to repay such “uncovered” exposure in respect of the swingline loans and will have no obligation to make swingline loans to the extent such swingline loans would exceed the commitments of the non-defaulting Revolving Lenders.

## Incremental Facilities:

The Senior Secured Credit Facilities will permit the Borrower to add one or more incremental term loan facilities to the Senior Secured Credit Facilities (each, an “**Incremental Term Facility**”) and/or increase commitments under the Revolving Facility (any such increase, an “**Incremental Revolving Increase**”) and/or add one or more incremental revolving credit facility tranches (each an “**Incremental Revolving Facility**”); the Incremental Term Facilities, the Incremental Revolving Increases and the Incremental Revolving Facilities are collectively referred to as “**Incremental Facilities**”) in an aggregate amount of up to the greater of (a)(i) \$220 million plus (ii) all voluntary prepayments and commitment reductions of the Senior Secured Credit Facilities prior to such time minus (iii) amounts incurred pursuant to clause (iii) of the third paragraph under Negative Covenants and (b) the amount that would not, on a pro forma basis after giving effect to the incurrence of any such Incremental Facility (assuming (x) the full amount thereof is drawn and the commitments thereunder are fully utilized and (y) net cash proceeds of any loans under any Incremental Facility are not netted from indebtedness for purposes of calculating the Consolidated First Lien Net Leverage Ratio (as defined below)) and after giving effect to any acquisition consummated in connection therewith and all other appropriate pro forma adjustments, cause the Consolidated First Lien Net Leverage Ratio (to be defined in a manner consistent with the Documentation Principles (as defined below)) to exceed 4.00:1.00, subject solely to the following terms and conditions: (i) the Incremental Facilities will have the same guarantees as, and be secured on a *pari passu* basis by the same collateral securing, the Senior Secured Credit Facilities, (ii) the representations and warranties in the Credit Facilities Documentation shall be true and correct in all material respects on and as of the date of the incurrence of the Incremental Facilities (although any representations and warranties which expressly relate to a given date or period shall be required only to be true and correct in all material respects as of the respective date or for the respective period, as the case may be), subject to customary “Sungard” limitations to the extent the proceeds of any Incremental Facility are being used to finance an acquisition, (iii) no existing Lender will be required to participate in any such Incremental Facility without its consent, (iv) no default or event of default under the Senior Secured Credit Facilities would exist after giving effect thereto, (v) the maturity date of any such Incremental Term Facility or Incremental Revolving Facility shall be no earlier than the maturity date of the Term Facility or the Revolving Facility, respectively, and, in the case of the Incremental Term Facility only, the weighted average life of such Incremental Term Facility shall be not shorter than the then remaining weighted average life of the Term Facility, (vi) in the case of an Incremental Revolving Increase, the maturity date of such Incremental Revolving Increase shall be the same as the maturity date of the Revolving Facility, such Incremental Revolving Increase shall require no scheduled amortization or mandatory commitment reduction prior to the final maturity of the Revolving Facility and the Incremental Revolving Increase shall be on the exact same terms and pursuant to the exact same documentation applicable to the Revolving Facility, (vii) the interest rate margins and (subject to clauses (v) and (vi), as appropriate) amortization schedule applicable to any Incremental Term Facility or Incremental Revolving Facility shall be determined by the Borrower and the lenders thereunder; *provided* that in the event that the interest rate margins for any Incremental Term Facility or Incremental Revolving Facility are higher than the interest rate margins for the Term Loans or the Revolving Facility by more than (in either case) 50 basis points, then the interest rate margins for the Term Loans or Revolving Commitments, as the case may be, shall be increased to the extent necessary so that such interest rate margins are equal to the interest rate margins for such Incremental Term Facility or Incremental Revolving Facility, as the case may be, minus 50 basis points; *provided further* that, in determining the interest rate margins applicable to the Incremental Term Facility and the Term Loans or the Incremental Revolving Facility and the Revolving Facility, (x) customary arrangement or commitment fees payable to the Lead Arranger (or its affiliates) in connection with the Term Loans or the Revolving Facility or to one or more arrangers (or their affiliates) of any Incremental Term Facility or Incremental Revolving Facility shall be excluded, (y) OID and upfront fees paid to the lenders thereunder shall be included (with OID being equated to interest based on assumed four-year life to maturity or, if shorter, the actual weighted average life to maturity) and (z) if the Incremental Facilities include an interest rate floor greater than the applicable interest rate floor under the existing Senior Secured Credit Facilities, such differential between interest rate floors shall be equated to the applicable interest rate margin for purposes of determining whether an increase to the interest rate margin under the existing Senior Secured Credit Facilities shall be required, but only to the extent an increase in the interest rate floor in the existing Senior Secured Credit Facilities would cause an increase in the interest rate then in effect thereunder, and in such case the interest rate floor (but not the interest rate margin) applicable to the existing Senior Secured Credit Facilities shall be increased to the extent of such differential between interest rate floors (all adjustments made pursuant to this clause (vii), the “**MFN Adjustments**”), (viii) any Incremental Term Facility or Incremental Revolving Facility shall be on terms and pursuant to documentation to be determined; *provided* that, to the extent such terms and documentation are not consistent with the Term Facility or the Revolving Facility, as the case may be (except to the extent permitted by clause (v) or (vii) above), they shall be reasonably satisfactory to the Administrative Agent and *provided, further* that (x) in no event shall any Incremental Term Facilities be permitted to be voluntarily or mandatorily prepaid prior to the repayment in full of the Term Loans, unless any such prepayment is accompanied by a ratable prepayment of Term Loans and (y) any Incremental Revolving Facility will be subject to pro rata borrowing, letter of credit participation and prepayment and commitment reduction provisions with the Revolving Facility and any other revolving facility under the Senior Secured Credit Facilities (the “**Revolver Ratability Requirements**”), (ix) each Incremental Facility shall be in such minimum amounts and subject to such notice provisions and other mechanics as are consistent with the Documentation Principles and (x) after giving effect to the incurrence of any Incremental Facilities, the Borrower shall be in pro forma compliance with the Financial Covenants referred to below for the most recently ended fiscal quarter of the Borrower for which financial statements were delivered.



Refinancing Facilities:

The Credit Facilities Documentation will permit the Borrower to refinance loans under the Term Facility (or any Incremental Term Facility) or commitments under the Revolving Facility (or any Incremental Revolving Facility) from time to time, in whole or part, with one or more new term facilities (each, a “**Refinancing Term Facility**”) or new revolving credit facilities (each, a “**Refinancing Revolving Facility**”); the Refinancing Term Facilities and the Refinancing Revolving Facilities are collectively referred to as “**Refinancing Facilities**”), respectively, under the Credit Facilities Documentation with the consent of the Borrower, the Administrative Agent and the institutions providing such Refinancing Term Facility or Refinancing Revolving Facility or with one or more additional series of senior, senior subordinated or subordinated unsecured notes or loans or senior secured notes or loans that will be secured by the Collateral on a *pari passu* or junior basis with the Senior Secured Credit Facilities (and such notes or loans, “**Refinancing Notes**”), subject solely to the following terms and conditions: (i) customary intercreditor agreements are entered into, (ii) any Refinancing Term Facility or Refinancing Notes does not mature prior to the maturity date of, or have a shorter weighted average life than, loans under the Term Facility being refinanced, (iii) any Refinancing Revolving Facility does not mature (or require commitment reductions or amortization) prior to the maturity date of the revolving commitments being refinanced, (iv) none of the Borrower’s restricted subsidiaries is a borrower or guarantor with respect to any Refinancing Facility unless such restricted subsidiary is a Guarantor which shall have previously or substantially concurrently Guaranteed the Borrower Obligations, (v) the other terms and conditions of such Refinancing Term Facility, Refinancing Revolving Facility or Refinancing Notes (excluding pricing, fees, rate floors and optional prepayment or redemption terms) reflect market terms and conditions at the time of incurrence or issuance; *provided* that if any such Refinancing Term Facility, Refinancing Revolving Facility or Refinancing Notes contains any financial maintenance covenants, such covenants shall not be tighter than (or in addition to) those contained in the Credit Facilities Documentation, (vi) delivery of certificates and information consistent with the Documentation Principles, and (vii) the proceeds of such Refinancing Facilities shall be applied, substantially concurrently with the incurrence thereof, to the pro rata prepayment of outstanding loans (and, in the case of the Revolving Facility, pro rata commitment reductions) under the applicable Senior Secured Credit Facility being so refinanced; *provided* that (x) in no event shall Refinancing Term Facilities be permitted to be voluntarily or mandatorily prepaid prior to the repayment in full of the Term Loans, unless any such prepayment is accompanied by a ratable prepayment of Term Loans and (y) any Refinancing Revolving Facility will be subject to the Revolver Ratability Requirements.

Purpose:

- (A) The proceeds of borrowings under the Term Facility will be used by the Borrower on the Closing Date, together with the proceeds from borrowings under the Revolving Facility, the proceeds from the Unsecured Bridge Facility and/or the Unsecured Notes and cash on hand at the Borrower and Prism, solely to pay the Acquisition Costs.

- (B) The letters of credit and proceeds of Revolving Loans (except as set forth below) will be used by the Borrower and its subsidiaries for working capital and other general corporate purposes, including the financing of permitted acquisitions, and, subject to the limitation below under “Availability”, to finance a portion of the Acquisition Costs.

Availability:

- (A) The Term Facility will be available in a single drawing on the Closing Date. Amounts borrowed under the Term Facility that are repaid or prepaid may not be reborrowed.
- (B) The Revolving Facility (exclusive of letter of credit usage) will be made available on and after the Closing Date (i) in an aggregate principal amount up to \$15 million (a) to finance the Transactions and the Acquisition Costs (including to fund OID or upfront fees in connection with the Senior Secured Credit Facilities other than as required to be funded under the flex provisions of the Fee Letter) and (b) for working capital needs, (ii) to fund any or all OID or upfront fees in connection with the Senior Secured Credit Facilities required to be funded under the flex provisions in the Fee Letter or in connection with the issuance of the Unsecured Notes, or any other Securities on the Closing Date and (iii) to backstop, replace or cash collateralize existing letters of credit. Additionally, letters of credit may be issued on the Closing Date in order to, among other things, backstop or replace letters of credit outstanding on the Closing Date under facilities no longer available at Prism or its subsidiaries as of the Closing Date. Otherwise, subject to the terms of the Credit Facilities Documentation, letters of credit and Revolving Loans will be available at any time prior to the final maturity of the Revolving Facility, in minimum principal amounts to be agreed upon. Amounts repaid under the Revolving Facility may be reborrowed.

Interest Rates and Fees:

As set forth on Annex I hereto.

Default Rate:

With respect to overdue principal, the applicable interest rate plus 2.00% per annum, and with respect to any other overdue amount (including overdue interest), the interest rate applicable to ABR loans (as defined in Annex I) plus 2.00% per annum and in each case, shall be payable on demand.



Letters of Credit:

An aggregate amount to be agreed upon of the Revolving Facility will be available to the Borrower for the purpose of issuing letters of credit denominated in dollars. Letters of credit under the Revolving Facility will be issued by the Administrative Agent and/or other Revolving Lenders reasonably acceptable to the Borrower and the Administrative Agent (each an “**Issuing Bank**”). Each letter of credit shall expire not later than the earlier of (a) 12 months after its date of issuance and (b) the fifth business day prior to the final maturity of the Revolving Facility; *provided* that any letter of credit may provide for renewal thereof for additional periods of up to 12 months (which in no event shall extend beyond the date referred to in clause (b) above). The face amount of any outstanding letter of credit (and, without duplication, any unpaid drawing in respect thereof) will reduce availability under the Revolving Facility on a dollar-for-dollar basis.

Drawings under any letter of credit shall be reimbursed by the Borrower (whether with its own funds or with the proceeds of loans under the Revolving Facility) within one business day after notice of such drawing is received by the Borrower from the relevant Issuing Bank. The Revolving Lenders will be irrevocably and unconditionally obligated to acquire participations in each letter of credit, pro rata in accordance with their commitments under the Revolving Facility, and to fund such participations in the event the Borrower does not reimburse an Issuing Bank for drawings within the time period specified above.

If any Revolving Lender becomes a “defaulting Lender”, then the letter of credit exposure of such defaulting Lender will automatically be reallocated among the non-defaulting Lenders pro rata in accordance with their commitments under the Revolving Facility up to an amount such that the revolving credit exposure of such non-defaulting Lender does not exceed its commitments. In the event that such reallocation does not fully cover the exposure of such defaulting Lender, the applicable Issuing Bank may require the Borrower to cash collateralize such “uncovered” exposure in respect of each outstanding letter of credit and will have no obligation to issue new letters of credit, or to extend, renew or amend existing letters of credit to the extent letter of credit exposure would exceed the commitments of the non-defaulting Revolving Lenders, unless such “uncovered” exposure is cash collateralized to the Issuing Bank’s reasonable satisfaction.

Final Maturity and Amortization:

(A) Term Facility

The Term Facility will amortize in equal quarterly installments in aggregate annual amounts equal to 1% of the original principal amount of the Term Facility, with the balance payable on the maturity date thereof. The Term Facility will mature on the date that is seven years after the Closing Date; *provided* that the Credit Facilities Documentation shall provide the right for individual Lenders to agree to extend the maturity date of the outstanding Term Loans upon the request of the Borrower and without the consent of any other Lender (it being understood that each Lender under a tranche of Term Loans that is being extended shall have the opportunity to participate in such extension on the same terms and conditions as each other Lender under such tranche).

(B) Revolving Facility

The Revolving Facility will mature, and lending commitments thereunder will terminate, on the date that is five years after the Closing Date; *provided* that the Credit Facilities Documentation shall provide the right of individual Lenders to agree to extend the maturity of their Revolving Commitments upon the request of the Borrower and without the consent of any other Lender (it being understood that each Revolving Lender under a tranche of Revolving Commitments that is being extended shall have the opportunity to participate in such extension on the same terms and conditions as each other Revolving Lender under such tranche).

Guarantees:

All obligations of the Borrower (the "**Borrower Obligations**") under the Senior Secured Credit Facilities and under any interest rate protection or other swap or hedging arrangements or cash management arrangements entered into with a Lender, the Administrative Agent or any affiliate of a Lender or the Administrative Agent ("**Hedging /Cash Management Arrangements**") will be unconditionally guaranteed jointly and severally on a senior secured basis (the "**Guarantees**") by Holdings and each existing and subsequently acquired or organized direct or indirect wholly-owned domestic restricted subsidiary of the Borrower (the "**Guarantors**"), *provided* that Guarantors shall not include, (a) any domestic subsidiary of a foreign subsidiary, (b) any domestic subsidiary that is a disregarded entity for U.S. federal income tax purposes substantially all of whose assets consist of capital stock and/or indebtedness of one or more foreign subsidiaries and any other assets incidental thereto, (c) unrestricted subsidiaries, (d) captive insurance companies, (e) not-for-profit subsidiaries, (f) special purpose entities, (g) immaterial subsidiaries (defined in a manner to be agreed) and (h) to the extent a guarantee is prohibited or restricted by applicable law whether on the Closing Date or thereafter or contract existing on the Closing Date or, with respect to subsidiaries acquired after the Closing Date, contract existing when such subsidiary was acquired (including any requirement to obtain governmental authority or third party consent) or would result in material adverse tax consequences as reasonably determined by Borrower in consultation with the Administrative Agent .

Notwithstanding the foregoing, subsidiaries may be excluded from the guarantee requirements in circumstances where the Borrower and the Administrative Agent reasonably agree that the cost of providing such a guarantee is excessive in relation to the value afforded thereby.

Security:

Subject to the limitations set forth below in this section and subject to the Certain Funds Provision, the Borrower Obligations, the Guarantees and the Hedging/Cash Management Arrangements will be secured by: (a) perfected pledge of all the capital stock of the Borrower and a perfected pledge of all the capital stock in material wholly-owned restricted subsidiaries directly held by the Borrower or any Guarantor (which pledge, in the case of the capital stock of any foreign subsidiary of a domestic entity or of a domestic entity that is disregarded entity for U.S. federal income tax purposes substantially all of whose assets consist of capital stock and/or indebtedness of one or more foreign subsidiaries and any other assets incidental thereto, shall be limited to 65% of the stock of such foreign subsidiary or such domestic entity, as the case may be) and (b) perfected first priority security interests in, and mortgages on, substantially all tangible and intangible personal property and fee-owned real property of the Borrower and each subsidiary Guarantor (including but not limited to accounts receivable, inventory, equipment, general intangibles (including contract rights), investment property, intellectual property, intercompany notes in excess of an amount to be agreed and proceeds of the foregoing) (the items described in clauses (a) and (b) above, but excluding the Excluded Assets (as defined below), collectively, the "**Collateral**").

Notwithstanding anything to the contrary, the Collateral shall exclude (including from any applicable security documents) the following: (i) any immaterial fee-owned real property and any leasehold interest (with no requirement to obtain landlord waivers, estoppels or collateral access letters), (ii) perfection of any motor vehicles and other assets subject to certificates of title, (iii) all commercial tort claims, (iv) any governmental licenses or state or local franchises, charters and authorizations to the extent security interest is prohibited thereby, (v) pledges and security interests prohibited or restricted by applicable law (including any requirement to obtain the consent of any governmental authority or third party), (vi) margin stock and equity interests in any person other than material wholly-owned restricted subsidiaries (other than immaterial and other excluded subsidiaries (to be defined consistent with the Documentation Principles), (vii) any lease, license or agreement or any property subject to a purchase money security interest or similar arrangement to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money arrangement or create a right of termination in favor of any other party thereto after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other applicable law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code or other applicable law notwithstanding such prohibition, (viii) any assets to the extent a security interest in such assets would result in material adverse tax consequences as reasonably determined by the Borrower, in consultation with the Administrative Agent, (ix) letter of credit rights, except to the extent constituting a support obligation for other Collateral as to which perfection of the security interest in such other Collateral is accomplished solely by the filing of a UCC financing statement (it being understood that no actions shall be required to perfect a security interest in letter of credit rights, other than the filing of a Uniform Commercial Code financing statement), (x) cash and cash equivalents (other than proceeds of Collateral as to which perfection of the security interest in such proceeds is accomplished solely by the filing of a UCC financing statement), deposit and securities accounts (including securities entitlements and related assets) and (xi) any intent-to-use application trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law (the foregoing described in clauses (i) through (xi) are, collectively, the "**Excluded Assets**").

Notwithstanding the foregoing, assets will be excluded from the Collateral in circumstances where the cost of obtaining a security interest in such assets exceeds the practical benefit to the Lenders afforded thereby as reasonably determined by the Administrative Agent (in consultation with the Borrower).

Notwithstanding anything to the contrary, the Borrower and the subsidiary Guarantors shall not be required, nor shall the Administrative Agent be authorized, (i) to perfect the above-described pledges, security interests and mortgages by any means other than by (A) filings pursuant to the Uniform Commercial Code in the office of the secretary of state (or similar central filing office) of the relevant State(s) and filings in the applicable real estate records with respect to mortgaged properties or any fixtures relating to mortgaged properties, (B) filings in United States government offices with respect to intellectual property as expressly required in the Credit Facilities Documentation, (C) mortgages in respect of fee-owned real property with a fair market value in excess of an amount to be agreed or (D) delivery to the Administrative Agent to be held in its possession of all Collateral consisting of intercompany notes, stock certificates of the Borrower and its subsidiaries and instruments, in each case as expressly required in the Credit Facilities Documentation, (ii) to enter into any control agreements with respect to assets requiring perfection through control agreements or perfection by “control” (other than in respect of certificated equity interests in the Borrower and material wholly-owned restricted subsidiaries otherwise required to be pledged) (including without limitation deposit accounts and other bank or securities accounts) or (iii) to take any action in any non-U.S. jurisdiction in order to create any security interests in assets located or titled outside of the U.S. or to perfect any security interests in such assets, including any intellectual property registered in any non-U.S. jurisdiction (it being understood that, other than pledge agreements with respect to the equity interests of certain material foreign subsidiaries to be mutually agreed upon, there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction).

All the above-described pledges, security interests and mortgages shall be created on terms to be set forth in the Credit Facilities Documentation, and none of the Collateral shall be subject to other pledges, security interests or mortgages (except permitted liens and other exceptions and baskets to be set forth in the Credit Facilities Documentation).

The liens on the Collateral securing the Senior Secured Credit Facilities will be *pari passu* with the liens on the Collateral securing the Borrower’s existing 8.25% Senior Notes due 2018 (the “**Existing Notes**”). The priority of the security interests and related creditor rights between the Senior Secured Credit Facilities and the Existing Notes will be set forth in a customary intercreditor agreement (the “**Intercreditor Agreement**”) on terms and conditions to be mutually agreed.

Mandatory Prepayments:

Loans under the Term Facility shall be prepaid with:

- (a) Commencing with the fiscal year ending March 31, 2013, 50% of Excess Cash Flow (to be defined consistent with the Documentation Principles) with step-downs 25% and 0% based upon the achievement of Consolidated First Lien Net Leverage Ratio levels to be agreed; *provided that*, (i) in any fiscal year, any voluntary prepayments of loans under the Term Facility and loans under the Revolving Facility to the extent commitments thereunder are permanently reduced by the amount of such prepayments, other than prepayments funded with the proceeds of incurrences of indebtedness or from any Specified Equity Contribution, shall be credited against Excess Cash Flow prepayment obligations on a dollar-for-dollar basis for such fiscal year; *provided that*, in the case of Term Loans prepaid at a discount to par, any such reduction of the amount of Excess Cash Flow prepayments shall be equal to the amount spent to make such prepayment (as opposed to the face amount of the Term Loans so prepaid) and (ii) Excess Cash Flow shall be reduced for, among other things, cash used for capital expenditures, permitted investments, permitted acquisitions and certain restricted payments to be agreed, in each case, to the extent financed with internally generated funds and made during such fiscal year;
- (b) 100% of the net cash proceeds of all non-ordinary course asset sales or other dispositions of property by the Borrower and its restricted subsidiaries (including insurance and condemnation proceeds and sale leaseback proceeds) in excess of an amount to be agreed, subject to exceptions to be agreed and subject to the right to reinvest 100% of such proceeds if such proceeds are reinvested (or committed to be reinvested) in the business (other than working capital, except for short term capital assets), including in permitted acquisitions or capital expenditures, within 12 months and, if so committed to be reinvested, so long as such reinvestment is actually completed within 180 days after of the end of such 12 month period, and other exceptions to be set forth in the Credit Facilities Documentation; and

- (c) 100% of the net cash proceeds of issuances of debt obligations of the Borrower and its restricted subsidiaries after the Closing Date (excluding debt permitted under the Credit Facilities Documentation but including Refinancing Facilities and Refinancing Notes).

In addition, in the event certain brands previously identified to the Lead Arranger (the “**Split Brands**”) are not acquired on or prior to the six month anniversary of the Closing Date, the Borrower shall within 5 business days of such anniversary (or such later date as is the end of the next concluding interest period) prepay Term Loans in an aggregate principal amount (the “**Prepayment Amount**”) of \$45,000,000, or such lesser amount as constitutes the ratable portion of such \$45,000,000 allocable as of the date hereof to such brand(s) not purchased based on a customary economic metric to be agreed.

Mandatory prepayments shall be applied, without premium or penalty, subject to reimbursement of the Lenders’ redeployment costs in the case of a prepayment of Adjusted LIBOR borrowings other than on the last day of the relevant interest period, on a pro rata basis to the Term Facility and any Incremental Term Facility under the Credit Facilities Documentation and to scheduled amortization payments thereof in direct order of maturity.

Any Lender under the Term Facility may elect not to accept its pro rata portion of any mandatory prepayment under clauses (a) and (b) above (each a “**Declining Lender**”). Any prepayment amount declined by a Declining Lender may be retained by the Borrower.

The loans under the Revolving Facility shall be prepaid and the letters of credit cash collateralized to the extent such extensions of credit exceed the amount of the commitments under the Revolving Facility.

Prepayments from subsidiaries’ Excess Cash Flow and asset sale proceeds will be limited under the Credit Facilities Documentation to the extent such prepayments (including the repatriation of cash in connection therewith) would (a) be prohibited or delayed by applicable law; *provided* that the Borrower and its restricted subsidiaries shall take all commercially reasonable actions available under local law to permit such repatriation or (b) result in material adverse tax consequences; *provided* that, if not previously repatriated and applied to such prepayment within 12 months, an amount equal to the affected portion of Excess Cash Flow or asset sale proceeds (less the amount of additional taxes that would have been payable or reserved against if such amount had been repatriated) shall be applied to prepay the Term Facility or to other local indebtedness of restricted subsidiaries organized in the relevant jurisdiction.

Voluntary Prepayments and Reductions in Commitments:

Voluntary reductions of the unutilized portion of the Revolving Facility commitments and voluntary prepayments of borrowings under the Senior Secured Credit Facilities will be permitted at any time in minimum principal amounts to be agreed upon, without premium or penalty (except as provided below), subject to reimbursement of the Lenders' redeployment costs in the case of a prepayment of Adjusted LIBOR borrowings other than on the last day of the relevant interest period.

All voluntary prepayments of the Term Facility and any Incremental Term Facility will be applied to the remaining amortization payments under the Term Facility or such Incremental Term Facility, as applicable, and may be applied to any of the Term Facility or any Incremental Term Facility, in any case, as directed by the Borrower (and absent such direction, in direct order of maturity thereof).

Documentation:

The definitive documentation for the Senior Secured Credit Facilities (the "**Credit Facilities Documentation**") shall be negotiated in good faith to finalize the Credit Facilities Documentation, giving effect to the Certain Funds Provision, as promptly as reasonably practicable, shall be based on the definitive documentation for Emdeon with changes determined to be reasonably necessary by the Lead Arrangers in light of market conditions at the time of syndication (*provided* that such modifications shall not be in contravention of any of the terms and conditions set forth in this Exhibit B), shall contain the terms and conditions set forth in this Exhibit B and, to the extent any terms are not set forth in this Exhibit B, shall otherwise be usual and customary for transactions of this kind, reflecting the operational and strategic requirements of the Borrower and its subsidiaries in light of their size, industries, practices and the Borrower's proposed business plan (collectively, the "**Documentation Principles**"). The Credit Facilities Documentation shall contain only those payments, conditions to borrowing, mandatory prepayments, representations, warranties, covenants and events of default expressly set forth in this Exhibit B, and with standards, qualifications, thresholds, exceptions, "baskets" and grace and cure periods consistent with the Documentation Principles as applied to transactions of this kind.



Representations and Warranties:

Limited to the following (to be applicable to Holdings, the Borrower and their restricted subsidiaries only): organization; existence, qualification and power; compliance with laws; authorization; no contravention with respect to the Credit Facilities Documentation; governmental authorization; binding effect of the Credit Facilities Documentation; financial statements; no material adverse effect (after the Closing Date); litigation; labor matters; ownership of property; environmental matters; taxes; ERISA compliance; subsidiaries; margin regulations; investment company act; disclosure; intellectual property; projections; creation, validity, perfection and priority of security interests in the Collateral (subject to permitted liens and the Certain Funds Provisions); status of the Senior Secured Credit Facilities as senior debt; no material undisclosed liabilities; anti-terrorism laws (including PATRIOT Act); and consolidated Closing Date solvency of the Borrower and its subsidiaries, subject, in the case of each of the foregoing representations and warranties, to customary qualifications and limitations for materiality to be provided in the Credit Facilities Documentation.

Conditions to Initial Borrowing:

The availability of the initial borrowing and other extensions of credit under the Senior Secured Credit Facilities on the Closing Date will be subject solely to the applicable conditions set forth in the “Conditions to All Borrowings” section below and in Exhibit D to the Commitment Letter.

Conditions to All Borrowings:

The making of each extension of credit under the Senior Secured Credit Facilities shall be conditioned upon (a) delivery of a customary borrowing notice, (b) the accuracy of representations and warranties in all material respects (subject, on the Closing Date, to the Certain Funds Provisions) and (c) after the Closing Date, the absence of defaults or events of default at the time of, or after giving effect to the making of, such extension of credit.

Affirmative Covenants:

Limited to the following (to be applicable to Holdings, the Borrower and their restricted subsidiaries only): quarterly and annual financial statements (with annual financial statements accompanied by an opinion of an independent accounting firm (which opinion shall not contain any going concern qualification)); certificates; other information; notices; payment of taxes; preservation of existence; maintenance of properties; maintenance of insurance; compliance with laws; books and records; inspection rights; covenant to guarantee obligations and give security; further assurances as to security; compliance with environmental laws; annual budget; material changes in nature of business; use of proceeds; and designation of subsidiaries; commercially reasonable efforts to maintain a corporate credit rating from S&P and a corporate family rating from Moody's, in each case with respect to the Borrower and a rating of each of the Senior Secured Credit Facilities by each of S&P and Moody's (with no requirement to maintain any minimum ratings); subject, in the case of each of the foregoing covenants, to exceptions and qualifications to be provided in the Credit Facilities Documentation.

Negative Covenants:

Limited to the following (to be applicable to Holdings, the Borrower and their restricted subsidiaries and, in the case of the passive holding company covenant set forth below, Holdings) limitations on: liens (which shall permit liens securing any Refinancing Facilities and any Incremental Facilities); investments (including acquisitions, loans, etc.); debt (which shall permit any Refinancing Facilities and any Incremental Facilities); limitation on changes in fiscal year of Holdings and the Borrower; fundamental changes; dispositions; restricted payments; transactions with affiliates; restrictions on negative pledge clauses; prepaying and amending subordinated debt, the Unsecured Bridge Facility, the Unsecured Notes, unsecured Ratio Indebtedness (as defined below) and permitted refinancings of any of the foregoing; and Holdings incurring material liabilities, owning material assets or conducting material business other than as a passive holding company. Certain baskets and exceptions to the foregoing covenants shall be agreed.

The Borrower or any restricted subsidiary will be permitted to make acquisitions (each, a "**Permitted Acquisition**") so long as (a) no Event of Default exists and the Borrower would be in compliance (on a pro forma basis after giving effect to such acquisition and any other acquisition, disposition, debt incurrence, debt retirement and customary pro forma adjustments, including pro forma cost savings and synergy addbacks, to be agreed) with the Financial Covenants recomputed as of the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are available and (b) subject to the limitations set forth in "Guarantees" and "Security" above, the acquired company and its subsidiaries (other than any designated as an unrestricted subsidiary) will become Guarantors and pledge their Collateral to the Administrative Agent to the extent required by the Credit Facilities Documentation. With respect to acquisitions of entities that do not become Guarantors, consideration provided by the Borrower or a Guarantor will be limited to an aggregate amount not to exceed an amount equal to the sum of (x) an amount to be agreed and (y) available "Cumulative Credit" amounts (to be defined in a manner consistent with the Documentation Principles and based on the unswept portion of Excess Cash Flow plus qualified equity proceeds (other than Specified Equity Contributions)).

So long as no event of default has occurred and is then continuing, the Borrower and any restricted subsidiary will be permitted to (a) incur indebtedness (“**Ratio Indebtedness**”) subject to compliance on a pro forma basis with (i) the Financial Covenants recomputed as of the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are available, (ii) a Total Net Leverage Ratio (to be defined in a manner consistent with the Documentation Principles and, in any case, to be determined net of all unrestricted cash and cash equivalents, but to exclude the cash proceeds from the indebtedness being incurred) of 5.50:1.00 and (iii) if such indebtedness (or other permitted indebtedness) is to be secured, the amount of such indebtedness could have been incurred as Incremental Facilities (and shall be treated as first lien debt for all ratio calculations) under the test described above, subject to the execution and delivery of *pari passu* or junior lien intercreditor agreements; *provided* that such indebtedness shall (A) have a maturity at least 91 days after the latest date of maturity of the Senior Secured Credit Facilities, (B) in the event such indebtedness is incurred or guaranteed on a *pari passu* secured basis by the Borrower or a Guarantor, be in the form of debt securities or indebtedness that is not a term loan or revolving loan, and (C) have terms and conditions (other than pricing, rate floors, discounts, fees, and optional redemption provisions) that are not materially less favorable (when taken as a whole) to the Borrower than the terms and conditions of the Credit Facilities Documentation (when taken as a whole); *provided further* that any such indebtedness incurred pursuant to clause (a) above by a restricted subsidiary that is not a Guarantor (including any non-U.S. subsidiaries) shall be capped at an amount to be agreed and (b) make unlimited non-ordinary course asset sales subject to fair market value, the consideration for such sales being at least 75% cash consideration (subject to designated non-cash consideration) and compliance, if required, with the mandatory prepayment provisions.

Financial Maintenance Covenants:

Limited to the following financial maintenance covenants (the “**Financial Covenants**”) solely for the benefit of the Revolving Facility: (i) a maximum Consolidated Total Net Leverage Ratio (to be defined in a manner consistent with the Documentation Principles and, in any case, to be determined net of all unrestricted cash and cash equivalents) and (ii) a minimum Consolidated Net Cash Interest Coverage Ratio (to be defined in a manner consistent with the Documentation Principles). The Term Facility shall not have the benefit of, or any rights with respect to, the Financial Covenants (including, without limitation, as to amendments, modifications and waivers).

The foregoing Financial Covenants will be tested quarterly with respect to the Borrower and its restricted subsidiaries on a consolidated basis, with the first covenant test to commence with the first full fiscal quarter ending after the Closing Date.

The levels with respect to the Financial Covenants shall be set to reflect at least a 35% cushion (calculated on a non-cumulative basis, with the levels with respect to the minimum Consolidated Net Cash Interest Coverage Ratio reflecting a greater cushion than the levels with respect to the maximum Consolidated Total Net Leverage Ratio) to Consolidated EBITDA from the Borrower’s financial model most recently delivered to the Lead Arranger prior to the date of the Commitment Letter (the “**Borrower’s Financial Model**”) together with any updates or modifications thereto reasonably agreed among the Borrower and the Commitment Parties or as necessary to reflect (i) any exercise of “market flex” pursuant to the Fee Letter (including as to margin, LIBOR floor, OID and upfront fees), (ii) if the Unsecured Bridge Facility is funded, assuming that the interest rate under the Unsecured Bridge Facility is at the Unsecured Total Cap, (iii) the actual pricing of the Term Loans, Unsecured Notes and other Securities issued on the Closing Date in excess of the related yield assumed in the Borrower’s Financial Model (or if the actual pricing of the Unsecured Notes or other Securities occurs after completion of Successful Syndication, assuming pricing at the Unsecured Total Cap or such other yield acceptable to the Borrower) and (iv) Adjusted LIBOR consistent with the assumptions in the Borrower’s Financial Model.

It is agreed that “**Consolidated EBITDA**” as used in the calculation of the Financial Covenants and otherwise in the Facilities Documentation shall be defined in a manner consistent with the Documentation Principles and in any event shall include, without limitation:

(i) (x) cost savings, operating expense reductions and synergies related to the Transactions that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken (in the good faith determination of the Borrower) within 18 months after the Closing Date and (y) cost savings, operating expense reductions and synergies related to mergers and other business combinations, acquisitions, divestitures, restructurings, cost savings initiatives and other similar initiatives consummated after the Closing Date that are reasonably identifiable and factually supportable and projected by the Borrower in good faith to result from actions that have been taken or with respect to which substantial steps have been taken (in the good faith determination of the Borrower) within 18 months after a merger or other business combination, acquisition or divestiture (or 12 months in the case of any other restructuring, cost savings initiative or other initiative) is consummated;

(ii) restructuring and related charges up to an amount to be agreed; and

(iii) adjustments and add-backs reflected in the Company’s financial model as provided to the Lead Arranger, and others as shall be mutually negotiated in light of Borrower’s business, operations and the Company’s business plan.

For purposes of determining compliance with the Financial Covenants, any cash equity contribution (which shall be common equity or otherwise in a form reasonably acceptable to the Administrative Agent) made to the Borrower after the beginning of the relevant fiscal quarter and on or prior to the day that is 10 days after the day on which financial statements are required to be delivered for such fiscal quarter will, at the request of the Borrower, be included in the calculation of Consolidated EBITDA solely for the purposes of determining compliance with the financial maintenance covenants at the end of such fiscal quarter and applicable subsequent periods which include such fiscal quarter (any such equity contribution so included in the calculation of Consolidated EBITDA, a “**Specified Equity Contribution**”), subject solely to the following terms and conditions: (a) in each four fiscal quarter period, there shall be at least two fiscal quarters in respect of which no Specified Equity Contribution is made, (b) the amount of any Specified Equity Contribution shall be no greater than the amount required to cause the Borrower to be in pro forma compliance with the Financial Covenants, (c) all Specified Equity Contributions shall be disregarded for purposes of determining any baskets with respect to the covenants contained in the Credit Facilities Documentation, (d) no more than five Specified Equity Contributions shall be made during the term of the Senior Secured Credit Facilities and (e) there shall be no reduction in indebtedness in connection with any Specified Equity Contributions for determining compliance with the Financial Covenants and no Specified Equity Contribution will reduce (or count towards) net leverage/indebtedness for purposes of any calculation thereof.

Unrestricted Subsidiaries:

The Credit Facilities Documentation will contain provisions pursuant to which, subject to limitations on loans, advances, and other investments in, unrestricted subsidiaries, the Borrower will be permitted to designate any existing or subsequently acquired or organized subsidiary as an “unrestricted subsidiary” and subsequently re-designate any such unrestricted subsidiary as a restricted subsidiary, *provided* that, (x) immediately after giving effect to any such designation, no event of default shall have occurred and shall be continuing and (y) after giving pro forma effect to such designation or re-designation, as if it had occurred on the first day of the applicable reference period, the Borrower would be in compliance with the Financial Covenants, recomputed as of the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are available. Unrestricted subsidiaries will not be subject to the representation and warranties, affirmative or negative covenant or event of default provisions of the Credit Facilities Documentation, and the results of operations and indebtedness of unrestricted subsidiaries will not be taken into account for purposes of determining compliance with the Financial Covenants. The designation of any subsidiary as an unrestricted subsidiary shall constitute an investment therein at the date of designation in an amount equal to the fair market value thereof. The designation of any unrestricted subsidiary as a restricted subsidiary shall constitute (i) the incurrence at the time of designation of any indebtedness, liens or investments of such subsidiary existing at such time and (ii) a return on any such investment in an amount equal to the fair market value.

Events of Default:

Limited to the following (to be applicable to Holdings, the Borrower and its restricted subsidiaries): nonpayment of principal, interest or fees (with grace periods for interest, fees and other amounts); failure to perform negative covenants and the Financial Covenants (and affirmative covenants to provide notice of default or maintain the Borrower's corporate existence); failure to perform other covenants subject to a 30-day cure period after notice by the Administrative Agent; any representation or warranty incorrect in any material respect when made; cross-default and cross-acceleration to other indebtedness, subject to a threshold amount; bankruptcy or insolvency proceedings; monetary judgment, subject to a threshold amount; ERISA events, subject to material adverse effect; invalidity (actual or asserted in writing by the Borrower or any Guarantor) of the Credit Facilities Documentation or material portion of Collateral; and change of control (to include a pre and post-initial public offering provision); *provided* that, notwithstanding anything to the contrary in the Credit Facilities Documentation, a breach of the Financial Covenants will not constitute an Event of Default for purposes of the Term Facility (or any other facility other than the Revolving Facility), and the Lenders under the Term Facility (or any other facility other than the Revolving Facility (including any Incremental Revolving Facilities)) will not be permitted to exercise any remedies with respect to an uncured breach of the Financial Covenants until the date, if any, on which the commitments under the Revolving Facility have been terminated and the loans under the Revolving Facility have been accelerated as a result of such breach.

Voting:

Amendments and waivers of the Credit Facilities Documentation will require the approval of Lenders holding more than 50% of the aggregate amount of the loans and commitments under the Senior Secured Credit Facilities (the "**Required Bank Lenders**"), except that the consent of each Lender directly adversely affected thereby shall be required with respect to (a) increases in the commitment of such Lender, (b) reductions of principal (including any amortization payment), interest or fees, (c) extensions of final maturity or the due date of any interest, fee or amortization payment, (d) releases of all or substantially all Guarantors or all or substantially all of the Collateral, and (e) changes in voting thresholds. Defaulting Lenders will be subject to the suspension of certain voting rights. Notwithstanding the foregoing, amendments and waivers of the Financial Covenants (or any of the financial definitions included in the Financial Covenants) will require only the consent of Lenders holding more than 50% of the aggregate commitments and loans under the Revolving Facility and no other consents or approvals shall be required.

The Credit Facilities Documentation will permit amendments thereof without the approval or consent of the Lenders to effect a permitted “repricing transaction” (i.e., a transaction in which any tranche of Term Loans is refinanced with a replacement tranche of term loans, or is modified with the effect of, bearing a lower rate of interest) other than any Lender holding Term Loans subject to such “repricing transaction” that will continue as a Lender in respect of the repriced tranche of Term Loans or modified Term Loans.

For the avoidance of doubt, the Credit Facilities Documentation may be amended in order to modify any provision relating to pro rata sharing of payments (other than the “waterfall provisions” applicable following enforcement) among the Lenders (and, in any case, any provision requiring pro rata payments or sharing of payments in connection with “amend and extend” transactions) with the consent of the Required Bank Lenders.

The Credit Facilities Documentation shall contain customary provisions for replacing non-consenting Lenders in connection with amendments and waivers requiring the consent of all Lenders under the Senior Secured Credit Facilities, or of all Lenders directly affected thereby so long as Lenders under the relevant facilities holding more than 50% of the aggregate amount of the loans and commitments under the Senior Secured Credit Facilities shall have consented thereto.

Cost and Yield Protection:

The Credit Facilities Documentation shall contain customary provisions (a) protecting the Lenders against increased costs or loss of yield resulting from changes in reserve, capital adequacy and other requirements of law (it being understood that Dodd-Frank and Basel III and the applicable regulations thereunder shall be deemed to be changes in law following the Closing Date) and from the imposition of or changes in certain withholding or other taxes and (b) indemnifying the Lenders for “breakage costs” incurred in connection with, among other things, any prepayment of a LIBOR borrowings on a day other than the last day of an interest period with respect thereto, it being understood that there will be a customary exception to be agreed to the gross-up obligations for U.S. federal withholding taxes imposed as a result of any failure of a Lender to comply with the procedures, certifications, information reporting, disclosure or other related requirements of newly enacted Sections 1471-1474 of the Internal Revenue Code of 1986, as amended (and any regulations promulgated thereunder or published administrative guidance issued pursuant thereto), and any amended or successor version that is substantively comparable.



Assignments and Participations:

The Lenders will be permitted to assign (other than to any Disqualified Lender) (a) loans under the Term Facility with the consent of the Borrower (not to be unreasonably withheld or delayed) and (b) loans and commitments under the Revolving Facility with the consent of the Borrower, the Swingline Lender and the Issuing Bank (in each case, not to be unreasonably withheld or delayed); *provided* that no consent of the Borrower shall be required in the case of (A) the Term Facility only, if such assignment is made to another Lender or an affiliate or approved fund of a Lender or in connection with the initial syndication (subject to the terms of the Commitment Letter), (B) the Revolving Facility only, if such assignment is made to another Lender that is a Lender under the Revolving Facility, or (C) after the occurrence and during the continuance of a payment or bankruptcy with respect to the Borrower) event of default. All assignments will require the consent of the Administrative Agent, not to be unreasonably withheld or delayed. In the case of the Term Facility only, the Borrower shall be deemed to have consented to an assignment of loans under the Term Facility if the Borrower does not object to such assignment within 10 business days following the Borrower's receipt of a written request for consent to such assignment from the Administrative Agent.

Each assignment (other than to another Lender, an affiliate of a Lender or an approved fund) will be in an amount of an integral multiple of \$1,000,000 in the case of the Term Facility and \$5,000,000 in the case of the Revolving Facility (or lesser amounts, if agreed between the Borrower and the Administrative Agent) or, if less, all of such Lender's remaining loans and commitments of the applicable class. Assignments will be by novation and in the case of the Senior Secured Credit Facilities will not be required to be pro rata among the Senior Secured Credit Facilities. The Administrative Agent shall receive a processing and recordation fee of \$3,500 for each assignment.

The Lenders will be permitted to sell participations (other than to any Disqualified Lender) in loans and commitments without restriction in accordance with applicable law and subject to limitations consistent with the Documentation Principles. Voting rights of participants shall be limited to matters set forth under "Voting" above with respect to which the unanimous vote of all Lenders (or all directly and adversely affected Lenders, if the participant is directly and adversely affected) would be required.

The Credit Facilities Documentation shall provide that so long as no default or event of default is continuing, Term Loans may be purchased by and assigned to Holdings or any of its subsidiaries on a non-pro rata basis through (a) open market purchases and/or (b) Dutch auctions open to all Lenders on a pro rata basis in accordance with customary procedures to be agreed; provided that any such Term Loans shall be automatically and permanently cancelled immediately upon acquisition thereof by Holdings or any of its subsidiaries.

Expenses and Indemnification:

The Borrower shall pay, if the Closing Date occurs, all reasonable and documented or invoiced out-of-pocket costs and expenses of the Administrative Agent and the Commitment Parties (without duplication) associated with the syndication of the Senior Secured Credit Facilities and the preparation, execution and delivery, administration, amendment, modification, waiver and/or enforcement of the Credit Facilities Documentation (including the reasonable fees, disbursements and other charges of counsel identified herein or otherwise retained with the Borrower's consent (such consent not to be unreasonably withheld or delayed) and, if necessary, one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for the Administrative Agent and the Commitment Parties taken as a whole).

The Borrower will indemnify the Administrative Agent, the Commitment Parties, the Lenders and their affiliates, and the directors, officers, employees, counsel, agents, advisors and other representatives of the foregoing, and hold them harmless from and against any and all losses, liabilities, damages, claims and reasonable and documented or invoiced out-of-pocket fees and expenses (including reasonable fees, disbursements and other charges of one counsel for all indemnified parties and, if necessary, one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all indemnified parties (and, in the case of an actual or perceived conflict of interest, where the indemnified person affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for such affected indemnified person)) of any such indemnified person arising out of or relating to any claim or any litigation or other proceeding (regardless of whether such indemnified person is a party thereto and whether or not such proceedings are brought by the Borrower, its equity holders, its affiliates, creditors or any other third person) that relates to the Transactions, including the financing contemplated hereby; *provided* that no indemnified person will be indemnified for any liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements to the extent it has resulted from (i) the gross negligence, bad faith or willful misconduct of such person or any of its controlled affiliates or controlling persons or any of the officers, directors, employees, agents, advisors, or members of any of the foregoing, in each case who are involved in or aware of the Transactions (as determined by a court of competent jurisdiction in a final and non-appealable decision), (ii) a material breach of the Credit Facilities Documentation by any such person or one of its affiliates or (iii) disputes between and among indemnified persons to the extent such disputes do not arise from any act or omission of the Borrower or any of its affiliates (other than claims against an indemnified person acting in its capacity as an agent or arranger or similar role under the Senior Secured Credit Facilities unless such claims arise from the gross negligence, bad faith or willful misconduct of such indemnified person).

Governing Law and Forum:

New York.

Counsel to the Administrative Agent, the Lead Arranger and the Bookrunner:

Cahill Gordon & Reindel LLP.

Interest Rates:

Initially, the interest rates under the Senior Secured Credit Facilities will be as follows:

With respect to the Revolving Loans, at the option of the Borrower, initially, Adjusted LIBOR plus 5.00% or ABR plus 4.00%.

From and after the delivery by the Borrower to the Administrative Agent of the Borrower's financial statements for the period ending at least one full fiscal quarter following the Closing Date, interest rates under the Revolving Facility shall be subject to at least one 25 basis points reduction on a pricing grid to be determined based upon the Consolidated First Lien Net Leverage Ratio set forth in the applicable officer's certificate and shall be as agreed upon between the Borrower and the Administrative Agent.

With respect to Term Loans, at the option of the Borrower, initially, Adjusted LIBOR plus 5.00% or ABR plus 4.00%.

From and after the delivery by the Borrower to the Administrative Agent of the Borrower's financial statements for the period ending at least one full fiscal quarter following the Closing Date, interest rates under the Term Facility shall be subject to one 25 basis points reduction on a pricing grid to be determined based upon the Consolidated First Lien Net Leverage Ratio set forth in the applicable officer's certificate and shall be as agreed upon between the Borrower and the Administrative Agent.

With respect to swingline borrowings, ABR plus 4.00%.

The Borrower may elect interest periods of 1, 2, 3 or 6 months (or, if agreed by all relevant Lenders, 9 or 12 months) for Adjusted LIBOR borrowings.

Calculation of interest shall be on the basis of the actual days elapsed in a year of 360 days (or 365 or 366 days, as the case may be, in the case of ABR loans where the applicable rate is determined pursuant to clause (i) of the definition of ABR).

Interest shall be payable in arrears (a) for loans accruing interest at a rate based on Adjusted LIBOR, at the end of each interest period and, for interest periods of greater than 3 months, every three months, and on the applicable maturity date and (b) for loans accruing interest based on the ABR, quarterly in arrears and on the applicable maturity date.

ABR is the Alternate Base Rate, which is the highest of (i) the rate of interest established by the Administrative Agent, from time to time, as its “corporate base rate”, (ii) the Federal Funds Rate plus 1/2 of 1.0% and (iii) the one-month Adjusted LIBOR rate plus 1.0% per annum.

Adjusted LIBOR is the London interbank offered rate for dollars, adjusted for statutory reserve requirements.

With respect to the Term Loans, there shall be a minimum Adjusted LIBOR (i.e. Adjusted LIBOR prior to adding any applicable interest rate margins thereto) requirement of (i) 1.25% per annum and (ii) a minimum ABR requirement of 2.25%.

Letter of Credit Fee:

A per annum fee equal to the spread over Adjusted LIBOR under the Revolving Facility will accrue on the aggregate face amount of outstanding letters of credit under the Revolving Facility, payable in arrears at the end of each quarter and upon the termination of the respective letter of credit, in each case for the actual number of days elapsed over a 360-day year. Such fees shall be distributed to the Revolving Lenders pro rata in accordance with the amount of each such Lender’s Revolving Facility commitment, with exceptions for defaulting Revolving Lenders. In addition, the Borrower shall pay to each Issuing Bank, for its own account, (a) a fronting fee equal to 0.125% per annum upon of the aggregate face amount of outstanding letters of credit, payable in arrears at the end of each quarter and upon the termination of the Revolving Facility, calculated based upon the actual number of days elapsed over a 360-day year, and (b) customary issuance and administration fees.

Commitment Fees:

The Borrower shall pay a commitment fee of 0.50% per annum on the average daily unused portion of the Revolving Facility, payable quarterly in arrears commencing from the Closing Date, calculated based upon the actual number of days elapsed over a 360-day year. Such fees shall be distributed to the Revolving Lenders pro rata in accordance with the amount of each such Lender’s Revolving Facility commitment, with exceptions for defaulting Revolving Lenders.

Swingline loans shall, for purposes of the commitment fee calculations only, not be deemed to be a utilization of the Revolving Facility.

Project Prism  
Senior Unsecured Increasing Rate Bridge Loans  
Summary of Principal Terms and Conditions<sup>3</sup>

<u>Borrower:</u>	Same as the Borrower under the Senior Secured Credit Facilities.
<u>Administrative Agent:</u>	MSSF will act as sole administrative agent (in such capacity, the “ <b>Administrative Agent</b> ”) for a syndicate of banks, financial institutions and other entities arranged by the Lead Arranger (as defined below) in consultation with the Borrower (excluding any Disqualified Lender) with respect to the Unsecured Bridge Facility (together with the Initial Lenders, the “ <b>Lenders</b> ”), and will perform the duties customarily associated with such roles.
<u>Lead Arranger and Bookrunner:</u>	MSSF, Citi and RBCCM will act as joint lead arrangers and joint bookrunners for the Unsecured Bridge Facility (collectively, the “ <b>Lead Arranger</b> ”), and will perform the duties customarily associated with such role.
<u>Syndication Agent:</u>	Citi will act as syndication agent for the Unsecured Bridge Facility.
<u>Documentation Agent:</u>	RBCCM will act as documentation agent for the Unsecured Bridge Facility.
<u>Unsecured Bridge Facility:</u>	A senior unsecured bridge facility (the “ <b>Unsecured Bridge Facility</b> ”) in an aggregate principal amount of \$290 million <i>plus</i> , at the Borrower’s election, an amount sufficient to fund any OID or upfront fees required to be funded on the Closing Date in connection with the issuance of the Unsecured Notes or any other Securities on the Closing Date <i>minus</i> the amount of gross proceeds from Unsecured Notes on the Closing Date (the loans thereunder, the “ <b>Unsecured Bridge Loans</b> ”).
<u>Guarantees:</u>	The same as the guarantors for the Senior Secured Credit Facilities. Any guarantee will be automatically released upon the release of the corresponding guarantee under the Senior Secured Credit Facilities (other than upon payment in full thereof).

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<sup>3</sup> All capitalized terms used but not defined herein have the meanings given to them in the Commitment Letter to which this term sheet is attached.

Security: None.

Use of Proceeds: The proceeds of borrowings under the Unsecured Bridge Facility will be used by the Borrower on the Closing Date, together with the proceeds from borrowings under the Term Facility and the Revolving Facility and cash on hand at the Borrower and Prism, solely to pay the Acquisition Costs

Interest Rates: Interest for the first 90-day period commencing on the Closing Date shall be payable at the London interbank offered rate ("**LIBOR**") for U.S. dollars (for interest periods of 1, 2, 3 or six months, as selected by the Borrower) plus 800 basis points (the "**Initial Margin**"). Following the 90th day after the Closing Date, interest on the Unsecured Bridge Loans shall be payable at a rate equal to the Unsecured Total Cap (as defined in the Fee Letter). The Unsecured Bridge Facility shall have a LIBOR floor equal to 1.25% per annum.

Notwithstanding anything to the contrary set forth above, at no time, other than as provided in the second succeeding paragraph, shall the per annum yield on the Unsecured Bridge Loans exceed the Unsecured Total Cap.

Interest Payments: Interest on the Unsecured Bridge Loans will be payable in cash quarterly in arrears.

Default Rate: The applicable interest rate plus 2.0% on overdue amounts.

Notwithstanding anything to the contrary set forth herein, in no event shall any cap or limit on the yield or interest rate payable with respect to the Unsecured Bridge Loans, Senior Unsecured Term Loans or Unsecured Exchange Notes affect the payment of any default rate of interest in respect of any Unsecured Bridge Loans, Senior Unsecured Term Loans or Unsecured Exchange Notes.

Maturity:

The Unsecured Bridge Loans will mature on the first anniversary of the date of funding of the Unsecured Bridge Loans (the “**Maturity Date**”). On the Maturity Date, any Unsecured Bridge Loan that has not been previously repaid in full will be, subject to the absence of a bankruptcy or other insolvency event of default, automatically converted into a senior unsecured term loan (each a “**Senior Unsecured Term Loan**”) due on the date that is eight years after the date of funding of the Unsecured Bridge Facility (the “**Senior Unsecured Extended Maturity Date**”). The date on which Unsecured Bridge Loans are converted into Senior Unsecured Term Loans is referred to as the “**Senior Unsecured Conversion Date**”. At any time on or after the Senior Unsecured Conversion Date, at the option of the applicable Lender, the Senior Unsecured Term Loans may be exchanged in whole or in part for senior unsecured exchange notes (the “**Unsecured Exchange Notes**”) having an equal principal amount; *provided* that no Unsecured Exchange Notes shall be issued until the Borrower shall have received requests to issue at least \$75 million in aggregate principal amount of Unsecured Exchange Notes. The Senior Unsecured Bridge Loans, the Senior Unsecured Term Loans and the Unsecured Exchange Notes shall be *pari passu* obligations of the Borrower.

The Senior Unsecured Term Loans will be governed by the provisions of the Unsecured Bridge Loan Documentation (as defined below) and will have the same terms as the Unsecured Bridge Loans except as expressly set forth herein or on Annex I hereto. The Unsecured Exchange Notes will be issued pursuant to an indenture that will have the terms set forth on Annex II hereto.

Mandatory Prepayment:

The Unsecured Bridge Loans shall be prepaid at 100% of the outstanding principal amount thereof with, subject to exceptions and baskets and in any event (in the case of clause (ii) below) no less favorable than those applicable to the Term Facility, (i) the net proceeds from the issuance of the Unsecured Notes or any other debt securities, or subject to certain exceptions to be mutually agreed, other indebtedness for borrowed money of the Borrower or any of its restricted subsidiaries (such exceptions to include borrowings under any Incremental Facility), (ii) the net proceeds from any non-ordinary course asset sales by the Borrower or any of its restricted subsidiaries in excess of amounts either reinvested in accordance with the Term Facility or used to repay the Term Facility or other secured debt and (iii) the net proceeds of public equity issuances of Holdings and the Borrower (subject to certain exceptions). The Borrower will also be required to prepay the Unsecured Bridge Loans following the occurrence of a change of control at 100% of the outstanding principal amount thereof. In the event any Lender or affiliate of a Lender purchases debt securities from the Borrower pursuant to a permitted securities demand at a price above the level at which such Lender or affiliate has reasonably determined such debt securities can be resold by such Lender or affiliate to a bona fide third party at the time of such purchase (and notifies the Borrower thereof), the net cash proceeds received by the Borrower in respect of such debt securities may, at the option of such Lender or affiliate, be applied first to prepay the Unsecured Bridge Loans of such Lender or affiliate prior to being applied to prepay the Unsecured Bridge Loans held by other Lenders. These mandatory prepayment provisions will not apply to the Senior Unsecured Term Loans.



Optional Prepayment:

The Unsecured Bridge Loans may be prepaid, in whole or in part, at par plus accrued and unpaid interest upon not less than three days' prior written notice, at the option of the Borrower at any time.

Right to Resell Unsecured Bridge Loans:

Each Lender shall have the absolute and unconditional right to resell or assign the Unsecured Bridge Loans or commitments held by it in compliance with applicable law to any third party at any time; *provided* that, for the twelve month period commencing on the Closing Date and so long as no payment or bankruptcy event of default exists or a Demand Failure Event (as defined in the Fee Letter) has occurred and is continuing, the consent of the Borrower (not to be unreasonably withheld) shall be required with respect to any assignment that would result in the Initial Lenders collectively holding less than 50.1% of the aggregate outstanding principal amount of the Unsecured Bridge Loans. The Administrative Agent shall receive, other than with respect to assignments by Initial Lenders, a processing and recordation fee of \$3,500 for each assignment.

The Lenders will be permitted to sell participations in loans and commitments without restriction. Voting rights of participants shall be limited to matters in respect of (a) reductions of principal, interest or fees, (b) extensions of final maturity or the due date of any interest or fee payment, (c) releases of all or substantially all of the Guarantors and (d) changes in voting threshold. The definitive credit documentation will contain customary bank provisions.

Conditions to All Borrowings:

The availability of the borrowings under the Unsecured Bridge Facility on the Closing Date shall be conditioned solely upon (a) delivery of a customary borrowing notice, (b) the accuracy of representations and warranties in all material respects (subject, on the Closing Date, to the Certain Funds Provisions) and (c) the applicable conditions set forth in Exhibit D to the Commitment Letter.

Documentation:

The definitive documentation relating to the Unsecured Bridge Loans (the “**Unsecured Bridge Loan Documentation**” and, together with the Credit Facilities Documentation, the “**Facilities Documentation**”) shall be negotiated in good faith to finalize the Unsecured Bridge Loan Documentation, giving effect to the Certain Funds Provision, as promptly as reasonably practicable, shall be consistent with Emdeon with changes determined to be reasonably necessary by the Lead Arrangers in light of market conditions at the time of syndication (*provided* that such modifications shall not be in contravention of any of the terms and conditions set forth in this Exhibit C), shall contain the terms and conditions set forth in this Exhibit C and shall be consistent with the Documentation Principles as applied to transactions of this kind. Such Unsecured Bridge Loan Documentation shall contain only those payments, conditions to borrowing, mandatory prepayments, representations, warranties, covenants and events of default expressly set forth in this Exhibit C, in each case, applicable to the Borrower and its restricted subsidiaries and with standards, qualifications, thresholds, exceptions, “baskets” and grace and cure periods consistent with the Documentation Principles as applied to transactions of this kind.

Representations and Warranties:

The Unsecured Bridge Loan Documentation will contain representations and warranties relating to the Borrower and its restricted subsidiaries substantially consistent with the representations and warranties applicable to the Senior Secured Credit Facilities but including changes thereto customary for bridge loan financings.

Covenants: The Unsecured Bridge Loan Documentation will contain such affirmative covenants as are customary for bridge loan financings of this type and substantially similar to (but less restrictive than) those for the Senior Secured Credit Facilities to the extent applicable, and the Unsecured Bridge Loan Documentation will contain such incurrence-based negative covenants as are customary for high yield senior unsecured debt securities (but in any event less restrictive than those in the Senior Secured Credit Facilities) (it being understood that prior to the Maturity Date the restricted payments and debt incurrence covenants shall be more restrictive than is customary for high yield senior unsecured debt securities in a manner to be mutually agreed). There will not be any financial maintenance covenants.

Events of Default: The Unsecured Bridge Loan Documentation will contain such events of default (including notice and grace periods) as are customary for high yield senior unsecured debt securities (but in any event less restrictive than those in the Senior Secured Credit Facilities), consisting of nonpayment of principal, interest or other amounts; violation of covenants; incorrectness of representations and warranties in any material respect; cross acceleration to material indebtedness; bankruptcy or insolvency proceedings; material monetary judgments subject to a threshold amount; and actual or asserted invalidity of material guarantees.

Voting: Amendments and waivers of the Unsecured Bridge Loan Documentation will require the approval of Lenders holding more than 50% of the aggregate amount of the loans and commitments under the Unsecured Bridge Facility, except that the consent of each Lender directly adversely affected thereby shall be required with respect to (a) increases in the commitment of such Lender, (b) reductions of principal, interest or fees payable to such Lender, (c) extensions of final maturity of the Unsecured Bridge Loans of such Lender or the due date of any interest or fee payment, (d) releases of all or substantially all of the Guarantors and (e) changes in voting thresholds.

Cost and Yield Protection: Customary for financings of this kind, it being agreed that the documentation will provide customary provisions regarding withholding tax liabilities and a customary exception to be agreed to the gross-up obligations for U.S. federal withholding taxes imposed as a result of any failure of a Lender to comply with the procedures, certifications, information reporting, disclosure or other related requirements of newly enacted Sections 1471-1474 of the Internal Revenue Code of 1986, as amended (and any regulations promulgated thereunder or published administrative guidance issued pursuant thereto), and any amended or successor version that is substantively comparable.

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Expenses and Indemnification: On the same basis as under the Senior Secured Credit Facilities.

Governing Law: New York.

Counsel to the Administrative Agent, the Lead Arranger and the Bookrunner: Cahill Gordon & Reindel LLP.

Senior Unsecured Term Loans

<u>Maturity:</u>	The Senior Unsecured Term Loans will mature on the date that is eight years after the funding of the Unsecured Bridge Loans.
<u>Interest Rate:</u>	The Senior Unsecured Term Loans will bear interest at an interest rate per annum (the “ <b>Senior Unsecured Term Loan Interest Rate</b> ”) equal to the Unsecured Total Cap. Interest shall be payable on the last day of each fiscal quarter of the Borrower and on the maturity date of the Senior Unsecured Term Loans, in each case payable in arrears and computed on the basis of a 360 day year. Interest will be payable in cash.
<u>Guarantees and Security:</u>	Same as Unsecured Bridge Facility (except no guarantee by Holdings).
<u>Covenants, Defaults and Mandatory Prepayments:</u>	Upon and after the Senior Unsecured Conversion Date, the covenants, mandatory prepayments and defaults which would be applicable to the Unsecured Exchange Notes, if issued, will also be applicable to the Senior Unsecured Term Loans in lieu of the corresponding provisions of the Unsecured Bridge Loan Documentation (except that any offer to repurchase upon the occurrence of a change of control will be made at 100% of the outstanding principal amount thereof, plus accrued and unpaid interest to the date of repurchase).
<u>Optional Prepayment:</u>	The Senior Unsecured Term Loans may be prepaid, in whole or in part, at par, plus accrued and unpaid interest upon not less than three days’ prior written notice, at the option of the Borrower at any time.

Unsecured Exchange Notes

<u>Issue:</u>	The Unsecured Exchange Notes will be issued under an indenture capable of being qualified under the Trust Indenture Act of 1939, as amended. Such indenture shall be negotiated in good faith and shall be based on forms of definitive documentation agreed to by you and the Commitment Parties, and such indenture (including all covenants, defaults and mandatory offers to purchase) shall be consistent with the terms in this Term Sheet and the Documentation Principles as applied to transactions of this kind.
<u>Maturity:</u>	The Unsecured Exchange Notes will mature on the date that is eight years after the date of funding of the Unsecured Bridge Loans.
<u>Interest Rate:</u>	The Unsecured Exchange Notes will bear interest payable semi-annually at an interest rate per annum equal to the Unsecured Total Cap. Interest will be payable in cash.
<u>Guarantees and Security:</u>	Same as the Senior Unsecured Term Loans.
<u>Repurchase with Asset Sale Proceeds:</u>	The Borrower will be required to make an offer to repurchase the Unsecured Exchange Notes at 100% of the outstanding principal amount thereof with, subject to exceptions consistent with the Documentation Principles as applied to transactions of this kind, the net proceeds from any non ordinary course asset sales by the Borrower or any of its restricted subsidiaries in excess of amounts either reinvested in a manner consistent with the Documentation Principles as applied to transactions of this kind or applied to repay the Senior Secured Credit Facilities or other secured debt.
<u>Repurchase upon Change of Control:</u>	The Borrower will be required to make an offer to repurchase the Unsecured Exchange Notes following the occurrence of a change of control at a price in cash equal to 101% (or 100% in the case of Unsecured Exchange Notes held by the Commitment Parties or their respective affiliates other than Asset Management Affiliates (as defined in the Fee Letter)) of the outstanding principal amount thereof, plus accrued and unpaid interest to the date of repurchase.

Optional Redemption:

The Unsecured Exchange Notes will be non-callable (subject to the make-whole and equity clawback exceptions in the two succeeding paragraphs below) until the fourth anniversary of the date of funding of the Unsecured Bridge Loans. Thereafter, each Unsecured Exchange Note will be callable at par plus accrued interest plus a premium equal to one half of the coupon on such Unsecured Exchange Note, which premium shall decline ratably on each subsequent anniversary of such funding date to zero on the date that is two years prior to the maturity of the Unsecured Exchange Notes.

Notwithstanding the foregoing, unless a Demand Failure Event has occurred and is continuing, any Unsecured Exchange Notes held by the Commitment Parties or their respective affiliates other than Asset Management Affiliates may be repaid, in whole or in part, in minimum denominations to be agreed, at par plus accrued and unpaid interest upon not less than one business days' prior written notice, at the option of the Borrower at any time.

Prior to the fourth anniversary of the date of funding of the Unsecured Bridge Loans, the Borrower may redeem such Unsecured Exchange Notes at a make-whole price based on U.S. Treasury notes with a maturity closest to the fourth anniversary of such funding date plus 50 basis points.

Prior to the third anniversary of such funding date, the Borrower may redeem up to 35% of such Unsecured Exchange Notes with proceeds from an equity issuance at a price equal to par plus the coupon on such Unsecured Exchange Notes.

The optional redemption provisions will be otherwise consistent with the Documentation Principles as applied to transactions of this kind.

Defeasance Provisions:

Consistent with the Documentation Principles as applied to transactions of this kind.

Modification:

Consistent with the Documentation Principles as applied to transactions of this kind.

Registration Rights:

The Borrower will use commercially reasonable efforts to file after the first issuance of the Unsecured Exchange Notes and use commercially reasonable efforts to cause to become effective, a shelf registration statement with respect to the Unsecured Exchange Notes (a “**Shelf Registration Statement**”) and/or a registration statement relating to a Registered Exchange Offer (as defined below). If a Shelf Registration Statement is filed, the Borrower will keep such Shelf Registration Statement effective and available (subject to customary exceptions) until one year from the effectiveness of the Shelf Registration Statement. If within 365 days from the first issuance of the Unsecured Exchange Notes, a Shelf Registration Statement for the Unsecured Exchange Notes has not been declared effective or the Borrower has not effected an exchange offer (a “**Registered Exchange Offer**”) whereby the Borrower has offered registered notes having terms identical to the Senior Exchange Notes (the “Substitute Notes”) in exchange for all outstanding Unsecured Exchange Notes, then the Borrower will pay liquidated damages of 0.25% per annum on the principal amount of Unsecured Exchange Notes outstanding to holders of Transfer Restricted (to be defined in a manner to be agreed) Unsecured Exchange Notes from and including the 366th day after the date of the issuance of any Unsecured Exchange Note (the “**Default Registration Date**”) to but excluding the earlier of the effective date of such Shelf Registration Statement or the date of consummation of such Registered Exchange Offer (such damages may be payable, at the option of the Borrower, in the form of additional Unsecured Exchange Notes). Such liquidated damages shall increase by 0.25% per annum on the date that is three months after the Default Registration Date and on each date occurring three months thereafter, to a maximum increase in interest of 1.00%. The Borrower will also pay such liquidated damages for any period of time (subject to customary exceptions) following the effectiveness of a Shelf Registration Statement that such Shelf Registration Statement is not available for resales thereunder.

Covenants:

Consistent with the Documentation Principles as applied to transactions of this kind (but in any event less restrictive than those in the Senior Secured Credit Facilities and with a reporting covenant appropriate for transactions of this kind).

Events of Default:

Consistent with the Documentation Principles as applied to transactions of this kind (but in any event less restrictive than those in the Senior Facilities).



Project Prism  
Summary of Additional Conditions<sup>4</sup>

The initial borrowings under the Credit Facilities shall be subject to the following conditions:

1. The Acquisition shall have been consummated, or substantially simultaneously with the initial borrowing under the Term Facility, shall be consummated, in all material respects in accordance with the terms of the Acquisition Agreement, dated December 20, 2011, without giving effect to any amendments, consents or waivers by you thereto that are material and adverse to the Lenders or the Lead Arranger (as reasonably determined by the Lead Arranger), without the prior consent of the Lead Arranger (such consent not to be unreasonably withheld, delayed or conditioned) (it being understood that (a) any reduction in the purchase price of, or consideration for, the Acquisition is not material and adverse to the interests of the Lenders or the Lead Arranger, but shall reduce the Term Facility and the Unsecured Bridge Facility (or Unsecured Notes) ratably and (b) any amendment to the definition of “Material Adverse Change” or “Material Adverse Effect” is material and adverse to the interests of the Lenders and the Lead Arranger).
2. No Material Adverse Change (as defined in the Acquisition Agreement) has occurred which is not capable of remedy prior to the Closing Date.
3. Subject in all respects to the Certain Funds Provisions, all documents and instruments required to create and perfect the Senior Administrative Agent’s security interest in the Collateral (as defined in Exhibit B) shall have been executed and delivered and, if applicable, be in proper form for filing.
4. The Administrative Agent and the Lead Arranger shall have received all documentation and other information about the Borrower and the Guarantors as has been reasonably requested in writing at least 15 days prior to the Closing Date by the Administrative Agent or the Lead Arranger that they reasonably determine is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the PATRIOT Act.

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<sup>4</sup> Capitalized terms used in this Exhibit E shall have the meanings set forth in the other Exhibits attached to the Commitment Letter to which this Exhibit E is attached (the “Commitment Letter”). In the case of any such capitalized term that is subject to multiple and differing definitions, the appropriate meaning thereof in this Exhibit E shall be determined by reference to the context in which it is used.

5. The execution and delivery of (i) the Credit Facilities Documentation, in the case of the Senior Secured Credit Facilities and the Unsecured Bridge Loan Documentation, in the case of the Unsecured Bridge Facility, which shall, in each case, be consistent with the Commitment Letter and Term Sheets and subject to the Certain Funds Provision set forth in the Commitment Letter and (ii) customary legal opinions, customary evidence of authorization, customary officer's certificates, good standing certificates (to the extent applicable) in the jurisdiction of organization of the Borrower and each Guarantor and a solvency certificate of the Borrower's chief financial officer, chief accounting officer or other officer with equivalent duties (certifying that, after giving effect to the Transactions, the Borrower and its subsidiaries on a consolidated basis are solvent) in substantially the form set forth in Annex I attached to this Exhibit D.
6. The Lead Arranger shall have received a pro forma consolidated balance sheet and related pro forma consolidated statement of income of the Borrower as of and for the twelve-month period ending on the last day of the most recently completed four-fiscal quarter period ended at least 45 days prior to the Closing Date (or 90 days in case such four-fiscal quarter period is the end of the Borrower's fiscal year), prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of income).
7. As a condition to the availability of the Unsecured Bridge Facility, (a) the Borrower shall have provided the Commitment Parties with a customary preliminary offering memorandum containing all customary information (other than a "description of notes" and information customarily provided by the Commitment Parties or their counsel), including financial statements, pro forma financial statements, business and other financial data of the type and form that are customarily included in private placements pursuant to Rule 144A promulgated under the Securities Act (including information required by Regulation S-X and Regulation S-K under the Securities Act, which is understood to include statements of net assets to be sold and statements of revenues and direct operating expenses of Prism, but not to include consolidating and other financial statements and data that would be required by Sections 3-10 and 3-16 of Regulation S-X and Item 402 of Regulation S-K and information regarding executive compensation and related party disclosure related to SEC Release Nos. 33-8732A, 34-54302A and IC-27444A) or that would be necessary for the Commitment Parties to receive customary (for high yield debt securities) "comfort" (including "negative assurance" comfort) from independent accountants in connection with the offering of the Unsecured Notes, as well as drafts of customary comfort letters (which shall provide "negative assurance" comfort) by independent auditors of the Borrower which such auditors are prepared to issue upon completion of customary procedures and (b) the Commitment Parties shall have been afforded a period (the "**Notes Marketing Period**") of at least 15 consecutive business days commencing on or after January 3, 2012 and upon receipt of the information described in clause (a) to seek to place the Unsecured Notes with qualified purchasers thereof; *provided* that the Notes Marketing Period will not be deemed to have commenced if (A) the Notes Marketing Period is not completed prior to the Comfort Letter End Date or (B) a Competition Condition (as defined in the Acquisition Agreement) is not satisfied or waived in accordance with the Acquisition Agreement on the Comfort Letter End Date, in which case the Notes Marketing Period shall not be deemed to commence until (x) the Notes Marketing Period would have otherwise commenced in accordance with the terms hereof and (y) the receipt by the Commitment Parties of the information described in clause (a) which contains audited statements of net assets to be sold and related statements of revenue and direct operating expenses of Prism for the fiscal year ending December 31, 2011. If you shall in good faith reasonably believe that the Borrower has delivered the preliminary offering memorandum together with the information and data required to be delivered pursuant to clause (a) of this Paragraph 7, you may deliver to the Lead Arrangers written notice to that effect (stating when you believe it completed any such delivery), in which case the Borrower shall be deemed to have satisfied its requirements under clause (a) of this Paragraph 7 on the date specified in such notice and the Notes Marketing Period shall be deemed to have commenced on the date specified in such notice, in each case unless the Lead Arrangers in good faith reasonably believe that the Borrower has not delivered the preliminary offering memorandum together with the information and data required to be delivered pursuant to clause (a) of this Paragraph 7 and, within three business days after their receipt of such notice from you, the Lead Arrangers deliver a written notice to you to that effect (stating with specificity which information is required to satisfy the Borrower's requirements under clause (a) of this Paragraph 7 for purposes of compliance with this condition only).

For purposes hereof, the “**Comfort Letter End Date**” means February 10, 2011 or such later date (i) on which independent accountants delivering customary “comfort” letters in connection with the offering of Unsecured Notes are able to give “negative assurance” comfort or (ii) to which the Lead Arrangers may agree.

8. The Lead Arranger shall have received (a) audited consolidated balance sheets of Holdings and related statements of income, changes in equity and cash flows of Holdings for the three most recent fiscal years ended at least 90 days prior to the Closing Date, (b) audited statements of net assets to be sold and related statements of revenues and direct operating expenses of Prism for the three most recent fiscal years ended at least 90 days prior to the Closing Date, (c) unaudited consolidated balance sheets and related statements of income, changes in equity and cash flows of Holdings for each subsequent fiscal quarter (other than the fourth fiscal quarter of Holdings’ fiscal year) after the date of the most recent financial statements delivered pursuant to clause (a) above and ended at least 45 days before the Closing Date and (d) unaudited statements of net assets to be sold and related statements of revenues and direct operating expenses of Prism for the nine month period ended September 30, 2011 and the prior comparative period and for each subsequent fiscal quarter commencing with the quarter ending March 31, 2012; *provided* that filing of the required financial statements on form 10-K and form 10-Q by Holdings will satisfy the foregoing requirements with respect to Holdings and its subsidiaries.
9. All fees required to be paid on the Closing Date pursuant to the Fee Letter and reasonable out-of-pocket expenses required to be paid on the Closing Date pursuant to the Commitment Letter, to the extent invoiced at least three business days prior to the Closing Date (except as otherwise reasonably agreed by the Borrower), shall, upon the initial borrowing under the Term Facility, have been paid (which amounts may be offset against the proceeds of the Credit Facilities).
10. The Refinancing shall have been consummated or substantially concurrently with the initial borrowings under the Senior Credit Facilities, shall be consummated.

FORM OF SOLVENCY CERTIFICATE

SOLVENCY CERTIFICATE

of

PRESTIGE BRANDS, INC.

AND ITS SUBSIDIARIES

Pursuant to the [Credit Agreement], the undersigned hereby certifies, solely in such undersigned's capacity as [chief financial officer] [specify other officer with equivalent duties] of the Borrower, and not individually, as follows:

As of the date hereof, after giving effect to the consummation of the Transactions, including the making of the Loans under the Credit Agreement on the date hereof, and after giving effect to the application of the proceeds of such Loans:

- a. The fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise;
- b. The present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured;
- c. The Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured; and
- d. The Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

For purposes of this Certificate, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

The undersigned is familiar with the business and financial position of the Borrower and its Subsidiaries. In reaching the conclusions set forth in this Certificate, the undersigned has made such other investigations and inquiries as the undersigned has deemed appropriate, having taken into account the nature of the particular business anticipated to be conducted by the Borrower and its Subsidiaries after consummation of the transactions contemplated by the Commitment Letter.

[Signature Page Follows]

Annex I to Exhibit D -2

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IN WITNESS WHEREOF, the undersigned has executed this Certificate in such undersigned's capacity as [chief financial officer] [specify other officer with equivalent duties] of the Borrower, on behalf of the Borrower, and not individually, as of the date first stated above.

PRESTIGE BRANDS, INC.

By

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Name:

Title:

[Signature Page to Solvency Certificate]

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